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

Reserved on: 13.01.2020
Date of Decision:04.02.2020

\+ **W.P.(C) 3143/2018**

THE INDIAN NEWSPARER SOCIETY AND ANR.
..... Petitioners
Through: Mr.Ramji Srinivasan, Sr. Adv. with Mr.Rakesh Sinha, Mr.Pawan Kumar Bansal, Ms.Sylona Mohapatra, Advs.

versus

THE CHAIRMAN, PRESS COUNCIL OF INDIA AND ORS.
..... Respondents
Through: Mr.T.Singhdev, Mr.Tarun Verma, Ms.Sumangla Swami, Ms.Puja Sarkar, Ms.Michell B., Das, Ms.Arunima Pal, Advs. for Press Council of India.
Mr.Anand Srivastava, Adv. for R-3.
Mr.Vijay Kumar Sharma, Mr.Tanuj Khurana, Advs. for R-4-5.
Mr.B.S.Shukla, Adv. for UOI.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

CM No. 33872/2018

This is an application filed seeking impleadment in the present petition. As the learned counsels for the applicants have been heard on merits of the petition as well, the application stands allowed. The applicants are referred to as respondent nos. 4 and 5 in the following judgment.

W.P.(C) 3143/2018

1. The present petition has been filed by the petitioners challenging the order dated 20.03.2018 (communicated by the letter dated 21.03.2018) passed by the respondent no.1 rejecting the nomination of the respondent no.3 by the petitioners for being considered as a member of the 13th term of the Press Council of India (PCI) under Section 5(3)(b) of the Press Council Act, 1978 (hereinafter referred to as the 'Act') in the category of 'persons who own or carry on the business of management of newspapers' in the Medium newspaper category.

2. Vide notification dated 26.10.2017, the petitioner no.1 was notified under Section 5(4) of the Act as a representative body of the owners/managers of Big, Medium and Small newspapers.

3. By a communication dated 24.11.2017, PCI called upon the petitioners to give a panel of names comprising twice (12 in the instant case) the number of Owners and Managers of Big, Medium and Small Newspapers to be nominated on the Council, arranged in the order of preference, and containing the particulars specified in Rule 3 of the Press Council (Procedure for Nomination of Members) Rules, 1978 (hereinafter referred to as the Rules). The communication further stipulated that it shall be presumed that the person so nominated is eligible for nomination under that category. It was further stipulated that such panel of names must reach the PCI by 05.01.2018 and any panel received thereafter, shall not be considered.

4. The petitioner under cover of its letter dated 11.12.2017 submitted the panel of names nominating the respondent no.3 as preference no.1 as a owner of a newspaper in the Medium category.

5. The Secretary PCI by communication dated 19.01.2018, informed *inter alia* the petitioners that the panel of names submitted by it was found to be deficient as it did not contain twice the number of Members to be nominated under each category. It further informed the petitioners that the documents filed along with the panel did not show *inter alia* the respondent no.3 being the owner or as carrying on the business of management of the newspaper, thereby *prima facie* rendering the panel illegal and disentitling the persons named therein to be nominated under Section 5(4) of the Act. The communication further called upon the petitioners to attend a meeting on 05.02.2018 for hearing along with the documents so as to enable the Chairman PCI/respondent no.1 to take a decision on the issue of nomination.

6. The petitioners filed a detailed representation dated 30.01.2018 before the PCI. As far as the respondent no.3 is concerned, the petitioners filed the Annual Return for the financial year 2016-17 of Bombay Samachar Pvt. Ltd. (hereinafter referred to as the 'Company'), which *inter alia* shows that the respondent no.3 was the Whole time Director of the said company and held 4360 shares out of a total of 96000 shares of the said company.

7. The respondent no.1 by its order dated 15.02.2018, however, rejected the panel of the petitioners. As far as the respondent no.3 is concerned, the respondent no.1 observed as under:

> *"ii. Mr. H.N.Cama- His nomination has been sought for in the category of Medium Newspaper and Associations claim that he is the owner of Gujrati Daily "Mumbai Samachar". The documents filed do not show him to be the owner of the newspaper, instead the Certificate of Registration shows the Mumbai Samachar Pvt. Ltd. to be the owner of the Newspaper. Document filed subsequently show Mr. Cama to be the whole time director of the Bombay Samachar Pvt. Ltd. who owns the Newspaper. A whole time director or equity share holder of a company does not become the owner of the Newspaper individually. It is the company which is the owner of the newspaper and may nominate a person for its management. Nothing has been placed on record to show any such authentication so as to make him eligible for nomination under the category of owner. Further, the records show that the Newspaper with the same title "Mumbai Samachar" is published daily and weekly having different registration numbers. The rules provide for furnishing the figures relating to total circulation of all the editions. The Associations while submitting the panels have not given the entire figure which shall have bearing to determine the category. For all these reasons Mr.Cama is found to be ineligible."*

8. By the above order, the respondent no.1 decided not to make any nominations under the category of 'persons who own or carry on the business of management of the newspapers' that is under Section 5(3)(b) of the Act.

9. By a subsequent order dated 28.02.2018, the respondent no.1 decided to call for fresh nominations from the Associations, including the petitioners, for the purpose of making nomination of members under Section 5(3)(b) of the Act. It was stipulated that such panel

must reach the respondent no.1 by 15.03.2018 and 'All terms and conditions as also the eligibility for filing the nomination shall remain the same as notified in Notice dated November 24, 2017'.

10. Pursuant to the above order, the Secretary PCI issued a notice dated 28.02.2018 to all Notified Associations, informing them that the date of filing the panel of names has been extended till 15.03.2018. Notice further stipulated as under:

> *'All other terms and conditions shall remain the same and eligibility shall be determined as on 5.1.2018'*

11. Pursuant to the above notice, the petitioners submitted another panel of names, now complying with the condition of giving twice the number as stipulated in Section 5(4) of the Act. The name of the respondent no.3 was again recommended as Owner/Manager of a Medium newspaper and as the first preference in that category. Apart from the Annual Return of the Company, its Memorandum and Articles of Associations, the petitioners also annexed a copy of the Resolution dated 01.03.2018 passed by the Board of Directors of the said company authorizing the respondent no.3 to manage day to day affairs of the company including its publication 'Mumbai Samachar', on basis of which the respondent no.3 was being recommended.

12. By the Impugned Order, however, the respondent no.1 has again rejected the nomination of the respondent no.3 and has instead nominated the respondent nos.4 and 5 as Members of the PCI for its 13th Term in the category of Medium Newspapers under Section 5(3)(b).

13. As far as the respondent no.3 is concerned, the respondent no.1 found him to be ineligible with the following observations:

> ***"Medium Newspapers***
>
> *In the category of persons, who own or carry on the business of management of medium newspapers, two association have been notified i.e. Indian Newspapers Society and All India Small And Medium Newspapers federation. Two persons need to be nominated under this category. These associations have given common names twice the number i.e. four to be nominated in this category. Panels contain the name of Shri Hormusji N. Cama. By order dated 15.2.2018, I found him to be ineligible under this category. This time to substantiate the claim a resolution dated 1.3.2018 has been filed inter alia stating that "Shri Hormusji N. Cama whole time Director and Shareholder is authorized to manage day to day affairs of the company, including its publications, 'Mumbai Samachar Daily, Mumbai Samachar Weekly, Mumbai Samachar Panchang and the Mumbai Samachar Dipotsavi Ank".*
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> *While extending the time to file panel by order dated 28.2.2018, it was made clear that eligibility shall remain the same as provided under notice dated 24.11.2017, it may be stated here that last date for submission of nomination was 05.01.2018. Therefore this documents of the late date needs to be ignored.*
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> *To put the records straight the representative of India Newspapers Society (INS) attempted to project that the resolution of the Board of Director of Bombay Samachar Pvt. Ltd. has superseded the earlier resolution of the Company. The resolution perse does not show any such thing. There is nothing on record to show that the company Bombay Samachar Pvt. Ltd., at any point of time earlier than 01.03.2018 authorized Shri Hormusji N. Cama, to manage the day to day affairs of Mumbai*

Samachar Daily, Mumbai Samachar Weekly, Mumbai Samachar Panchang and the Mumbai Samachar Dipotsavi Ank. For the reasons stated in my order dated 15.02.2018 Shri Hormusji N. Cama is found ineligible and hence his nomination stands rejected."

14. A reading of the above would show that the nomination of the respondent no.3 has been rejected on the ground that as the eligibility was to be considered as on 05.01.2018, documents filed thereafter, including the copy of the Board Resolution dated 01.03.2018, could not be taken into cognizance for determining the eligibility of the respondent no.3.

15. The learned senior counsel for the petitioners, in challenge to the above decision submits that the respondent no.1 has failed to appreciate that there is a presumption to be drawn on the eligibility of the person nominated by the Association. Such presumption cannot be displaced by finding highly technical lacuna in the documents submitted by the Association/petitioner no.1 in support of the claim of eligibility of the persons who are nominated.

16. The learned senior counsel for the petitioners further submits that the respondent no.1 has failed to appreciate that as only an individual can be nominated as a Member of PCI, incase of a newspaper being run by a company, its shareholder would be the 'owner'.

17. The learned senior counsel for the petitioners further submits that even otherwise, the respondent no.3 being the Whole time

Director of the Company which runs the newspaper, that is Mumbai Samachar, was the person carrying on the business of management of the newspaper and therefore, eligible to be nominated under Section 5(3)(b) of the Act. He submits that the respondent no.1 has failed to consider the Annual Return of the Company filed along with the representation dated 30.01.2018 and the effect of Section 2(15)(iii) of the Companies Act, 2013.

18. As far as the *locus standi* to file the present petition is concerned, the learned senior counsel for the petitioners submits that the petitioners had an interest in the panel submitted by it and therefore, have a right to challenge the decision incorrectly rejecting the same. He further submits that the respondent no.3 had been placed by the petitioners as preference no.1 and such preference being sacrosanct, has to be given effect to by the respondent no.1. Therefore, if the respondent no.1 rejects the panel, the petitioners would have the *locus standi* to challenge the same.

19. On the other hand, the learned counsel for the respondent no.1 submits that the notice dated 28.02.2018 clearly stipulated that the eligibility of the persons nominated has to be considered as on 05.01.2018. The Board Resolution dated 01.03.2018 was therefore, rightly excluded from consideration by the respondent no.1. Further, placing reliance on the Annual Return of the Company, he submits that it clearly shows that the respondent no.3 owned only 4360 shares out of a total of 96000 shares in the Company, respondent no.3 therefore, could not have been treated as an owner of the newspaper.

20. As far as the claim of the respondent no.3 as to being in management of the newspaper is concerned, the learned counsel for the respondent no.1 submits that as the Company had appointed a Managing Director, in terms of Section 196 of the Companies Act, 2013, the Company could not have appointed the respondent no.3 as a 'Manager'. Therefore, the respondent no.3 has rightly not been considered as carrying on the business of management of the newspaper.

21. The learned counsels for the respondent nos.4 and 5, who had been nominated under Section 5(3)(b) of the Act in the category of Medium newspapers, while adopting the arguments of the respondent no.1, further submit that the respondent no.3, in any case, could not have been considered in the category of Medium newspapers. They submit that the respondent no.3 had not disclosed the circulation figures of the newspapers and, therefore, had been rightly rejected in the said category even by the order dated 15.02.2018 passed by the respondent no.1.

22. I have considered the submissions made by the learned counsels for the parties.

23. At the outset, provisions of the Act, especially sub-section 3 to 5 of Section 5 of the Act need notice and are re-produced hereinbelow:

> *"5. **Composition of the Council.-***
>
> *xxxxxx*
>
> *(3) Of the other members-*

(a) thirteen shall be nominated in accordance with such procedure as may be prescribed from among the working journalists, of whom six shall be editors of newspapers and the remaining seven shall be working journalists other than editors: so, however, that the number of such editors and working journalists other than editors in relation to newspapers published in Indian languages shall be not less than three and four respectively;

(b) six shall be nominated in accordance with such procedure as may be prescribed from among persons who own or carry on the business of management of newspapers, so, however, that there shall be two representatives from each of the categories of big newspapers, medium newspapers and small newspapers;

(c) One shall be nominated in accordance with such procedure as may be prescribed from among persons who manage news agencies;

(d) three shall be persons having special knowledge or practical experience in respect of education and science, law, and literature and culture of whom respectively one shall be nominated by the University Grants Commission, one by the Bar Council of India and one by the Sahitya Academy;

(e) five shall be members of Parliament of whom three shall be nominated by the Speaker from among the members of the House of the People (Lok Sabha) and two shall be nominated by the Chairman of the Council of States (Rajya Sabha) from among its members:

Provided that no working journalist who owns, or carries on the business of management of, any newspaper shall be eligible for nomination under clause (a):

Provided further that the nomination under clause (a) and clause (b) shall be so made that among the persons nominated there is not more than one person interested in any newspaper or group of newspapers under the same control of management.

[Explanation.- For the purposes of clause (b), a "newspaper" shall be deemed to be categorised as big, medium or small newspaper on the basis of its circulation per issue, as the Central Government, may, by notification in the Official Gazette, notify from time to time.]

(4) Before making any nomination under clause (a), clause (b) or clause (c) of sub-section (3), the Central Government in the case of the first Council and the retiring Chairman of the previous Council in the case of any subsequent Council shall, in the prescribed manner, invite panels of names comprising twice the number of members to be nominated from such associations of persons of the categories referred to in the said clause(a), clause (b) or clause (c) as may be notified in this behalf by the Central Government in the case of the first Council and by the Council itself in the case of subsequent Councils:

Provided that where there is no association of persons of the category referred to in the said clause (c), the panels of names shall be invited from such news agencies as may be notified as aforesaid.

(5) The Central Government shall notify the names of persons nominated as members under sub-section (3) in the Official Gazette and every such nomination shall take effect from the date on which it is notified."

24. Reading of the above provision would show that the PCI *inter alia* shall have two representatives from the category of Medium newspapers who own or carry on the business of management of newspapers. Before making nomination in this category, the retiring Chairman of the previous Council shall invite panels of names comprising twice the number of Members to be nominated from such Association as may be notified by the Council itself for such category. The Central Government shall notify the names of the persons nominated as Members in the Official Gazette and every such nomination shall take effect from the date on which it is notified.

25. It is also important to remember that the purpose of establishment of the PCI is for preserving free Press and for maintaining and improving the standards of newspapers and news agencies in India. It is, therefore, important to ensure adequate and proper representation of each category of Members, as has been mentioned in sub-section 3 of Section 5 of the Act, in the PCI.

26. Rule 3 of the Rules further provides the manner in which the retiring Chairman of the Previous Council is to invite panels of names for membership of the subsequent Council.

27. Sub-section 1(vi) of Rule 3 provides that the Associations shall, while forwarding the panel of names, also give the order of preference.

28. Rule 5 provides that panel of names shall be signed by a designated and authorized person on behalf of the Association, who

shall be responsible in all respects for the accuracy of the contents thereof. It further provides that where the name of any person is included in a panel of names, it shall be presumed that such person is eligible for nomination under that category.

29. The submission of the learned senior counsel for the petitioners flows out of this presumption of eligibility. He submits that the respondent no.3 having been nominated by the petitioners as a person who owns or carries on the business of management of newspapers in the category of Medium newspapers, a presumption was attached to his eligibility. He submits that the Chairman of the previous Council, therefore, could not have embarked upon an enquiry into the eligibility of the respondent no.3, however, he not only embarked on the same but also held respondent no.3 to be ineligible.

30. I am unable to agree with the above submissions of the learned senior counsel for the petitioners. While it is true that there is a presumption of eligibility of a person being nominated by the Association, it cannot be extended to a state of fait accompli for the Chairman of the PCI. As far as the Chairman of the Council is concerned, he can hold an inquiry to determine the eligibility of such person being nominated, however, being guided by a presumption that such person is eligible. Incase, for any reason, the Chairman finds the person so nominated not to be eligible in a particular category, such decision needs to be tested on its own merit and such order cannot be set aside merely because there was a presumption attached to the eligibility of a person. Presumption is merely an act of assumption of

a state of affairs to be true unless proved to the contrary. However, where an evidence to the contrary is found, the presumption stands negated.

31. In ***Kumar Exports vs. Sharma Carpets***, (2009) 2 SCC 513, while dealing with provisions of the Negotiable Instruments Act, 1881, the Supreme Court held that a presumption is not in itself evidence, but only makes a prima facie case for a party for whose benefit it exists; Presumptions are rebuttable and on a fact presumed, when a party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of the presumption is over.

32. The learned senior counsel for the petitioners has further asserted that the respondent no.3 was eligible even in his capacity as the 'owner' of the 'Mumbai Samachar' newspaper. For this purpose, he places reliance on the Annual Report which shows the respondent no.3 to be holding 4360 shares of 'Bombay Samachar Pvt. Ltd.' He submits that the other shares of the Company were held by the family members of the respondent no.3 and therefore, the respondent no.3 should have been considered as 'owner' of the said newspaper.

33. I again do not find any merit in the above submission. Clearly, the owner of the newspaper 'Mumbai Samachar' is Bombay Samachar Pvt. Ltd. Though, it is permissible in various circumstances to lift the corporate veil to find the person behind the corporate entity, in the present case, even if this exercise is done, it is not possible to hold the respondent no.3 to be the owner of the Bombay Samachar Pvt. Ltd.

As noted hereinabove, he held only 4360 shares out of 96000 shares of the said Company.

34. The learned senior counsel for the petitioners has further submitted that the respondent no.1 has erred in not placing reliance on the Board Resolution of the Company dated 01.03.2018 for determining the eligibility of the respondent no.3. As observed earlier, the respondent no.1 has refused to rely on the Board Resolution on the ground that it had been passed after 05.01.2018, which was the cutoff date for determining the eligibility.

35. The learned senior counsel for the petitioners has submitted that as the last date of receiving such nominations had been extended till 15.03.2018, the cutoff date for determining the eligibility is deemed to have been extended till that date. He submits that this was the effect of the order dated 28.02.2018 passed by the respondent no.1, however, the Secretary of the PCI, while issuing notice calling for fresh nominations, has erred in stipulating that the eligibility shall be determined as on 05.01.2018.

36. I do not find any merit in the above submission of the learned senior counsel for the petitioners.

37. The order dated 28.02.2018 passed by the respondent no.1 only extended the date of submission of the panel to 15.03.2018. It further stipulated that 'all terms and conditions as also the eligibility for filing the nomination shall remain the same as notified in Notice dated November 24, 2017'. Pursuant thereto, in the notice issued calling for

such nominations, it had been clearly stipulated that the eligibility shall be determined as on 05.01.2018. This being a public notice on basis whereof nominations were submitted by the petitioners, the petitioners are estopped from challenging the same. Reference in this regard can be made to the judgment of the Supreme Court in ***Ramesh Chandra Shah & Ors. vs. Anil Joshi & Ors.,*** (2013) 11 SCC 309.

38. This now brings me to the submission of the learned counsel for the petitioners that the respondent no.3 was still eligible to be nominated under Section 5(3)(b) of the Act, being the Whole time Director of Bombay Samachar Pvt. Ltd.

39. Section 5(3)(b) of the Act provides that the nominee may be a person who ‘carry on the business of management of newspapers’. Therefore, it is also to be seen if the respondent no.3 was eligible to be considered as a person who carries on the business of the management of the newspaper.

40. The Annual Return of the Company for the financial year 2016-17 shows the respondent no.3 to be the Whole time Director of the Company. Section 2 (51) of the Companies Act, 2013 provides that the Whole time Director shall be considered as a ‘Key Managerial Personnel’ in relation to a company. Therefore, a Whole time Director is certainly a person who carries on the business of management of the company and its affairs, in the present case the newspaper.

41. Reliance of the learned counsel for the respondent no.1 on Section 196 of the Companies Act, 2013 is ill-founded. Sub-section (1) of Section 196 of the Companies Act, 2013 provides that no company shall appoint or employ at the same time a Managing Director and a Manager. The term 'Manager' is defined in Section 2(53) of the Companies Act, while the term 'Managing Director' is defined in Section 2(54) of the Companies Act. These provisions, however, can have no application for the purposes of determination of eligibility of a person under Section 5(3)(b) of the Act. It is important to note that Section 5(3)(b) does not use the term 'Manager' and/or 'Managing Director' for the purpose of determining the eligibility. Instead, it uses the words 'carry on the business of management'. The above referred provisions of the Companies Act, 2013, therefore, would have no application for determining the eligibility of persons nominated by the Associations for being considered under Section 5(3)(b) of the Act. Equally, the judgment of the Andhra Pradesh High Court in ***T Deen Dayalu vs. Sri Bezawada Papi Reddy & Ors.*** (1984) 2 Com LJ 396 (AP) and of the *Calcutta High Court in* ***Sishu Ranjan Dutta & Anr. vs. Bhola Nath Paper House Ltd***. 1983 (Cal) 883 relied upon by the learned counsel for the respondent no.1 would have no application to the facts of the present case as they deal with the provisions under the Companies Act, 1956.

42. It is trite law that a statute must be read as a whole in its context. While reference to other statutes in *pari materia*, that is statutes dealing with the same subject-matter or forming part of the

same system may be permissible, where two statutes are not *pari materia* and, in fact, use different words, like in the present case, concepts from the other statute, that is the Companies Act, 2013, cannot be alone used to determine the eligibility under Section 5(3)(b) of the Act.

43. For purpose of Section 5(3)(b) of the Act, what had to be determined was as to whether the respondent no.3 can be said to be a person carrying on the business of management of the newspaper. In the context of the Act, these words can only mean a person who has managerial control over the newspaper rather than being its Manager in *sensu stricto*. In such determination, the fact that the respondent no.3 was a Whole time Director of the Company owning the newspaper was a relevant consideration. This, however, was completely lost sight of by the respondent no.1 while passing the order dated 15.02.2018 and the Impugned Order dated 20.03.2018.

44. The respondent no.1 further did not consider that the respondent no.3 had been a Member of the PCI in its previous terms that is the 9th Term, 10th Term and 12th Term in the category under Section 5(3) (b) of the Act. Though, the learned counsel for the respondent no.1 submits that this time around the scrutiny was a little stricter, in my opinion, the Impugned Order does not indicate any appreciation of this fact by the respondent no.1. This being a relevant consideration, the respondent no.1 was expected to give reasons for not giving due weightage to such circumstance in the Impugned Order.

45. While I have held that the presumption attached to the nomination made by an Association under Rule 5 of the Rules does not bar the respondent no.1 to hold an inquiry into the eligibility of the persons so nominated, at the same time, such presumption cannot be displaced or negated where there is at least some *prima facie* evidence showing the eligibility of such person. The onus on the respondent no.1 to hold that such person is not eligible would be much higher in light of the presumption attached to the eligibility of the person so nominated by the Association.

46. In view of the above finding, before considering the relief to be granted to the petitioners, I must deal with the two objections taken by the respondent nos.4 and 5, who had in fact been nominated in the category of Medium newspapers under Section 5(3) (b) of the Act. They submit that the petitioners do not have the locus to maintain the present petition. In their submission, the petition could have been filed only by the respondent no.3, whose nomination had been rejected by the respondent no.1.

47. I do not find merit in the said submission.

48. Sub-section (4) of Section 5 of the Act and the Rules provide that nominations in form of a panel of names for purpose of Section 5(3)(b) of the Act have to be called from such Associations of persons of the categories referred to in *inter alia* Clause-(b) of Section 5(3) of the Act and as may be notified in this behalf by the Central Government in the case of the first Council and by the Council itself in the case of subsequent Councils. Such associations, therefore, have

a locus to challenge the decision whereby the names given in the panel are arbitrarily rejected by the respondent no.1. It cannot be said that such Associations have no interest in their panel or in the acceptance or rejection of such panel. Such association would therefore, have the *locus standi* to maintain the petition against the rejection of their panel or any name suggested by them in the panel.

49. It is further contended by the learned counsels for the respondent nos.4 and 5 that the name of the respondent no.3 had been rejected by the respondent no.1 in the order dated 15.02.2018 also on the ground that he cannot be said to be a person owning or carrying on the business of management of newspaper in the Medium newspapers category. They submit that the circulation figures of other newspapers were also to be added to determine whether the nomination of the respondent no.3 in the Medium newspapers category could be sustained.

50. I need not dwell into the submission made by the learned counsels for the respondent nos.4 and 5 for the relief that I intend to grant to the petitioners in the present case. It will be for the respondent no.1 to consider this submission while determining the eligibility of the respondent no.3 pursuant to the present judgment.

51. As I have held that the respondent no.1 has failed to take into consideration the relevant material for determining the eligibility of the respondent no.3 as a person carrying on the business of management of newspapers, I set aside the order dated 20.03.2018

passed by the respondent no.1 in so far as it declares the respondent no.3 as ineligible for nomination under Section 5(3) (b) of the Act.

52. The learned senior counsel for the petitioners, relying upon the judgment dated 19.03.2015 passed in WP(C) No.871/2015, titled ***Awas 39423 Ireland Ltd. & Ors. vs. Directorate General of Civil Aviation & Anr.,*** submits that this would be a fit case where this Court, instead of remanding the matter back to the respondent no.1 for fresh consideration, direct the respondent no.3 to be nominated under Section 5(3) (b) of the Act as a Member to the PCI. He submits that as respondent no.3 was the first preference of both the Associations for the category of Medium newspapers, the respondent no.1 has to necessarily nominate respondent no.3 under such category. He places reliance on the judgment of this Court in ***Suraj Prakash vs. Union of India & Ors.,*** ILR (1991) 1 Delhi 544.

53. I do not find any merit in the above submission of the learned senior counsel for the petitioners.

54. It is for the respondent no.1 to consider the eligibility of the respondent no.3 to be nominated under Section 5(3)(b) of the Act keeping in mind the present judgment and the relevant material. In such determination, the plea of the respondent nos.4 and 5 would also have to be considered by the respondent no.1. I am also persuaded to adopt this course because sub-section 4 of Section 5 of the Act requires the Chairman of the previous Council to invite the panel of names comprising twice the number of members to be nominated. Though Clause 1(vi) of Rule 3 of the Rules requires the Associations

to give the panel in order of preference, it is for the respondent no.1 to first determine the eligibility of the respondent no.3 and thereafter, give effect to such preference, in accordance with past precedence, while nominating the Members under Section 5(3) (b) of the Act.

55. In view of the above, the Impugned order dated 20.03.2018 in so far as it holds the respondent no.3 to be ineligible to be nominated under Section 5(3)(b) of the Act to the PCI is set aside, directing the respondent no.1 to re-consider the eligibility of the respondent no.3 keeping in view the relevant material placed by the petitioners in support of such eligibility, within a period of 2 weeks of receipt of this order. There shall be no order as to costs.

CM Nos. 12508/2018, 21216/2019, 25435/2019 & 38704/2019

In view of the above judgment these applications are rendered infructuous and are disposed of as such.

NAVIN CHAWLA, J

FEBRUARY 4, 2020
RN