

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 7186/2007

Reserved on: December 7, 2010

Decision on: December 20, 2010

THE PRESIDENT,
INDIAN LANGUAGES NEWSPAPERS
ASSOCIATION

..... Petitioner

Through: Ms. Arti Bansal, Advocate

versus

THE REGISTRAR OF NEWSPAPERS
FOR INDIA, MINISTRY OF INFORMATION
& BROADCASTING

..... Respondents

Through: None.

CORAM: JUSTICE S. MURALIDHAR

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| 1. Whether Reporters of local papers may be
allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

JUDGMENT
20.12.2010

1. The order dated 9th July 2007 issued by the Registrar of Newspapers for India ('RNI') has been challenged by the Indian Languages Newspapers Association as being *ultra vires* the provisions of Press and Registration of Books Act, 1867 ('PRB Act'). The impugned order, *inter alia*, mandates audit of the circulation data of newspapers by private external auditors.

2. The relevant portion of the impugned order dated 9th July 2007 issued by the RNI reads as under:

“1. Objective of Audit

The Registrar of Newspapers for India (RNI) receives

circulation data from the publications in the prescribed annual returns which is filed by the publishers on periodical basis. The said circulation data is used by various Government departments, for example by DAVP for allotment of government advertisements by RNI for allotment of quota for purchase/import of newsprint etc. These returns/reports are to be certified by the auditors/chartered accountants of publisher.

RNI now intends to carry out the sample verification of the circulation data submitted by the publishers from their own panel auditors (i.e. Chartered Accountants firms) to be appointed by RNI. The objective of the said audit shall be to reconfirm the correctness and genuineness of the circulation data/figures submitted by the publications in their returns/report.”

3. The order further sets out guidelines regarding payment of fees and reimbursement of expenses of the auditors. The fees and expenses are to be reimbursed by the newspapers concerned. The list of chartered accountant firms empanelled with the RNI for the purpose of carrying out the circulation check of newspapers/periodicals having circulation of 75,000 copies and above has been enclosed with the impugned order.

4. Learned counsel for the Petitioner submits that under Section 19F of the PRB Act, the Press Registrar or any gazetted officer authorized by him in writing has the right to access the records and documents of a newspaper publisher. The impugned order in so far as it permits chartered accountants, who are not gazette officers authorized by the Press Registrar, to access information relating to the newspapers is violative of Section 19F of the PRB Act. It is further submitted that the powers of the Press Registrar to inspect the premises of a newspaper published can be delegated, if at all, to

an officer subordinate to the Press Registrar in terms of Section 19-I of the PRB Act. Thirdly, it is submitted that the requirement under the impugned order that the fees and expenses payable to the auditors should be reimbursed by the newspaper concerned places a heavy financial burden on the newspapers and is without any authority of law. It is submitted that for many years in the past the work of verification of the records of the newspapers has been undertaken by the Press Registrar and his duly authorized subordinates.

5. The counter affidavit filed by the RNI justifies the ‘outsourcing’ of the work of audit of circulation data of newspapers by chartered accountant firms in the following manner:

“Para 12: It is submitted that a reading of Para, (*sic.* Section) 19 (F) of the Act would show that the Registrar has the mandate for getting the checking of premises and documents done through any gazetted officer under him. It is further submitted that the power/mandate vests only with the office of the Registrar and through the new scheme of circulation check, if he gets the checking done through Chartered Accountant Firms, it is wrong to say that there is any violation of Section 19 (F) of the PRB Act. In fact the reason for outsourcing for this work and getting it done through Chartered Accountant Firms has been brought into force through new scheme, in order to bring the checking process in conformity with the checking done by Audit Bureau of Circulation (ABC). The Audit Bureau of Circulation (ABC) undertakes audits of circulation of publications which voluntarily register themselves as members of the Bureau. For obtaining the membership of ABC, the publisher has to pay membership fee which is based on circulation and periodicity. For a circulation of

75,000 and above, the fee ranges between Rs. 5,450 to Rs. 42,000/-. The publisher members are required to submit the Bureau audited circulation figures in the prescribed format every six months for the period January-June and July-December. The circulation audit can be undertaken by a firm of Chartered Accountant which have been empanelled by the Bureau. The duly audited circulation figures submitted by a publication to the Bureau if on examination is found in compliance with the existing Bureau's audit guidelines, then certificate is issued on Net paid sales by ABC. It may here be mentioned that the publication members of ABC have to bear the actual audit expenses of the auditors.

On the same lines now RNI is getting the circulation verified through the Chartered Accountant Firms empanelled with it. The Chartered Accountant Firms are conducting the circulation check at the instance of Press Registrar, who in turn finally issue the circulation certificate after examination of the recommendations or findings of the Chartered Accountant Firms. The PRB Act nowhere prohibit the Press Registrar to engage outside agencies for getting the ground work of circulation checking done.”

6. The counter affidavit further states that in terms of the new advertisement policy of the Ministry of Information & Broadcasting, made effective from 1st June 2006, the verification of the circulation data of newspapers is required to be got done through the RNI. It is stated that:

“In order to facilitate the circulation verification, RNI has decided to get the checking work done through Chartered Accountant Firms because RNI lacks the technically qualified officers/staff of Audit and Accounts Service to organize and complete the said technical and specialized task. It is reiterated that

powers under Section 19 (F) of the PRB Act rest with the Press Registrar and he can very well obtain technical help from outside agencies, particularly when such expertise is not available in RNI. It is submitted that there is no prohibition on the Registrar from obtaining assistance of outside agencies.”

7. This Court has heard the submissions of Ms. Arti Bansal, learned counsel appearing for the Petitioner. Despite the case being heard finally on two consecutive dates, i.e., 6th December 2010 and 7th December 2010 none appeared for the Respondent. In the circumstances, this Court has gone by the counter affidavit filed as constituting the stand of the Respondent.

8. In order to appreciate the submissions of the parties, it is necessary first to refer to the relevant provisions of the PRB Act which read as under:

“19A. Appointment of Press Registrar and Other officers-

The Central Government may appoint a Registrar of Newspapers for India and such other officers under the general superintendence and control of the Press Registrar as may be necessary for the purpose of performing the functions assigned to them by or under this Act and may, by general or special order, provide for the distribution or allocation of functions to be performed by them under this Act.

19B. Register of newspapers - (1) The Press Registrar shall maintain in the prescribed manner a Register of newspapers.

(2) The Register shall, as far as may be practicable, contain the following particulars about every newspaper published in India, namely:-

- (a) the title of the newspaper;
- (b) the language in which the newspaper is published;
- (c) periodicity of the publication of the newspaper;

- (d) the name of the editor, printer and publisher of the newspaper;
- (e) the place of printing and publication;
- (f) the average number of pages per week;
- (g) the number of days of publication in the year;
- (h) the average number of copies printed, the average number of copies sold to the public and the average number of copies distributed free to the public, the average being calculated with reference to such period as may be prescribed;
- (i) retail selling price per copy;
- (j) the names and addresses of the owners of the newspaper and such other particulars relating to ownership as may be prescribed;
- (k) any other particulars which may be prescribed.

19C

19D. Annual statement, etc., to be furnished by newspapers – It shall be the duty of the publisher of every newspaper:-

(a) to furnish to the Press Registrar an annual statement in respect of the newspaper at such time and containing such of the particulars referred to in sub-section (2) of Section 19B as may be prescribed;

(b) to publish in the newspaper at such times and such of the particulars relating to the newspaper referred to in sub-section (2) of Section 19B as may be specified in this behalf by the Press Registrar.

19E. Returns and reports to be furnished by newspapers – The publisher of every newspaper shall furnish to the Press Registrar such returns, statistics and other information with respect to any of the particulars referred to in sub-section (2)

of Section 19B as the Press Registrar may from time to time require.

19F. Right of access to records and documents – The Press Registrar or any gazetted officer authorised by him in writing in this behalf shall, for the purpose of the collection of any information relating to a newspaper under this Act, have access to any relevant record or document relating to the newspaper in the possession of the publisher thereof, and may enter at any reasonable time any premises where he believes such record or document to be and may inspect or take copies of the relevant records or documents or ask any question necessary for obtaining any information required to be furnished under this Act.

19G. Annual Report - The Press Registrar shall prepare, in such form and at such time each year as may be prescribed, an annual report containing a summary of the information obtaining by him during the previous year in respect of the newspapers in India and giving an account of the working of such newspapers, and copies thereof shall be forwarded to the Central Government.

19H. ...

19-I. Delegation of powers - Subject to the provisions of this Act and regulations made thereunder, the Press Registrar may delegate all or any of his powers under this Act to any officer subordinate to him.”

9. A reading of the above provisions makes it clear that the power to call for certain information from the newspapers has been vested with the Press Registrar under the PRB Act. Section 19D mandates the publisher of every newspaper to furnish to the Press Registrar an annual statement in respect

of the newspaper containing the particulars referred to in Section 19B (2) of the PRB Act. Section 19E of the PRB Act makes it mandatory for the publisher of every newspaper to furnish to the Press Registrar such returns, statistics and other information with respect to any of the particulars referred to in Section 19B (2) as the Press Registrar may require from time to time.

10. Section 19F of the PRB Act, which has been relied upon by the Respondent, enables the Press Registrar “or any gazetted officer authorized by him in writing in this behalf” to access any relevant record or document in relation to a newspaper that is available with its publisher and to enter the premises where such document may be kept for inspection and obtaining copies thereof. What is important is that this provision permits either the Press Registrar or any gazetted officer authorized by the Press Registrar, to enter and collect the information. It however does not permit any private party to be authorized by the Press Registrar to carry out any of the above functions. In other words, it is only the Press Registrar or any officer authorized by him who can carry out these functions. This Court is unable to accept the submission made on behalf of the Respondent-RNI that Section 19F permits the Press Registrar to outsource the work of audit of the circulation data of newspapers to private chartered accountant firms. Such outsourcing of the work would necessarily imply permitting the personnel of such firms to enter the premises of the publishers of newspapers to obtain information and copies of the documents kept therein. There should be a specific provision in the PRB Act permitting this. The policy directive of the Information and Broadcasting Ministry which

requires circulation check to be done by the RNI cannot be the source of power of the RNI to 'outsource' such function to 'external' auditors.

11. Section 19-I of the PRB Act also makes it abundantly clear that the Press Registrar can delegate his powers only to "any officer subordinate to him" and not to a third party. The external auditor not being an employee in the office of the RNI certainly is not an officer subordinate to the Press Registrar. The outsourcing of the work of circulation audit of newspapers to private chartered accountant firms would be in violation of Section 19-I of the PRB Act.

12. There is merit in the contention of the Petitioner that without there being any express provision in the PRB Act, or any other law for the time being in force, the newspapers cannot be compelled to reimburse the fee and expenses of the chartered accountant firms to whom the work of circulation audit is outsourced. No such involuntary extraction of contribution by the newspapers can be permitted without the authority of law.

13. The contention of the Petitioner that the impugned order dated 9th July 2007 issued by the RNI is without authority of law and is contrary to the provisions of the PRB Act, in particular Section 19F and 19-I thereof, is well founded.

14. For all the above reasons, the writ petition is allowed and the impugned

order dated 9th July 2007 passed by the RNI is hereby quashed.

15. The writ petition and the pending application are disposed of.

S. MURALIDHAR, J.

DECEMBER 20, 2010

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