

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 27.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE **M.VENUGOPAL****W.P. (MD) No.14618 of 2013****and****M.P. (MD) .No.1 of 2013**

Anbin Oozhiam,
Registered Trust,
represented by its Managing Trustee,
No.40, S.P.K.Street,
Woraiyur, Trichy-3.

... Petitioner

Vs.

1. The Department of Posts,
represented by Chief Post Master General,
Anna Salai,
Chennai-2.
2. The Post Master General,
Trichy Region, Trichy.
3. The Senior Superintendent of Post Offices,
Tiruchirapalli Division,
Tiruchirapalli.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the third respondent in its proceedings originating in Memo No.G/RNP/licence dated at Trichy 620001 the 17.01.2013 and consequent proceedings in Memo NO.G/RNP/licence dated at Trichy 620001 the 05.07.2013 and quash the same.

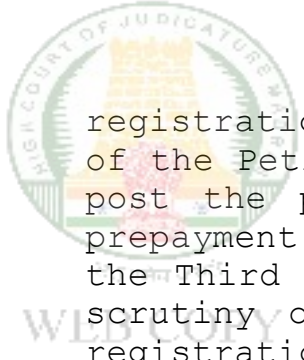
For Petitioner
For Respondents

: Mr.J.Maria Roseline
: Mr.G.R.Swaminathan
Assistant Solicitor General
Government of India

O R D E R

Heard both sides.

2. According to the Petitioner/Trust, it was accorded with an approval by the Registrar of Newspapers for India for printing and publishing the monthly magazine in Tamil vide RNI.No.008131/16/14/848-T.C. dated 20.04.1988. The stand of the Petitioner is that the Third Respondent had permitted the Petitioner to post the petitioner's magazine at concessional rates as Registered Newspaper with/without pre-payment under postal



registration which was renewed periodically. The clear-cut plea of the Petitioner is that it had applied for licence originally to post the petitioner's magazine as Registered Newspaper 'without prepayment' by duly enclosing all the documents, as required by the Third Respondent and the Third respondent, only after careful scrutiny of the documents submitted by it, had accorded postal registration number for posting its monthly magazine 'Anbin Oozhiam' as registered newspaper 'without prepayment' and thereby extended the concessional rates.

3. Furthermore, it is represented on behalf of the Petitioner that the licence/permission was accorded by the Third Respondent which was periodically renewed by the Third Respondent and lastly, permission was renewed by the Third Respondent, by means of proceedings in Memo No.G/RNP/licence dated 21.11.2011, Tiruchirapalli, and the Petitioner was permitted to post its magazine as registered newspaper 'with prepayment' by availing the concessional tariff.

4. At this stage, the Learned counsel for the petitioner emphatically contends that only based on the permission/licence issued by the Third Respondent, the Petitioner was posting its monthly magazine 'Anbin Oozhiam' as registered newspaper with/without prepayment and availed the concession tariff. Also that, the Petitioner had submitted a communication, dated 20.04.1988, from the Office of the Registrar of Newspapers for India, as proof of its registration and the Third Respondent also treated the same as certificate of registration, had allotted the Petitioner, postal registration number for posting the petitioner's monthly magazine 'Anbin Oozhiam' as stated supra and availed concessional tariff.

5. The categorical argument advanced on behalf of the Petitioner is that the Petitioner/Trust never at any point of time, had misled the Third Respondent about the Certificate of Registration and it is the case of the Third Respondent that it was misled by the petitioner about the Certificate of Registration. In this connection, the learned counsel for the Petitioner comes out with a plea that both the Petitioner as well as the Third Respondent were under the bona fide intention that the communication dated 20.04.1988, from the office of the Registrar of Newspapers for India containing registration No.008131/16/14/AL/848-T.C. is the certificate of registration.

6. The Learned counsel for the Petitioner urges before this Court that the Third Respondent, through its impugned proceedings in Memo No.G/RNP/licence dated 17.01.2013, had not only cancelled the permission/licence granted to the petitioner to post its magazine under concession rate, but also levied shortage of postage amount of Rs.7,47,600/- by giving retrospective effect to withdrawal of permission/licence accorded to the petitioner.

7. The Learned counsel for the Petitioner urges before this Court that the Third Respondent should have seen that it had granted permission to post under WPP only on the basis of communication dated 20.04.1988 from the office of the Registrar of

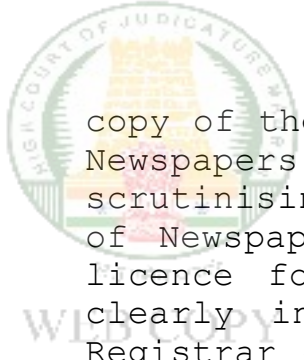
Newspapers for India containing Registration No.008131/16/14/AL/848-T.C.

8. The Learned counsel for the Petitioner takes a legal plea that the impugned proceedings of the Third Respondent is bad in law inasmuch as it gives retrospective effect to its order of cancellation of licence. Added further, it is the case of the Petitioner that the Third Respondent/licensing authority routinely dealing with WPP licence ought to be an expert in the field and in the said capacity ought to have guided the petitioner properly and instead of doing so, it had taken the petitioner to task for lapses on its part.

9. Apart from that, the Learned counsel for the Petitioner takes a stand that the impugned proceedings of the Third Respondent suffers from arbitrariness and is in violation of the principles of natural justice. Furthermore, there is no rational basis for arriving at a short levy of Rs.7,47,600/- and in fact, the Third Respondent had arbitrarily arrived at the figure of Rs.17,800 copies per month without any basis.

10. Per contra, it is the submission of the Learned Assistant Solicitor General of India appearing for the respondents 1 to 3 that under Section 9 of the Indian Post Office Act, 1898, every publication, consisting wholly or in great part of political or other news, or of articles relating thereto or to other current topics, with or without advertisements, shall be deemed a newspaper. Further, the said publication of the petitioner does not contain any such news and in fact, licence in respect of the petitioner's magazine was rejected by the second respondent in terms of relevant Act and Rules of the Department. On behalf of the respondents 1 to 3, it is brought to the notice of this Court that the petitioner/trust on earlier occasion filed W.P.Nos.6371 and 6372 of 2000 before this Court for renewal of the licence and this Court, by an order dated 08.09.2000, directed that the magazine should be treated as Registered Newspaper and the licence can be granted, if that conditions were found satisfied for renewal of licence. Based on the order of this Court, the renewal of licence to post magazine under concessional tariff was granted by the Post Master General C.R., Trichy for the period beginning from 2000, 2001, 2002, 2003-2005. Later, renewal for the period from 2006-2008 to 2009-2011 was granted by the third respondent. Renewal was granted on 30.11.2011 for the year 2012-2014 under licence No.TRY/075/2012-2014 by the third respondent. Moreover, all these years, licence and renewal was granted on the basis of the letter issued to District Revenue Officer, Trichy by O/o. the Registrar of Newspapers of India, West Block 8, Wing No.2, R.K.Puram, New Delhi-110 066 under their Letter No.008131/16/14/A1/848-TC dated 20.04.1988.

11. The Learned Assistant Solicitor General of India contends that the Indian Audit Department Posts and Telecommunications, Audit Office, Chennai-15, during their audit visit to Trichy HPO, on 07.01.2013, had objected that the Registered Newspapers viz., 'Anbin Oozhiyam' had not furnished



copy of the Certificate of Registration issued by the Registrar of Newspapers for India. That apart, they had observed that on scrutinising the details of registrations granted by the Registrar of Newspapers for India, in their official website 'rni.nic.in' licence for this magazine was not available in the site which clearly indicates that the periodical is not registered under Registrar of Newspapers for India under Press and Registration of Books Act, 1867 and hence, not eligible for transmission by post under concessional tariff.

12. Mr.G.R.Swaminathan, Learned Assistant Solicitor General of India appearing for the respondents projected an argument that the impugned amount of Rs.7,47,600/- was quantified in respect of one year (for the period from January 2012 to December 2012) and that too, only by the audit based on the number of average articles posted, even though the petitioner had applied for permission to post 50,000 copies per month under concessional tariff during last renewal. As such, the permission granted to the petitioner to post the magazine with concessional tariff under Registration No.TRY/075/2012/2014 was withdrawn, through an order dated 17.01.2013 by the third respondent, besides addressing the publisher of the petitioner magazine to pay the short paid postage revenue of Rs.7,47,600/- through letter No.G/RNP/licence dated 05.07.2013.

13. Yet another stand of the Respondents 1 to 3 is that the petitioner had given false information regarding Registered Newspaper Number, in their application for renewal dated 16.09.2011, which clearly shows that the Petitioner had misled the licence issuing authority and the third respondent herein.

14. In any event, it is the crystalline stand of the Respondents 1 to 3 that the Petitioner had not registered the magazine with RNI and in fact, the petitioner was already intimated in the licence itself that 'any failure to comply with the conditions would lead to the treatment of registered newspaper as unpaid and the articles will be taxed' and this was agreed by the petitioner, vide their declaration dated 16.09.2011, given at the time of renewal of application. The argument of the Respondents 1 to 3 is that the orders of licence issuing authority is not against Law. In fact, the reasons for recovery of deficiency in postage of the articles posted by the Petitioner during the period January 2012 to December 2012 was clearly explained to the Petitioner, vide Letter No.G/RNP/licence dated 17.01.2013.

15. The Learned counsel for the Respondents 1 to 3 comes out with a plea that since the Petitioner had not registered its magazine with Registered Newspapers for India, the magazine has to be treated as book packet. Further, the petitioner showed its untrustworthiness and its propensity to enjoy concession on improper way and in fact, it furnished the wrong Registered Newspaper Number in the application for renewal dated 16.09.2011.

16. By means of Reply, the learned counsel for the Petitioner submits that before passing the impugned order, dated



05.07.2013, issued by the Third Respondent, no notice was given to the Petitioner and especially where it affects civil consequences, viz., to credit the shortage of postage amount of Rs.7,47,600/-, hence, prior notice should have been given to the Petitioner and in fact, the Petitioner ought to have been provided with an opportunity to submit its remarks/objection as regards the impugned order dated 05.07.2013.

17. The Learned counsel for the Petitioner contends that the principles of natural justice were not followed by the Third Respondent, at the time of passing the impugned order, dated 05.07.2013 and on this score alone, the impugned order is liable to be set aside by this Court, in the interest of justice.

18. To lend support to her contention that the impugned order dated 05.07.2013 of the Third Respondent is bad in law, since no enquiry was conducted and also, no notice was issued to the Petitioner, prior to passing of the impugned order, the learned counsel for the Petitioner seeks in aid of the order of this Court, dated 14.03.2014 between **M.Ravichandran vs. Director of Adi Dravidar Department, W.P.No.11571, 18541 and 21273 of 2007**, whereby and whereunder at paragraph Nos.6 to 10, it is observed and held as under:

"6. The main contention raised on the side of the petitioners is that the impugned orders of recovery has been made without issuing notice and without conducting any enquiry. A specific ground has been taken in the affidavits in support of these writ petitions, which is set out here under:- " The impugned orders of recovery cannot be sustained inasmuch as the same have been passed in violation of principles of natural justice. It is a settled law that any order which has civil consequences and if they are passed in violation of the said principle cannot be sustained. Further, no order of recovery can be passed without issuing any notice and also without affording any opportunity."

7. Though the learned Additional Government Pleader submitted that the impugned order has been passed after due notice to the petitioners, the same has not been substantiated.

8. It is also noteworthy to mention at this juncture that the learned brother Judge of this Court, under identical circumstances, in W.P.No.12057 of 2007 dated 14.03.2009 (M.Arumugam and others v. the Director of Adi Dravidar Department, Chepauk, Chennai and another) quashed the similar orders of recovery and directed the respondents to initiate the recovery proceedings afresh in accordance with law.

9. In view of the above stated position, this Court is inclined to set aside the proceedings of the first respondent and the second respondent on the sole ground that such orders have been passed by them without due notice to the petitioners and without calling for an explanation from them.



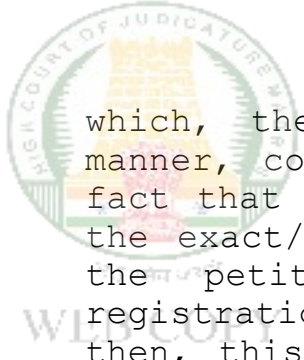
10. In the result, all the writ petitions are allowed and the impugned orders of the first respondent and the second respondent are set aside. The respondents are at liberty to pass orders afresh after issuing due notice with all relevant particulars to all the petitioners calling for the explanation and after giving them opportunity of personal hearing."

19. Undoubtedly, the aforesaid order of the Learned Single Judge dated 14.03.2014 between **M.Ravichandran vs. Director of Adi Dravidar Department** relates to service matter, where the impugned orders centered around the 'Recovery Issue'.

20. As far as the present case is concerned, the petitioner itself has given an incorrect information as regards the Registered Newspaper Number, in its application for renewal dated 16.09.2011. The said number appears to be a non-existence one. The said Number was found out to be a non-existence one only during the course of 'Audit of Indian Audit and Accounts Department', Posts and Telecommunications, Audit Office, Chennai 15. When the Petitioner had given RNI No.008131/16/14/AI/848-T.C. dated 20.04.1988 was found to be non-existence one, then, there is nothing wrong on the part of the 'Audit Authorities', after coming to know that the periodical was not registered under RNI to issue the interim order dated 30.08.2013, as opined by this Court. As such, impugned Memo NO.G/RNP/licence, dated 05.07.2013 addressed to the petitioner to credit the shortage of postage amount of Rs.7,47,600/-, in the considered view of this Court, cannot be said to be an arbitrary, unreasonable and capricious one. Only when the petitioner has a valid, live force copy of 'Registration of Certificate' issued by the Registrar of Newspapers for India, then RNP should be treated in a proper manner. In the absence of non-furnishing of certificate of registration issued by the Registrar of Newspapers for India, the direction issued by the Indian Audit and Accounts Department, Posts and Telecommunications, Audit Office, Chennai 15, to treat the Book packet containing periodical and stating that it should be charged at the rates applicable for book packets i.e., Rs.4/- per packet/per unit instead of Rs.0.50/- actually charged could not be found fault with.

21. Suffice it for this Court to point out that the Petitioner had not adhered to the provisions which had resulted in their loss of postage revenue of Rs.7,47,600/-. Moreover, when the Petitioner had given a Registration Number which was really not in existence, then, in the considered opinion of this Court it cannot claim 'Equity'. A person in order to claim 'Equity' should come to Court with 'Clean Hands'.

22. Viewed in above perspective, the argument advanced on behalf of the petitioner that the petitioner had not misrepresented and only the concerned authorities, where under the bona fide impression that the petitioner had registration, for



which, the petitioner could not be found fault with, in any manner, could not be countenanced by this Court, in view of the fact that it is the primordial duty of the petitioner to mention the exact/real/correct/proper registration certificate number. If the petitioner had given a non-existence number in the registration certificate or in any other relevant document(s), then, this Court opines that the petitioner alone is squarely to be blamed and none else can be blamed in this regard.

23. In the upshot of the above, and also viewing the present case from any angle, the impugned order dated 05.07.2013 of the third respondent is a fair, valid and legally tenable one. Consequently, the writ petition fails and the same is dismissed leaving the parties to bear their own costs. The connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (W)

/True copy/

Sub Assistant Registrar

To

1. The Chief Post Master General,
Anna Salai, Chennai-2.
2. The Post Master General,
Trichy Region, Trichy.
3. The Senior Superintendent of Post Offices,
Tiruchirapalli Division,
Tiruchirapalli.

+1cc to M/s.J.Maria Roseline, Advocate in Sr.No. 33607

JA-AAL-MPA-18.07.2016/7P:5C

W.P. (MD) No.14618 of 2013
27.06.2016