

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.8382 of 2016

and

W.M.P.Nos.7426 and 7427 of 2016

1. Tamil Nadu Electricity Board Engineers' Sangam,
Registration Number 124/MDS (Recognized),
Rep by its Secretary, Mr.V.Ashok Kumar,
793, Anna Salai, Chennai 600 002.
 2. Mr.R.Sankaran
Publisher and Editor,
Minalai (Tamil and English Monthly),
Tamil Nadu Electricity Board Engineers' Sangam,
793, Anna Salai, Chennai 600 092. .. Petitioners
- Vs.
1. The Chief Post Master,
Office of the Chief Post Master,
Anna Road HPO, Chennai - 2.
 2. The Senior Superintendent of Posts,
Office of the Senior Superintendent of Post Offices,
Chennai City Central Division, Chennai - 17 .. Respondents

* * *

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to quash the proceedings of the first respondent in G2/RNP-Digs/2015 dated 23.11.2015 read with G2/RNP-Digs/2015 dated 26.12.2015 read with G2/RNP-Digs/2015 dated 21.01.2016 and consequently direct the official respondents to renew the RNP license of the petitioners and permit the petitioners to post their English and Tamil monthly magazine "MINALAI" at concessional rates of postage.

For Petitioners :Mr.Sundar Narayan

For Respondents :Mr.K.Raju,
Central Government Standing Counsel

O R D E R

Challenging the order passed by the first respondent in G2/RNP-Digs/2015 dated 23.11.2015 read with G2/RNP-Digs/2015 dated 26.12.2015 read with G2/RNP-Digs/2015 dated 21.01.2016 and consequently seeking a direction to the official respondents to renew the RNP license of the petitioners and permit them to post their English and Tamil monthly magazine "MINALAI" at concessional rates of postage, the present Writ Petition came to be filed.

2. The first petitioner is a registered trade union. Presently, the name of the first petitioner is Tamil Nadu Electricity Board Engineers' Sangam as registered on 13.11.1979. The said Sangam represents the interests of 7000 Engineers working in the Tamil Nadu Electricity Board (in short "TNEB") espousing the cause of the diploma and graduate engineers recognized by the Board. The petitioners had been circulating a monthly magazine called "MINALAI" to highlight the relations between the TNEB, TANGEDCO, TANTRANSCO and its members and harmonizing their relations and bringing in better working conditions etc.,

3. The first petitioner-Sangam has considerable readership, as more than 5400 magazines are being sent by post through the office of the respondents each month. To send them by post, the petitioner had to obtain concessional rates of postage prior to bringing out the publication in the year 1973 and to comply with conditions stipulated under the Indian Post Office Act, 1898 and the Press and Registration of Books Act, 1867 (in short "P & R Act"). The petitioner-Sangam had also applied for certificate of Registration before the Presidency Magistrates Court, Egmore and were granted a certificate of Registration in No.47988/73 dated 28.09.1972. This established the fact that the Petitioner had complied with the rules as to publication of newspapers under Section 5 of the "P & R Act". Ever since 1973, the petitioners have been publishing the English and Tamil monthly edition of "MINALAI" and posting them at concessional rates of postage in terms of a Registered Newspaper Licence (in short "RNP"), which is renewable on expiry. Thus, the petitioners had renewed the RNP licence of their magazine "MINALAI" each year till 2014 without prepayment of postage. The last renewal of the RNP licence was granted by the Official respondents by letter dated 29.11.2011 for the period from 01.01.2012 to 01.12.2014.

4. While so, by letter dated 16.08.2012, the petitioner received a communication from the first respondent addressed to the ASRM stating that the petitioner's magazine would not be entitled for the concessional rates of postage. Further, the first respondent had directed that the magazine be treated as

book packets containing periodicals and be charged postal tariff at the rates applicable for book packets with immediate effect. For the first time, i.e., after close to four decades, the respondents insisted for production of the Registration Certificate, as the RNI Certificate was not available in the RNP file. The petitioner had sent a reply on 25.02.2013 stating that they had fulfilled all the conditions for availing concessional rates of postage and requested the respondents to continue the postal concession already granted. However, the first respondent had insisted for payment of the above said sum, by letter dated 13.06.2013. Further, by letter dated 23.11.2015, the petitioners were directed to settle a sum of Rs.8,69,659/- towards short billing of postage revenue for the period from 01.01.2009 to 31.08.2012, which was again reiterated in the letter dated 26.12.2015.

5. The contention of the petitioners is that having granted the renewal of postal licence under No.TN/ARD/30/12-14 for a period of two years with effect from 01.01.2012 to 31.12.2014, by letter dated 29.11.2011, it was not open to the respondents to cancel the licence even without notice. The same was successfully challenged in W.P.No.23360 of 2013, wherein, this Court by order dated 16.09.2015 set aside the same as no opportunity was granted to the petitioners before the impugned order was passed and directed the respondents to issue fresh notice to the petitioners and afford an opportunity of personal hearing. According to the petitioners, without complying with the directions issued by this Court, the respondents had initiated proceedings under the Revenue Recovery Act. By letter dated 31.12.2015, the petitioners had sent a legal notice stating that the demand notices dated 23.11.2015 and 26.12.2015 were passed without giving the petitioners an opportunity of hearing which is ex-facie in violation of the orders passed by this Court in W.P.No.22360 of 2013 dated 16.09.2015. However, the first respondent had replied on 21.01.2016 stating that the demand notices were in compliance with the orders passed by this Court and that sufficient time was granted to the petitioners to send their reply and the petitioners had not replied for the same. Therefore, the action taken by the respondents is in accordance with law. The learned counsel for the petitioners contended that

(a) No notice to show cause had been sent by the first respondent after the order was passed in W.P.No.23360 of 2013.

(b) All notices sent from the Office of the first respondent were demand notices predetermining and quantifying the liability without even undertaking an exercise of hearing the petitioners and hence, the demand notices were bad in law.

(c) No notice has been received by the petitioners till date intimating the fact that they had to file their reply on 12.01.2016, failing which final orders would be passed on the same day.

(d) The petitioners had not received any order alleged to have passed on 12.01.2016 and

(e) Had the first respondent given an opportunity of hearing to the petitioner, the petitioners could have produced the certificate of Registration under the "P & R Act" ever since 1972 and they had been availing the concessional rates of postage since 1973 pursuant to a valid RNI Registration.

In the above factual circumstances, the impugned order is assailed by the petitioners.

6. A perusal of the documents would show that the first petitioner-Sangam was given the Certificate that the Tamil monthly "MINALAI" is registered under Section 5 of the P and R Act. The registration has been renewed periodically and the extension has been granted by the respondents. The letter No.TCA/58-141/2000/AR dated 29.10.2002 is relating to the allotment of postal registration number, wherein, the respondents had sent a communication regarding the renewal of the publication of magazine "MINALAI" under the category of registered newspaper and that the publication has been granted, renewal of registration for posting under the Registration No.TN/PMG(CCR)/196/03 and WPP-102. It further states that the licence is valid from 01.01.2003 to 31.12.2005 and the first petitioner-Sangam is entitled to post 4500 number of copies at Patrika Channel, Egmore. The said allotment of the registration is renewed from time to time and the last of such renewal was by communication No.G2/RNP -Renewal/ARD/2012-2014 dated 29.11.2011. As per the said communication, the licence is valid from 01.01.2012 to 31.12.2014.

7. Section 19 of the P and R Act deals with the Registration of Newspapers. Section 19-C of the said Act provides for Certificates of Registration, which reads as follows:- "On receiving from the Magistrate under Section 6 a copy of the declaration in respect of a newspaper and on the publication of such newspaper, the Press Registrar shall, as soon as practicable thereafter, issue a Certificate of registration in respect of that newspaper to the publisher thereof."

8. Admittedly in this case, the first petitioner-Sangam has got the certificate of Registration and it has been periodically renewed. The concession has been given to the

petitioners from 1973 onwards and the same was renewed from time to time. Suddenly, a sum of Rs.8,69,659/- was demanded towards short billing of postage revenue followed by the subsequent orders. Even as admitted by the respondents, the petitioners do have the Certificate under the P and R Act dated 28.09.1972 issued by the office of Chief Presidency Magistrate Court, Egmore, Madras - 8 followed by another certificate dated 23.01.2013, which is the certificate of Registration issued by the Office of the Registrar of Newspapers for India. The amount demanded is only pursuant to the audit objections raised by the respondent department.

9. Sections 5 and 6 of the P & R Act set out the rules of Publication of Newspapers and Authentication of Declaration.

10. In spite of the orders passed by this Court earlier in W.P.No.23360 of 2013, the respondents without even affording an opportunity to the petitioners had demanded the amount. When the RNP licence of the petitioners to publish the magazine "MINALAI" has been renewed every year starting from the year 1973, it is not understandable as to how the respondents can make a demand for non production of certificate of Registration, as the RNP licence could not have been renewed year after year without the existence of a RNI Registration.

11. The Government of India had issued a consolidated Ruling on registered newspapers superseding all previous rulings on 05.05.2008. As per which, a publication will be deemed as a newspaper on satisfaction of two conditions;

(a) that it is published in number at intervals of not more than thirty one days.

(b) that it has a list of bona fide subscribers.

The petitioners' magazine is a monthly one and has already given a declaration under Press Regulation and Books Act and thus become entitled to get registered with Registration of Newspaper in India (RNI). RNI registration is different from postal registration. The postal registration entitles a newspaper to avail concessional rates of postage which is subsidized. The petitioner has also applied for postal registration under the Post Office Act and the same was registered by the Senior Superintendent, vide proceedings No.G6/31/Regn dated 15.11.1973.

12. While so, the official respondents had sent the impugned demand notices based on audit objections only without verifying the RNP licence of the petitioners.

13. Even otherwise, as per Section 11 of the Indian Post Office Act, 1898, the "addressee" will be liable to pay the deficit postal charges, if any, once the addressee accepts the postal article or opens it. On the other hand, the "sender"

will be liable to be charged for the deficit postage, if it is detected at the time of postage or if the addressee refuses or returns postage. If such amount is due from the sender, the Postal Authority is empowered to recover the sum dues from the sender under Section 12 of the Indian Post Office Act, 1898. When there is no provision whatsoever for levying arrears on postal charges and without complying with the terms and mandate of Section 12 of the Indian Post Office Act, 1898, money cannot be recovered from the sender under Section 11 of the said Act.

14. The demand having been made long after the magazines which had already been delivered by the postal authorities without any objections, the demand made is not sustainable.

15. From the above discussions, it is clear that the petitioners had renewed their RNP licence from the year 1973 after the official respondents had satisfied themselves on the fact that the conditions under the Act and Rules are complied with. Hence, the demand notices issued by the respondents are illegal and liable to be set aside.

16. Accordingly, the impugned orders are quashed and the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

srn

To

1. The Chief Post Master,
Office of the Chief Post Master,
Anna Road HPO, Chennai - 2.
2. The Senior Superintendent of Posts,
Office of the Senior Superintendent of Post Offices,
Chennai City Central Division, Chennai - 17

+1cc to Mr.Sundar Narayan, Advocate, S.R.No. 30531
+1cc to Mr.K.Raju, Advocate, S.R.No. 30315

W.P.No.8382 of 2016
and W.M.P.Nos.7426 and 7427 of 2016

GJ(CO)
GN(22/07/2019)