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Emergency file

An important judgement relating to the validity of statutory Precensorship Order issued by the Government of India on 26th June 1975 as amended from time to time, was given ~~today~~ by the Division Bench of the Gujarat High Court, consisting of Mr. Justice J.B. Mehta and Mr. Justice S.H. Sheth. Their Lordships found several clauses of the order ultra vires Rules 48 of the Defence of India - Rules and Section 3 of the Defence of India Act.

The Court was deciding a Writ Petition filed by Shri Chunibhai Vaidya, Editor of 'Bhoomi Putra', Gujarati Journal published from Baroda, challenging the validity of pre-censorship order and the actions taken by the Chief Censor against Bhoomi Putra and its Press for having published a speech delivered by Shri M.C. Chagla at the Civil Liberties Conference held in Ahmedabad in last October.

The Court examined the Rules 48 and found that it empowered the Government of India to issue pre-censorship order only for certain purposes specified in the Rules viz. Maintenance of Public Order among others. But the clauses (c)(d) and (e) of the order went beyond these purposes. These clauses require that any news or comments regarding the proclamation of Emergency, the Presidential Order suspending the Fundamental Rights, and regarding detention orders made under Misa should be submitted to the censor and should not be published without his permission. The clauses made no distinction between a comment which was legitimate i.e. to say peaceful and constructive comment and those which had the tendency to incite the violence. In a Democratic Society every person has a right to level strong criticism against the policies and measures of the Government, even in strong language. No democracy could function if such criticisms could be prohibited or subjected to Censorship. Similarly the President's Order suspending fundamental rights could be criticised without exhorting the people to commit violence. Such comments had no connection whatsoever with the maintenance of public order. Rule 48 marked out a field in which the Government of India could operate by making the pre-censorship Regulation. But that field was a limited one and it was confined to specific purposes mentioned in the Rule. The Government therefore had to show that any - criticism on these topics had the tendency to disturb public order or to

create public disorder but the censorship order covered all kinds of criticism on these topics, and thus went far beyond the mandated area. Clause (g) required a prejudicial report to be submitted to the censor that report was defined as a report which would bring the Government established by law in hatred or contempt, or incite disaffection towards it. These words were judicially interpreted in the past by the Federal Court and by the Supreme Court and it was held that criticism of the Government's measure with a view to secure their alteration would not attract these words unless the report was intended to incite violence. Of course this interpretation was given in the context of section 124A of the Indian Penal Code but there was no reason not to give the same interpretation in the context of the Defence of India Rules. The right of the people to make comments emanated for the requirement of a Democratic Government to know its errors so that it can correct them and harmonise the policies with the will of the people. In fallibility and democracy go ill to gether. Infallibility and Dictatorship go hand in hand. Foundations of the Dictatorship lie in the strong desire on the part of an individual or a group of individual to entrench themselves into power for ever regardless of what the people want or desire. This desire of a would be dictator can be achieved by him only if he is able to sell the idea either by Press Censorship or otherwise by fully controlling the mass media of communications, that what he does is always correct and admits of no error. Right of dissent and free press are two out of three which constitute the essence of a democratic set up. The third is independent judiciary acting as sentinel que vive and discharging the duty of protecting the freedom of the people against the executive and legislative inroads on it. Public comments of criticism which do not lead to violence cannot be forbidden in a democratic society.

Therefore if Clause (g) should be interpreted to mean only such reports which incite violence or public disorder. So interpreted no objection can be taken to clause (g) in the censorship order and therefore it is intra vires. The Court quoted the Father of the Nation as saying "The indispensable condition of the success is that we encourage the greatest freedom of the opinion. Liberty of speech means that it is unassailed even when the speech hurts, liberty of the press is

respected only when the press can comment in the severest terms and even misrepresent the matters. Protection against - misrepresentation or violence being secured not by the administrative gagging order, not by closing down the press but by punishing the real offender leaving the press itself unrestricted. Evolution of the democracy is not possible if we are not prepared to hear the other side. We shut the doors of reason when we refuse to listen to opponents or having listened, make fun of them".

The Court then proceeded to examine the speech of Mr. Chagla. The Court said that the speech emphasised Mahatma Gandhi's Principle that the ends does not justify the means. It no doubt criticised emergency and suspension of fundamental rights and also stated that in democratic society every one had a right to demand the change of the Prime Minister. No doubt, the language was strong and charged with emotion, but no person could think that the speech would lead the readers of 'Bhumi Putra' to violence or public disorder. The Court dealt with the contentions advanced on behalf of the Government of India that though Shri Chagla ostensibly exhorted non-violence it was only a cloak for preaching violence in a veiled manner. The Court rejected this contention as without substance and held having regard to the high judicial office which he held in the past and his whole career and having regard to the fact that 'Bhumi putra' believed in Sarvodaya Ideology, it is not at all likely that the readers would imagine Shri Chagla advocating violence under the cloak of non-violence.

The Court also examined the guidelines issued by the Chief Censor and found that some of these guidelines were entirely outside the scope of censorship. As for example one of the guidelines stated that only operative part of the judgment of the Courts could be published. Another guideline stated that the names of the leaders who are detained under MISA and the places of detention should not be mentioned. The third stated that the institution of the Prime Minister should not be denigrated. The Court held these guidelines to be illegal and useless. The Institution of the Prime Minister was different from the person who occupied that position. The incumbent of the office could certainly be criticised if he or she was following wrong policies. One could also demand the change in the occupancy of the office. This did not amount to denigration of the Institution. On the

contrary the demand to change the person for the misdeeds or mistaken policies would strengthen the Institution in contempt of Court matters and distinction was always made between the person who occupied the judicial office and the judiciary itself.

As regards the detention under Misa the Court said that the people had a right to know whether the detentions were proper and where the detainees were kept so that they could criticise the Government's action if it was not proper.

As regards the Court's judgments it was impossible to see how the judgments could ever incite violence. The Court's judgments were not censorable. This guide lines therefore could not be relied upon by the Government to justify their actions.

In issuing these guidelines, the Chief Censor was trying to be more Royal than the King himself. The guidelines far exceeded the statutory order of censorship. In the event the Court struck down Clauses (c) (d) and (e) of the Censorship order dated 26th June 1975 issued by the Government of India and interpreted Clause (g) favourably to the petitioner and upheld it. The Court also struck down the order of the Chief Censor forfeiting the issue of Bhumi Putra and the entire press to the Government.

The Court granted permission to appeal to the Supreme Court. However, the Court rejected the application of the Counsel of the Government of India to postpone the operation of the judgement.

Mr. C.T. Daru appeared for the petitioners.

Mr. K.G. Vakharia appeared for Chief Censor and -
Govt. of India.

ORAL ORDER :

Mr. Daru yesterday applied orally for a direction to respondents nos. 1 and 5 restraining them from censoring or withholding the permission to print and publish this judgment or a part of it. Mr. Vakharia objected to it and took time to answer the application made by Mr. Daru. Today he has stated to us that the judgment is not available to the Censor to decide whether he should grant permission to print or publish it or to withhold it. He has further submitted that the Court should not intervene at this stage on the oral application

made by Mr. Daru because in his opinion, it would be premature intervention. He has next submitted that this Court has not struck down the entire statutory order and that, therefore, it is still open to the Censor to decide whether the judgment should be allowed to be printed and published under that part of the statutory order which still remains in force. We have held that under Rule 48 the Censor has no jurisdiction to censor Court proceedings and that Court proceedings do not and cannot incite people to violence or disturb public order or endanger public safety. Next, under our Constitution the Court interpretes the law and lays it down. The law which we have laid down must hold good atleast until the superior Court takes a different view. The Censor cannot sit in judgment upon our decision and decide which law should be allowed to be made known to the people and which not. It is impossible for us to imagine that a Court proceeding or a judgment of the Court can ever amount to a prejudicial report within the meaning of that expression as interpreted by us and used in sub-paragraph (g) of paragraph 1 of the statutory order. The Censor is not above the Court. It is necessary for him to realize that he is subject to the jurisdiction of the Court. What is held ultra vires cannot be allowed to operate as intra vires under the veil of secrecy. We cannot permit liberty of the people to be under the weight of censorship. We are not inclined to do anything by which deprivation of liberty can be continued even for a moment more. We, therefore, grant Mr. Daru's request and direct respondents nos. 1 and 5 their servants, agents and employees to desist and forbear from censoring or withholding the permission to print and publish this judgment or any part thereof.

Mr. Vakharia at the conclusion of this order makes a request that we must stay the operation of the last part of the order which we have dictated to-day. For the reasons stated in this judgment and for the reasons which we have stated in the order just now dictated, we are unable to accede to his request. His apprehension that some harm or damage may be done to the people at large by the publication of this judgment or a part thereof is totally unfounded and mis-conceived.

Dated : 23rd March 1976.

Dashrath Lal Thakur

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