

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 25th April, 2016

+ **W.P.(C) No. 5486/2013 & CM No.12230/2013 (u/O VI R-17 CPC)**

**SGR TECHNICAL & EDUCATIONAL
SOCIETY (REG.)**

..... Petitioner

Through: Mr. Vikas Mehta, Mr. Puneeth K.G.
and Mr. Varun Singh, Advs.

Versus

THE PRESS COUNCIL OF INDIA & ORS **..... Respondents**

Through: Mr. Akhil Sibal, Mr. Shantanu
Agarwal and Mr. Yogendra Misra,
Advs. for R-2.

Mr. Deepak Agarwal and Mr.
Sharlash Madiyal, Advs. for R-3.

Mr. EMS. Anam, Mr. Aman Vachha,
Mr. Ashutosh Dubey and Mr.
Abhishek Chauhan, Advs. for R-5.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition (i) impugns the letter dated 22nd March, 2004 of the respondent no.2 The Indian Newspaper Society (INS) imposing an embargo on the advertisements to be taken out by the petitioner in the newspapers; (ii) impugns the order dated 3rd/4th January, 2011 of the respondent no.1 The Press Council of India (PCI) on the complaint dated 15th June, 2007 of the petitioner directing the petitioner to file a fresh representation before respondent no.2 INS for lifting the embargo and directing the respondent no.2 INS to decide the said

complaint within four months; (iii) seeks a mandamus to the respondent no.1 PCI and the respondent no.2 INS to remove the embargo on the advertisements to be placed by the petitioner; and, (iv) seeks a direction to the respondent no.3 to 7 newspapers/advertising agencies to publish the advertisements placed by the petitioner.

2. Notice of the petition was issued. Only respondent no.2 INS has filed a counter affidavit and to which the petitioner has filed a rejoinder. The counsels for the petitioner and the counsel for the respondent no.2 INS were heard on 7th September, 2015 and judgment reserved. The counsels for the other appearing respondents did not address any oral arguments as well. None appeared for the respondent no.1 PCI despite service.

3. It is the case of the petitioner in the amended petition (filed prior to issuance of notice) (i) that the petitioner Society has set-up several educational institutions in the State of Karnataka and in connection with its activities and affairs has to take out advertisement periodically in various newspapers; (ii) that the respondent no.3 SD Advertising Agency vide its letter dated 15th October, 2003 raised a false and fabricated claim of Rs.8,90,549/- on the petitioner for advertisements released in the month of March, 2003; (iii) the petitioner vide its letter dated 1st November, 2003 responded stating that it had

ceased to use the services of the respondent no.3 SD Advertising Agency and terminated the services of the respondent no.3 SD Advertising Agency in January, 2003 itself and thus it did not owe any amount to the respondent no.3 SD Advertising Agency; (iv) however the respondent no.2 INS vide impugned communication dated 22nd March, 2004 advised to all its member publications and accredited advertising agencies not to carry the advertisements of the petitioner released directly or through any other source till further advice (v) the petitioner filed a complaint dated 24th August, 2004 before the respondent no.1 PCI under Section 14(1) of the Press Council Act, 1978; (vi) upon no action being taken by the respondent no.1 PCI on the aforesaid complaint, the petitioner filed W.P.No.35202/2004 seeking a direction to the respondent no.1 PCI to expeditiously consider and dispose of the complaint; (vii) the petitioner filed a fresh complaint before respondent no.1 PCI under Section 14(1) of the Press Council Act read with Regulation 3(1)(f) of the Press Council (Procedure for Inquiry) Regulations, 1979; (viii) upon there being no action on the second complaint also the petitioner filed W.P.No.14650/2005 again seeking a direction to the respondent no.1 PCI to expeditiously consider the said complaint; (ix) the petitioner on 8th June, 2007 approached the respondent no.5 Malayala Manorama to publish its advertisements for admissions to various

educational institutions but it refused in view of the embargo imposed by the respondent no.2 INS; (x) the petitioner filed yet another complaint dated 15th June, 2007 before the respondent no.1 PCI against the respondent no.5 Malayala Manorama; (xi) upon no action being taken on the complaint against the respondent no.5 Malayala Manorama also, the petitioner filed W.P.No.10484/2007 before the High Court of Karnataka seeking a direction to the respondent no.1 PCI to consider the complaint dated 15th June, 2007 against the respondent no.5 Malayala Manorama and to hold an inquiry into the respondent no.2 INS; the said writ petition was disposed of on 9th September, 2008 with a direction to the respondent no.1 PCI to dispose of the complaint within six months and in the interregnum the concerned newspapers were directed to publish the advertisements of the petitioner subject to payment of charges thereof by the petitioner (xii) the respondent no.1 PCI vide impugned order dated 3rd / 4th January, 2011 has disposed of the complaint of the petitioner only with a direction to the respondent no.2 INS to decide the petitioner's case within four months; and, (xiii) the petitioner filed a fresh representation with the respondent no.1 INS but no decision was taken by the respondent no.2 INS.

4. The respondent no.2 INS in its counter affidavit has opposed the writ petition contending (i) that the respondent no.2 INS is a Section 25 company offering help and regulatory services to its member publication houses and acts as a co-ordination entity between newspapers across the country and no writ lies against it; (ii) that the respondent no.2 INS also accredits advertising agencies as per Rules of Accreditation for the Advertising Agencies and the said Rules empower the respondent no.2 INS to issue an advisory to the advertising agencies; (iii) that the respondent no.2 INS after receiving intimation from the respondent no.3 SD Advertising Agency about non-payment of Rs.8,90,549/- towards advertisement dues by the petitioner enquired into the matter, afforded an opportunity to the petitioner to pay the amount due to the respondent no.3 SD Advertising Agency and make representation/clarification if any to the respondent no.2 INS and only thereafter issued the impugned advisory dated 22nd March, 2004 (the respondent no.2 INS has given details of the correspondence between the petitioner and the respondent no.3 as well as of the communications sent by the respondent no.2 INS to the petitioner and the response of the petitioner thereto and of the reasons for which the respondent no.2 INS concluded that the petitioner owed advertisement dues to the respondent no.3 SD Advertising

Agency but need to even succinctly record the same here is not felt); (iv) that the respondent no.1 PCI vide its letter dated 16th July, 2004 in response to the first complaint dated 5th June, 2004 of the petitioner informed the petitioner that it has no jurisdiction over the respondent no.2 INS; (v) the High Court of Karnataka disposed of W.P.No.35202/2004 of the petitioner vide order dated 20th November, 2004 upholding the decision of the respondent no.1 PCI that the respondent no.2 INS is not amenable to the jurisdiction of the respondent no.1 PCI and further directing that in case the newspapers refuse to publish the advertisements of the petitioner, the petitioner is free to approach the respondent no.1 PCI as the earlier complaints were only against the respondent no.2 INS and not against any newspaper; (vi) that the petitioner along with W.P.No.14650/2005 also of the Karnataka High Court had sought *ex parte ad interim* relief and upon notice merely being issued vide order dated 2nd June, 2005, preferred W.A. No.2854/2005 of the High Court of Karnataka by order dated 30th August, 2005 wherein some newspapers were directed to publish the advertisements of the petitioner; (vii) that the respondent no.3 SD Advertising Agency filed a suit for recovery of money against the petitioner in the Courts at Bangalore and which was still pending adjudication; (viii) that the respondent no.1 PCI has no authority or jurisdiction against the respondent no.2 INS as

held by the High Court of Karnataka also in order dated 20th November, 2004 in the first writ petition supra filed by the petitioner and which has attained finality; (ix) that the order dated 9th September, 2008 of the High Court of Karnataka in W.P.No.10484/2007 directed the respondent no.1 PCI to dispose of the complaint dated 15th June, 2007 of the petitioner and to hold an inquiry against the respondent no.5 Malayala Manorama only; and, (x) that in compliance with the aforesaid direction, the respondent no.1 PCI erroneously directed the petitioner to file fresh representation before the respondent no.2 INS for lifting the advisory and erroneously directed the respondent no.2 INS to decide the petitioner's case.

5. Need to refer to the rejoinder filed by the petitioner is not felt.

6. The counsel for the petitioner argued (i) that access to advertisements in the newspapers cannot be denied to the petitioner and is in violation of Article 19 of the Constitution of India; (ii) that the respondent no.1 PCI under Section 13(1) and 13(2)(f) of the PCI Act is empowered to entertain the complaints against the respondent no.2 INS; (iii) that the High Court of Karnataka having in the writ petition filed by the petitioner directed respondent no.1 PCI to dispose of the complaint of the petitioner, it is now not open to the respondent no.1 PCI or the respondent no.2 INS to contend that respondent no.1 PCI has

no jurisdiction over respondent no.2 INS; and, (iv) that the Press Council (Procedure for Inquiry) Regulations, 1979 prescribe the procedure for inquiry and the impugned decision dated 3rd / 4th January, 2011 of the respondent no.1 PCI is not in accordance therewith.

7. Per contra the counsel for the respondent no.2 INS contended (i) that the petitioner suppressed the order dated 20th November, 2004 in W.P.No.35202/2004 of the High Court of Karnataka accepting the stand of the respondent no.1 PCI that it has no control over respondent no.2 INS and did not find any fault therewith and the said order was allowed by the petitioner to attain finality; (ii) the complaint by the petitioner to the respondent no.1 PCI thereafter was against the newspapers only and not against the respondent no.1 INS – thereby the petitioner expressly admitted the order in W.P.No.35202/2004; (iii) the second writ petition filed by the petitioner thereafter being W.P.No.14650/2005 of the High Court of Karnataka was also without impleading respondent no.2 INS; however vide order dated 30th August, 2005 in W.A. No.2854/2005 preferred by the petitioner therefrom, without giving any opportunity of hearing to the respondent no.2 INS, the respondent no.2 INS was impleaded as party thereto but the order in the writ appeal also was directed against the newspapers only and not against the

respondent no.2 INS; (iv) that the respondent no.2 INS was not represented even when the order dated 12th March, 2008 was made in W.P.No.14650/2005; (v) the petitioner in the second writ petition before the High Court of Karnataka also suppressed the order in the first writ petition; (vi) that the jurisdiction of the respondent no.2 PCI is only against the newspapers and news agencies and not against the bodies such as respondent no.2 INS; (vii) respondent no.1 PCI has no power to enquire into any commercial disputes; and, (viii) attention was invited to Rule 56A of the rules and regulations governing Accreditation of Advertising Agencies of the respondent no.2 INS.

8. The counsel for the respondent no.2 INS handed over a compilation of:-

- A. ***R.K.B. Herbals (P) Ltd. Vs. Enterprises Advertising (P) Ltd.*** AIR 1989 Delhi 254;
- B. ***Binny Ltd. Vs. V. Sadasivan*** (2005) 6 SCC 657;
- C. ***VST Industries Ltd. Vs. VST Industries Workers' Union*** (2001) 1 SCC 298;
- D. ***Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology*** (2002) 5 SCC 111;

- E. ***G. Bassi Reddy Vs. International Crops Research Institution***
(2003) 4 SCC 225;
- F. ***Rahul Mehra Vs. Union of India*** W.P.(C) No.1680/2000;
- G. ***Zee Telefilms Ltd. Vs. Union of India*** (2005) 4 SCC 649;
- H. ***The Praga Tools Corporation Vs. C.A. Imanuel*** 1969 (1) SCC 585;
- I. ***Bharat Coking Coal Ltd. Vs. Indian Newspaper Society*** (2011) 14 SCC 140;
- J. ***Kavalappara Kottarathil Kochunni Vs. State of Madras*** AIR 1959 SC 725; and,
- K. ***Hamdard Dawakhana (Wakf) Lal Kuan, Delhi Vs. Union of India*** AIR 1960 SC 554.

but drew attention only to (a) ***R.K.B. Herbals (P) Ltd.*** supra, also concerned with the entitlement in law of the Indian Newspaper Society to issue advisories such as the one impugned in this petition and holding that if two or more persons agree to act in concert with a view to protect their own business interest then if any action is taken in that regard, the same cannot be regarded as unlawful even though the taking of such action harms or damages another

party and that such advisories are only with a view to warn members about a defaulting party; and, (b) ***Bharat Coking Coal Ltd.*** supra – holding writ petition challenging such advisories of Indian Newspaper Society to be not maintainable.

9. The counsel for the petitioner in rejoinder argued (i) that there is no finding in the order in the first writ petition filed by the petitioner in the Karnataka High Court that respondent no.1 PCI has no jurisdiction over respondent no.2 INS and that it is merely an observation and of no avail owing to the order in the subsequent writ petition filed by the petitioner in that High Court; (ii) that the respondent no.2 INS also before the respondent no.1 PCI did not argue that respondent no.1 PCI had no jurisdiction over it and rather submitted to the jurisdiction of the respondent no.1 PCI – attention in this regard is invited to the impugned order dated 3rd / 4th January, 2011 of the respondent no.1 PCI recording the stand of the respondent no.1 INS; (iii) that the respondent no.1 PCI should have censured respondent no.2 INS; (iv) that the judgment in ***R.K.B. Herbals (P) Ltd.*** is now no longer good law in view of the judgment of the Supreme Court in ***Tata Press Ltd. Vs. Mahanagar Telephone Nigam Limited*** (1995) 5 SCC 139 holding advertising to be part of Article 19(1)(a) of the Constitution of India; and, (v) reliance in this regard was

placed on *Century Plyboards (India) Ltd. Vs. Advertising Standards Council of India* 1999 (3) MhLJ 543 holding that restrictive orders can only be passed by the State in exercise of its powers under Article 19 of the Constitution of India which permits only the State to impose reasonable restrictions on the Rights to Freedom, guaranteed thereunder and that Advertising Standards Council of India governed by the provisions of Companies Act being not a statutory authority or instrumentality of State could not arrogate to itself the power of State and issue direction to its members not to publish advertisements of a particular party and such directions were not binding on that party.

10. The counsel for the petitioner on specific query whether writ lies against respondent no.2 INS fairly answered in the negative but contended that writ petition does lie against respondent no.1 PCI.

11. I have considered and detailed the pleadings and the contentions for the reason of the judgment having remained to be pronounced for a unreasonably long time. Else, what immediately stands out is -

A. that the challenge in this petition which came up first for consideration in this Court on 4th September, 2013, to the communication dated 22nd March, 2004 of the respondent no.2 INS

advising its members not to publish the advertisements of the petitioner is highly belated, made after more than nine years.

- B. In view of the categorical answer as recorded above of the counsel for the petitioner, of the writ remedy being not available against the respondent no.2 INS and even otherwise, in accordance with ***Bharat Coking Coal Ltd*** supra, writ petition impugning the communication dated 22nd March, 2004 of the respondent no.2 INS cannot be entertained.
- C. Thus the challenge in this petition, in so far as order dated 22nd March, 2004 of respondent no.2 INS is concerned, is not maintainable and/or is barred by principles of laches / acquiesce / waiver.
- D. The challenge in this petition to the order dated 3rd / 4th January, 2011 of the respondent no.1 PCI is also after more than 2 ½ years.
- E. It is the case of the petitioner that the petitioner even otherwise was not aggrieved by the order dated 3rd / 4th January, 2011 of the respondent no.1 PCI and claims to have accepted the same and in accordance therewith approached respondent no.2 INS and filed a

fresh representation with respondent no.2 INS and filed this petition with the grievance of respondent no.2 INS, inspite of order dated 3rd /4th January, 2011 of respondent no.1 PCI, having not taken any decision.

- F. Once that is so, the relief claimed in this petition impugning the order dated 3rd / 4th January, 2011 is also misconceived as the petitioner admittedly was/is not aggrieved therefrom and accepted and complied therewith.
- G. If the respondent no.2 INS did not take any action inspite of direction of respondent no.1 PCI, the grievance of the petitioner, has to be against the inaction of the respondent no.2 INS and against which no writ petition admittedly lies and cannot be with respect to the order dated 3rd / 4th January, 2011.
- H. The relief claimed, of direction to respondent no.2 INS to remove the “embargo” on the petitioner, again cannot be granted when writ remedy is admittedly not available against respondent no.2 INS.

12. I am therefore of the view that not only the institution of the petition but the insistence of the petitioner on pursuing the same is misconceived and abusive.

13. Rather I find the petitioner to be abusing the process of the Court also by re-litigating and by hopping from one Court to another and also by not making a clean breast of state of affairs in the petition filed before this Court.

14. The petitioner in this petition did not disclose the first complaint dated 5th June, 2004 made by it to the respondent no.1 PCI and commenced the factual narrative from the complaint dated 24th August, 2004. However from the documents filed by the respondent no.2 INS with its counter affidavit it has emerged that the respondent no.1 PCI in response to the first complaint dated 5th June, 2004 informed the petitioner that respondent no.2 INS against whom the complaint had been preferred, being not a newspaper, was not amenable to its jurisdiction and the matter stood closed.

15. Similarly, the petitioner though in the writ petition mentioned W.P.No.35202/2004 preferred by it before the Karnataka High Court and annexed to the petition a copy of the said writ petition but did not disclose the

order dated 20th November, 2004 therein produced by the respondent no.2 INS

and the relevant part whereof is as under:-

“According to the petitioner, there is a dispute between the petitioner and S.D. Enterprises in regard to the quantum of amount payable towards publishing of advertisements. Thereafter, the petitioner approached the Press Council of India requesting it to direct the Indian Newspaper Society to remove the embargo placed on the advertisement. The Press Council of India by its letter dated 16.7.2004 has informed the petitioner that Indian Newspaper Society is not amenable to the jurisdiction of the Press Council of India. The action of the Press Council of India is called in question in this writ petition.

4. Admittedly, the complaint was lodged by the petitioner before the Press Council of India against the Indian Newspaper Society. According to the Press Council of India, it has no control over the Indian Newspaper Society and therefore, the relief sought by the petitioner cannot be granted. If it is so, I cannot find fault with the order passed by the Press Council of India.

5. Sri. T.R. Subbanna, learned counsel appearing for the petitioner contends that whenever a complaint is lodged by a party invoking Section 14(1) of the Press Council Act, 1979, it was the duty of the Press Council of India to examine the complaint and to conduct an enquiry and thereafter to pass appropriate orders on the complaint lodged by the petitioner.

6. In the instant case, from the perusal of the complaint lodged by the petitioner before the Press Council of India, it is clear to me that a complaint was lodged against the Indian Newspapers Society and not against any individual news-paper. According to the petitioner, in respect of a dispute pending between the petitioner and S.D. Enterprises, the advertisement of the petitioner has to be

published by the other news-paper and relying upon the embargo of the second respondent, if the newspapers are unnecessarily harassing the petitioner in not publishing the advertisement, it is always open for him to approach the Press Council of India and if such complaint is lodged, the same shall have to be adjudicated by the Press Council of India in accordance with law.

7. With the above observations, the writ petition is disposed of.”

16. I am unable to agree with the contention of the counsel for the petitioner that the aforesaid order of the High Court of Karnataka does not uphold the stand of the respondent no.1 PCI in the letter dated 16th July, 2004. The High Court of Karnataka in the aforesaid order unequivocally held that it did not find fault with the stand of the PCI in its letter dated 16th July, 2004 that it does not have jurisdiction over INS and accordingly did not grant any relief to the petitioner against PCI but observed that the petitioner could complain to the PCI against the newspapers which were refusing to publish advertisements of the petitioner. The orders of the Karnataka High Court in the subsequent petitions, without dealing with the order aforesaid in the first writ petition, cannot be said to be undoing the finding in the order aforesaid. It thus but has to be held that the order aforesaid of the Karnataka High Court attained finality and it is not open to the petitioner before this Court to contend to the contrary. In fact it appears that the petitioner this time around invoked the jurisdiction of

this Court instead of of the High Court of Karnataka which it had in the past been approaching, only for this reason. Such conduct of the petitioner has but to be deprecated.

17. In view aforesaid, there is no need to peruse the provisions of the PCI Act to determine whether it has jurisdiction over respondent no.2 INS. All that can be observed is that as far as the petitioner is concerned, owing to the order aforesaid of the Karnataka High Court, the said question is no longer open. I may record that the counsel for the petitioner after judgment was reserved mentioned the matter and handed over copy of the judgment dated 22nd September, 1975 in C.W.P No.122/1975 of the Division Bench of this Court in ***K.K. Birla Vs. The Press Council of India*** holding that the Press Council constituted under the Press Council Act, 1965 has to function in a *quasi-judicial* capacity and that whenever there is infringement or impingement of the freedom of the Press and independence of the newspaper, the jurisdiction of the Press Council is attracted and that any interference with the presentation of the news, views or comments or any attempt to suppress or constrain it would be impairment of such freedom. I may similarly observe that the judgment of the Single Judge of the High Court of Bombay relied upon by the counsel for the petitioner is on an application for interim relief and on a *prima facie* view of the

matter as distinct from the judgment of this Court in *R.K.B. Herbals (P) Ltd.* and that the Bombay High Court has not taken note of a number of judgments on which this Court relied to conclude as aforesaid. However for the reasons aforesaid, need to deal with the said contentions in detail is not felt.

18. The writing is thus on the wall. The petition is dismissed. I am refraining from imposing any costs, for the fairness shown by the counsel for the petitioner.

RAJIV SAHAI ENDLAW, J

APRIL 25, 2016
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