

Gopal Dass Sharma

Vs

The District Magistrate, Jammu and Another

Writ Petition No. 276 of 1971

(CJI S. M. Sikri, A. N. Ray, S. N. Dwivedi, D. G. Palekar, M. H. Beg JJ)

10.11.1972

JUDGMENT

RAY, J. -

1. This writ petition is directed against an order, dated July 8, 1971, made by the District Magistrate, Jammu.
2. The District Magistrate by the said order under Section 8-B(ii) of the Press and Registration of Books Act, 1867, referred to as the Act, cancelled the petitioner's declaration, dated April 23, 1971.
3. The petitioner is a citizen of India. He is a permanent resident of the State of Jammu and Kashmir. On June 2, 1970, he made an application to the District Magistrate, Jammu for permission to start a weekly paper in English from Jammu. The petitioner in accordance with the rules under Act gave a list of 11 names in order of preference. The first preference given by the petitioner was "Blitzkrieg".
4. The petitioner, on February 9, 1971, made a declaration under Section 5 of the Act giving particulars of the newspapers, the title of the newspaper, the language in which it was to be published as also the periodicity of the publication. A second declaration was given by the petitioner on April 23, 1971. The second declaration was necessitated because of two changes. One was regards the day of publication. It was shifted from Saturday to Tuesday. The other was with regard to the name of the printing press. The District Magistrate, under Section 6 of the Act, authenticated the declaration made by the petitioner. A declaration made under rules laid down in Section 5 and authenticated under Section 6 shall be necessary before the newspaper can be published.
5. The first issue of the petitioner's weekly paper was published on March 20, 1971.
6. Some time in the month of July, 1971, the petitioner was served with a notice, dated July 7, 1971 asking him to show cause why the declaration, dated April 23, 1971, might not be cancelled inasmuch as the petitioner's title of the weekly newspaper Blitzkrieg was similar to that of Blitz published from Bombay. The petitioner was asked to show cause by August 8, 1971.
7. The petitioner came to know on July 16, 1971, from the notice, dated July 13, 1971, served upon the Keeper of the Printing Press where the petitioner printed the issue of his paper that the declaration of the petitioner for 'Blitzkrieg' had been cancelled by the District Magistrate, Jammu by

an order, dated July 8, 1971.

8. The petitioner alleges the District Magistrate's displeasure with the petitioner. Though the District Magistrate in the notice, dated July 7, 1971, gave the petitioner one month's time till August 8, 1971 to show cause, yet the District Magistrate cancelled the petitioner's declaration, on July 8, 1971.

9. The petitioner challenges the validity of the order. The petitioner alleges the order to be violative of his fundamental rights to carry on occupation, trade or business.

10. This District Magistrate in his affidavit alleged that in the notice, dated July 7, 1971, the date August 8, 1971, was a typing error. Therefore, by an order, dated November 8, 1971, the notice was withdrawn and a fresh notice was served on the petitioner to show cause by November 20, 1971, as to why his declaration should not be cancelled.

11. The petitioner obtained a rule on August 2, 1971. It is apparent that the District Magistrate took the steps after the petitioner had exposed the wrongful and illegal acts.

12. The cancellation of the declaration is made under Section 8-B of the Act. The Magistrate is to give a notice to the person concerned. An opportunity is to be given to show cause against the action proposed. An enquiry is to be held. An opportunity is to be given to the person concerned to being heard. If the Magistrate is thereafter satisfied that (a) the newspaper is published in contravention of the provisions of the Act or rules made thereunder, or (b) the newspaper mentioned in the declaration bears 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, or (c) the printer or publisher has ceased to be the printer or publisher of the newspaper mentioned in such declaration, or (d) the declaration was made on false representation or on the concealment of any material facts or in respect of a periodical work which is not a newspaper, the Magistrate may, by order, cancel the declaration.

13. In the present case the respondents justify the cancellation on the ground that the title of Blitzkrieg is the same as that of Blitz. In the affidavit the District Magistrate stated that the title of Blitzkrieg "had been inadvertently cleared in favour of" the petitioner. That is not a ground for cancellation of declaration. The petitioner gave the title Blitzkrieg as the first in order of preference. Eleven titles were given. The Magistrate authenticated the petitioner's declaration in respect of the title Blitzkrieg. The newspaper Blitz cannot be said to be either a recent publication or to be unknown. The petitioner contended that Blitz and Blitzkrieg were different titles. So they are.

14. The cancellation was wrongful. It was hasty. No opportunity was given to the petitioner. The explanation of a typing error with regard to the date indicates the unseemly haste with which the District Magistrate took action against the petitioner.

15. It was said on behalf of the respondents that the petitioner had a right of appeal under Section 8-C of the Act. It is also that no fundamental right of the petitioner was infringed by the cancellation. The petitioner's fundamental right to carry on the occupation of editor of newspaper as well as business of publishing a newspaper is infringed by the illegal act.

16. The order of the District Magistrate, dated July 8, 1971, cancelling the petitioner's declaration is quashed. We have taken notice of the subsequent event during the pendency of this rule when the District Magistrate issued another notice, dated November 9, 1971, asking the petitioner to show cause why the declaration should not be cancelled. That notice, dated November 9, 1971, is also quashed. There will be no order as to costs.

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