

## **Kali Charan Garg vs Post Master General, U.P., Lucknow And ... on 21 October, 1955**

**Equivalent citations: AIR1956ALL87, AIR 1956 ALLAHABAD 87, 1956 ALL. L. J. 886**

ORDER

Mehrotra, J.

1. This is an application under Article 226 of the Constitution praying that (1) a writ of mandamus be issued directing the opposite parties, who are the Post Master General, U.P. Lucknow and the Sub-Post Master, Hathras District, to treat "Sangeet" (a magazine published by the petitioner) as a registered newspaper within the meaning of the Post Office Act, (2) a writ of certiorari be issued quashing . the order dated 2-3-1955, cancelling the registration number of "Sangeet", (3) a writ of mandamus be issued directing the opposite parties to restore the registration number of "Sangeet".

2. The applicant Kali Charan Garg is the manager of the Sangit Karyalaya which publishes a monthly magazine known as "Sangeet". The allegations of the petitioner in his affidavit are that the said magazine is devoted to the science and art of Indian music. The said magazine started publication in 1935 and since then has been published regularly every month.

The magazine was registered as a newspaper for the purposes of paragraph 74 of the Post and Telegraph Guide in 1935. The registration number which was assigned to it was A2663, and since then registration has been renewed from year to year till 1955. The registration number was changed in 1940 to A-194. Renewal for the year 1955 was granted by the postal authorities by their letter dated 21-12-1954.

A subsequent letter dated 18-2-1955 was sent by the Sub-Post Master, Hathras asking the applicant to supply four copies of the latest issue of the magazine to the Post Master General, Lucknow. On the same date four copies of the latest issue of the magazine were supplied to the Post Master General through the Sub-Post Master, Hathras.

By another letter dated 2-3-1955, the Post Master General informed the applicant that the registration of "Sangeet" has been cancelled as it did not conform to the requirements of Section 9, Post Office Act, and Clause 74 of the Post and Telegraph Guide, Thereafter several representations were made by the applicant to the Post Master General about the cancellation but to no effect.

For the last 20 years, it is urged, the postal authorities had been treating the magazine as conforming to the requirements of Section 9, Post Office Act, and the registration had been renewed from year to year. The magazine is published at intervals of not more than 31 days and has a

monthly circulation of about 2,500 copies. There is a 'bona fide' list of subscribers of above 50-A magazine, which is registered for purposes of Section 9, Post Office Act, has certain privileges and concessional rates for such magazines, are provided in the Act.

3. A counter-affidavit has been filed on behalf of the opposite-party in which it is admitted that the magazine "Sangeet" is published usually at intervals of not more than 31 days. It is, however, stated that the deponent is not aware of the fact that it has a monthly circulation of about 2,500 copies. The main allegation is that the magazine does not comply with the requirements of Section 9, Post Office Act, and it was registered as a newspaper under a mistaken belief of the law.

Sufficient opportunity had been given to the petitioner before cancelling the registration to publish the publication in conformity with the Act and on the petitioner's failure to do so, the Post Master General had no alternative but to cancel the registration.

4. Two main grounds have been urged in the case. Firstly, it is contended that the matters contained in the "Sangeet" are matters of the nature as contemplated by Section 9, Post Office Act, and secondly, the Post Master General had no power to cancel the registration. It was also contended by the applicant that the magazine has been for the last 20 years accepted as complying with the provisions of Section 9, Post Office Act.

It is not open to the Department to place a different interpretation after 20 years. The intention of the Legislature in enacting Section 9 is not to give power to every Post Master General to differ from his predecessor's opinion and to hold that a publication, which had been considered in the past by the Department to be in conformity with the provisions of Section 9, is no longer so.

5. Section 9 of the Post Office Act provides:

"91. The Central Government may make rules providing for the registration of newspapers for transmission by inland post as registered newspapers.

(2) For the purpose of such registration, every publication, consisting wholly or in great part of political or other news, or of articles relating thereto, or to other current topics, with or without advertisements, shall be deemed a newspaper, subject to the following conditions namely:

(a) that it is published in numbers at intervals of not more than thirty-one days; and

(b) that it has a 'bona fide' list of subscribers.

(3) An extra or supplement to a newspaper, bearing the same date as the newspaper and transmitted therewith, shall be deemed to be part of the newspaper:

Provided that no such extra or supplement shall be so deemed, unless it consists wholly or in great part of matter like that of the newspaper and has the title and date

of publication of the newspaper printed at the top of each page.

Explanation: Nothing in this section or in the rules thereunder shall be construed to render it compulsory to send newspapers by the inland post."

6. The applicant's contention is that the magazine "Sangeet" is a newspaper within the meaning of Section 9 of the Act. There is no dispute that the magazine is published in-numbers at intervals of not more than 31 days and that it has a bona fide list of subscribers. The question, therefore, to be determined is whether the magazine consists wholly or in great part of political or other news or articles relating thereto or to other current topics with or without advertisements.

The magazine does not contain any political news or any article relating to political news but the contention of the petitioner is that it contains in great part articles relating to other current topics. The Standing Counsel, who appeared for the opposite parties, contended that the subject-matter of the magazine in great part neither can be called an article nor can it be regarded as relating to current topics.

A current topic necessarily implies a topic relating to matters or events which are current. In my opinion the words "current topics" do not necessarily imply that it must relate to current events. Events, which have happened in the past, may have, due to certain circumstances, become of interest to the public. If the general public takes interest in any topic, such a topic can be regarded as a current topic, even though it may deal with events which happened in the past. The section covers two distinct categories.

The first part of the section deals with publications consisting wholly or in great part of political or other news or of articles relating thereto, and the second part deals with articles relating to other current topics. If the latter part only means that the current topic must relate to current news, it was not necessary for the Legislature to have used two different categories in the section. The public may have acquired interest in the art and culture and it may be that the topic relating to the development of art and culture and suggesting improvements in the art may be matters of- current topic. In order to discuss any such topic, it may sometimes be necessary to refer to the historical background.

The question whether the modern music should be based entirely on the old classical style or it should be improved, may itself be a matter of current topic and it cannot, therefore, be said that as such the magazine deals only with cultural subjects and it cannot be regarded as containing articles relating to current topics.

7. The contention of the Standing Counsel, however, is that it is for the Post Master General to decide whether the contents of the newspaper relate to current topics or not. The decision of the Post Master General should be regarded as final.

It is not open to this Court to examine the contents and to come to the conclusion whether the contents relate to current topics or not. The magazine is issued every month and if this Court can exercise its discretion under Article 226 of the Constitution and examine the contents, it will be

open to the publisher to approach this Court every month and to say that the magazine contains materials which are articles relating to current topics and as such entitled to be registered, in case such a registration is refused by the postal department.

The registration is renewed every year and to my mind, if the Post Master General, when he grants a registration in the beginning, comes to the conclusion that the magazine conforms to the provisions of Section 9 and registers the same, it is not open to him the next day to say that his predecessor committed a mistake and erroneously held that the contents of the magazine relate to current topics.

When the registration is to be renewed or is to be granted originally it may be open to the Post Master General to come to the conclusion that the Magazine cannot be regarded as a newspaper for purposes of Section 9 but, after having once held that it does come within the purview of Section 9 Post Office Act, it is not open to the Post Master General, on the same set of facts, to come to a different conclusion sometimes afterward during the period when the registration is in force and cancel the registration on that ground.

Nothing has been suggested in the counter-affidavit to show that the contents of the magazine were substantially different when the registration was granted from what it was at the time when the cancellation order was passed. As I have already pointed out, the case of the Department, as set out in the counter-affidavit, is that on the mistaken interpretation of Section 9, the magazine was registered and the Department having now realised that the publication is not a newspaper under Section 9, has cancelled the order.

The cancellation order was no doubt passed after giving notice to the applicant to bring the magazine in conformity with the provisions of Section 9 but the case of the Department is not that after the registration the contents have ceased to comply with the provisions of Section 9. The case on the contrary is that from the very inception when the registration was granted, the magazine did not comply with the provisions of Section 9 and consequently, the fact that a notice was given to the applicant and he was asked to comply with the provisions of Section 9 is of no consequence.

8. Paragraph 74 of the Post and Telegraph Guide also provides that:

"Every publication, consisting wholly or in great part of political or other news or of articles relating thereto, or to other current topics, with or without advertisements, shall be deemed a newspaper, subject to the following conditions, namely:

- (1) that it is published in numbers at intervals of not more than thirty-one days; and
- (2) that it has a bona fide list of subscribers".

It is in the same terms as Section 9, Post Office Act. The power to register a publication as a newspaper is with the Post Master General under paragraph 79 of the Postal Guide and ordinarily the power to register carries with it the power to cancel the registration but Rule 30(5) of the Post and Telegraphs Manual expressly provides that:

"The Postmaster-General or officer exercising, the powers of the Postmaster-General of the Postal circle in which the newspaper is published may cancel or refuse the registration of a newspaper (i) when he is satisfied that the conditions specified in Sub-section (2) of Section 9 of the Act do not continue to be fulfilled or (ii) as soon as the certificate or the recommendation mentioned in item (i) or item (ii) of Sub-rule (2), respectively, is formally cancelled or withdrawn by the authorities concerned".

Rule 30(5), in my opinion, gives power to the Postmaster General to cancel a registration or to refuse a renewal if he is satisfied that the conditions do not continue to be fulfilled. The power to cancel is given only when subsequent to the registration the publication has failed to continue to conform to the provisions of Section 9; but the Rule does not give power to the Post Master General to cancel a registration, if during the course of the period of registration, it appears to the Post Master General that the registration has not been properly granted. In a case of renewal the position may be different. In that case the words "continue to be fulfilled" necessarily mean that in past it may have complied with the provisions of Section 9 but at the time when the renewal is sought, it may have ceased to conform to the provisions of Section 9.

The question whether at the time when the application for registration is made or when renewal of the registration is applied for, the publication conformed to the provisions of Section 9, is a matter which depends upon the satisfaction of the Post Master General and cannot be interfered with by this Court but in cases where the Post Master General has cancelled a registration without any change in the contents of the publication only on the ground that when the registration was granted, it did not fulfil the conditions of Section 9, such a cancellation is not permissible under Rule 30(5).

The registration of a publication as a newspaper may depend upon the discretion of the Post Master General but it cannot be left to the sweet will of every Post Master General every month to form a different opinion about a particular publication. The Rule, which gives power to the Post Master General to cancel a registration, does not, to my mind, authorise the Post Master General to change his opinion subsequently and to hold that a publication already registered did not come within the scope of Section 9 of the Act at the time of the registration

9. In the present case, as I have already pointed out, the publication was registered and the Department was so far of the opinion that the publication was in conformity with the provisions of Section 9 of the Act; thus it is not open to the Post Master General, without any change in the contents of the publication, to come to the conclusion that the publication does not conform to Section 9. The Post Master General, in my opinion, had no power to cancel the registration on the ground that the publication did not conform to the provisions of Section 9, Post Office Act.

10. I, therefore, allow this petition with costs, quash the order dated 2-3-1955, cancelling the registration number of "Sangeet" and direct the opposite-parties to restore the registration number.