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Emergency file

RULE NISI ISSUED BY HIGH COURT

By a Legal Reporter

MOVING an application before Mr Justice S. A. Masud of Calcutta High Court on behalf of The Statesman Ltd and its Managing Director, Mr C. R. Irani, on Monday, Mr R. C. Deb, Counsel, stated that three circulars, issued by the Directorate of Advertising and Visual Publicity (DAVP) asking Government departments, public sector undertakings, autonomous bodies and statutory corporations not to advertise in The Statesman, were "without authority and mala fide."

Counsel said this was one of the steps taken by the Government to cripple The Statesman simply because the newspaper followed an independent policy and had on occasions been critical of Government policies and actions. In the past few years the Government had tried in a number of ways to put pressure on the company to make it conform to, and consistently support, Government policies.

His Lordship issued a Rule nisi calling upon the DAVP and the Central Government to show cause why these circulars should not be quashed. The Court directed the Rule to be made returnable a fortnight hence with liberty to the petitioners to apply for interim orders after service of the Rule.

Seeking remedy for the illegal circulars, Mr Deb referred to relevant portions of the 333-page application and narrated how some time ago the Company Law Board had issued a notice on The Statesman to show cause why an unspecified number of Directors should not be appointed on the company's Board of Directors. Counsel said in that earlier matter, after four days of hearing in Calcutta High Court, the Central Goverment had unconditionally withdrawn the said notice on December 20, 1976. The Statesman's attempt at resisting the Government move to gain control of the paper was successful.

The recent case arose out of the DAVP's circulars in regard to the issue of advertisements to The Statesman, JS Magazine and The Statesman Weekly. The first circular was issued from New Delhi on August 5, 1976, and read: "Dear Chief Executive, DAVP is not releasing advertisements to Calcutta and Delhi editions of The Statesman. I am desired to advise you not to release advertisements to either of the papers. N. Sethi, DAVP."

The second circular read: "Dear Sir, We advised you on August 5 through our circular ... not to release any advertisements to The Statesman Calcutta/Delhi and Tribune, Chandigarh. We notice that some public sector undertakings are continuing to release advertisements. This may be stopped forthwith and advice sent to us. I am now desired to advise you not to release any advertisement to any newspaper published by or connected with Indian Express Group. A list of such papers is enclosed. Action taken by you may be reported immediately. N. Sethi, DAVP. List: Indian Express, Sunday Standard, Screen, Financial Express, Lok Satta, Sunday Lok Satta (Marathi), Sunday Lok Satta (Gujarati), Dinamani, Andhra Prabha—daily, Andhra Prabha—weekly, Kannada Prabha, Nutan Gujarati, Rang Tarang, Dinamani Kadir, Janasatta, Chandni."

And the third circular. "Subject: Junior Statesman, The Statesman Weekly. Dear Chief Executive, Kindly refer to my secret circular No.... dated the 5th August, 1976, through which I advised you not to release any advertisements to Calcutta and Delhi editions of The Statesman. I am now to advise you that two other publications brought out by The Statesman, viz, Junior Statesman and The Statesman Weekly should also not be given any advertisements. I repeat that Calcutta and Delhi editions of The Statesman, Junior Statesman and The Statesman Weekly should not be given any advertisements.

"I have already sent separate circulars No.... dated the 5th August, 1976 and No.... dated the 19th August, 1976 that no advertisements should be released to The Tribune, Chandigarh, and the Indian Express Group of papers. All these instructions should be complied with and action reported. Yours sincerely, N. Sethi."

Continuing, Counsel said these impugned circulars were issued to Central and State Government departments, public sector undertakings, autonomous bodies and statutory corporations. According to information collected by the petitioners, at least 373 such organizations had received DAVP circulars. The number might be higher. These sources of advertisements complied with the impugned orders/circulars of August, 1976 and stopped or substantially stopped releasing advertisements to The Statesman and its allied publications.

As a result of the impugned circulars of the DAVP, Counsel pointed out, the company had lost a considerable amount of advertisement revenue. He said in October, 1975 the percentage of advertisements from Government and public sector undertakings to the total booking was 25.7. By December, 1976 it fell to 1.18. While the revenue from such advertisements in October, 1975 was about Rs 9 lakhs, in December, 1976 it was only about Rs 36,000.

Mr Deb referred to the application which stated that publication of advertisements was the main source of earning for a newspaper, specially for a major English newspaper like The Statesman, and constituted about 65% to 70% of the total revenue earned from circulation and advertisements. The gross monthly advertisement revenue for 1976 prior to October that year varied between Rs 39 lakhs and Rs 44 lakhs approximately. Those figures were now between Rs 33 lakhs and Rs 35 lakhs because of non-release of advertisements to The Statesman by Government departments, statutory bodies and public sector undertakings since the issue of the impugned circulars of the DAVP.

"The said impugned orders/circulars are instances of Governmental pressure and the same have been issued out of grudge and vindictiveness and to achieve the objects, namely, either to make the company toe the Government line in every respect or go out of existence" the application stated.

The application cited several instances of how the Central Government put pressure on the company and tried to harass it. On December 10, 1975 the Company Law Board issued a notice on the company to show cause why Directors should not be appointed on the company's Board of Directors. It was alleged in that notice that the company had been printing copies of The Statesman much in excess of the readership requirement particularly when supplements and consumer service sheets were published and that such excess copies were being sold as waste paper.

This show cause notice, the application stated, was issued mala fide at the instigation of the Central Government with the oblique motive of gaining control in the Board of Directors of the company, having failed to exercise control over the contents of the newspapers published by the company. On December 22, 1975 the company filed an application under Article 226 of the Constitution praying for orders for quashing of the said notice.

A Rule nisi was issued by Mr Justice A. N. Sen in the said application and in spite of opposition from the Central Government and the Company Law Board. His Lordship was pleased to issue an injunction restraining, inter alia, the Central Government and the Company Law Board from giving effect to the show cause notice. The same application came up for final hearing before Mr Justice T. K. Basu on December 6, 7, 13 and 20, 1976. On December 20 the Company Law Board and the Union Government through their Counsel made a statement in the Court that the said notice had been withdrawn with immediate effect. In view of such statement being made, the application was not pressed and the Rule was discharged.

The application mentioned a second instance of pressure on the company. On December 26, 1975 the Central Government and the Company Law Board mala fide and in abuse of power caused the Registrar of Companies, West Bengal to file a complaint under the Companies Act in the court of the Chief Metropolitan Magistrate, Calcutta, on the alleged ground that in 1970 the company had acquired shares in Nachiketa Publication Ltd in excess of 10% of the paid-up capital of that company without the prior approval of the Central Government.

"In fact, on July 23, 1973 the Registrar of Companies had issued a notice on the company alleging that in the matter of acquisition of the shares in Nachiketa Publication Ltd the company had contravened the provisions of the Companies Act. The company replied to the notice on July 31, 1973 setting out the facts and explaining that there was no contravention of the Act as alleged.

"Nothing further was heard on this subject from the Registrar of Companies until September 30, 1974 when the same allegations were repeated, this time in another notice sent individually to each Director of the company." Since then the Nachiketa case has been pending in court.

Giving a third instance of how the Government put pressure on The Statesman, the application stated that on January 24, 1976 the passport of Mr C. R. Irani was impounded by a letter issued by the Regional Passport Officer, Calcutta. Mr Irani had left for Hong Kong on January 22, 1976 to attend board meetings of the Press Foundation of Asia in his capacity as a Director from India of the said Foundation. On his return to India Mr Irani, under protest and without prejudice to his rights, surrendered his passport to the Regional Passport Officer.

Thereafter Mr Irani filed a petition under Article 226 of the Constitution and on February 16, 1976 Mr Justice A. N. Sen issued a Rule nisi calling upon the Regional Passport Officer and the Union of India in the Ministry of External Affairs to show cause why appropriate relief should not be granted to the petitioner. "It has been specifically charged in the petition that no reasons exist for the impounding of the passport except for further harassment of the petitioner and for putting pressure on The Statesman Ltd to toe the line of the Central Government in every respect. The affidavits-in-opposition in these proceedings have been filed but these do not disclose any reasons why the passport has been impounded. A claim of privilege has been raised. The matter has not yet been heard; it is pending before the court."

The application cited yet another instance of pressure being put on The Statesman. Since 1961 the Job Printing Department of The Statesman Ltd, New Delhi had regularly undertaken the printing of a monthly journal, called "Seminar." After its July, 1976 issue was printed and delivered by the said Job Department the Delhi office of The Statesman was served with an order, dated July 15, 1976 and addressed to the printer and publisher of "Seminar." The order, issued by the Under-Secretary to the Union Government under the Defence and Internal Security of India Rules, 1971, directed that "no matter shall be published in "Seminar"... unless such matter has been submitted for scrutiny to the Chief Censor to the Union Government... and the publication thereof is authorized in writing by the Chief Censor."

Immediately after the order was received by the Delhi office of the paper instructions were issued to the Job Printing Department not to undertake any matter for printing in "Seminar" unless it had been approved by the Chief Censor. The Chief Censor and the Under-Secretary were informed accordingly. But in spite of prompt compliance with the order imposing pre-censorship on future issues of "Seminar" the company was served with an order, dated July 20, 1976 that the company, the Chairman and members of the Board of Directors of The Statesman Ltd were individually required to show cause as to why the printing press known as "The Statesman Press" in New Delhi should not be forfeited.

The ground for issuing this show cause notice was that four articles contained in the July, 1976 issue of "Seminar" were not submitted for pre-censorship. In issuing the said show cause notice the initial order imposing pre-censorship dated, June 27, 1975 at the time of imposition of Emergency in the country was invoked. No account was taken of the fact that by administrative action in practice this order was not then required to be observed in large parts of the country, including New Delhi. Official announcements and the proclaimed policy of the Central Government in regard to a system of self-censorship and guidelines were ignored.

The company moved Delhi High Court for a stay of the order and appropriate relief. On July 29, 1976 the High Court was pleased to stay the operation of the notice and fixed August 20 for the reply of the respondents and hearing. Further time was given to the respondents and when the matter was next brought up on September 13, 1976 Counsel for the respondents made a statement in court that the respondents would not take any further action pursuant to the show cause notice. The petition was disposed of accordingly.

Coming back to the issue of advertisements for The Statesman from Government departments, public sector undertakings and other organizations, Mr Deb contended that the impugned DAVP circulars had been issued mala fide and in breach of Article 301 of the Constitution. Article 301, subject to certain provisions of the Constitution, guarantees that trade, commerce and intercourse throughout the territory of India shall be free.

This guarantee, Counsel argued, extended to all forms and varieties of commercial dealings and included, in particular in the case of a newspaper, the freedom to seek advertisements for publication in the newspaper from all sources as part of the freedom of trade, commerce and intercourse. This guarantee could not be taken away by an executive action.

The DAVP circulars, Mr Deb said, were not supported by any legislative authority. The said impugned orders/circulars were, therefore, void and illegal and issued in breach of the principles of justice, equity and fair play.

Mr Deb, Mr Bhaskar Gupta and Mr Ranjan Deb, Counsel, appeared for the petitioner.

Pakistan Election Commission Begins Inquiry

ISLAMABAD, Feb. 2.—Pakistan's Election Commission yesterday began an inquiry into complaints by Opposition parties that the Prime Minister, Mr Z. A. Bhutto, and several other candidates of the ruling Pakistan People's Party had adopted unfair means to get themselves elected unopposed to the National Assembly and provincial legislatures, reports AFP.

Mr Bhutto, the only candidate from the Larkana constituency in Sind province, has been re-elected to the 216-seat National Assembly unopposed.

The national elections will be held on March 7.

The commission heard 51 complaints, concerning eight National Assembly and 23 provincial legislature seats.

The commission asked the Opposition parties to submit affidavits of their witnesses' testimony.

The Chief Ministers of Punjab, Sind and the North-West Frontier Province are among the officials who have been elected unopposed. Their elections have been challenged on the ground that irregularities were committed to prevent Opposition candidates from filing nominations.

Press Censorship Lifted In Sri Lanka

COLOMBO, Feb. 1.—Press censorship, imposed in Sri Lanka during the strike in essential services early this month, has been lifted, says Samachar.

The 21-day-old Press censorship related to news of essential services and trade union activities. However, there was no censorship on despatches sent abroad by foreign correspondents.

The lifting of censorship follows the withdrawal of the railwaymen's strike. The Government also lifted the ban on meetings in Colombo district, imposed during the strike.

Podgorny To Visit India

NEW DELHI, Feb. 2.—President Podgorny of the Soviet Union will pay an official friendly visit to India towards the end of this month, it was officially announced yesterday, reports Samachar. The date of the visit has not been announced.

Freedom House Award

From WARREN W. UNNA

NEW YORK, Jan. 31.—Freedom House tonight bestowed its annual "freedom award" on Mr Cushrow R. Irani, managing director of The Statesman.

The citation, made at the Civil Liberties Society's annual dinner at New York's Hotel St Regis, said, in part: "Whatever the ultimate outcome of the struggle for Press freedom in India, Mr Irani and The Statesman have shown by their courage and intelligence, by confidence in the courts as the testing ground for constitutional guarantees, that the spark of freedom, once ignited, must be continuously tended; that, indeed, the Press, when upholding constitutional commitments to freedom, can be the primary defender of an entire nation's liberties".

CITATION

In introducing the citation, Mr Roscoe Drummond, the syndicated columnist, said in reference to India: "Censorship and intimidation persist. The possibility of an election in two months only underscores the hazard of restricting the flow of information while permitting the electoral process to go forward. Without a free Press can Indian elections be regarded as little more than a facade for the régime in power? And even if Press freedoms were immediately restored, can the damage done to the free exchange of ideas, these past 19 months be overcome in less than two months? The Indian example, sadly, should be a lesson for all free peoples, and others contemplating freer societies than they now enjoy...

"We invited Mr Irani to join us here this evening", Mr Drummond continued, "but he has written that his passport, impounded by the Government in January, 1976, as another effort to intimidate him and his newspaper, has not been restored. We are deeply concerned by the painful poverty of the Indian people. But Mr Irani knows that no nation is so poor that it cannot give its people freedom. Freedom House, in the interest of upholding the hand of one who courageously supports freedom of the Press, regards it timely to present this citation to Mr Cushrow R. Irani of The Statesman of India".

Mr Irani, in a written acknowledgement dispatched here, thanked Freedom House "for the honour you have done to my newspaper and to me as a symbol of our collective will to resist these encroachments on basic human rights. I would like to feel that in thus honouring The Statesman you are also honouring the many publications, big and small, who are with us in this common struggle."

PREVIOUS RECIPIENTS

Freedom House is an outgrowth of a citizens' group organized in 1940-1941 to rally the "fight for freedom" against Hitler's attempt at world domination. Previous recipients of its annual "freedom award" include: the former U.S. President, Dwight D. Eisenhower, the former British Prime Minister, Winston Churchill; the former Philippine President, Ramon Magsaysay; the former West German Chancellor, Mr Willy Brandt; the Committee for a Free Europe's Mr Paul-Henri Spaak; the European Economic Community's Mr Jean Monnet; South African freedom fighter, Mr Alan Paton; Yugoslavian freedom fighter, Mr Milovan Djilas; and the USA's martyred black activist, Medgar W. Evers.

The citation read at tonight's banquet also declared: "Governments, by harassing or repressing journalists, demonstrate the régime's intention to restrict and oppress an entire nation. The 1975 crackdown on Press freedom in India began in 1969 as quiet harassment intended to isolate editors from publishers. When that failed, Indian officials, in 1971, devised a secret scheme to exert management, financial and editorial control over the Press. The first to publish details of that secret plan was The Statesman... "Four months before the Indian Government in June, 1975 restricted the civil and political rights of all Indians, Mr Irani published in our "Freedom at Issue" a detailed account of 'the Indian Press under pressure'. It was the case history of a then democratic nation's Press under fire—and a warning to free peoples everywhere.."