Virendra

Vs

The State of Punjab and Another (and connected petition)

Petitions Nos. 95 and 96 of 1957

(CJI S. R. Dass, T. L. Venkatarama Ayyar, B. P. Sinha, A. K. Sarkar, J. L. Kapur JJ)

06.09.1957

JUDGMENT

DAS C.J. -

In these two petitions under Art. 32 of the Constitution of India the petitioners call in question the validity of the Punjab Special Powers (Press) Act, 1956 (being Act No. 38 of 1956), hereinafter referred to as "the impugned Act", and pray for an appropriate writ or order directing the respondents to withdraw the Notifications issued by them on the two petitioners as the editors, printers and publishers of two newspapers, Pratap Vir Arjun.

The Daily Pratap was started about 38 years back in Lahore, the capital of the united Punjab. It is a daily newspaper printed in the Urdu language and script. Since the partition of the country the Daily Pratap is being published simultaneously from Jullundur and from New Delhi. Vir Arjun is a Hindi daily newspaper also published simultaneously from Jullundur and from New Delhi. Virendra, the petitioner, in Petition No. 95 of 1957 is the editor, printer and publisher of the two papers published from Julludur and K. Narendra is the editor, printer and publisher of the two papers published from New Delhi.

The petitioners allege that after the appointment of the States Reorganisation Commission on December 29, 1953, the Akali party in the Punjab started a compaign for the partition of the State of Punjab on communal and linguistic basis. According to the petitioners this agitation soon degenerated into a campaign of hatred which threatened the peace of the State. The petitioners maintain that the Hindu inhabitants of the State belonging to all shades of opinion and also a section of the Sikh community and the Congress Party were strongly opposed to that proposal. It is in the circumstances reasonable to infer that the Hindus would also indulge in a counter propaganda in the Press and from the platform against the agitation started by the Akali party. It is admitted that the policy of these two papers, the Daily Pratap and Vir Arjun, has been to oppose the Akali demand for partition of the State of Punjab. Obviously a good deal of tension was generated in the State by reason of the two bitterly opposing parties trying to propagate their respective ideologies. About a year back the Congress Party, which is the ruling party, is said to have surrendered to the communal pressure of the Akalies and accepted what has since come to be known as the regional formula. It was amidst the din and bustle of this ideological war and to prevent and combat any possible activity prejudicial to the maintenance of communal harmony that the Legislature of the State of Punjab found it necessary to pass the impugned Act which received the assent of the President on October 19, 1956, and came into force on the 25th of the same month.

The provisions of the impugned Act, in so far as they are material, may now be referred to. Section

2(1)(a) runs as follows :

> "2(1) The State Government or any authority so authorised in this behalf if satisfied that such action is necessary for the purpose of preventing or combating any activity prejudicial to the maintenance of communal harmony affecting or likely to affect public order, may, by order in writing addressed to a printer publisher or editor, -
>
> (a) prohibit the printing or publication in any document or any class of documents of any matter relating to a particular subject or class or subjects for a specified period or in a particular issue or issues of a newspaper or periodical;
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> Provided that no such order shall remain in force for more than two months from the making thereof;
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> Provided further that the person against whom the order has been made may within ten days of the passing of this order make a representation to the State Government which may on consideration thereof modify, confirm or rescind the order;"

Section 2(1)(b) authorises the State Government or any authority so authorised in this behalf to require that any matter covering not more than two columns be published in any particular issue or issues of a newspaper or periodical on payment of adequate remuneration and to specify the period (not exceeding one week) during which and the manner in which such publication shall take place. Clause (c) of s. 2(1) authorises the State Government or the delegated authority to impose pre-censorship. Sub-section (2) of s. 2 enables the State Government or the authority issuing the order in the event of any disobedience of an order made under s. 2 to order the seizure of all copies of any publication and of the printing press or other instrument or apparatus used in the publication. Section 3(1) runs as follows :

> "The State Government or any authority authorised by it in this behalf, if satisfied that such action is necessary for the purpose of preventing or combating any activity prejudical to the maintenance of communal harmony affecting or likely to affect public order, may, by notification, prohibit the bringing into Punjab of any newspaper, periodical, leaflet or other publication."

Sub-Section (2) of s. 3 gives power to the State Government or the authority issuing the order, in the event of any disobedience of an order made under s. 3, to order the seizure of all copies of any newspaper, periodical, leaflet or other publication concerned. Section 4 provides punishment for the contravention of any of the provisions of the Act by imprisonment of either description which may extend to one year or with fine up to one thousand rupees or with both.

It appears that on or about May 30, 1957, a movement known as the "save Hindi agitation" was started by a Samiti which goes by the name of Hindi Raksha Samiti. The Arya Samaj, which claims to be a cultural and religious society, joined this campaign for changing what they conceive to be the objectionable features of the regional formula and the Sachar formula on language. According to the petitioners the Hindi Raksha Samiti, the sponsor of the "save Hindi agitation" claims that it has the support of practically all sections of the Hindus of the State. The petitioners who are the editors, printers and publishers of the two newspapers published simultaneously from Jullundar and New Delhi respectively consider that the objectionable clauses of those formulae are not only unjust and unfair to the cause of propagating that national language in the country, but are also a contrivance to

secure the political domination of the minority community over the majority. Admittedly the petitioners have been publishing criticisms and news concerning the agitation which, according to them, are quite fair and legitimate, but they allege that newspapers like Prabhat and Ajit, which support the Akali party in the State have been publishing articles and news couched in a strong and violent language against the "save Hindi agitation" and the Hindu community. The agitation apparently followed the usual course and pattern of all political agitation of this kind with its attendant demonstrations, slogans and satyagraha by the volunteers and lathi charge by the police. Eventually on July 10, 1957, the agitation culminated in the "save Hindi agitation" volunteers' forcible entry into the Secretariat of the Punjab Government at Chandigarh. It was in these circumstances that the four Notifications complained of were issued.

On July 13, 1957, a Notification under s. 2(1)(a) of the impugned Act was issued against the petitioner Virendra, as the editor, printer and publisher of the Daily Pratap published from Jullundar. It was in the following terms :

> "Whereas I, Ranbir Singh, Home Secretary, Punjab Government, authorised by the said Government under Section 2(1) of the Punjab Special Powers (Press) Act, 1956, on examination of the publications enumerated in the annexure relating to the "save Hindi agitation" have satisfied myself that action is necessary for combating the calculated and persistent propaganda carried on in the newspaper the 'Pratap' published at Jullundar to disturb communal harmony in the State of Punjab;
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> And whereas the said propaganda by making an appeal to communal sentiments has created a situation which is likely to affect public order and tranquillity in the State;
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> And therefore in pursuance of the powers conferred under sub-clauses (a) of clause (1) of section 2 the said Act, I prohibit Shri Virendra, the printer, publisher and the editor of 'Pratap' from printing and publishing any article, report, news item, letter or any other material of any character whatsoever relating to or connected with "save Hindi agitation" for a period of two months from this date.
>
> # Sd./ Home Secretary to Government Punjab. No : 8472-C(H) 57/14679"##

The annexure referred to in the Notifications sets out the headings of fifteen several articles published in this paper between May 30, 1957, to July 8, 1957. Another Notification in identical terms with an annexure setting forth the heading of sixteen articles published during the same period in Vir Arjun was issued on the same day against Virendra as the editor, printer and publisher or Vir Arjun published from Jullundar.

On July 14, 1957, two Notifications in identical terms were issued under s. 3 of the impugned Act against K. Narendra as the editor, printer and publisher of Daily Pratap and Vir Arjun published from New Delhi. It will suffice to set out the Notification in respect of Daily Pratap which ran as follows :

> # "Punjab Government Gazette Extraordinary Published by Authority Chandigarh, Sunday, July 14, 1957. Home Department Notification The 14th July, 1957.##
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> No. 8453-C(H)-57/14580 :- Whereas I, Ranbir Singh, Home Secretary to Government, Punjab, authorised by the said Government under section 3 of the Punjab Special Powers (Press) Act. 1956, have satisfied myself that it is necessary to

combat and prevent the propaganda relating to "save Hindi agitation" carried on in the Pratap with the object of disturbing communal harmony in the State of Punjab and thereby affecting public order;

Now, therefore, in exercise of the powers conferred by section 3(1) of the said Act, I do hereby prohibit the bringing into Punjab of the newspaper printed and published at Delhi, from the date of publication of this notification."

The petitioners contend that both ss. 2 and 3 of the impugned Act are ultra vires the State Legislature, because they infringe the fundamental rights of the petitioners guaranteed by Arts. 19(1)(a) and 19(1)(g) of the Constitution and are not saved by the protecting provisions embodied in Art. 19(2) or Art. 19(6). In the first place it is contended that these sections impose not merely restrictions on but total prohibition against the exercise of the said fundamental rights, for in the case of the Notifications under s. 2 there is a total prohibition against the publication of all matters relating to or in connection with the "save Hindi agitation" and in the case of the Notifications made under s. 3 there is a complete prohibition against the entry and the circulation of the papers published from New Delhi in the whole of Punjab. There is and can be no dispute that the right to freedom of speech and expression carries with it the right to propagate and circulate one's views and opinions subject to reasonable restrictions. The point to be kept in view is that the several rights of freedom guaranteed to the citizens by Art. 19(1) are exercisable by them throughout and in all parts of the territory of India. The Notifications under s. 2(1)(a), prohibiting the printing and publishing of any article, report, news item, letter or any other material of any character whatsoever relating to or connected with "save Hindi agitation" or those under s. 3(1) imposing a ban against the entry and the circulation of the said papers published from New Delhi in the State of Punjab do not obviously take away the entire right, for the petitioners are yet at liberty to print and publish all other matters and are free to circulate the papers in all other parts of the territory of India. The restrictions, so far as they extend, are certainly complete but whether they amount to a total prohibition of the exercise of the fundamental rights must be judged by reference to the ambit of the rights and, so judged, there can be no question that the entire rights under Arts. 19(1)(a) and 19(1)(g) have not been completely taken away, but restrictions have been imposed upon the exercise of those rights with reference to the publication of only articles etc. relating to a particular topic and with reference to the circulation of the papers only in a particular territory and, therefore, it is not right to say that these sections have imposed a total prohibition upon the exercise of those fundamental rights.

Learned counsel then urges that assuming these sections impose only restrictions they are, nevertheless, void as being repugnant to the Constitution, because the restrictions are not reasonable. As regards the right to freedom of speech and expression guaranteed by Art. 19(1)(a) it is qualified by Art. 19(2) which protects a law in so far as it imposes reasonable restriction on the exercise of the right conferred by Art. 19(1)(a) "in the interests of..... public order.....". Likewise the right to carry on any occupation, trade or business guaranteed by Art. 19(1)(g) is cut down by Art. 19(6) which protects a law imposing "in the interests of the general public" reasonable restrictions on the exercise of the right conferred by Art. 19(1)(g). As has been explained by this Court in Ramji Lal Modi v. The State of U.P. [Petition No. 252 of 1956, decided on April 5, 1957.] the words "in the interests of" are words of great amplitude and are much wider than the words "for the maintenance of". The expression "in the interest of" makes the ambit of the protection very wide, for a law may not have been designed to directly maintain the public order or to directly protect the general public against any particular evil and yet it may have been enacted "in the interest of" the public order or the general public as the case may be. It is against this background, therefore, that we are to see whether the restrictions imposed by ss. 2 and 3 can be said to be

reasonable restrictions within the meaning of Arts. 19(2) and 19(6).

The test of reasonableness has been laid down by this Court in The State of Madras v. V. G. Row [[1952] S.C.R. 597, 607.] in the following words :

> "It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."

This dictum has been adopted and applied by this Court in several subsequent cases. The surrounding circumstances in which the impugned law came to be enacted, the underlying purpose of the enactment and the extent and the urgency of the evil sought to be remedied have already been adverted to. It cannot be overlooked that the Press is a mighty institution wielding enormous powers which are expected to be exercised for the protection and the good of the people but which may conceivably be abused and exercised for anti-social purposes by exciting the passions and prejudices of a section of the people against another section and thereby disturbing the public order and tranquillity or in support of a policy which may be of a subversive character. The powerful influence of the newspapers, for good or evil, on the minds of the readers, the wide sweep of their reach, the modern facilities for their swift circulation to territories, distant and near, must all enter into the judicial verdict and the reasonableness of the restrictions imposed upon the Press has to be tested against this background. It is certainly a serious encroachment on the valuable and cherished right to freedom of speech and expression if a newspaper is prevented from publishing its own views or the views of its correspondents relating to or concerning what may be the burning topic of the day. Our social interest ordinarily demands the free propagation and interchange of views but circumstances may arise when the social interest in public order may require a reasonable subordination of the social interest in free speech and expression to the needs of our social interest in public order. Our Constitution recognises this necessity and has attempted to strike a balance between the two social interests. It permits the imposition of reasonable restrictions on the freedom of speech and expression in the interest of public order and on the freedom of carrying on trade or business in the interest of the general public. Therefore, the crucial question must always be : Are the restrictions imposed on the exercise of the rights under Arts. 19(1)(a) and 19(1)(g) reasonable in view of all the surrounding circumstances ? In other words are the restrictions reasonably necessary in the interest of public order under Art. 19(2) or in the interest of the general public under Art. 19(6) ?

It is conceded that a serious tension had arisen between the Hindus and the Akalies over the question of the partition of the State on linguistic and communal basis. The people were divided into two warring groups, one supporting the agitation and the other opposing it. The agitation and the counter agitation were being carried on in the Press and from the platforms. Quite conceivably this agitation might at any time assume a nasty communal turn and flare up into a communal frenzy and factious fight disturbing the public order of the State which is on the border of a foreign State and where consequently the public order and tranquillity were and the essential in the interest of the safety of the State. It was for preserving the safety of the State and for maintaining the public order that the Legislature enacted this impugned Statute. Legislature had to ask itself the question; who will be the appropriate authority to determine at any given point of time as to whether the prevailing

circumstances require some restriction to be placed on the right to freedom of speech and expression and the right to carry on any occupation, trade or business and to what extent ? The answer was obvious, namely, that as the State Government was charged with the preservation of law and order in the State, as it alone was in possession of all material facts it would be the best authority to investigate the circumstances and assess the urgency of the situation that might arise and to make up its mind whether any and, if so, what anticipatory action must be taken for the prevention of the threatened or anticipated breach of the peace. The court is wholly unsuited to gauge the seriousness of the situation, for it cannot be in possession of materials which are available only to the executive Government. Therefore, the determination of the time when and the extent to which restrictions should be imposed on the Press must of necessity be left to the judgment and discretion of the State Government and that is exactly what the Legislature did by passing the statute. It gave wide powers to the State Government, or the authority to whom it might delegate the same, to be exercised only if it were satisfied as to the things mentioned in the two sections. The conferment of such wide powers to be exercised on the subjective satisfaction of the Government or its delegate as to the necessity for its exercise for the purpose of preventing or combating any activity prejudicial to the maintenance of communal harmony affecting or likely to affect public order cannot, in view of the surrounding circumstances and tension brought about or aided by the agitation in the Press, be regarded as anything but the imposition of permissible reasonable restrictions on the two fundamental rights. Quick decision and swift and effective action must be of the essence of those powers and the exercise of it must, therefore, be left to the subjective satisfaction of the Government charged with the duty of maintaining law and order. To make the exercise of these powers justiciable and subject to the judicial scrutiny will defeat the very purpose of the enactment. Even in his dissenting judgment in Dr. N. B. Khare v. The State of Delhi [[1950] S.C.R. 510.] Mukherjea, J., conceded that in cases of this description certain authorities could be invested with power to make initial orders on their own satisfaction and not on materials which satisfy certain objective tests.

It is said that the sections give unfettered and uncontrolled discretion to the State Government or to the officer authorised by it in the exercise of the drastic powers given by the sections. We are referred to the observations of Mukherjea, J., in Dwarka Prasad Laxmi Narain v. The State of Uttar Pradesh [[1954] S.C.R. 803, 813.]. That case does not seem to us to have any application to the facts of this case. In the first place, the discretion is given in the first instance to the State Government itself and not to a very subordinate officer like the licensing officer as was done in Dwaraka Prasad's case (supra). It is true that the State Government may delegate the power to any officer or person but the fact that the power of delegation is to be exercised by the State Government itself is some safeguard against the abuse of this power of delegation. That apart, it will be remembered that the Uttar Pradesh Coal Control Order, 1953, with reference to which the observations were made, prescribed no principles and gave no guidance in the matter of the exercise of the power. There was nothing in that order to indicate the purpose for which and the circumstances under which the licensing authority could grant or refuse to grant, renew or refuse to renew, or suspend, revoke, cancel or modify any licence under that order and, therefore, the power could be exercised by any person to whom the State Coal Controller might have chosen to delegate the same. No rules had been framed and no directions had been given on the relevant matters to regulate or to guide the exercise of the discretion of the licensing officer. That cannot, in our judgment, be said about s. 2 or s. 3 of the impugned Act, for the exercise of the power under either of these two sections is conditioned by the State Government or the authority authorised by the said Government being satisfied that such action was necessary for the purpose of preventing or combating any activity prejudicial to the maintenance of communal harmony affecting or likely to affect the public order. As explained by this Court in Harishankar Bagla v. The State of Madhya

Pradesh [[1955] 1 S.C.R. 380, 386, 387.], the dictum of Mukherjea, J., can have no application to a law which sets out its underlying policy so that the order to be made under the law is to be governed by that policy and the discretion given to the authority is to be exercised in such a way as to effectuate that policy, and the conferment of such a discretion so regulated cannot be called invalid. The two sections before us lay down the principle that the State Government or the delegated authority can exercise the power only if it is satisfied that its exercise is necessary for the purposes mentioned in the sections. It cannot be exercised for any other purposes. In this view of the matter neither of these sections can be questioned on the ground that they give unfettered and uncontrolled discretion to the State Government or one executive officer in the exercise of discretionary powers given by the section.

It is next said that an executive officer may untruthfully say, as a matter of form, that he has been satisfied and there is nothing in the section which may prevent him from abusing the power so conferred by these sections. But, as pointed out in Khare's case (supra), the exercise of a discretionary preventive power to be exercised in anticipation for preventing a breach of public order musts necessarily be left to the State Government or its officers to whom the State Government may delegate the authority. No assumption ought to be made that the State Government or the authority will abuse its power. To make the exercise of the power justiciable will defeat the very purpose for which the power is given. Further, even if the officer may conceivably abuse the power, what will be struck down is not the statute but the abuse of power.

Reference has been made to the principles enunciated by this Court in Ramesh Thappar v. The State of Madras [[1950] S.C.R. 594.], and applied in Chintaman Rao v. The State of Madhya Pradesh [[1950] S.C.R. 759.], namely, that if the language employed in the impugned law is wide enough to cover restriction both within and outside the limits of constitutionally permissible legislative action affecting the guaranteed fundamental rights and so long as the possibility of the statute being applied for purposes not sanctioned by the Constitution cannot be ruled out, the sections must be struck down as ultra vires the Constitution. We do not think those principles have any application in the instant case. It will be remembered that Art. 19(2), as it was then worded, gave protection to a law relating to any matter which undermined the security of or tended to overthrow the State. Section 9(1-A) of the Madras Maintenance of Public Order was made "for the purpose of securing public safety and the maintenance of public order". It was pointed out that whatever end the impugned Act might have been intended to subserve and whatever aim its framers might have had in view, its application and scope could not, in the absence of limiting words in the statute itself, be restricted to the aggravated form of activities which were calculated to endanger the security of the State. Nor was there any guarantee that those officers who exercised the power under the Act would, in using them, discriminate between those who acted prejudicially to the security of the State and those who did not. This consideration cannot apply to the case now under consideration. Article 19(2) has been amended so as to extend its protection to a law imposing reasonable restrictions in the interests of public order and the language used in the two sections of the impugned Act quite clearly and explicitly limits the exercise of the powers conferred by them to the purposes specifically mentioned in the sections and to no other purpose.

Apart from the limitations and conditions for the exercise of the powers contained in the body of the two sections as hereinbefore mentioned, there are two provisos to s. 2(1)(a) which are important. Under the first proviso the orders made under s. 2(1)(a) can only remain in force for two months from the making thereof. Further, there is another proviso permitting the aggrieved person to make a representation to the State Government which may, on consideration thereof, modify, confirm or rescind the order. A power the exercise of which is conditioned by the positive requirement of the

existence of the satisfaction of the authority as to the necessity for making the order for the specific purposes mentioned in the section and the effect of the exercise of which is to remain in operation for a limited period only and is liable to be modified or rescinded upon a representation being made cannot, in our opinion, in view of the attending circumstances, be characterised as unreasonable and outside the protection given by Art. 19(2) or Art. 19(6). Under cl. (b) of sub-s. (1) of s. 2, also there are several conditions, namely, that the matter required to be published must not be more than two columns, that adequate remuneration must be paid for such publication and that such requirement cannot prevail for more than one week. A consideration of these safeguards must, in our opinion, have an important bearing in determining the reasonableness of the restrictions imposed by s. 2. The prevailing circumstances which led to the passing of the statute, the urgency and extent of the evil of communal antagonism and hatred which must be combated and prevented, the facility with which the evil might be aggravated by partisan news and views published in daily newspapers having large circulation and the conditions imposed by the section itself on the exercise of the power conferred by it must all be taken into consideration in judging the reasonableness or otherwise of the law and, so judged, s. 2 must be held to have imposed reasonable restrictions on the exercise of the rights guaranteed by Arts. 19(1)(a) and 19(1)(g) in the interest of public order and of the general public and is protected by Arts. 19(2) and 19(6).

Learned counsel appearing for the petitioner Virendra also maintains that assuming that s. 2(1)(a) is valid, the Notifications actually issued thereunder are much too wide in language and cannot be supported. The operative part of the Notification prevents the petitioner from publishing any article, new item, letter or any other matter of any character whatsoever relating to or connected with the "save Hindi agitation". It is said that the petitioner cannot even publish a report or a letter from a correspondent against the "save Hindi agitation". It cannot publish a report of the statement made on the floor of the House by the Prime Minister deprecating the "save Hindi agitation". This argument appears to us to have no real substance. If the section is good - and that is what we hold it to be and that is what, for the purposes of this part of the argument, learned counsel is prepared to assume - then the section has conferred on the State Government this power to be exercised if it is satisfied as to the necessity for its exercise for the purposes mentioned in the section. In other words the exercise if the power is made dependent on the subjective satisfaction of the State Government or its delegate. If the State Government or its delegate is satisfied that for the purposes of achieving the specified objects it is necessary to prohibit the publication of any matter relating to the "save Hindi agitation" then for the court to say that so much restriction is not necessary to achieve those object is only to substitute its own satisfaction for that of the State Government or its delegate. The authority before making the order had applied its mind and had made its estimate of the general trend of the policy of these papers and their possible reactions and had formed its satisfactions as to the necessity for making the orders founded on the several articles published in these papers between May 30, 1957, and July 8, 1957, wherein the petitioner had systematically published matters in support of the agitation and its disapproval of everything which might run counter to that agitation. It is admitted that the policy of the papers is to support the "save Hindi agitation". Therefore, a grievance that the papers are not allowed even to publish anything against the agitation sounds hollow, wholly unconvincing and of no substance at all. It may not be unreasonable for the Government to hold the opinion, in view of the antecedents and policy of these papers that they will not publish any news or views running counter to their policy without adverse comments. Further, if there happens to be a change in their policy there will be nothing to prevent the petitioner from making a representation to the State Government asking it to modify its Notifications. In our view, having regard to the body s. 2(1)(a) and the two provisos thereto, namely, the conditions as to the satisfaction of the authority in respect of certain matters specified in the section, the time limit as to the efficacy of the

Notifications and the right to make a representation given to the aggrieved party makes this grievance wholly illusory.

It is said that the Notifications should have been qualified so as to prohibit the publication of any matter relating to the "save Hindi agitation" which was likely to prejudicially affect the public order. Suppose such a qualification had been super-added, then there should be somebody who would have to judge whether any given publication did or did not affect the public order. If the editor claimed that it did not but the State held that it did who would decide and when ? It would obviously be the court then which would have to decide whether the publication was likely to prejudicially affect the public order. If the Government exercised the power of seizure to stop the circulation of the offending issue then it would do so at the risk of having to satisfy the court that for preventing the public order being prejudicially affected it was necessary to stop such circulation. That would be the issue before the court. Likewise if the Government launched a prosecution under s. 4 then also the issue would be the same. That would obviously defeat the very purpose of the section itself which, for this argument, is accepted as valid. The question of the necessity for the exercise of the power for the purpose of achieving the specified objects is, having regard to the very nature of the thing and the surrounding circumstances, left by the section entirely to the subjective satisfaction of the Government and if the Government exercises that power after being satisfied that it is necessary so to do for the purposes mentioned in the section and if the Notification is within the section, in the sense that it directs or prohibits the doing of something which the section itself authorises the Government to direct or prohibit, then nothing further remains to be considered. The only issue that can then arise will be whether the Notification has been complied with and the court will only have to decide whether there has been a contravention of the Notification. To introduce the suggested qualification in the Notification will be to make the exercise of the power which is by the section left to the subjective satisfaction of the Government dependent on an objective test subject to judicial scrutiny. That, as we have explained, will defeat the very purpose of the section itself.

It is lastly contended that the impugned Notifications have been made mala fide in order only to suppress legitimate criticisms and fair comments on public affairs. We have perused the articles annexed to the affidavit in opposition and referred to in the Notifications themselves and we are not satisfied that no reasonable person reading those articles could entertain the opinion and feel satisfied that it was necessary to make the order for the purposes mentioned in the section. We are unable to hold, on the materials before us, that the Notifications issued under s. 2 were mala fide.

The observations hereinbefore made as to the safeguards set forth in the provisions of s. 2(1)(a) and (b) cannot, however, apply to the provisions of s. 3. Although the exercise of the powers under s. 3(1) is subject to the same condition as to the satisfaction of the State Government or its delegate as is mentioned in s. 2(1)(a), there is, however, no time limit for the operation of an order made under this section nor is there any provision made for any representation being made to the State Government. The absence of these safeguards in s. 3 clearly makes its provisions unreasonable and the learned Solicitor-General obviously felt some difficulty in supporting the validity of this section. It is surprising how in the same statute the two sections came to be worded differently.

For reasons stated above petition No. 95 of 1957 (Virendra v. The State of Punjab) which impugns the Notifications issued under s. 2(1)(a) must be dismissed and petition No. 96 of 1957 (K. Narendra v. The State of Punjab) which challenges s. 3 must be allowed. In the circumstances of these cases we make no order as to the costs of these applications.

Petition No. 95 of 1957 dismissed.

Petition No. 96 of 1957 allowed.

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