Hindustan Times & Ors vs State Of U.P. & Anr on 1 November, 2002

Equivalent citations: AIR 2003 SUPREME COURT 250, 2003 (1) SCC 591, 2002 AIR SCW 4706, 2002 ALL. L. J. 2829, 2003 (1) UJ (SC) 49, 2002 (10) SRJ 510, (2002) 5 ALL WC 3543, 2002 (6) SLT 279, (2003) 2 ALLINDCAS 241 (SC), (2002) 9 JT 317 (SC), 2003 UJ(SC) 1 49, 2002 (4) LRI 715, (2002) 101 FJR 955, (2003) 2 INDLD 515, (2003) 1 LABLJ 206, (2003) 95 CUT LT 755, (2002) 258 ITR 469, (2003) 1 UC 130, (2002) 4 LAB LN 1165, (2003) 1 ANDH LT 18, (2002) 8 SCALE 301, (2003) 1 ESC 24, (2002) 8 SUPREME 206, (2003) 96 FACLR 758, (2003) 1 UPLBEC 355, (2003) 2 CALLT 1

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Bench: V.N. Khare, S.B. Sinha

CASE NO.:
Writ Petition (civil) 328 of 1992

PETITIONER:
Hindustan Times & Ors.

RESPONDENT:
State of U.P. & Anr.

DATE OF JUDGMENT: 01/11/2002

BENCH:
V.N. Khare & S.B. Sinha.

JUDGMENT:

J U D G M E N T S.B. SINHA, J. :

By reason of this petition under Article 32 of the Constitution of India, the writ petitioners herein have questioned the validity of an order dated 24th September, 1991 as also one dated 16th October, 1991 issued by the Special Secretary, Government of Uttar Pradesh, Lucknow, whereby and whereunder a direction had been issued to the effect that at the time of payment of bills for publication of Government advertisements in all newspapers having a circulation of more than 25,000 copies, 5% of the amount thereof, forming part of a fund for the purpose of granting pension to the working journalists, would be deducted.

Petitioner No.1 herein is a company incorporated under the Companies Act and is engaged in the business of publishing newspapers including 'The Hindustan Times'. Petitioner No.2 is a shareholder of Petitioner No.1 and Petitioner No.3 is its Director. The petitioners have questioned the legality/validity of the said orders, inter alia, on the following grounds :-

1. The impost, is not leviable either as a tax or as a fee having regard to the fact that the legislative field in relation to the payment of retiral benefits to the working journalists is covered by a Parliamentary Act known as the Working Journalists and other Newspapers Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 ('the said Act').

2. As the State of Uttar Pradesh had no legislative competence, it could not have issued the impugned orders in exercise of its power under Article 162 of the Constitution of India or otherwise.

3. Assuming, that welfare of the working journalists is a field falling within Entry 24 of List III of the VIIth Schedule of the Constitution of India, any State legislation would be the subject to the Central legislation and in that view of the matter too, the impugned orders are ultra vires Article 14 of the Constitution.

The contention of the respondents, on the other hand, is that the scheme in question was made upon obtaining suggestions from the managements of the leading newspapers in terms whereof a beneficent measure for grant of pension to the working journalists was taken and in the event the petitioners are not agreeable thereto, they are free not to accept the offer of the respondents. In any event, as issuance of advertisements is a matter of contract by and between the State and the publishers of the newspapers, the petitioners cannot claim any legal right in relation thereto.

The matter relating to grant of pension to the accredited journalists is said to have been under consideration of the Respondent-State for a number of years. A Bill to the said effect was presented in the Vidhan Sabha and referred to the Select Committee. However, following dissolution of the Vidhan Sabha, the said Bill lapsed.

With a view to give effect to the scheme, despite lapse of the said Bill, by reason of the impugned executive instructions issued under Article 162 of the Constitution of India, the Respondent No.1 upon inviting suggestions from several newspaper publishers, made a scheme, known as the 'Pension and Social Security Scheme for Full-time Journalists' the etc.; the relevant portions whereof are as under :-

"

(1) This Scheme will be for full time working Journalists Group Scheme. In this no individual Policy will be issued. Life Insurance Corporation will issue one policy in favour of Director of Information.

(2) The Scheme will be voluntary.

This will be sharing Scheme in which 50% of the amount will be taken from member journalists and the remaining 50% will be deposited by the State Government. The amount of contribution on the basis of average will be divided into the following three categories

2. The following Journalists will be entitled to adopt the said scheme:-

> (1) These working Journalists who are regularly working for at least 5 years in news papers agencies in Uttar Pradesh. The circulation of such newspapers should be atleast 10000.
>
> (2) Those workers who are covered by the definition of Journalist and are in full time service.
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> (5) If any Journalist after paying instalment for continuous 10 years in Uttar Pradesh under the Pension scheme is transferred to other States then he can voluntarily continue this scheme and continue to contribute the instalments and during this period he will have to contribute cent per cent instalments. If he returns to Uttar Pradesh then from the date of his return to Uttar Pradesh he will be entitled to get 50% contribution from the Government.
>
> . "
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> By a letter dated 16th October, 1991 the Special Secretary of the First Respondent communicated the following to the Director, Information and Public Relations Department, Uttar Pradesh (Press Division)/Advertisement Division, Lucknow :-
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> "On the above subject drawing your attention to para 5 of the Government order No. 460/Nineteen-1-91-32/77 dated 24th September, 1991 I have been directed to state that for the implementation of the scheme the Governor sanctions the deduction of 5% from bills for publicity/tender advertisement of those papers/journals, besides the specified newspapers whose circulation is over 25000. The said Government order will be deemed to be amended."

Pursuant to or in furtherance of the said communication, 5% of the amount from the advertisement bill of the petitioners was deducted.

Admittedly the petitioner objected thereto.

However by a letter dated 9th April, 1992, the Editor/in charge Advertisement of Information and Public Relation Department of the respondent wrote to the Chief Advertisement Manager of Petitioner No.1, to the following effect :-

> "Kindly refer to your letter dated 26.3.92.
>
> In this connection I have to inform you that deduction @5% from your advertisement bills has been done in accordance with the government orders issued in this regard. If you are not agreeable to this deduction as per government order then it will not be possible to use your newspaper for government advertisement."

In the aforementioned premise, this writ petition has been filed by the petitioner.

The impugned order, as noticed hereinbefore, was apparently issued only because the bill presented before the Vidhan Sabha in this behalf lapsed. The respondents thus, sought to achieve the same purpose which it intended to do by reason of a legislative enactment. The question posed in this writ petition must be viewed from this angle also. The backdrop of formulation of the said scheme as also the impugned orders clearly go to suggest that by reason thereof the respondents have exercised its constitutional powers and the matter does not relate to a contract qua contract.

The benefits sought to be granted to the working journalists, indisputably, is covered by Entry 92 of the VIIth Schedule of the Constitution, which reads thus :-

> "92. Taxes on the sale or purchase of newspapers and on advertisements published therein."

The Parliament, as noticed hereinbefore, enacted the said Act. It is also not in dispute that the matter relating to grant of benefits under the said Act, is subject-matter of various reports/Awards of wage boards including the Bachawat Award wherein the matter relating to payment of pension to the working journalists was considered in the following terms :-

> "Pension 6.89 Pension constitutes an important clement of wages and its importance as a social security measure is well recognised the world over. Indeed, the committee on Fair Wages (1949) categorically mentioned that living wages should enable the worker to provide important misfortunes, including old age". The Directive Principles of State Policy enshrined in the Constitution and the Supreme Court verdicts fully support the position.
>
> 6.90 Though on strictu sensu construction of the definition of the term "wages" in Section 2(rr) of the Industrial Disputes Act which becomes applicable (i) newspaper employees by virtue of Section 2(g) of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, there was some hesitation as to whether provision of pension fell within the jurisdiction of the Wage Boards, the Wage Boards on a thorough consideration of the question took a view that it did Accordingly, the Questionnaire issued by the Wage Boards and its subsequent proceedings continued to abide by this decision till the Finance Minister in his Budget Speech on 29th February, 1988 came out with the following announcement:

> "Working journalists have contributed a lot to the country by their intellectual toil, and should be considered by the Parliament to provide a reasonable pension scheme for them Government will be taking appropriate steps in this direction after consulting all concerned".

6.91 This was followed by the appointment of an Expert Group by the Government "to go into the question of providing a pension scheme for journalists as well as non-journalist employees; of newspaper establishment". Thus the scope got extended to non-journalists newspaper employees as well.

6.92 The above-mentioned budget speech and the order constituting Expert Group by the Government was taken by the Wage Boards as a message not to proceed further in the matter. Accordingly, on recommendations are being made in regard to pension and the various statements on capacity to pay so not include any burden that might fall on the newspaper establishments as a result of any pension Scheme."

It is, furthermore, not in dispute that no State legislation in terms of Entry 24 of List II of the VIIth Schedule of the Constitution has been enacted.

Entry 92 of List I of the VIIth Schedule provides for taxes on the sale or purchase of newspapers and on advertisements published therein. Entry 55 of List II authorizes the State to impose taxes on advertisements other than advertisements published in the newspapers and advertisements broadcast by radio or television.

On advertisements published in the newspapers, no fee in respect thereto can be imposed by the State Legislature, inasmuch as Entry 96 of List I and Entry 66 of List II makes it clear that the respective Legislatures have the requisite legislative competence to legislate only in respect of any of the matters contained in the lists.

As noticed hereinbefore, the State of Uttar Pradesh intended to make a legislation covering the same field but even if the same was to be made, it would have been subject to the Parliamentary legislation unless assent of the President of India was obtained in that behalf. The State Executive was, thus, denuded of any power in respect of a matter with respect whereto the Parliament has power to make laws, as its competence was limited only to the matters with respect to which the Legislature of the State has the requisite legislative competence. Even assuming that the matter relating to the welfare of the working journalists is a field which falls within Entry 24 of the Concurrent List, unless and until a legislation is made and assent of the President is obtained, the provisions of 1955 Act of the Working Journalists (Fixation of Rates and Wages) Act, 1958 would have prevailed over the State enactment.

Thus, the directive of the State to the effect that 5% of the amount to be deducted on the amount payable for publication of Government advertisements in all newspapers having a circulation of more than 25,000 copies, would be part of the fund meant to be used towards retiral benefits of the working journalists, must be held to be bad in law. As the said Act, as also the Bachawat Award

specifically deal with the matter relating to pension scheme for journalists, we have no hesitation in holding that the impugned orders were beyond the legislative competence of the State.

In Sudhir Chandra Sarkar v. Tata Iron & Steel Co. Ltd. & Ors. [(1984) 3 SCR 325], it was held that the pension and gratuity are well-known measures of social security. It was observed that the employer cannot have an absolute discretion not to pay any gratuity even when it is earned. It is not the contention of the respondents that the State had been delegated with any power to levy tax or impose any fee. Article 162 of the Constitution is subject to the other provisions contained therein.

By reason of the impugned directives of the State, the petitioners have been deprived of their right to property.

The expression 'law', within the meaning Article 300A, would mean a Parliamentary Act or an Act of the State Legislature or a statutory order having the force of law.

In Bishambhar Dayal Chandra Mohan & Ors. etc. v. State of Uttar Pradesh & Ors. etc. [(1982) 1 SCC 39], this Court held as under :-

> "41. There still remains the question whether the seizure of wheat amounts to deprivation of property without the authority of law. Article 300-A provides that no person shall be deprived of his property save by authority of law. The State Government cannot while taking recourse to the executive power of the State under Article 162, deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive fiat or order. Article 162, as is clear from the opening words, is subject to other provisions of the Constitution. It is, therefore, necessarily subject to Article 300-A. The word "law" in the context of Article 300-A must mean an Act of Parliament or of a State legislature, a rule, or a statutory order, having the force of law, that is positive or State- made law."

It is not the contention of the respondents that any service is rendered to the petitioners herein. It is also not the contention of the respondents that the petitioners are bound to pay the amount in question by reason of their statutory obligation to pay retiral benefits to the working journalists. It is also not the case of the respondents that the petitioners herein have not been discharging their statutory obligations in the matter of payment of retiral benefits to the working journalists working in their own establishment in terms of the provision of the Central Acts as well as in terms of the Bachawat Award.

The term 'taxation' has been defined in Article 366 (28) of the Constitution of India in the following terms :-

> "28. "taxation" includes the imposition of any tax or impost, whether general or local or special, and "tax"

shall be construed accordingly;"

> The impost by reason of the impugned orders may come within the purview of the aforesaid definition. See Corporation of Calcutta v. Liberty Cinema [AIR 1965 SC 1107], Hoechst Pharmaceuticals Ltd. v. State of Bihar [(1983) 4 SCC 45] and Gasket Radiators (P) Ltd. v. E.S.I. Corporation [(1985) 2 SCC 68]. The question which is required to be posed and answered is as to whether the petitioners herein can be directed to bear the burden although they have no statutory liability in this behalf.
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> We may at this juncture notice that a Constitution Bench of this Court in Koluthara Exports Ltd. v. State of Kerala & Ors.{2002(2) SCC 459} has observed that even if a State in exercise of its legislative power under Entry 23, List III of VIIth Schedule of the Constitution of India can make a welfare legislation, yet the burden of impost cannot be placed upon a person who is neither the member of society nor the employer of a person who is member of such society. It was held that :-
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> "There can be no doubt that Entry 23 enables the State Legislature to enact a law in respect of social security and social insurance or dealing with employment and unemployment. The provisions of sub-section (4) of Section 3 of the Act (quoted above) postulate social security and welfare measures for the firshermen. The State can, therefore, justify its competence under this entry. But, in our view, the State cannot in an Act under Entry 23 of List III, place the burden of an impost by way of contribution for giving effect to the Act and the Scheme made thereunder for the social security and social welfare of a section of society upon a person who is not a member of such section of society nor an employer of a person who is a member of such section of society. The burden of the impost may be placed only when there exists the relationship of employer and employee between the contributor and the beneficiary of the provision of the Act and the Scheme made thereunder."

The burden of the impost, thus, can be placed only when there exists relationship of employer and employee between the contributor and the beneficent of the provisions of the scheme. In the instant case, also, no such relationship exists.

In any event, the State cannot make any compulsory exaction from any citizen unless there exists a specific provision of law operating in the field. In relation to a compulsory payment , it is well-settled, there is no room for any intendment.

In Ahmedabad Urban Development Authority v. Shardkumar Jayantikumar Pasawalla & Ors. [(1992) 3 SCC 285] , it has been held as follows :-

> "7.After giving our anxious consideration to the contentions raised by Mr Goswami, it appears to us that in a fiscal matter it will not be proper to hold that even in the absence of express provision, a delegated authority can impose tax or fee. In our view, such power of imposition of tax and/or fee by delegated authority must be very specific and there is no scope of implied authority for imposition of such tax or fee. It appears to us that the delegated authority must act strictly within the parameters of

> the authority delegated to it under the Act and it will not be proper to bring the theory of implied intent or the concept of incidental and ancillary power in the matter of exercise of fiscal power..."

The contention of Shri Verma, learned counsel appearing on behalf of the respondents to the effect that the petitioners are at liberty not to accept any advertisements issued by the respondents, may now be examined.

The newspapers serve as a medium of exercise of freedom of speech. The right of its shareholders to have a free press is a fundamental right. In Sakal Papers (P) Ltd. & Ors. v. Union of India [AIR 1962 SC 305], this Court held as follows :-

> "34. We would consider this matter in another way also. The advertisement revenue of a newspaper is proportionate to its circulation. Thus the higher the circulation of a newspaper the larger would be its advertisement revenue. So if a newspaper with a high circulation were to raise its price its circulation would go down and this in turn would bring down also the advertisement revenue. That would force the newspaper either to close down or to raise its price. Raising the price further would affect the circulation still more and thus a vicious cycle would set in which would ultimately end in the closure of the newspaper. If, on the other hand, the space for advertisement is reduced the earnings of a newspaper would go down and it would either have to run at a loss or close down or raise its price. The object of the Act in regulating the space for advertisements is sated to be to prevent 'unfair' competition. It is thus directed against circulation of a newspaper. When a law is intended to bring about this result there would be a direct interference with the right of freedom of speech and expression guaranteed under Art. 19(1)(a)."

Advertisements in a newspaper have a direct nexus with its circulation.

In Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd. & Ors. [(1995) 5 SCC 139], it was held as under :-

> "20. Advertising is considered to be the cornerstone of our economic system. Low prices for consumers are dependent upon mass production, mass production is dependent upon volume sales, and volume sales are dependent upon advertising. Apart from the lifeline of the free economy in a democratic country, advertising can be viewed as the lifeblood of free media, paying most of the costs and thus making the media widely available. The newspaper industry obtains 60%/80% of its revenue from advertising. Advertising pays a large portion of the costs of supplying the public with newspaper. For a democratic press the advertising 'subsidy' in crucial. Without advertising, the resources available for expenditure on the 'news' would decline, which may lead to an erosion of quality and quantity. The cost of the 'news' to the public would increase, thereby restricting its 'democratic' availability."

It is not in dispute that advertisements play important roll in the matter of revenue of the newspapers.

This Court in Bennett Coleman & Co. & Ors. etc. v. Union of India & Ors. etc. [(1972) 2 SCC 788] observed as under :-

> "34. Publication means dissemination and circulation. The press has to carry on its activity by keeping in view the class of readers, the conditions of labour, price of material, availability of advertisements, size of paper and the different kinds of news comments and views and advertisements which are to be published and circulated. The law which lays excessive and prohibitive burden which would restrict the circulation of a newspaper will be saved by Article 19(2). If the area of advertisement is restricted, price of paper goes up. If the price goes up circulation will go down. This was held in Sakal Papers case (supra) to be the direct consequence of curtailment of advertisement. The freedom of a newspaper to publish any number of pages or to circulate it to any number of persons has been held by this Court to be an integral part of the freedom of speech and expression. This freedom is violated by placing restraints upon something which is an essential part of that freedom. A restraint on the number of pages, a restraint on circulation and a restraint on advertisements would affect the fundamental rights under Article 19(1)(a) on the aspects of propagation, publication and circulation.
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> 43. The various provisions of the newsprint import policy have been examined to indicate as to how the petitioners' fundamental rights have been infringed by the restrictions on page limit, prohibition against new newspapers and new editions. The effect and consequence of the impugned policy upon the newspapers is directly controlling the growth and circulation of newspapers. The direct effect is the restriction upon circulation of newspapers. The direct effect is upon growth of newspapers through pages. The direct effect is that newspapers are deprived of their area of advertisement. The direct effect is that they are exposed to financial loss. The direct effect is that freedom of speech and expression is infringed.
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> 45. It is indisputable that by freedom of the press is meant the right of all citizens to speak, publish and express their views. The freedom of the press embodies the right of the people to read. The freedom of the press is not antithetical to the right of the people to speak and express."

It is neither in doubt nor in dispute that for the purpose of meeting the costs of the newsprint as also for meeting other financial liabilities which would include the liability to pay wages, allowances and gratuity etc to the working journalists as also liability to pay a reasonable profit to the shareholders vis--vis making the newspapers available to the readers at a price at which they can afford to purchase it, the petitioners have no other option but to collect more funds by publishing commercial and other advertisements in the newspaper. The respondents being a State, cannot in view of the equality doctrine contained in Article 14 of the Constitution of India, resort to the theory of "take it

or leave it". The bargaining power of the State and the newspapers in matters of release of advertisements is unequal. Any unjust condition thrust upon the petitioners by the State in such matters, in our considered opinion, would attract the wrath of Article 14 of the Constitution of India as also Section 23 of the Indian Contract Act. See Central Inland Water Transport Corporation Limited & Anr. v. Brojo Nath Ganguly & Ors. etc. [(1986) 3 SCC 156] and Delhi Transport Corporation v. D.T.C. Mazdoor Congress & Ors. [AIR 1991 SC 101]. It is trite that the state in all it activities must not act arbitrarily. Equity and good conscience should be at the core of all governmental functions. It is now well- settled that every executive action which operates to the prejudice of any person must have the sanction of law. The executive cannot interfere with the rights and liabilities of any person unless the legality thereof is supportable in any court of law. The impugned action of the State does not fulfill the aforementioned criteria.

We are, therefore, of the considered view that the impugned orders dated 24th September, 1991 and 16th October, 1991 are unconstitutional and void and must be declared as such.

This writ petition is, therefore, allowed. However, in the facts and circumstances of the case, we make no order as to costs.