

Reserved on : 25.04.2017

Delivered on : 01.06.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.06.2017

CORAM

THE HON'BLE Mr. JUSTICE M.DURAI SWAMY

W.P.Nos.6374, 6375, 6394 & 8242 of 2017 and
W.M.P.Nos.6880, 6881, 6896 & 9002 of 2017

W.P.Nos.6374, 6375 & 8242 of 2017:

Kal Publications Private Limited
represented by its Authorized Signatory
D.Karthikeyan,
No.229, Kutcheri Road,
Mylapore,
Chennai - 600 004.

... Petitioner in W.P.Nos.6374 &
8242/2017

R.M.R.Ramesh,
Managing Director,
Kal Publications Private Limited
No.229, Kutcheri Road,
Mylapore,
Chennai - 600 004.

... Petitioner in W.P.No.6375/2017

Vs.

1.State of Tamil Nadu
rep by its Secretary to Government,
Information & Public Relations,
Fort St.George,
Chennai.

... 1st Respondent in W.P.Nos.6374 &
6375 of 2017
8242/2017

2.The Director,
Directorate of Information & Public Relations,
Fort St.George,
Chennai.

- 3.The Deputy Director,
Directorate of Information & Public Relations,
Fort St.George,
Chennai. ... Respondents 2 & 3 in W.P.Nos.6374
& 6375/2017
- 4.The Secretary,
Department of Tamil Development and
News (Advertisement),
Fort St.George,
Chennai - 9. ... 2nd Respondent in W.P.No.8242/2017

W.P.No.6394 of 2017:

Dr.R.Krishnamurthy,
Editor, Dinamalar, No.39, Whites Road,
Royapettah, Chennai - 600 014. ... Petitioner
Vs.

- 1.The Chief Secretary,
Secretariat,
Fort St.George,
Chennai - 600 009.
- 2.The Director of Information and
Public Relations & Ex-officio Joint
Secretary to Government,
Secretariat,
Fort St.George,
Chennai - 600 009.
- 3.The Secretary,
Secretariat,
Fort St.George,
Chennai - 600 009. ... Respondents

W.P.Nos.6374 & 6375 of 2017 are filed under Article 226 of The Constitution of India praying to issue a writ of mandamus directing the respondents herein to continue to give advertisements to the petitioner's newspapers "Dinakaran" and "Tamil Murasu" based on the Audit Bureau of Circulation (ABC) Certificate.

W.P.No.8242 of 2017 is filed under Article 226 of The Constitution of India praying to issue a writ of mandamus directing the respondents herein to re-fix the rate for Government advertisements for the petitioner's newspapers "Dinakaran" and "Tamil Murasu" based on circulation and the Audit Bureau of Circulation (ABC) Certificate.

W.P.No.6394 of 2017 is filed under Article 226 of The Constitution of India praying to issue a writ of mandamus directing the 1st respondent to frame guidelines/qualifications in releasing advertisement to newspapers on the basis of circulation without any discrimination.

For Petitioners : Mr.Vijayanarayanan, Senior Counsel
(W.P.Nos.6374, for Mr.J.Ravindran
6375 & 8242/2017) and Ms.M.Sneha
(W.P.No.6394/2017) : Mr.S.Elambharathi
For Respondents : Mr.R.Muthukumarasamy, Advocate General
assisted by Mr.A.N.Thambidurai,
Special Government Pleader

C O M M O N O R D E R

Since the issues involved in all the above Writ Petitions are common, by consent of the learned counsel on either side, the Writ Petitions are disposed of by this common order.

2.W.P.No.6374 of 2017 has been filed by Kal Publications Private Limited to issue a writ of mandamus directing the respondents to continue to give advertisements to the petitioner's Newspapers "Dinakaran" and "Tamil Murasu" based on the Audit Bureau of Circulation (ABC) Certificate. For the same relief, the Managing Director of Kal Publications Private Limited has filed a Writ Petition in W.P.No.6375 of 2017.

3.W.P.No.8242 of 2017 has been filed by Kal Publications Private Limited to issue a writ of mandamus directing the respondents to re-fix the rate for Government advertisements for the petitioner's Newspapers "Dinakaran" and "Tamil Murasu" based on circulation and the Audit Bureau of Circulation (ABC) Certificate.

4.W.P.No.6394 of 2017 has been filed by the Editor of "Dinamalar" to issue a writ of mandamus directing the 1st respondent to frame guidelines/ qualifications in releasing advertisement to Newspapers on the basis of circulation without any discrimination.

5.The brief case of the petitioners in W.P.Nos.6374, 6375 & 8242 of 2017 necessary for the disposal of the Writ Petitions is as follows:

(i)According to the petitioners, it is a Company registered under the Companies Act, 1956 and is in the business of printing and publishing of Newspaper and Magazines. It owns a Tamil morning Daily Newspaper known as "Dinakaran". This Newspaper is in existence for more than 34 years and the circulation, as on

date, is more than 11,41,965 copies per day. According to the petitioners, it is one of the highest and largest circulating Tamil Newspaper in India. Further, it is the first Tamil Daily Newspaper to reach the sales of one million mark.

(ii) According to the petitioners, the Audit Bureau of Circulations (the Audit Bureau of Circulations), Mumbai, publishes the circulation of each Newspapers and the petitioners have also enclosed the Certificates from the Audit Bureau of Circulations (ABC) in respect of the Newspaper "Dinakaran" to show that it is one of the highest and largest circulated Newspaper in Tamil Nadu. Further, the Audit Bureau of Circulations is having its Registered Office at Mumbai, which certifies the volume of Newspapers circulated in India and the Government Advertisements are given by various Governments based on the Certificate given by the Audit Bureau of Circulations as an yardstick, since it acts as a conclusive proof for volume of sales. The Audit Bureau of Circulations Certificate establishes that "Dinakaran" Newspaper as one of the highest and largest selling Tamil Daily in India, having an average total qualifying sales of 11,41,965 Newspapers for the period from January to June, 2016.

(iii) Apart from the Tamil Morning Daily "Dinakaran", the petitioners also own a Evening Daily "Tamil Murasu", which is the highest and largest selling Evening Daily in Tamil Nadu.

(iv) Since the petitioner's Company is one of the largest and highest circulated Newspapers in Tamil Nadu, it was being patronized by various Government Departments, Government Companies, Statutory Boards, Local Bodies and other Government Autonomous Institutions. The Government and Government related advertisements form substantial part of the advertisements in any Newspapers and any attempt to choke the advertisements to a particular Newspaper would drastically affect the financial viability of the Newspaper and would be a direct attack on the freedom of speech and expression and freedom of press guaranteed under Articles 19(1)(a) and 19(1)(g) of the Constitution of India.

(v) In the case of the petitioner's Company, the petitioner Company's Newspapers would get approximately 8000 square centimeters of advertisements from the Government of Tamil Nadu per month before 2011. In the case of Evening Daily viz., "Tamil Murasu", it would get approximately 1200 square centimeters of advertisements from the Government of Tamil Nadu per month before 2011. The value of the advertisements given to these Newspapers is approximately Rupees three crores per month and it constitutes substantial income from the advertisements given to

these Newspapers. After 2011, all of a sudden, without any valid reason, the Government completely stopped releasing advertisements to their Newspapers for ulterior reasons.

(vi)As an independent Newspaper, the petitioner's Company has an obligation to report all news dispassionately and faithfully and the readers have a right to know the events that are taking place in the Country and Abroad. The right to dissemination of knowledge and information is a part of the right of freedom of speech and expression and a Newspaper is obliged to its readers to report all news in a true and faithful manner. The petitioner Newspapers, as a responsible fourth estate, have published articles disseminating the truth, which may not be to the liking of the Government. As a result, the vindictive action in not releasing the Government advertisements, thereby, violating the right to equality guaranteed under the Constitution of India.

(vii)According to the petitioners, the respondents not only refuse to release the advertisements to their Newspapers, but are releasing advertisements to Newspapers with less and very poor circulation, thereby, defeating the very purpose of advertisements, since they do not reach the masses.

(viii)Even in the year 2008, when the petitioner's Newspapers were denied advertisements by the respondents, the petitioners filed Writ Petitions in W.P.Nos.16349 & 21415 of 2008 before this Court and when this Court was about to pass orders in the Writ Petitions, the respondents gave an oral undertaking that they would release advertisements in a fair manner and therefore, the Writ Petitions were withdrawn by the petitioners and the respondents were releasing advertisements to the petitioners' Newspapers till 2011.

(ix)According to the petitioners, in a democratic country like India, all should be treated equally and when distribution of state largesse is considered, it should be in a fair and equitable manner to ensure the right to equality guaranteed under the Constitution of India.

(x)The petitioners made several representations to the respondents, the latest being on 19.08.2016 and 18.01.2017. However, the respondents neither released advertisements to the Newspapers nor sent any reply to them. In these circumstances, the petitioners have filed the Writ Petitions in W.P.Nos.6374 & 6375 of 2017 to issue a writ of mandamus directing the respondents to continue to give advertisements to their Newspapers based on the Audit Bureau of Circulation (ABC) Certificate.

(xi) Further, it is the case of the petitioners that since 1996 the Government of Tamil Nadu, periodically, by Government Orders, fixed and finalized the cost/rate of Government advertisements to each and every Newspapers in all languages, printed and published in the State of Tamil Nadu, based on its circulation.

(xii) The Government of Tamil Nadu, by G.O.(D).No.108, dated 02.06.2006, considering the representations made by various Newspapers with regard to the rise and hike in price in raw materials and printing charges, increased the rates and fixed the rates for Government advertisements for each Newspapers, purely based on its circulation and distribution. Likewise, the rates were also fixed to the petitioners' Newspapers viz., "Dinakaran" and "Tamil Murasu". Based on the said Government Order, the Government advertisements were released to the petitioners' Newspapers till 2011, as per the rates fixed by the Government. Thereafter, advertisements were completely stopped and denied to the petitioners' Newspapers, for which, the petitioners have initiated the above Writ Petitions.

(xiii) Further, according to the petitioners, from the year 2006 to till date, the Government has failed and neglected to increase the costs of the Government advertisements to the petitioners' Newspapers by re-fixing the rates. On enquiry, the petitioners came to know that the respondents, by various Government Orders, at its own whims and fancy, without any guidelines or rules or uniformity or yardstick, had re-fixed the rates for various Newspapers for Government advertisements.

(xiv) According to the petitioners, the various Government Orders re-fixing the rates of Government advertisements with respect to the other Newspapers will clearly demonstrate the vindictive attitude of the Government as against the petitioners' Company. The respondents, while re-fixing the rates for Government advertisements to other Newspapers, for the reasons best known to them, with ulterior and malafide reasons failed to do so with respect to "Dinakaran" and "Tamil Murasu". In this regard, the petitioners have made several representations, orally as well as in writing, the last of such being on 21.03.2017. But till date, the respondents neither re-fixed the rates for the petitioners' Newspapers with regard to the Government advertisements nor sent any reply to them.

(xv) Due to steep increase in raw materials, increase in costs of raw materials and costs of printing, it is incumbent on the part of the respondents to re-fix the rates for the Government advertisements to the petitioners' Newspapers, as

done to the other Newspapers, based on its circulation and distribution. In these circumstances, the petitioner has filed the Writ Petition in W.P.No.8242 of 2017 to issue a writ of mandamus directing the respondents to re-fix the rate for Government advertisements for the petitioners' Newspapers based on circulation and the Audit Bureau of Circulation (ABC) Certificate.

6.The brief case of the petitioner in W.P.No.6394 of 2017 is as follows:

(i)According to the petitioner, the Tamil Newspaper "Dinamalar" is one of the largest Tamil Daily having circulation more than nine lakhs copies per day. According to the petitioner, the respondents have been releasing advertisements for the Government of Tamil Nadu to various Tamil and English Newspapers indiscriminately, excluding the Tamil Newspaper "Dinamalar", even though it is one of the accredited Newspapers of Government of Tamil Nadu. The public money is being spent without any criteria or guidelines.

(ii)Though the petitioner's Newspaper is having circulation of 8,61,181 copies per day in Tamil Nadu, no advertisement was released to the said Newspaper. For the period from January, 2016 to June, 2016, the petitioner's Newspaper is having daily circulation of 8,61,181 and the Tamil Daily "Dinakaran" is having circulation of 11,41,965. The Government had paid a sum of Rs.62,94,45,924/- to other Newspapers viz., Daily Thanthi, Dinamani, Indian Express, Namadhu MGR, The Hindu and The Hindu Tamil for publication of Government advertisements. The advertisements are being released and payments were made by the respondents out of the public money, without any norms.

(iii)All Newspapers have their own rate card for the advertisements published in the Newspapers and the rate differs with reference to circulation, as circulation is the major criteria for any advertisers to place their advertisements. The more number of circulation will bring more advertisements and it would also reach more number of readers. The respondents are indiscriminately releasing advertisements to Newspapers, without any criteria. Questioning the same, the petitioner sent a legal notice to the respondents on 25.01.2017, calling upon them to show cause on what basis the advertisements are being released to various Tamil and English Dailies and whether any criteria/policy is available with the Government of Tamil Nadu for the release of advertisements to Tamil and English Daily Newspapers and whether the Newspaper in which the advertisement is being released is selected on the basis of circulation and if it is on the basis of circulation, what is the minimum limit of circulation a Newspaper is required to possess. However, the

respondents have not given any reply to the notice sent by the petitioner.

(iv) According to the petitioner, the act of the respondents is violative of Article 14 of the Constitution of India, as it discriminates in disbursing the funds for the public exchequer without any basis. The selective approach in releasing the advertisements to Newspapers, which has minimum circulation like "Namadhu MGR" and disregarding the Newspaper of the petitioner, is violative of Articles 14 & 15 of the Constitution of India. Further, denying the release of advertisements to the petitioner Newspaper is violative of Article 19(1)(g) of the Constitution of India. The respondents are not treating the Newspaper of the petitioner equally along with other accredited Newspapers, even though it is the accredited Newspaper of Government of Tamil Nadu. In these circumstances, the petitioner has filed the Writ Petition in W.P.No.6394 of 2017 to issue a writ of mandamus directing the 1st respondent to frame guidelines/qualifications in releasing advertisement to newspapers on the basis of circulation without any discrimination.

7.The brief case of the respondents is as follows:

(i) According to the respondents, the cause of action and the relief sought for in the Writ Petitions do not make out any violation of freedom of speech and freedom of press for the petitioners as guaranteed under Articles 14, 15, 19(1)(a) and 19(1)(g) of the Constitution of India. Further, the print media advertisement policy of the Government of India (DAVP) in Clause - 2 has stated that the Government advertisements are not intended to be financial assistance to Newspapers/Journals. The Government of Tamil Nadu, through its Department of Information and Public Relations, release press releases, press notes, photographs, video clippings to all the print and visual media, without any bias. The Government takes into account the contents, target audience for the advertisements and availability of funds in consultation with the Departments/Undertakings. The selection of Newspapers for releasing advertisements is not based on the Audit Bureau of Circulations figures. The Department of Information and Public Relations takes into account the type of advertisement, target audience and availability of funds for publishing the advertisement and past history of the Newspapers for having carried out the welfare measures of the Government intended to reach the masses, etc.

(ii) According to the respondents, the petitioners' Newspapers did not publish many of the welfare messages intended for the common man issued by the Government. The respondents have stated that they did not give any oral undertaking for the

release of Government advertisements to the petitioners' Newspapers in the Writ Petitions filed on the earlier occasion. The Department of Information and Public Relations release advertisements based on the guidelines stipulated in the Government Order. The Government advertisements are released in accordance with the procedure laid down in G.O.Ms.No.764, Public (I & PR) Department dated 26.03.1980. The selection of Newspapers for releasing Government advertisements is purely based on the circulation figures of the Newspapers. The Government does not pose threat neither to the freedom of press nor to the democracy. The Government does not discriminate anyone on the ground of religion, race, caste, sex or place of birth. The Government advertisements are not intended to provide financial assistance to the Newspapers/Journals. The Government acts fairly and reasonably and does not violate any law. The advertisements are released in accordance with the procedure laid down in G.O.Ms.No.764 and neither entertain discrimination nor give an impression of bias, favouritism and nepotism.

(iii) Clause - 4.2.1 of G.O.Ms.No.764, Public (I & PR) Department dated 26.03.1980 states that the Information and Public Relations Department will consider the recommendations received and select the media list taking into account the area and the class of readers to whom the particular advertisement is directed to. The advertisement is then released by the Information and Public Relations Department either directly to the Newspapers or through one of the Advertising Agencies in the approved panel in G.O.Ms.No.1742, Home (I & PR) dated 19.07.1976 and hence, the petitioners' accusation that the Government releases advertisements to various Tamil and English Dailies indiscriminately without any guidelines is totally false and contradictory to the facts.

(iv) So far as the Tamil Daily "Dinamalar" is concerned, the respondents have stated that during the period from June, 2016 to November, 2016, advertisements have been released to the petitioner's Newspaper, amounting to Rs.3,51,48,150/-. Hence, it is clear that the Department of Information and Public Relations is not acting arbitrarily as claimed by the petitioner. In these circumstances, the respondents pray for dismissal of the Writ Petitions.

8. Heard Mr. Vijayanarayanan, learned senior counsel appearing for the petitioners in W.P.Nos.6374, 6375 & 8242 of 2017, Mr. S. Elambharathi, learned counsel appearing for the petitioner in W.P.No.6394 of 2017 and Mr. R. Muthukumarasamy, learned Advocate General appearing for the respondents in all the Writ Petitions.

9.Mr.Vijayanarayanan, learned senior counsel appearing for the petitioners in W.P.Nos.6374, 6375 & 8242 of 2017 submitted that the petitioners' Newspapers viz., "Dinakaran" and "Tamil Murasu" are rated as one of the highest and largest in circulation and the same is also evident from the Audit Bureau of Circulations Certificate. Further, the learned senior counsel submitted that the advertisements were released to the petitioners' Newspapers till 2011 and thereafter, all of a sudden, with ulterior reasons and malafide intention did not release the Government advertisements only to the said Newspapers. According to the learned senior counsel, the said Newspapers are singled out for such arbitrary treatment. The learned senior counsel also submitted that the comparison table with respect to the releasing of advertisements to other Newspapers with that of the petitioners' Newspapers will clearly establish the arbitrary discriminating treatment of the respondents towards the petitioners' Newspapers. The learned senior counsel submitted that the action of the respondents is arbitrary, illegal and violative of Articles 14, 15, 19(1)(1) and 19(1)(g) of the Constitution of India. In support of his contentions, the learned senior counsel relied upon the following judgments:

(i)AIR 1973 Supreme Court 106 [Bennett Coleman and Co. Ltd. and others Vs. Union of India and others] wherein the Hon'ble Supreme Court had held as follows:

"...

31.Article 19(1)(a) provides that all citizens shall have the right to freedom of speech and expression. Article 19(2) states that nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence. Although Article 19(1)(a) does not mention the freedom of the Press, it is settled view of this Court that freedom of speech and expression includes freedom of the Press and circulation.

32.In the Express Newspapers case, 1959 SCR 12 = (AIR 1958 SC 578) (supra) it is said that there can be no doubt that liberty of the Press is an essential part of the freedom of speech and expression guaranteed by Art. 19(1)(a).The Press has the right of free propagation and free circulation without any previous restraint on publication. If a law were to single out the Press for laying down prohibitive

burdens on it that would restrict the circulation, penalise its freedom of choice as to personnel, prevent newspapers from being started and compel the press to Government aid. This would violate Article 19 (1)(a) and would fall outside the protection afforded by Article 19(2).

...
34. Publication means dissemination and circulation. The press has to carry on its activity by keeping in view the class of readers, the conditions of labour, price of material, availability of advertisements, size of paper and the different kinds of news comments and views and advertisements which are to be published and circulated. The law which lays excessive and prohibitive burden which would restrict the circulation of a newspaper will not be saved by Article 19(2). If the area of advertisement is restricted, price of paper goes up. If the price goes up circulation will go down. This was held in Sakal Papers case, (1962) 3 SCR 842 = (AIR) 1962 SC 305 (supra) to be the direct consequence of curtailment of advertisement. The freedom of a newspaper to publish any number of pages or to circulate it to any number of persons has been held by this Court to be an integral part of the freedom of speech and expression. This freedom is violated by placing restraints upon it or by placing restraints upon something which is an essential part of that freedom. A restraint on the number of pages, a restraint on circulation and a restraint on advertisements would affect the fundamental rights under Article 19(1)(a) on the aspects of propagation, publication and circulation."

(ii) AIR 1986 Supreme Court 515 [Indian Express Newspapers (Bombay) Private Ltd., and others, etc Vs. Union of India and others] wherein the Apex Court held as follows:

...
31. In today's free world freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments. Newspaper being purveyors of news and views having a bearing on public administration very often

carry material which would not be palatable to governments and other authorities. The authors of the articles which are published in newspapers have to be critical of the actions of government in order to expose its weaknesses. Such articles tend to become an irritant or even a threat to power. Governments naturally take recourse to suppress newspapers publishing such articles in different ways. Over the years governments in different parts of the world have used diverse methods to keep press under control. They have followed carrot-stick methods. Secret payments of money, open monetary grants and subventions, grants of lands, postal concessions, Government advertisements, conferment of titles on editors and proprietors of newspapers, inclusion of press barons in cabinet and inner political councils etc. constitute one method of influencing the press. The other kind of pressure is one of using force against the press. Enactment of laws providing for pre-censorship, seizures, interference with the transit of newspapers and demanding security deposit, imposition of restriction on the price of newspapers, on the number of pages of newspapers and the area that can be devoted for advertisements, withholding of Government advertisements, increase of postal rates, imposition of taxes on newsprint, canalisation of import of newsprint with the object of making it unjustly costlier etc. are some of the ways in which Governments have tried to interfere with freedom of press. It is with a view to checking such malpractices which interfere with free flow of information, democratic constitutions all over the world have made provisions guaranteeing the freedom of speech and expression laying down the limits of interference with it. It is, therefore, the primary duty of all the national Courts to uphold the said freedom and invalidate all laws or administrative actions which interfere with it contrary to the constitutional mandate."

(iii) AIR 1989 Gauhati 30 [Dainik Sambad and another Vs. State of Tripura and others] wherein the Division Bench of Gauhati High Court held as follows:

"...

18. Can a newspaper to which allotment of Government Advertisements happened to be gradually reduced complain of discrimination? Would it affect its freedom of press requiring or justifying judicial review? The strongest of Anti-discrimination

legislation is to be found in Art.14 of the Constitution of India read Arts. 15 and 16 enabling judicial review of allegation of discrimination and to provide legal remedies to the victims of unlawful discrimination. In, order to establish discrimination of a prohibited ground the complainant has to establish that others less well or no better qualified than himself received more favourable treatment and alleged discriminatory refusal of state encouragement, economic or otherwise may amount to hostile discrimination. The use of an ostensible unfettered discretionary power may result in discrimination. Even licensing powers, it has been held, cannot be used to discriminate against political or religious opponents as was held in *Roncarelly v. Duplessis*, (1962) 1 DLR 680. The Court shall strike down an order if it is found to have been based on discrimination prompted by an ill-will, dislike of one's political views, favouritism or improper motives. If a discretionary power is exercised in disregard of relevant considerations or on considerations that cannot be lawfully taken into account and it results in discrimination it may be struck down.

19. In the cases of *Indian Express Newspapers (Bombay) Pvt. Ltd.* (AIR 1958 SC578); *Coleman and Co. Ltd* (AIR 1973 SC 106); *Statesman Ltd.*; *Kasture and Sons Ltd.*; *Ananda Bazar Patrika Ltd. v. Union of India*, AIR 1986 SC 515 : 1985. Tax LR 2451, *Venkataramiah, J.* speaking for the Court observed that newspapers constitute the fourth estate of the country and the State should not single out the newspaper industry for harsh treatment. Custom duty on newsprint, it has been observed, is an imposition on knowledge and would virtually amount to a burden around a man for being literate and for informing himself about the world around him. Public interest in freedom of expression (of which the freedom of press is one establishment) stands over the requirements of the members of the democratic society. Freedom of expression has four broad social purposes to serve : (i) it helps an individual to attain self fulfillment; (ii) it assists in the discovery of truth; (iii) it strengthens the capacity of an individual in participating in decision making and (iv) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. All members of society should be able to form their own beliefs and communicate them freely to others. "In sum, the fundamental principle involved

here is the people's right to know". Freedom of speech and expression should, therefore, receive a generous support from all those who believe in the participation of the people in the administration. It is on account of this special interest which society has in the freedom of speech and expression that the approach of the Government should be cautious while adopting fiscal or other measures concerning newspaper industry. The same principle shall apply against any sort of State interference of discriminatory action reducing circulation of newspaper. Exercise of taxing power by the State has been held to be subject to scrutiny by courts. The exercise of any other power increasing the burden on the newspaper is similarly subject to scrutiny of the courts. Such power should not be used on the newspaper establishment so as to make the establishment subservient to the Government of that the newspaper will have to run after the Government. Merely because the Government has the power, the freedom of press would not be totally lost and the court is always there to hold the balance and to strike down unconstitutional invasion of that freedom. The newspaper industry enjoys two of the fundamental rights' namely, freedom of speech and expression guaranteed under Art.19(1)(a) and freedom to engage in any business. Any measure adopted by the Government to transgress into the field of freedom of expression and to stifle that freedom would be unconstitutional. The Court can determine precisely at what stage there has been transgression in this regard with a view to suppress the newspapers. Governments often have used diverse methods to keep the press under control thereby interfering with free flow of information. For checking such malpractices, democratic constitutions all over the world made provisions guaranteeing the freedom of speech and laying down the limits of interference with it; and it has been held that it is the primary duty of all Courts to uphold the said freedom and invalidate all laws or administrative action which interfere with this freedom contrary to the constitutional mandate. Our Constitution does not use the expression 'freedom of press' under Art. 19. But it is declared by the Supreme Court that it is included under Art. 19(1)(a) which expresses freedom of speech and expression (See Brij Mohan or Brij Bhushan v. State, 1950 SCR 605 : AIR 1950 SC 129 and Bennett Coleman & Co. Ltd. v. Union of India, AIR 1973 SC 106: (1973) 2 SCR 757). No doubt publication of articles critical of the

Government may be irritant or a threat. Governments are sometimes prone to take recourse to different means to suppress such newspapers. "Over the years Governments in different parts of the world have used diverse methods to keep the press under control. They have followed carrot-stick methods. Secret payments of money, open monetary grants and subventions, grants of lands, postal concession, Government advertisements, conferment of titles on editors and proprietors of newspapers, inclusion of press barons in cabinet and inner political councils etc. constitute one method of influencing the press. The other kind of pressure is one of using force against the press. Enactment of laws providing for precensorship, seizures, interference with the transit of newspaper and demanding scrutiny deposit, Imposition of restriction on the price of newspapers, on the number of pages of newspapers and the area that can be devoted for advertisements, withholding of Government advertisements, increase of postal rates, imposition of taxes on newsprint, canalisation of import of newsprint with the object of making it unjustly costlier etc. are some of the ways in which Government have tried to interfere with freedom of press". It is with a view to checking such malpractices which interfere with free flow of information, democratic constitutions all over the world have made provisions guaranteeing the freedom of speech and expression laying down the limits of interference with it. It is, therefore, the primary duty of the courts to uphold the said freedom and invalidate all laws or administrative actions which interfere with it contrary to the constitutional mandate.

20. Discriminatory allotment of Government advertisements to different newspapers of the same category by the State Government will impair the freedom of press and will therefore be violative of Arts. 14 and 19(1)(a) of the Constitution of India. That being the position the contention that this court in such case is not to exercise jurisdiction as the matter has been pending before the Press Council is not tenable. We, however, find that the Government's stand is that no such discriminatory order has been passed and yet the volume of advertisements sent to the petitioner newspaper has been tapering. It is also the Government's stand that several months of the year are yet to elapse and at this stage this contention that there has been discrimination against the

petitioner's publication and deprivation and its quota is futile. To our mind, these two averments are contradictory. If all the class-I newspapers were to be given equal business in respect of advertisements and while in case of others the volume is not tapering, but in case of the petitioner newspaper it is tapering, discrimination is writ large on the statistics. The fact that no specific order has been passed cannot be accepted as a reasonable answer of explanation. If the State is true to its avowed policy of equal distribution of its advertisements, it should see that the policy is translated into action in letters and spirit. As admittedly the policy as to equal distribution of the Government advertisement among newspapers of the State belonging to the same category, we do not find any discrimination in the policy itself; but we find that there has been discrimination in implementing the policy. We accordingly direct the State Government to see that the avowed policy of equal distribution of its advertisements is carried put by its agents and servants and to take such measures as to sincerely and faithfully carry out its own policy of equal distribution of newspaper advertisements insofar as the petitioner newspaper is concerned."

(iv) (1995) 5 Supreme Court Cases 139 [TATA Press Limited Vs. Mahanagar Telephone Nigam Ltd., and others] wherein the Hon'ble

Supreme Court held as follows:

"...

19. Advertising is considered to be the cornerstone of our economic system. Low prices for consumers are dependent upon mass production, mass production is dependent upon volume sales, and volume sales are dependent upon advertising. Apart from the lifeline of the free economy in a democratic country, advertising can be viewed as the life blood of free media, paying of the costs and thus making the media widely available. The newspaper industry obtains 60/80% of its revenue from advertising. Advertising pays a large portion of the costs of supplying the public with newspaper. For a democratic press the advertising "subsidy" is crucial. Without advertising, the resources available for expenditure on the "news" would decline, which may lead to an erosion of quality

and quantity. The cost of the "news" to the public would increase, thereby restricting its "democratic" availability.

...

22. Advertising as a "commercial speech" has two facets. Advertising which is no more than a commercial transaction, is nonetheless dissemination of information regarding the product-advertised. Public at large is benefited by the information made available through the advertisement. In a democratic economy free flow of commercial information is indispensable. There cannot be honest and economical marketing by the public at large without being educated by the information disseminated through advertisements. The economic system in a democracy would be handicapped without there being freedom of "commercial speech". In relation to the publication and circulation of newspapers, this Court in Indian Express newspaper's case, (AIR 1986 SC 515), Sakal Paper's case (AIR 1962 SC 305) and Bennett Coleman's case (AIR 1973 SC 106) has authoritatively held that any restraint or curtailment of advertisements would affect the fundamental right under Article 19(1)(a) on the aspects of propagation, publication and circulation."

(v) AIR 1995 Gauhati 49 [State of Assam and others Vs. M/s. Omega Printers and Publishers Private Limited and another] wherein the Division Bench of Gauhati High Court held as follows:

"...

23. It is also now well-settled that the Government while discharging its administrative functions cannot act arbitrarily even regarding giving of advertisements. Whatever may be the activity of the Government, it has to act on some guiding principles and cannot affect the fundamental right guaranteed under Article 14 of the Constitution and also violate the other fundamental rights guaranteed under Article 19 of the Constitution. The exercise of the power can neither be arbitrary nor capricious and the exercise of any action of the Government will have to be based on certain definite guidelines for which the power is being exercised in public interest. Even in the cases of contracts, leases, licences or granting any other largess, the action of the Government will have to be bona fide based on well-defined guidelines which may

sub-serve the purpose for which the power is being exercised in public interest and in case the Government fails to satisfy that it has not acted on such settled principles, the action of the Government would be liable to be struck down."

(vi)AIR 1998 Gauhati 28 [Sushil Choudhury and another Vs. State of Tripura and others] wherein the Division Bench of Gauhati High Court held as follows:

"...

11. The next question is as to whether the increase in circulation of Daily Desher Katha as a direct consequence of increase in the quantum of advertisements issued by the Government to the said newspaper affects the freedom of speech expression and freedom of press. Increased circulation of Daily Desher Katha will result in more and more people reading the said news paper Daily Desher Katha and the said newspaper will, as a result of its increased circulation, influence the community to a much greater extent than the other newspapers and this increased influence of the newspaper on the minds of the people compared to other newspapers strikes at the very foundation of freedom of press and democracy. Freedom of press and healthy democracy require that divergent views are expressed through the newspapers and people reading the newspapers form their opinion on the basis of such divergent views. In the language of the Second Press Commission quoted in paragraph 39 of the judgment of the Supreme Court in the case of Indian Express Newspapers v. Union of India (supra).

"Freedom of special presupposes that right conclusions are more likely to be gathered out of a multitude of tongues than through any kind of authoritative selection. It rests on the assumption that the widest possible dissemination of information from as many diverse and antagonistic sources as possible is essential to the welfare of the public. It is the function of the Press to disseminate news from as many different sources and with as many different facts and colours as possible. A citizen is entirely dependent on the Press for the quality, proportion and extent of his news supply. In such a situation, the exclusive and continuous advocacy of one point of view through the medium of a newspaper which holds a monopolistic position is not conducive to the

formation of healthy public opinion. If the newspaper industry is concentrated in a few hands, the chance of an idea antagonistic to the idea of the owners getting access to the market becomes very remote. But our constitutional law has been indifferent to the reality and implication of non-Governmental restraint on exercise of freedom of speech by citizens. The indifference becomes critical when comparatively a few persons are in a position to determine not only the content of information but also its very availability. The assumption in a democratic set up is that the freedom of the press will produce a sufficiently diverse Press not only to satisfy the public interest by throwing up a broad spectrum of views but also to fulfill the individual interest by enabling virtually every one with a distinctive opinion to find some place, to express it."

In my considered opinion, if the State respondents continue to allot 24% of the total quantum of advertisements to the Daily Desher Katha as compared to only 6% of the total quantum of advertisements to other 'A' category newspapers, the views expressed in the said Daily Desher Katha will have increasing sway on the minds of the more and more people and the general community and will affect the formation of a healthy public opinion necessary for a good democracy. Thus, the impugned Memorandum dated 14-12-1993 of the State Government is violative of freedom of speech guaranteed under Art.19(1)(a) as well as the equality clause in Art.14 of the Constitution. The impugned Memorandum dated 14-12-1993 of the Government of Tripura, Information, Cultural Affairs and Tourism Department is accordingly quashed."

(vii) (2003) 1 Supreme Court Cases 591 [Hindustan Times and others Vs. State of U.P. and another] wherein the Apex Court held as follows:

"...

34. Advertisements in a newspaper have a direct nexus with its circulation.

35. In *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd. & Ors.* [(1995) 5 SCC 139], it was held as under :-

"20. Advertising is considered to be the cornerstone of our economic system. Low prices for

consumers are dependent upon mass production, mass production is dependent upon volume sales, and volume sales are dependent upon advertising. Apart from the lifeline of the free economy in a democratic country, advertising can be viewed as the lifeblood of free media, paying most of the costs and thus making the media widely available. The newspaper industry obtains 60%/80% of its revenue from advertising. Advertising pays a large portion of the costs of supplying the public with newspaper. For a democratic press the advertising 'subsidy' is crucial. Without advertising, the resources available for expenditure on the 'news' would decline, which may lead to an erosion of quality and quantity. The cost of the 'news' to the public would increase, thereby restricting its 'democratic' availability."

36. It is not in dispute that advertisements play important role in the matter of revenue of the newspapers.

37. This Court in *Bennett Coleman & Co. v. Union of India* [(1972) 2 SCC 788] observed as under:

"34. Publication means dissemination and circulation. The press has to carry on its activity by keeping in view the class of readers, the conditions of labour, price of material, availability of advertisements, size of paper and the different kinds of news comments and views and advertisements which are to be published and circulated. The law which lays excessive and prohibitive burden which would restrict the circulation of a newspaper will be saved by Article 19(2). If the area of advertisement is restricted, price of paper goes up. If the price goes up circulation will go down. This was held in *Sakal Papers case* [AIR 1962 SC 305] to be the direct consequence of curtailment of advertisement. The freedom of a newspaper to publish any number of pages or to circulate it to any number of persons has been held by this Court to be an integral part of the freedom of speech and expression. This freedom is violated by placing restraints upon something which is an essential part of that freedom. A restraint on the number of pages, a restraint on circulation and a restraint on advertisements would affect the fundamental rights under Article 19(1)(a) on the aspects of propagation, publication and circulation.

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43.The various provisions of the newsprint import policy have been examined to indicate as to how the petitioners' fundamental rights have been infringed by the restrictions on page limit, prohibition against new newspapers and new editions. The effect and consequence of the impugned policy upon the newspapers is directly controlling the growth and circulation of newspapers. The direct effect is the restriction upon circulation of newspapers. The direct effect is upon growth of newspapers through pages. The direct effect is that newspapers are deprived of their area of advertisement. The direct effect is that they are exposed to financial loss. The direct effect is that freedom of speech and expression is infringed.

* * *

45.It is indisputable that by freedom of the press is meant the right of all citizens to speak, publish and express their views. The freedom of the press embodies the right of the people to read. The freedom of the press is not antithetical to the right of the people to speak and express."

38.It is neither in doubt nor in dispute that for the purpose of meeting the costs of the newsprint as also for meeting other financial liabilities which would include the liability to pay wages, allowances and gratuity etc. to the working journalists as also liability to pay a reasonable profit to the shareholders vis-a-vis making the newspapers available to the readers at a price at which they can afford to purchase it, the petitioners have no other option but to collect more funds by publishing commercial and other advertisements in the newspaper."

(viii) (20037 1 Supreme Court Cases 143 [Ajay Goswami Vs. Union of India and others] wherein the Hon'ble Supreme Court held as follows:

"...

70.In S.Rangarajan V. P.Jagjivan Ram [(1989) 2 SCC 574], while interpreting Article 19(2) this Court borrowed from the American test of clear and present danger and observed:

"[The] commitment to freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are

pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. [In other words, the expression should be inseparably] like the equivalent of a 'spark in a power keg'."

11.Mr.S.Ilambharathi, learned counsel appearing for the petitioner in W.P.No.6394 of 2017 adopted the submissions made by the learned senior counsel appearing for the petitioners in W.P.Nos.6374, 6375 & 8242 of 2017. Further, the learned counsel submitted that the 1st respondent should be directed to frame guidelines/qualifications in releasing advertisements to the Newspapers on the basis of circulation without any discrimination.

12.Countering the submissions made by the respective learned counsels appearing for the petitioners, Mr.R.Muthukumarasamy, learned Advocate General appearing for the respondents submitted that the respondents have not discriminated or acted arbitrarily and released the Government advertisements to the Newspapers other than the petitioners' Newspapers viz., "Dinakaran", "Tamil Murasu" and "Dinamalar". The learned Advocate General further submitted that the respondents are following the procedure laid down in G.O.Ms.No.764 dated 26.03.1980 and release the advertisements on the basis of the said Government Order. Further, the learned Advocate General submitted that the respondents have not violated Articles 14, 15, 19(1)(a) and 19(1)(g) of the Constitution of India in any manner. Further, the learned Advocate General submitted that the selection of Newspapers for releasing the Government advertisements is not purely based on the circulation figures of the Newspapers and the Government takes into account various parameters like target audience, availability of funds for publishing the advertisements and past history of the Newspapers for having carried out the welfare measures of the Government intended to reach the masses. The learned Advocate General submitted that so far as the Tamil Daily "Dinamalar" is concerned, the Government have released advertisements for a total sum of Rs.24,48,08,239/- for the period from May 2011 to December 2016, therefore, the petitioner in W.P.No.6394 of 2017 cannot claim that the respondents have discriminated and released advertisements indiscriminately to other Dailies without following any guidelines. In these circumstances, the learned Advocate General submitted that the Writ Petitions are liable to be dismissed.

13. In the Writ Petitions in W.P.Nos.6374 & 6375 of 2017, the petitioners seek for a direction to the respondents to continue to give advertisements to the newspapers "Dinakaran" and "Tamil Murasu" based on the Audit Bureau of Circulation (ABC) Certificate. In the Writ Petition in W.P.No.8242 of 2017, the petitioner seeks for a direction to re-fix the rate for Government advertisements for the newspapers "Dinakaran" and "Tamil Murasu" based on circulation and the Audit Bureau of Circulation (ABC) Certificate. In the Writ Petition in W.P.No.6394 of 2017, the petitioner viz., the Editor of the Tamil Daily "Dinamalar" seeks for a direction to the 1st respondent to frame guidelines/qualifications in releasing advertisement to newspapers on the basis of circulation without any discrimination.

14. The petitioner in W.P.Nos.6374 & 8242 of 2017 owns a Tamil Morning Daily Newspaper known as "Dinakaran", which is in existence for more than 34 years. As per the Audit Bureau of Circulations Certificate, as on date, the circulation is more than 11,41,965 copies per day. It is one of the highest and largest circulating Tamil Newspaper in India. The Audit Bureau of Circulations Mumbai publishes the circulation of each Newspapers and the petitioner has also enclosed the Certificates of the Audit Bureau of Circulations in respect of the Tamil Daily "Dinakaran" to show that it is one of the highest and largest circulated Newspaper in Tamil Nadu. The Audit Bureau of Circulations is having its Registered Office at Mumbai, which certifies the volume of Newspapers circulated in India and the Government advertisements are given by various Governments based on the Certificate issued by the Audit Bureau of Circulations as an yardstick, since it acts as a conclusive proof for volume of sales. The Audit Bureau of Circulations Certificate establishes that the Tamil Daily "Dinakaran" Newspaper as one of the highest and largest selling Tamil Daily in India, having more than 11,41,965 copies per day. Apart from the Morning Tamil Daily "Dinakaran", the petitioner also owns an Evening Daily viz., "Tamil Murasu", which is the highest and largest selling Evening Daily in Tamil Nadu. It is evident from the materials available on record that the petitioner's Company Newspapers viz., "Dinakaran" would get approximately 8000 square centimeters of advertisements per month from the Government of Tamil Nadu before 2011. So far as the Evening Daily "Tamil Murasu" is concerned, it would get approximately 1200 square centimeters of advertisements per month from the Government of Tamil Nadu before 2011. According to the petitioners, the value of the advertisements given to these Newspapers is approximately Rupees three crores per month and it constitutes substantial income from the advertisements given to these Newspapers.

15.It is needless to say that the petitioners' Newspapers have an obligation to report all news dispassionately and faithfully and the people viz., the readers have a right to know the events that are taking place in the Country and Abroad. The right to dissemination of knowledge and information is a part of the right of freedom of speech and expression and a Newspaper is obliged to its readers to report all news in a true and faithful manner. Some of the news items may not be to the liking of one section of the readers. The main grievance of the petitioners is that since they have published some articles disseminating the truth, the respondents have taken the vindictive action by not releasing the Government Advertisements to them. However, the respondents have taken a stand that they have not discriminated the petitioners and that they have done everything as per the procedures laid down in G.O.Ms.No.764, Public (I & PR) Department dated 26.03.1980.

16.1.As per Clause - 4.1.4 of the G.O.Ms.No.764 dated 26.03.1980, selection of Newspapers for release of advertisement is the function of the Director of Information and Public Relations and he need not necessarily select the Newspapers recommended by the Advertising Department. Therefore, the Department requesting release of advertisement should not mark copies of its letter containing the request to the newspaper or in any other way divulge to the publications the nature of its recommendation to the Director of Information and Public Relations.

16.2.As per Clause - 4.2.1, the Information and Public Relations Department will consider the recommendations received and select the media list taking into account the area and the class of readers to whom the particular advertisement is directed to. The advertisement is then released by the Information and Public Relations Department either directly to the Newspapers or through one of the Advertising Agencies in the approved panel.

16.3.As per Clause - 4.2.2, if considered necessary, the Information and Public Relations Department may add, prune or totally change the media list recommended by the Advertising Department and if it considers the advertisement not necessary, may not release the advertisement at all.

16.4.Further, as per Clause - 8.1 of the Government Order, the Government should maintain an approved list of Dailies and Periodicals to which advertisements are to be released.

16.5.Clause - 8.2 says that for inclusion of a Newspaper in the approved list, the publication has to apply to the Government furnishing the particulars in the form at Annexure-III.

16.6.Clause - 8.3 says that a Newspaper (Daily or Periodical) which has not come out regularly and continuously for a period of six months is not considered for inclusion in the approved list.

16.7.As per Clause - 8.4, the requests of the Newspapers are examined by the Information and Public Relations Department keeping in view:

- (i)their circulation figures;
- (ii)tone and content;
- (iii)regularity in publication;
- (iv)language; and
- (v)adherence to accepted standards of journalistic ethics;

and the final selection is made after obtaining orders from the Minister in-charge of the Information and Public Relations Department.

16.8.As per Clause - 8.5, the advertisement rate of a Daily or a Periodical is revised only once in a financial year and the new rates will be effective from 1st April of the year.

16.9.In the Questionnaire annexed as Annexure-III to the said Government Order, in Clause - 8, the Government seeks for the details of the applicant Newspaper with regard to the circulation figures with State-wise/District-wise break-up (if not member of ABC, the figure audited by a Chartered Accountant was directed to be furnished). In Clause - 11 of the Questionnaire, the Government seeks for the details as to whether the applicant Newspaper is in the list of DAVP and if so, the rate approved by them.

17.On a careful perusal of the Government Order in G.O.Ms.No.764, Public (I & PR) Department dated 26.03.1980, it is clear that the requests of the Newspapers should be examined by the Information and Public Relations Department keeping in view of their circulation figures, tone & content, regularity in publication and their adherence to accepted standards of journalistic ethics. However, the final decision is to be made only after obtaining the orders from the Minister, who is in-charge of Information and Public Relations Department.

18.In the counter filed by the respondents, they have not stated that the petitioners' Newspapers have not fulfilled the

conditions stated in Clause - 8.4 of the Government Order. When it is not the case of the respondents that the petitioners have not fulfilled the criteria mentioned in Clause - 8.4 of the Government Order, then, it is for the respondents to explain as to why they have not released any advertisement to the petitioners after 2011. From the available materials, it is clear that the Tamil Dailies viz., "Dinakaran" and "Tamil Murasu" did not get even a single advertisement after 2011. When the respondents released advertisements to the said Newspapers upto 2011, the reason for not releasing advertisements to the said Newspapers should have been explained by the respondents in an acceptable manner. But the respondents have not explained the reasons for not releasing advertisements to the said two Newspapers viz., "Dinakaran" and "Tamil Murasu" in any manner whatsoever. It is also the case of the petitioners that the respondents are releasing advertisements even to the Newspapers, which are meagre in daily circulation. As per the Audit Bureau of Circulations, the daily average circulation of "Dinakaran" for the period from January to June 2016 was 11,41,965 copies.

19. In the typed set of papers, the petitioners have also given the comparative details with regard to the release of advertisements. On a perusal of the same, it is clear that since 2011, the respondents have not released even a single advertisement to the petitioners' Newspapers viz., "Dinakaran" and "Tamil Murasu". Even the Newspaper, which has got daily circulation of only 25,000 copies, was released advertisements by the respondents. On the contrary, the petitioners, who have got more than eleven lakh copies of daily circulation, were not given even a single advertisement from 2011. When the respondents were not in a position to explain the reasons for not releasing any advertisement to "Dinakaran" and "Tamil Murasu", it clearly amounts to discrimination.

20. The discriminatory allotment of Government advertisements to different Newspapers of the same category by the State Government will impair the freedom of press, therefore, be violative of Articles 14 and 19(1)(a) of the Constitution of India. If the respondents are true to its avowed policy of equal distribution of its advertisements, it should see that the policy is translated into action in letters and spirit. The policy as to equal distribution of the Government advertisement among Newspapers of the State belonging to the same category, this Court does not find any discrimination in the policy itself; but finds that there has been discrimination in implementing the policy.

21. It is also well settled that the Government, while discharging its administrative function, cannot act arbitrarily,

even regarding giving of advertisements. Whatever may be the activity of the Government, it has to act on some guiding principles and cannot affect the fundamental rights guaranteed under Article 14 of the Constitution and also violate the other fundamental rights guaranteed under Article 19 of the Constitution. Freedom of press and healthy democracy require that divergent views are expressed through the newspapers and people reading the newspapers form their opinion on the basis of such divergent views. The purpose of the press is to advance a public interest by publishing facts and opinions, without which, a democratic electorate cannot make responsible judgments and though Article 19(1)(a) does not mention freedom of press, it is settled law that freedom of speech and expression includes freedom of press and circulation.

22. The ratios laid down in the judgments relied upon by the learned senior counsel for the petitioners squarely applies to the facts and circumstances of the present case.

23. The issue of advertisements amount to grant of State largesse and there has to be some proper policy, which has to be followed by the respondents while issuing advertisements. The result of lack of proper policy would be that some Newspapers, which report activities of the State Government in a favourable manner, would enjoy State patronage and other Newspapers, which are reporting the news in an impartial and unbiased manner, may not enjoy such State patronage. This would amount to hostile discrimination as against a particular Newspaper. Every action of the State or its instrumentalities neither be suggestive of discrimination nor apparently give an impression of bias, favouritism and nepotism. If a decision is taken without any principle or any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law. Even as per Annexure-III of the Government Order, G.O.Ms.No.764, dated 26.03.1980, the respondents should also take into consideration the quantum of circulation of the Newspapers. When the petitioners' Newspapers are circulated in high volumes, the respondents should have released advertisements in the said Newspapers on par with the other Newspapers. The main object of giving advertisements is to give wide publicity to reach maximum number of readers. No purpose will be achieved if advertisements are given in Newspapers which have very less circulation. The petitioners are one of the largest Tamil Dailies having more than eleven lakhs copies per day. Similarly, the Tamil Daily "Dinamalar" has got more than nine lakhs copies per day. All Newspapers have their own rate card for the advertisements published in the Newspapers and the rate differs with reference to circulation, as circulation is the major criteria for any advertiser to place their advertisements. The more number of circulation will bring more

advertisements and it would also reach more number of readers.

24. For the reasons stated above, the respondents are directed to see that the avowed policy of equal distribution of its advertisements is carried out to all Newspapers and to take such measures as to sincerely and faithfully carry out its own policy of Newspaper advertisement insofar as the petitioners' Newspapers are concerned.

25. Insofar as W.P.No.8242 of 2017 is concerned, it is the case of the petitioner that the rate for the Government advertisements for the Newspapers viz., "Dinakaran" and "Tamil Murasu" have not been revised since 2006. Even in G.O.Ms.No.764 dated 26.03.1980, in Clause - 8.5, it has been stated that the advertisement rate of a Daily or Periodical is revised only once in a financial year and that the new rates will be effective from 1st April of the year.

26. In the case of Newspapers viz., "Dinakaran" and "Tamil Murasu", the rates remained the same since the year 2006. Even till 2011, the petitioners' Newspapers viz., "Dinakaran" and "Tamil Murasu" received only the rates fixed in the year 2006. When the Government Order itself provides for revision of rate once in a year, the respondents should have revised the rate for the petitioners' Newspapers once in a year. When the rates of other Newspapers were revised and re-fixed periodically, the respondents should have followed the same procedure to the petitioners' Newspapers also. The respondents cannot discriminate the petitioners' Newspapers without revising the rate fixed for the advertisements in the year 2006. The escalation in the cost of printing and increase in the cost of paper and raw-materials used for printing applies to the petitioners' Newspapers also. When the Newspapers are having large number of circulation, the respondents should have revised the rates of the advertisements in the said Newspapers. In these circumstances, I direct the respondents to re-fix the rate for Government advertisements for the petitioners' Newspapers viz., "Dinakaran" and "Tamil Murasu" based on circulation and the Audit Bureau of Circulations Certificate.

27. For the reasons stated above, it is also necessary that the respondents should frame guidelines for releasing advertisements to the Newspapers on the basis of circulation without any discrimination. Since the petitioners have alleged that the respondents have discriminated them while releasing Government advertisements and this Court also found that the petitioners' Newspapers were discriminated, it would be proper to frame guidelines/qualifications for releasing advertisements to Newspapers on the basis of circulation without any discrimination. If proper guidelines are framed and if the

guidelines are scrupulously followed by the authorities, then the question of discrimination shall not arise. Therefore, I am of the view that to avoid any future dispute with regard to the release of Government advertisements, the respondents should frame guidelines/ qualifications for the said purpose.

28. In these circumstances, mandamus is issued:

(i) directing the respondents to continue to give advertisements to the petitioners' Newspapers viz., "Dinakaran" and "Tamil Murasu" based on the Audit Bureau of Circulations Certificate and G.O.Ms.No.764 dated 26.03.1980 with immediate effect;

(ii) directing the respondents to re-fix the rate for the Government advertisements for the petitioners' Newspapers viz., "Dinakaran" and "Tamil Murasu" based on the circulation and the Audit Bureau of Circulations Certificate within a period of six weeks from the date of receipt of a copy of this order; and

(iii) directing the 1st respondent to frame guidelines/qualifications for releasing advertisements to the Newspapers on the basis of circulation and other criteria without any discrimination within a period of three months from the date of receipt of a copy of this order.

29. With the above directions, all the Writ Petitions are allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
State of Tamil Nadu,
Information & Public Relations,
Fort St. George, Chennai.

2. The Director,
Directorate of Information & Public Relations,
Fort St. George, Chennai.

3.The Deputy Director,
Directorate of Information & Public Relations,
Fort St.George, Chennai.

4.The Secretary,
Department of Tamil Development and News (Advertisement),
Fort St.George, Chennai - 9.

5.The Chief Secretary,
Secretariat, Fort St.George,
Chennai - 600 009.

6.The Director of Information and Public Relations &
Ex-officio Joint Secretary to Government,
Secretariat, Fort St.George,
Chennai - 600 009.

7.The Secretary,
Secretariat, Fort St.George,
Chennai - 600 009.

+3cc to Mr.Sneha, Advocate, S.R.No.39301,39298,39300

+1cc to Mr.S.Elambharathi, Advocate, S.R.No.39355

+1cc to the Government Pleader, S.R.No.39578

W.P.Nos.6374, 6375, 6394 & 8242 of 2017 and
W.M.P.Nos.6880, 6881, 6896 & 9002 of 2017

VSN(CO)
RS(07/06/2017)

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