

Mahesh Manumal Sundrani vs Union Of India on 6 May, 2019

Author: A.Y. Kogje

Bench: A.Y. Kogje

C/SCA/6837/2018

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 6837 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 6838 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 6839 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 6840 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 6841 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 6842 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 6843 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 6844 of 2018

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MAHESH MANUMAL SUNDRANI
Versus
UNION OF INDIA & 1 other(s)

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Appearance:

MR SP MAJMUDAR(3456) for the Petitioner(s) No. 1
MR DHAWAN JAYSWAL, ASSISTANT GOVERNMENT PLEADER(1) for the
Respondent(s) No. 2
MS TEJAL RAJPUT for MR DEVANG VYAS, learned ASG (2794) for the
Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE A.Y. KOGJE

Date : 06/05/2019

COMMON ORAL ORDER

1. These petitions under Article 226 of the Constitution of India are filed with a prayer to quash and set aside the order dated 21.03.2018 passed by the respondent No.2. Under the said order, the

declaration for publication came to be cancelled.

2. The petitions arise out of identical facts and situation and hence, with the consent of learned Advocates for the parties, all the petitions are taken up for joint hearing and disposal. However, the facts are taken from Special Civil Application No.6837/2018.

3. Learned Advocate for the petitioner submits that the petitioner is a Public Newspaper in the name of 'Chemist Ka Sandesh' and therefore, by Form I under Rule 3, an application was made for the purpose of seeking declaration for publication as required under Section 5 of The Press and Registration of Books Act, 1867 (hereinafter referred to in short as 'the Act'). The petitioner was accordingly issued with a Registration Certificate dated 19.12.2001 as a fortnightly in Gujarati language.

4. It is submitted that though the petitioner was in compliance with all the necessary requirements, the petitioner was issued with a Showcause Notice dated 03.02.2018 on the ground that the petitioner is in breach of the conditions of Section 5 of the Act and therefore, was called upon to give his response on 14.02.2018. It is submitted that thereafter, the petitioner submitted his reply, by the impugned order, the registration of the petitioner came to be cancelled.

5. The primary contention of the petitioner is that the reasons given in the impugned order were completely different from the reasons mentioned in the show cause notice. It is submitted that the respondent authority at the time of passing of the order has travelled beyond the scope of the showcause notice on facts and gave a factual finding without there being any factual foundation. It is submitted that as the showcause notice does not mention the exact ground on which the impugned order is passed, therefore, the impugned order is in violation of principles of natural justice and therefore, the said action is amenable to the Writ jurisdiction of this Court.

6. Learned Advocate for the petitioner has relied upon the judgment of this Court in the case of Dashratlal Ishwarlal Patel vs. State of Gujarat reported in 2013 (2) GLR 1257 drawing attention of this Court to Paragraphs 15 to 18 to support his argument that the authority cannot consider the grounds that have not been stated in the showcause notice. He also relied upon the judgment of the Apex Court in the case of Gopal Dass Sharma vs. The District Magistrate, Jammu and Another reported in AIR 1973 SC 213 and submitted that before cancellation of declaration made under Section 5 of the Act, an opportunity of hearing ought to have been given to the petitioner whereas in this case, no such opportunity is given.

7. Heard learned Assistant Government Pleader Mr. Dhawan Jayswal and learned Advocate Ms. Tejal Rajput for learned ASG Mr. Devang Vyas appearing for the respondent No.1. It is contended that the impugned order is appealable under Section 8(C) of the Act, which provides for an Appeal. The contention that the showcause notice does not contain the grounds on which the petition is based can also be subject to Appeal. There is no ground in favour of the petitioner which would bypass the provision of alternative remedy. Insofar the alternative remedy is concerned, the contention of the petitioner cannot be considered as even from the impugned order itself, it is on record that the petitioner was given a showcause notice and was asked to remain present, pursuant

to which the petitioner has remained present and has produced his explanation to the showcause notice.

8. Having considered the rival submissions of the parties and having considered the documents on record, the primary submission of the petitioner is that the showcause notice mentions four grounds which are in breach of Section 5 which are as under :-

"(1) Declaration of Registration shall be void, where the newspaper does not commence publication after registration of authentication from the competent authority and declaration for publication.

(2) Every declaration made in respect of a newspaper shall be void, where the newspaper does not commence publication within six weeks of the authentication of the declaration from the competent authority and after declaration of publication, in the case of a newspaper to be published once a week or oftener and within three months of the authentication of the declaration, in the case of any other newspaper.

(3) Declaration for publication shall be void, where, in any period of three months, newspaper publishes issues the number of which is less than half of what should have been published.

(4) Where any newspaper has ceased publication for a period, exceeding twelve months, every declaration made in respect thereof shall cease to have effect."

The reasons assigned in the impugned order reads as under :-

"Personal hearing was fixed on 14/02/2018 so as to give a week after service of notice vide reference no.4 and it is not concerned with working day or public holiday. If you would have published last six months editions regularly, it may be available for your ready reference. Despite that you have produced one copy of fortnightly magazine of last July to 16th January and upon perusing it carefully:-

News published in the editions produced by you are completely false, fabricated and contradictory. For example, in the issue no.2 from 16/12/2017 to 31/12/2017:- news published with title "Widespread rain in Panchmahal District", 'Forty Thousand Cusec water released from Panam Dam' and 'Nine gates were opened upto five feet to release eighty thousand cusec water from Kadana Dam' and two bridges engrossed in the water due to discharge of one lakh cusec water from Kadana' Several baseless news were also published as under: E.g.(1) News published on page no.1 in the issue no.2 dated 16/12/2017 to 31/12/2017 having title "Onions sold at eight to ten rupees per kilogram reaches at sixteen rupees per kilogram', were published verbatim on page no.4 in issue no.4 of fortnightly magazine Timepass Times dated 01/08/2017 to 15/08/2017.

E.g.(2) News published on page no.4 in the issue no.2 dated 16/12/2017 to 31/12/2017 having title "two bridges engrossed in the water due to discharge of one lakh cusec water from Kadana', were published verbatim on page no.1 in issue no.4 of fortnightly magazine Timepass Times dated 01/08/2017 to 15/08/2017.

E.g.(3) News published on page no.4 in the issue no.24 dated 16/11/2017 to 30/11/2017 having title "Khichadi is not for illness but for wellness', were published verbatim on page no.2 in issue no.2 of fortnightly magazine Timepass Times dated 16/11/2017 to 30/11/2017.

E.g.(4) News published on page no.4 in the issue no.24 dated 16/11/2017 to 30/11/2017 having title "Modi turned Bapu's bullet train into memu, is this "I am development and I am Gujarat (Hun Chhu Vikaas, Hun Chhu Gujarat)? ", were published verbatim on page no.2 in issue no.2 of fortnightly magazine Timepass Times dated 16/11/2017 to 30/11/2017.

Aforesaid facts prove that you have misled the court by producing fabricated evidences. Moreover, it appears that all six issues are printed at the same time and same printing press to produce before the court. Even if it is not the case, you have failed to submit detailed bill of your newspaper published by you.

Section 8C. of the Act reads as under :-

"[8C. Appeal. - (1) Any person aggrieved by an order of a Magistrate refusing to authenticate a declaration under section 6 or cancelling a declaration under section 8B may, within sixty days from the date on which such order is communicated to him, prefer an appeal to the Appellate Board to be called the Press and Registration Appellate Board [consisting of a Chairman and another member to be nominated by the Press Council of India, established under section 4 of the Press Council Act, 1978 (37of 1978), from among its members]:

Provided that the Appellate Board may entertain an appeal after the expiry of the said period, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) On receipt of an appeal under this section, the Appellate Board may, after calling for the records from the Magistrate and after making such further inquiries as it thinks fit, confirm, modify or set aside the order appealed against.

(3) Subject to the provisions contained in sub-section (2), the Appellate Board may, by order, regulate its practice and procedure.

(4) The decision of the Appellate Board shall be final.]"

9. In the facts of the present case, it is clear that the impugned order cannot be said to have travelled beyond the scope of the Showcause notice. The showcause notice was on the ground of breach of condition of Section 5 of the Act and when the petitioner had produced the record in his support, it is a finding of fact recorded by the Authority that just to overcome the breach under Section 5, false and fabricated documents were produced to mislead the authority and it is not what the petitioner seeks to submit that instead of breach of any condition of Section 5, the grounds are pertaining to wrong publication of the articles or publication of articles which are copied from other circulations. It appears that the authority has given a finding that too to overcome the conditions of Section 5 of the Act, breach of which is alleged in showcause notice, the petitioner has produced the articles which were false and fabricated and were only produced for that purpose but were not actually sufficient to hold that the petitioner had a Circulation as per the requirement of Section 5 and that he was not in breach of conditions of Section 5.

10. In view of the aforesaid, the Court is not inclined to interfere in the petitions, more particularly, when alternative remedy as provided for is available.

11. With the aforesaid, the petitions stand disposed of. Notice is discharged.

Sd/-

(A.Y. KOGJE, J) Caroline