

Omega Printers and Publications Pvt. Ltd. (M/s) and Others Vs State of Assam and Others

Court: Gauhati High Court

Date of Decision: March 7, 2013

Acts Referred: Constitution of India, 1950 " Article 14, 15, 19, 19(1)(a), 19(1)(g)

Citation: (2013) 3 GLD 334 : (2013) 3 GLT 779

Hon'ble Judges: Biplab Kumar Sharma, J

Bench: Single Bench

Advocate: A.C. Borbora and Mr. M. Smith, for the Appellant; A. Hussain, CGC, Mr. D. Saikia, Addl. AG, Mr. B. Gogoi and Mr. R. Gogoi, for the Respondent

Judgement

Biplab Kumar Sharma, J.

The grievance raised in this writ petition is the alleged discrimination in the matter of allotment of advertisement in

the newspaper to the English news daily viz. "The Sentinel" owned by the petitioner No. 1 company represented by its Managing Director i.e. the

petitioner No. 2. Further grievance raised is the alleged non-payment of outstanding dues to the petitioners in respect of the advertisements allotted

and published in the said newspaper. Raising the said two grounds, the petitioners have prayed for a direction to the respondents to comply with

the policy of equal distribution of advertisements to all news dailies including the "Sentinel" and to release the outstanding dues. Although the writ

petition was admitted for hearing way back in 2004 (25.5.2004), but the respondents did not show any response to it till the matter was

entertained on 19.11.2012, on which date, this Court having regard to the importance of the matter desired that the respondents should file their

counter affidavit, for which, Mr. D. Saikia, learned Additional Advocate General, Assam had taken time. It is only pursuant to the said order dated

19.11.2012, the respondent No. 4 i.e. the Director of Information and Public Relation filed the counter affidavit on 6.12.2012. Thereafter the

petitioners also filed their reply affidavit on 4.1.2013. Prior to that the petitioners had filed an additional affidavit bringing on record the subsequent

developments in the matter after filing of the writ petition, to which also, the respondent No. 4 filed a counter affidavit on 6.12.2012. Be it stated

here that the other two respondents namely the Government of Assam in the Home and Finance Department have not filed any counter affidavit.

2. I have heard Mr. A.C. Borbora, learned Sr. Counsel, assisted by Mr. M. Smith, learned counsel for the petitioners. I have also heard Mr. D.

Saikia, learned Additional Advocate General, Assam along with Mr. B. Gogoi, learned Standing Counsel, Finance Department. I have also

considered the entire materials on record.

3. The issues raised in this writ petition are no longer res-integra and have already been answered vide the Annexure-B judgment reported in

Omega Printers and Publishers Private Limited and Others Vs. The State of Assam and Others, by and between the same parties followed by the

Annexure-C judgment and order dated 27.9.1994 passed in W.A. No. 221/1994 and the judgment and order dated 12.6.1996 passed in Civil

Rule No. 4853/1995. As in the instant writ petition, in the earlier writ petition being Civil Rule No. 1848/1993 also the prayer made was to issue a

writ of mandamus to the respondents to allot equal and proportionate quota of advertisements to the petitioners as were being allotted to other

similar newspaper of the State.

4. It was the said writ petition, on which the learned single Judge delivered the judgment dated 4.4.1994 reported in Omega Printers and

Publishers Private Limited and Others Vs. The State of Assam and Others, , a copy of which has been annexed to the writ petition as Annexure-

B. By the said judgment and order, the respondents were directed to allot advertisements to the petitioners' newspaper "The Sentinel" adequately

at par with that of similar newspaper viz. "The Assam Tribune". Another direction issued was to allot sufficient quantity of advertisement to which

the newspaper was entitled to as per its own status for the period from January to June, 1993. For a ready reference, the relevant paragraphs of

the said judgment are quoted below:

25. Coming to the present case in hand, I find that the petitioners have specifically stated that their paper "The Sentinel" has wide circulation of

42000 copies, so as per Government's own norms it has to be regarded as a big paper. The petitioners have further stated that their paper "The

Sentinel" is at least at par with other daily, namely, "The Assam Tribune", if not more. That being the position, there was no justifiable ground or

reason to deprive the paper in getting the due quota of advertisement. As stated in the petition, in 1992 the quota of advertisements was more or

less at par with "The Assam Tribune" but in the subsequent years it has been drastically reduced and the figures have been quoted in the petition.

On perusal of the figures it really appears that allotment of advertisements to petitioners' paper "The Sentinel" has been reduced, on the other hand,

papers having less circulations like, "North East Times", "Assam Express", are being given much more quantity of advertisements. The

Government, as stated above, has not controverted the averments made in the petition though the Civil Rule was admitted on 9.7.93 making it

returnable by two months. Besides, the case remained part heard for considerable period, however no effort was made by the Government to

controvert the averments made in the petition. To my utter surprise, the Government did not care to produce the case records. At the time of

hearing of the Civil Rule, the learned Government Advocate expressed his inability to produce the record as the record was not received by him.

He could not answer why the Government failed to file counter affidavit or to produce case records as ordered by this Court on 9.7.93, nor any

prayer was made for further extension of time. This being the position the averments made in the petition should be deemed to be admitted by the

Government.

26. I do not find any reason why the records have been withheld. The averments made by the petitioners that curtailment of advertisement was for

an oblique purpose to put unreasonable restrictions on the freedom of speech and expression as guaranteed under Article 19(1)(a) of the

Constitution. The petitioners have also suggested that they might have incurred displeasure of the authorities by publishing articles, news, public

scandals, criticism involving Government departments, through investigative journalism and for revealing various irregularities in a fearless manner.

In the absence of any counter affidavit and failure to produce record, as held in *Naseem Bano* (supra), I am constrained to hold that all the

averments made in the writ petition have been admitted by the respondents. In view of the above, I am inclined to accept the submissions of

learned counsel for the petitioners that there has been unreasonable restriction on the freedom of speech and expression by refusing to grant

adequate number of advertisements. Besides the grant of advertisements is a kind of State largess and the State, no doubt, is the authority to grant

such largess has no unfettered right to give advertisements according to its own sweet will. This action of the Government must be informed of

reason. From the facts and circumstances, as urged by Mr. Goswami, I am constrained to hold that the action of the Government is not

reasonable.

27. Thus, on an overall consideration of the various aspects of the matter discussed above, I accept the submissions of Mr. Goswami and dispose

of the petition with a direction to the respondents to give/allot advertisements to the petitioners' newspaper "The Sentinel" adequately at par with

that of similar newspaper, viz. The Assam Tribune". It is further directed that the respondents shall also give sufficient quantity of advertisements,

which the paper was entitled to as per its own status for the period from January to June, 1993, which had been denied to the petitioners" and

newspaper. This must be done as expeditiously as possible and at any rate, within a period of two months from today.

5. The aforesaid judgment was carried on appeal being W.A. No. 221/1994, by the State of Assam. The appeal was disposed of by judgment

and order dated 27.9.1994. By the said judgment and order while upholding the direction of the learned Single Judge to provide advertisements to

"The Sentinel" at par with the other newspaper viz. "The Assam Tribune", the other direction to give more advertisements to the newspaper to

compensate the alleged loss sustained by it for not providing sufficient advertisements at par with the other newspaper and/or for providing less

advertisement in future, the writ appellate court interfered with the said direction.

6. The petitioners had the further occasion to approach this court by filing another writ petition being Civil Rule No. 4853/1995, when the policy of

equal distribution of advertisement to all the news dailies including The Sentinel" and also to make equitable payment of the pending advertisement

bills was allegedly flouted. The writ petition was disposed of by judgment and order dated 12.6.1996 directing the respondents to look into the

grievance of the petitioners so far as the same related to disproportionate distribution of advertisements. As regards the outstanding dues, direction

was issued to clear the same within two months from the date of receipt of the judgment and order.

7. It is really unfortunate that the petitioners had to approach this Court again by filing the instant writ petition relating to the same grievance as

according to them in spite of the aforesaid 3 judgments of this Court they have again been discriminated in the matter of allotment of advertisements

and payment of advertisement dues. At the time of filing of the instant writ petition, the newspaper had a circulation of about 45,000. In paragraph-

3 of the writ petition furnished the details of the newspaper, it has been stated thus:

3. That the Sentinel at present has a circulation of about 45,000. Every issue of the Sentinel brings out a minimum of 12 pages print area of size

39.5 cm x 50 cm x 8 standard columns. It also brings out more than 356 issues every year. In addition to its regular and daily standard sizes, the

Sentinel also brings out three weekly supplements, namely, a Multilingual supplement of 16 pages on every Friday, 16 pages supplement of

Saturday fare on every Saturday in tabulate forms, and a magazine on every Sunday. The present price of a copy of an issue of Sentinel is Rs. 2.00

for its Monday to Thursday issues and Rs. 3.00 for the weekend issues exclusive of air surcharge. Moreover, in order to ensure timely and most

expeditious distribution amongst the readers all over the N.E. Region the Sentinel has been maintaining its distribution offices at various places,

such as, at Delhi, Kolkata, Dibrugarh, Jorhat, Shillong etc. The petitioner company is also one of the largest employers of the state, giving direct

and indirect employment to the large number of people.

8. Referring to the policy decision of the Government as enumerated in the resolution dated 21.8.1986 (Annexure-A), it is the stand of the

petitioners that having regard to the circulation of their newspaper and the object behind releasing Government advertisement, their newspaper is

entitled to get advertisements at par with the other newspaper and that there has been discrimination in allotment of advertisements and also

payment of bills and in the process there has been violation of the aforesaid three judgments. It has been categorically stated in paragraph 11 of the

writ petition that although it is at par with big category of newspaper with more than 30,000 circulations but their newspaper has been

discriminated in the matter of allotment of advertisements and payment of outstanding dues. In the said paragraph, the outstanding dues are shown

as Rs. 38,80,194/-. Referring to the representation dated 24.9.2003 made by the petitioner to the respondent No. 4, it has been stated that the

said representation did not yield any result. As regards the outstanding dues, it has been stated in paragraph-14 of the writ petition that as of

January, 2004, the outstanding dues payable to the petitioners stood at Rs. 65,09,254/-.

9. In paragraph 15 of the writ petition, the petitioners have stated that the respondents, inspite of the aforesaid judgments, have taken recourse to

the discriminatory treatment inasmuch as while all other similarly circumstanced news dailies published from Guwahati and belonging to the same

category have been allotted with a large number of classified and displayed advertisements, the petitioners' daily have been provided with far less

advertisements. In this connection, the petitioners have drawn a comparison in reference to the advertisements allotted to "The Assam Tribune"

and the assamese daily "Dainik Agradoot" to establish the discrimination. The petitioners have also annexed the Annexure-G statement in this

regard. It has been stated that by such action on the part of the respondents, there has been violation of Article 14, 19(1)(a) of the Constitution of

India.

10. As stated above, although the writ petition was filed way back in 2004 and to be precise on 24.5.2004, there was no response from the

respondents till they were directed by the aforesaid order dated 19.11.2012 to show response to this proceeding. Prior to that, the petitioners had

filed an additional affidavit on 16.11.2012 bringing on record certain developments after filing of the writ petition in 2004. In paragraph-3 of the

said affidavit, it has been categorically stated that during the pendency of the writ petition for the last about 8 years, discriminatory action on the

part of the respondents in the matter of allotment of Government advertisements has continued to the prejudice and deprivation of the petitioners. It

has also been stated that outstanding advertisement dues payable to the petitioners in respect of published Government advertisements have also

accumulated.

11. In paragraph-4 of the said affidavit, the petitioners have indicated the year wise value of Government advertisements allotted to various news

dailies from 2005-08. Annexure-1 is the statement in this regard as has been obtained by the petitioners through RTI. Annexure-2 series is the

statement showing the circulation of the approved newspapers for the period from 2003-04 to 2007-08, as per which, while the circulation of

"The Assam Tribune" is nearly 60 to 65,000 during the said period, the circulation of The Sentinel" is nearly 45 to 55,000. It will be pertinent to

mention here that while the circulation of "The Assam Tribune" for the year 2007 stood at 65,561 copies, it was 57,406 for "The Sentinel" with

the variation of only 8000 copies. It is in this context, Mr. A.C. Borbora, learned Sr. Counsel for the petitioner submitted that although the English

dailies are in the same group, the respondents cannot discriminate the petitioners' newspaper in the matter of allotment of advertisements and

payment of dues.

12. Annexure-III, IV and V of the said additional affidavit are the copies of the list from the Audit Bureau of Circulation addressed to The

Sentinel" certifying circulation figures for the year 2010 and 1st half of 2011 and also for the period from July, 2009 to June, 2010. These

documents have been annexed to the said additional affidavit to show its increased circulation over the years, which is more or less at par with the

other English daily i.e. "The Assam Tribune". Along with the said additional affidavit, the petitioners have also annexed the Annexure-VII letter

dated 12.12.2011 addressed to the Chief Minister of the State by the authority of "The Sentinel" intimating about the out-standing dues amounting

to Rs. 1,0633,762/-. Annexure-VIII is the letter dated 19.1.2009 by which the respondent No. 4 had requested the representative of "The

Sentinel" to attend the meeting of the "Scrutiny Committee to scrutinize the arrear advertisement bills" that was scheduled to be held on 28.1.2009.

This document has been annexed to prove that there are outstanding dues payable to the petitioners.

13. During the course of hearing the learned counsel for the petitioners had produced the copy of the monthly extract of DIPR release to show the

discrimination in the matter of allotment of advertisements to the newspaper i.e. "The Sentinel". For a ready reference, the said monthly abstract is

shown below:

MONTHLY ABTRACT OF DIPR RELEASE

14. Now let us see the stand of the respondent No. 4 in the counter affidavit. The stand taken in the counter affidavit is reflected in paragraph-10,

12 and 18, which is quoted below:

10. that as regards to the statements made in paragraphs 15 and 16 of the writ petition, the deponent begs to deny the same and further begs to

state that as most of the Department prefers the Assam Tribune to publish their advertisement in case of English News Paper and others for local

vernacular, the Directorate is compelled to publish the advertisement as per their request. Thus, the Sentinel received less advertisement.

12. That as regards to the statements made in paragraph 20 of the writ petition, the deponent begs to rely and refer to the statements made in

paragraph 10 of this affidavit and further begs to state that outstanding payments are made as per availability of fund and proper verification of the

bills. The outstand bills of all the newspapers are being cleared by the Directorate, part by part, as per the funds received from the Government.

18. That as regards to the statements made in paragraph 39 of the writ petition, the deponent begs to state that it is not fact. The pending

Advertisement Bills are still under scrutiny and will be cleared after receiving necessary funds from the Government.

15. In the said counter affidavit, various contentions raised in the writ petition have not been dealt with. The basic plea of the petitioners" that "The

Sentinel" has been discriminated with in the matter of allotment of advertisements and payment of outstanding dues has not been specifically dealt

with. It does not lie on the mouth of the respondent No. 4 to say that as most of the departments prefer the other English daily and local

vernacular, it is compelled to publish the advertisement as per their choice. Such a plea of the respondent No. 4 violates the basic principles

underlying equality clause enshrined in Article 14 of the Constitution of India and so also the principles relating to the freedom of speech and

expression as enshrined in Article 19(1)(a) of the Constitution of India and so also Article 19(1)(g) of the Constitution of India. Even in the case of

permissible legislative abridgement of the right of free speech and expression, and this was doubtless due to the realisation that freedom of speech

and of the press lay at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the

proper functioning of the processes of popular government, is possible. A freedom of such amplitude might involve risk of abuse. But the framers

of the Constitution may well have reflected, with Madison who was "the leading spirit in the preparation of the First Amendment of the Federal

Constitution," that "it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigour of

those yielding the proper fruits. [Also see *Romesh Thappar Vs. The State of Madras*,].

16. In the case of *Dainik Sambad and Another Vs. State of Tripura and Others*, , the Division Bench of this Court had the occasion to deal with

the question as to whether a newspaper, to which allotment of Government advertisements happened to be gradually reduced can complain of

discrimination and would it affect its freedom of press requiring or justifying judicial review. It was held thus:

The strongest of anti-discrimination legislation is to be found in Article 14 of the Constitution of India read with Articles 15 and 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 discriminatory 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*, (1952) 1 DLR 680. The Court shall strike down an order if it is found to

have been based on discrimination prompted by ill-will, dislike of one's political views, favouritism or improper motives. If a discretionary power is

exercised in disregard of relevant consideration or on considerations that cannot be lawfully taken into account and it results in discrimination it may

be struck down.

....

....

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 Articles 14 and 19(1)(a) of the Constitution of India.

17. In the earlier judgments of this Court referred to above and reported in *Omega Printers and Publishers Private Limited and Others Vs. The*

State of Assam and Others, referring to various decisions of the Apex Court it was observed thus:

22. From the ratio of the above decisions it is abundantly clear that the State cannot impose unreasonable restrictions on the freedom of speech

and expression, be that by putting heavy burden on the paper by imposing taxes or by withholding advertisement or the facilities for concessional

rate in tax and purchase of newsprints; because if it is done it will amount to put pressure on the paper, particularly on its financial aspect, thereby

either the paper will be forced to raise the price, which ultimately reduce the circulation and thereby compel to close down the newspaper, or force

it to seek government assistance in order to thrive and thereby yield to the pressure of the Government.

18. The Division Bench of this Court also in the appellate judgment dated 27.9.1994 (Annexure-C) referring to the earlier decisions made the

following significant observation.

22. It is thus clear that the law laid down by the apex court is that if these assistance from the Government are curtailed, it may be that the

newspaper will not be able to withstand the competition and in the long run it may die down. The necessary corollary which follows is that such an

action of the Government would directly affect the freedom of speech and expression to which the newspaper is entitled.

26. ...Can the Government convey the message by reducing the advertisement that you follow that we are saying and till then the advertisement

which normally we would have given you would be reduced. We are of the opinion that no such power can be exercised as it will be giving to the

Government a power which in the context of giving advertisements can be very dangerous. If a paper is not following the guidelines and is indulging

in publishing articles which are not in public interest, as has been held by us, the power of removal of the name that newspaper from the list of

approved papers is available with the Government. Further, one cannot Understand that the Government come to the conclusion that the paper is

not following the guidelines and the advertisements are still being given, though in reduced numbers, till the newspaper follows the guidelines, as us

understood by the Government. We are of the definite opinion that no such power of regulation by reducing advertisement when it violates the

guidelines is available to the Government and the only power available to the Government is to remove the name of the newspaper from the

approved list of newspaper entitled to receive advertisement.

29. ...However, it is clear that if it is true that the State of Assam is not in a position to clear up the pending bills in respect of the advertisements

which it has got published in certain newspapers and the amount of those bills are to be paid, there cannot be any discrimination in payment of that

amount also. In our opinion if such a discrimination is practiced, that will again affect the right of the petitioner and other similarly situated

newspapers and will be arbitrary and discriminatory and even hits the fundamental right under Article 19. We may take an example. Supposing a

particular paper has a bill of Rs. 10 lakhs which is pending payment and the other paper has a bill of similar amount, that is Rs. 10 lakhs, which is

also pending. The State pays one paper the whole amount of Rs. 10 lakhs immediately and does not pay the other paper the bills which are

pending on the ground that further finances are not available for making the payment. We can at once see the impact of such an action of the

Government on the viability of the paper. The paper which receives the payment promptly becomes financially viable as it could get more financial

resources, while the paper which is kept waiting in a queue on the ground that more finances are not available may have to face serious financial

crisis. Such an action can also not be according to the whims of the Government. If such a situation is prevailing that payment of the bills which are

pending cannot be made by the State Government because of the financial stringency then the outstanding payment of all the papers should be

made according to some principle. It is expected that the State Government will act in such a manner that the bills of the newspapers in respect of

the advertisements of the government which are pending payments are released proportionately in a fair manner to all the newspaper and there

cannot be any question of any picking and choosing even for the purpose of paying the outstanding bills....

32. For the reasons stated above, we finally dispose of the appeal in terms of our observations made in this judgment. However, looking to the

facts and circumstances of the case, the parties shall bear their own costs.

19. As noted above, in the additional affidavit filed by the petitioners, the relevant facts after filing of the writ petition in 2004 have been brought on

record. The respondent No. 4 in its reply affidavit has not specifically disputed the facts stated in the said additional affidavit. What is now required

of the respondents is to rule out any possibility of discriminatory treatment being meted out to the petitioners" newspaper i.e. "The Sentinel" in the

matter of allotment of advertisement and payment of bills including the outstanding dues. It cannot be argued by the respondents that since the

departments prefer "The Assam Tribune" and the vernacular newspapers in the matter of issuance of advertisements, the said newspaper are

preferred. If such a plea is accepted, there will be gross violation of Article 14, 19(1)(a) and 19(1)(g) of the Constitution of India, which right,

flowing from the said provisions cannot be curtailed without reasonableness attached to it. Even the test of permissible reasonable restriction is very

stringent as has been held by the Apex Court in various decisions.

20. Allotment of advertisements and payment of dues cannot be as per the whims of some authority of the concerned department. That apart,

contrary to such stand of the respondent No. 4 in his affidavit, the documents annexed in support of the said stand do not reflect any such situation.

In such circumstances, the petitioners' newspaper cannot be discriminated and must be treated at par with the other newspaper, more particularly

the English daily "The Assam Tribune" entitling it to allotment of advertisements at par with the said newspaper and also payment of bills and

outstanding dues.

21. In view of the above, the writ petition is allowed directing the respondents to allot advertisement to the petitioners newspaper i.e. "The

Sentinel" advertisements at par with other newspaper more particularly The Assam Tribune" as both the newspapers fall in the same group with

more or less the same circulations. As regards the payment of dues, both outstanding and current, there should be equal distribution of available

amount treating the petitioners' newspaper at par with the said newspaper.

22. Above is only reiteration of what has already been provided for in the aforementioned three judgments, which have attained finality. Under no

circumstances, the respondents can make any deviation from what they are obliged to do in terms of the directions contained in the said judgments

and also reiterated in this judgment. The respondents shall now take required consequential action so that the discrimination being meted out to the

petitioners on both the counts i.e. allotment of advertisement and payment of dues, no longer subsist and stand redressed at the earliest. The writ

petition is allowed leaving the parties to bear their own costs.