

# The Indian Newspaper Society vs The Chairman, Press Council Of India & ... on 12 May, 2020

**Author: Jyoti Singh**

**Bench: Jyoti Singh**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ WP(C) 3105/2020

THE INDIAN NEWSPAPER SOCIETY

Through

..... Petitioner  
Mr. Ramji Srinivasan, Sr. Advocate  
with Mr. Rakesh Sinha, Mr. Pawan  
Kumar Bansal and Mr. Shikhar Singh,  
Advocates

versus

THE CHAIRMAN, PRESS COUNCIL OF INDIA  
& ORS.

Through

..... Respondents  
Mr. Jasmeet Singh, CGSC and Mr.  
Srivats Kaushal, Advocates for R-  
2/UOI.  
Mr. Anand Srivastava, Advocate for  
R-3.  
Mr. Tanuj Khurana, Advocate for R-4  
to 7.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH  
ORDER

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12.05.2020

CM No.10785/2020 (Exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

CM No.10786/2020 (Exemption)

In view of the reasons stated in the application, the same is disposed of with a direction to the applicant to file original Vakalatnama, signed and attested affidavits, original authorization and pay the requisite court fee within a period of one week of lifting of the lockdown.

WP(C) 3105/2020 and CM No.10784/2020 Hearing has been conducted through video conferencing. Present petition has been filed by the petitioner challenging the order dated 17.03.2020 passed by respondent No. 1 whereby nomination of respondent No. 3 made by the petitioner has been rejected for filling up vacancies in „medium newspaper category for 13th Term of the Press Council of India (hereinafter referred to as PCI) under Section 5 (3) (b) of the Press Council of India Act, 1978 (hereinafter referred to as the „Act ).

Petitioner is a notified Association for submitting panel of names for filling up six vacancies in PCI in the category of big, medium and small newspapers in India. Respondent No. 1 is the Statutory Authority under the provisions of the Act and is required to invite a panel of names from notified Associations for filling up 20 out of 28 vacancies of the PCI. Out of the 20 vacancies, six vacancies are to be filled amongst Owners or Managers of the big, medium and small newspapers.

Respondent No.1 makes nominations on the basis of panel of names submitted by notified Associations to Respondent No. 2, who then notifies such names in the Official Gazette, as members of PCI, under Section 5(5) of the Act.

For the present 13th Term, effective from 10.10.2017, PCI issued notice dated 30.09.2016 inviting Associations to apply for representing one of the categories for filling up the vacancies in PCI. On 27.10.2016, petitioner had applied for recognition in the category of big, medium and small newspapers. On 24.11.2017, petitioner was invited to submit a panel of names comprising twice the number of owners/managers to be nominated for the six vacancies. Vide order dated 15.02.2018, respondent No.1 rejected the panel of names submitted by the petitioner in its entirety. However, subsequently the said decision was recalled by an order dated 28.02.2018 and the Associations, including the petitioner were directed to provide fresh panels within the extended date of 15.03.2018, with the same terms and conditions as notified in the earlier Notice.

Petitioner and respondent No. 7 recommended names of respondent No.3 and respondent No.4 as first and second preferential candidates for two vacancies in the medium category. Nomination of respondent No.3 was again rejected by respondent No.1 and the petitioner challenged the said order by filing Writ Petition in this Court being WP (C) No. 3143 of 2018. By an interim order dated 03.04.2018, Court had directed the official respondents not to take any steps pursuant to the impugned order qua respondent No.3 herein. Finally, vide judgement dated 04.02.2020, Court set aside the order dated 20.03.2018 and respondent No. 1 was directed to reconsider the eligibility of respondent No. 3, keeping in view the materials placed by the petitioner in support of his eligibility.

Respondent No. 1 reconsidered the eligibility of respondent No. 3 and vide order dated 17.03.2020, rejected his nomination. Respondent Nos. 4 and 5 have been nominated in the category of medium newspapers but the nomination is yet to be notified by respondent No. 2.

Learned Senior Counsel for the petitioner submits that as per Explanation to Section 5(3) of the Act „Newspaper shall be deemed to be categorized as small, medium or big on the basis of circulation per issue as the Central Government may notify from time to time. As per categorisation notified by the Central Government, circulation of the newspaper per publishing day between 25,001 to 75,000 falls in the medium category. As per records of Registrar of Newspapers for India, the circulation of Gujarati daily „Mumbai Samachar for 2015-2016 was 62,424 and for 2016-2017 was 61,152 copies thus, qualifying in the medium category of newspapers.

Mr. Ramji Srinivasan, learned Senior Counsel appearing for the petitioner submits that respondent No.1 by arbitrarily clubbing the circulations of various newspapers managed by respondent No.3, with different periodicities i.e. daily, weekly and annually, has concluded that total circulation in

figures is more than 75,000, which is the threshold for the medium category. He further submits that error in the impugned order is further evident from the fact that the circulation figures of 1,42,740 for the year 2016-2017 have been taken from the 61st Annual Report of the Registrar of Newspapers and on that basis, a wrong conclusion has been arrived at that respondent No.3 falls in the „Big Category. Learned Senior Counsel has taken the Court at length to the various provisions of the Act to demonstrate that there cannot be a clubbing of publications with different periodicities, more particularly, in view of the definition of "newspaper" under Section 2(e) of the Act and the Explanation to Section 5 (3)(b) where the Legislature has carefully used the words "a newspaper" and "its circulation".

It is pointed out that respondent No. 3 publishes newspapers Mumbai Samachar, daily (Mumbai and Ahmedabad Editions), Mumbai Samachar, weekly and Mumbai Samachar, Deepotsavi Ank (Annual newspaper). Respondent No. 1 has against the provisions of the Act, clubbed all the newspapers, as a result of which the circulation figures have gone beyond 75,000, which is the threshold of the medium category. It is argued that the expression "newspaper" under Section 2(e) bears the same meaning as assigned to it under the Press and Registration of Books Act, 1867 and thus only the daily circulation of Mumbai Samachar, (both Mumbai and Ahmedabad Editions), could have been clubbed and in which case the circulation would have been below the threshold of the medium category.

Learned Senior Counsel further submits that clubbing of separate newspapers with different periodicity has never been done in the past. He vehemently argues that respondent No. 5, who has been held to be eligible by respondent No. 1, would fall outside the category if circulation figures of all newspapers with different periodicity held/managed by him are clubbed together to determine the category of newspaper in which they will fall.

Learned Senior Counsel further contends that the action of rejecting the nomination of respondent No. 3 is tainted and mala fide. He submits that even earlier the nomination was rejected on 20.03.2018, but the same was recalled. Matter was reconsidered and again the nomination was rejected for the second time, though on a different ground. The said decision was challenged before this Court and vide judgment dated 04.02.2020, the Court, finding merit in the contention of respondent No.3, directed respondent No.1 to re-look into the eligibility of respondent No.3. Learned Senior Counsel submits that having suffered the judgment, respondent No.1 has again rejected the nomination of respondent No.3 on a totally different and frivolous ground.

Mr. Srinivasan argues that the nominations made by respondent No.1 are likely to be notified anytime by respondent No.2 and in that case the relief sought will become meaningless and irreparable harm and injury shall be caused to respondent No.3. He thus presses for an interim relief restraining respondent Nos. 1 and 2 from taking any action in furtherance of the impugned decision.

There is no appearance on behalf of respondent No.1, despite an advance copy having been served.

Mr. Jasmeet Singh, Central Government Standing Counsel, appearing on behalf of respondent No.2/UOI, who has to notify the appointments under Section 5(5) of the Act, submits that at present he has no instructions in the matter and would need time to respond.

Mr. Tanuj Khurana, Advocate, appearing on behalf of respondent Nos. 4 to 7 vehemently opposes the petition and the application for interim relief. He submits that it is incorrect for learned Senior Counsel for the Petitioner to argue that there cannot be clubbing of figures of circulation of newspapers of different periodicities. He submits that he has ample material to show that even in the past, this practice had been followed and, in fact, the petitioner had nominated persons to the Council on this basis. Mr. Khurana also opposes grant of interim relief on the ground that grant of interim relief would amount to allowing the petition itself.

Issue notice to the respondents, returnable for 22.05.2020. Mr. Jasmeet Singh, CGSC, accepts notice on behalf of respondent No.2/Union of India, Mr. Anand Srivastava, Advocate, accepts notice on behalf of respondent No.3 and Mr. Tanuj Khurana, Advocate accepts notice on behalf of respondent Nos.4 to 7.

Notice be served on respondent No.1, through all modes including electronic mode, returnable for 22.05.2020.

Respondents are directed to file their respective affidavits before the next date of hearing.

Having perused the provisions of the Act and heard the respective counsels, this Court is of the opinion that the petitioner has made out a prima facie case for grant of interim relief and balance of convenience is also in favour of the petitioner. It is, therefore, directed that till the next date of hearing, respondent No.2 will not give effect to the nomination of respondent No. 5 and no further action will be taken in furtherance of the impugned decision dated 17.03.2020.

The order be uploaded on the Website of Delhi High Court. A copy of the same be also sent to the respective counsels through e-mail.

JYOTI SINGH, J MAY 12, 2020 yg