

THE HON'BLE SRI JUSTICE A.V. SETHA SAI

W.P.No.20514 of 2007

Oral Order:

This Writ Petition is filed under Article 226 of the Constitution of India for the following relief :

- “ a) Issue a writ in the nature of a writ of mandamus and/or any other appropriate writ, order or direction declaring that the actions of Respondents no.1 and 2 in clearing the title “The Hyderabad Mirror” in favour of the respondent no.3 and authenticating the Declaration furnished by respondents no.4 and 6 as illegal, null and void and consequently direct respondents no.1 and 2 to immediately cancel the declaration submitted by the respondents no.3 to 6 in relation to the newspaper title “The Hyderabad Mirror” and consequently to deregister the title “The Hyderabad Mirror” allotted to the respondent No.3 to 6 by respondents 1 & 2 :
- b. Issue a writ in the nature of a writ of mandamus or any other appropriate writ or directions directing the respondents no.1 and 2 to consider, in accordance with law, the application of the petitioner for title clearance, allotment and consequent registration of the title “Hyderabad Mirror” in its favour, and pass such other order or orders as this Hon'ble Court deems fit and proper.”

The pleaded case of the petitioner, in brief, is as follows :

The petitioner is the proprietor of various reputed newspapers and magazines such as the “The Times of India”, “The Economic Times” and “The Navbharat Times”. The Joint Commissioner of Police and Additional District Magistrate (Executive), Special Branch, City Hyderabad, 1st respondent herein, is the authority constituted under Section 5(2) of the Press and Registration of Books Act, 1867 (herein after called as “the Act”) for receiving the application for title verification and authentication of declaration. The 2nd respondent

Registrar of News Papers of India, New Delhi is the authority under Section 19(A) of the said Act for verification of title and for issuing Certificate of Registration and for maintaining a Register of newspapers published in India. The petitioner herein applied for title clearance/allotment of the title "Hyderabad Mirror", a proposed English daily newspaper on 20.7.2005. The petitioner submitted the application before the 1st respondent and same was given File number 116/2451 on 27.7.2005 and the petitioner also filed declaration from its printers M/s.Kala Jyothi Process and Printing Limited, Hyderabad. In view of non-availability of any information despite pursuing the authorities, the Deputy Chief Manager, Business and Commercial of the petitioner company at Hyderabad followed up with 1st respondent in early 2007 and to his surprise it was orally informed that earlier application and all the documents submitted therewith could not be traced out in the 1st respondent's office. On oral directions of the 1st respondent, the petitioner submitted entire set on 23.2.2007 with a covering letter dated 23.2.2007. But the respondent-authorities allotted and cleared the title "Hyderabad Mirror" in favour of the respondents 3 to 6 pending application of the petitioner. After continuous persuasion, the 2nd respondent issued a cryptic communication on 19.9.2007, stating that he did not receive any reference from the 1st respondent for title verification. The respondent-authorities cleared the title "Hyderabad Mirror" in favour of the 3rd respondent, who received the RNI Registration on 11.4.2007 from the respondents 1 and 2.

In the above background, the petitioner assails the action of the respondents 1 and 2 in clearing the title in favour of the 3rd respondent and authenticating the declarations furnished by the respondents 4 and 6 as illegal, null and void and consequently seeks direction to the respondents no.1 and 2 to consider the application of the petitioner for title clearance and allotment and consequent registration of the title "Hyderabad Mirror" in its favour.

This Court issued Rule Nisi on 1.4.2008 while recording the statement made by the learned counsel for the respondents 3 to 6 that there is no immediate plan to release English edition of “Hyderabad Mirror” and will not release the said edition without obtaining permission of this Court.

Respondents have filed counter affidavits. Additional counter affidavit has been filed by the 1st respondent. Reply affidavit has also been filed to the said counters by the writ petitioner.

Heard Sri D. Srinivasa Prasad, learned counsel for the petitioner, Sri H. Venugopal, learned Government Pleader for Home (TS), and Sri N. Krishna Rao, learned counsel for the contesting respondents 3 to 6.

Submissions/contentions of the learned counsel for the petitioner:

- i. The action of the respondents 1 and 2 is arbitrary, unreasonable, unfair and violative of Articles 14 and 19(1)(A) of the Constitution of India and the respondents-authorities, being the statutory authorities, are required to be fair and reasonable and should not act in arbitrary and unfair manner. The respondents 1 and 2 grossly erred in allotting/registering the title “Hyderabad Mirror” in favour of the respondent No.3 in view of pendency of petitioner’s application filed before the application of the respondent no.3 herein.
- ii. The petitioner has vested right to have its application considered for title clearance and for consequential allotment of registration of title “Hyderabad Mirror” in its favour.
- iii. Non-consideration of the application submitted by the

petitioner by the respondents 1 and 2 is in violation of the provisions of the Act.

Submissions/contentions of the learned Government Pleader for Home :

- i. The petitioner submitted application dated 20.7.2005 and the same was received in the office of the 1st respondent on 27.7.2005 and the same was endorsed to the Inspector, West Zone, Special Branch, Hyderabad on 30.7.2005 for enquiry through file No.2451/Press/SB/116/05.
- ii. An application dated 5.10.2006 from the 3rd respondent was received on 6.10.2006, wherein the 3rd respondent intended to publish Telugu daily furnishing the names of six titles including “Hyderabad Mirror” and another application dated 2.7.2007 was received from the 3rd respondent on 4.5.2007 wherein the 3rd respondent intended to publish English daily with the title “Hyderabad Mirror”.
- iii. It is a fact that the applications of 3rd respondent were received after the applications of the petitioner.
- iv. No letter said to have been written by the petitioner dated 4.12.2005 was received by the office of the 1st respondent.
- v. On receipt of the application of the 3rd respondent for Telugu daily on 6.10.2006, the same was entrusted

to Inspector, North Zone, Special Branch, Hyderabad for enquiry on 27.10.2006 and on receipt of report from the Inspector, the application was forwarded to the Registrar of Newspapers, New Delhi, 2nd respondent on 1.11.2006 and on 10.1.2007 a letter was received from the 1st respondent allotting "Hyderabad Mirror" (Telugu) in favour of the 3rd respondent subject to authentication of declaration as required under Section 5 of the Act. On 11.1.2007 declaration was authenticated and a copy of the same was sent to the 1st respondent on 25.1.2007.

vi. With regard to 2nd application of the 3rd respondent for English daily, the said application dated 2.5.2007 was forwarded to the 1st respondent on 15.6.2007 and on 9.7.2007 the title of "Hyderabad Mirror" (English) was allotted to the 3rd respondent by the 1st respondent subject to authentication of declaration as per Section 5 of the Act and the declaration was authenticated on 2.2.2007.

vii. The original file of the petitioner vide file No.2451/Press/SB/116/05 dated 20.7.2005 got misplaced in the office on account of shifting of the office of Special Branch from Basheerbagh to Puranahaveli and that the office of the Special Branch came to know about the application and its pendency only after the petitioner approached the office in the month of February 2007 and in the

meanwhile the application of the 3rd respondent got processed by the office of Special Branch and disciplinary action is being initiated against the erring staff who are responsible for misplacement of file.

viii. It is a fact that the petitioner furnished set of all the documents in the office of the 1st respondent on 23.2.2007. Due to negligence of Smt. Asina Wahab, Senior Assistant, application of the petitioner got misplaced and charge sheet was issued on 22/23.1.2008 and after submissions of the explanation, taking into consideration the length of service, she was warned to be careful in future by taking lenient view in the matter.

ix. Since the concerned clerk kept the office in dark about missing of petitioner's application, no fault can be found with the 1st respondent.

Submissions/contentions of the learned Standing Counsel for the 2nd respondent :

1. The 2nd respondent did not receive the application said to have been filed by the petitioner through the 1st respondent.
2. Office of the 2nd respondent would only consider the application routed through the 1st respondent under Section 5 of the Act.
3. The petitioner failed to make out any case, warranting interference of this Court under

Article 226 of the Constitution of India.

Submissions/contentions of the learned counsel appearing for the unofficial respondents R.3 to R.6 :

1. The present writ petition is not maintainable in view of availability of alternative statutory remedy of appeal under Section 8C of the Act.
2. Allegations made by the petitioner with regard to the application said to have been made by the petitioner for allotment of title on 20.7.2005 are not within the knowledge of the respondents 3 to 6.
3. On 9.1.2007, the title “Hyderabad Mirror” was cleared in favour of respondents 3 to 6 and commenced the publication of the Telugu daily and in respect of “Hyderabad Mirror” (English) clearance was granted by the 1st respondent on 9.7.2007.
4. Respondents 1 and 2 rightly allotted the title in favour of R.3 to R.6 and there is no illegality nor procedural infirmity in the impugned action.
5. When no application of the petitioner was pending before the 2nd respondent, the question of considering the application by the 2nd respondent did not arise.

In the above background, the issues which this Court is called upon to deal with and answer are :

4. Whether the present writ petition filed under Article 226 of the Constitution of India is

maintainable in view of the provisions of Section 8 C of the Act ?

5. Whether the action of the respondents 1 and 2 in clearing the title “Hyderabad Mirror” in favour of R.3 and authenticating the declaration furnished by R.4 and R.6 is in accordance with law ?
6. Whether the reasons assigned by the respondents-authorities for non-consideration of the application of the petitioner are in accordance with law ?

For the purpose of dealing with the above framed issue No.1, it would be appropriate and apt to refer to Section 8C of the Act which reads as under :

“ 8C. Appeal – (1) Any person aggrieved by an order of a Magistrate refusing to authenticate a declaration under section 6 or canceling 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 (37 of 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.”

A bare reading of the above provision of law makes it amply and succinctly clear that only against an order of a Magistrate (in this case the respondent No.1), refusing to authenticate a declaration under Section 6 or canceling a declaration, an appeal lies to the Appellate Board within two months. In the present case, there is neither order of the Magistrate, refusing to authenticate the declaration under Section 6 nor there is order of cancellation of declaration. In the absence of such contingencies, it cannot be said that appeal lies under Section 8 C of the Act. Therefore, contention contra advanced by the contesting respondents is liable to be rejected. Consequently issue No.1 is answered in favour of the petitioner.

Coming to issue nos.2 and 3 framed supra, application dated 20.7.2005 was submitted by the petitioner for allotment of title “Hyderabad Mirror” and on receipt of the same by the office of the 1st respondent on 27.7.2005, an endorsement was made to the Inspector, West Zone, Special Branch for enquiry on 30.7.2005 vide File No.2451/Press/SB/116 and the same are not contradicted and are in fact admitted by the 1st respondent in the counter affidavit. Receipt of application of the 3rd respondent after application of the petitioner is also admitted by the 1st respondent in the counter. There is also no dispute that the 3rd respondent submitted application on 5.1.2006 and on 2.7.2007 for Telugu and English dailies respectively. The application of the 3rd respondent for Telugu daily was forwarded to the 2nd respondent on 1.11.2006 after receipt of report of the Inspector, North Zone on 27.10.2006, and on 10.1.2007 a letter was received from the 2nd respondent allotting title “Hyderabad Mirror” Telugu in favour of the 3rd respondent, and on 11.1.2007 declaration was authenticated under Section 5 of the Act and a copy of the same was sent to the 2nd respondent on 25.1.2007. The application of the

3rd respondent for English daily dated 2.5.2007 was forwarded to the 2nd respondent on 15.6.2007 and on 9.7.2007, the 2nd respondent allotted title "Hyderabad Mirror" English and on 22.9.2007 declaration was also authenticated.

It is significant and important to note that according to the counter of the 1st respondent, the petitioner approached the 1st respondent with set of all documents on 23.2.2007 and whereas the 3rd respondent submitted application on 2.5.2007, but the 1st respondent did not process the application of the petitioner which was filed earlier to the 3rd respondent. There is no reason given for the same in the counter affidavit of the 1st respondent. Even according to the counter of the 1st respondent, application of the 3rd respondent was submitted one year three months after the application of the petitioner. In the additional counter affidavit dated 11.12.2014 it is averred that due to negligence of one Smt. Asima Wahab, Senior Assistant application of the petitioner was misplaced for which departmental action was initiated and she was issued show cause notice and after submission of the explanation she was warned to be careful in future by taking lenient view.

The above justification sought to be pressed into service by the respondents-authorities, by any stretch of imagination, cannot be approved as reasonable nor would legalize the illegal action. The legislature makes the laws for the betterment of the society and for the welfare of the citizens and the authorities functioning under relevant legislatures are required to give effect to the same in their true letter and spirit and they are required to scrupulously and strictly adhere to the law. Sacred duty is cast upon the authorities to give good governance to the public and their actions should be in the direction of creating and strengthening the system governed by the rule of law. In the instant case, callous and negligent act on the part of the authorities resulted in deprivation of valuable right of the petitioner under the provisions of the Act. The reasons sought to be assigned by the respondents-authorities are unfair and this Court

cannot remain as silent spectator in view of facts and circumstances of the present case. The persons benefited out of the illegal and irregular action of the authorities should also get ready to suffer the consequence also, when such actions are declared illegal at the intervention of the Courts. Therefore, unofficial respondents are not entitled for any equities in the matter.

For the aforesaid reasons, the writ petition is allowed. Consequently, the action of the respondents 1 and 2 clearing the title "Hydearbad Mirror" in favour of the respondent No.3 and authenticating the declaration furnished by the respondents 4 to 6 is declared as illegal, null and void and consequently allotments made in favour of the unofficial respondents are hereby set aside and the respondents 1 and 2 are further directed to consider the application of the petitioner for title clearance in accordance with law within a period of three months from the date of receipt of copy of this order.

Accordingly, the writ petition is allowed. No costs. Miscellaneous Petitions if any pending shall stand closed.

JUSTICE A.V.SESHA SAI

Dated 30-4--2015

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THE HON'BLE SRI JUSTICE A.V. SETHA SAI

W.P.No.20514 of 2007

Dated 30-4-2015

