

(2002) 11 AP CK 0024

Andhra Pradesh High Court

Case No: Writ Petition No. 17593 of 2000

G. Krishna, Editor and
Publisher of "Neti
Prapancham and Yuva
Sanchalanam"

APPELLANT

Vs

Managing Director,
APSRTC and Others

RESPONDENT

Date of Decision: Nov. 22, 2002

Acts Referred:

- Constitution of India, 1950 - Article 19(1)

Citation: AIR 2003 AP 121 : (2003) 1 ALD 256

Hon'ble Judges: T. Meena Kumari, J

Bench: Single Bench

Advocate: A. Satya Prasad, for the Appellant; K. Harinath, SC for APSRTC for Respondent
Nos. 1 to 3 and Posani Venkateswarlu, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

T. Meena Kumari, J.

This Writ Petition has been filed seeking to declare the action of the respondents in preventing the sale of the publications of the petitioner, namely, Ned Prapancham and Yuva Sanchalanam in the depots belonging to respondents 1 and 2 and for a consequential direction to permit the petitioner to sell the said magazines in the premises of the RTC Complex in the State.

2. The brief facts of the writ petition are as follows:

3. The petitioner is the Editor and Publisher of Neti Prapancham and Yuva Sanchalanam monthly Telugu Magazines. The magazine of Neti Prapancham was registered under the Press and Registration of Books Act, 1867 with Registration No. 65598 of 1993. It is submitted that the said magazine came into existence in the year

1993 and is being published uninterruptedly. It is submitted that the said magazine reports contemporary issues and apart from reporting political scenario of the State and also publishes real stories of all walks of life including crime and also human interested stories. It is submitted that by virtue of its content, it has gained reputation in its readers. As far as Yuva Sanchalanam magazine is concerned, it is stated that the said magazine is communicating the public on health issues and also reporting on the outstanding performance of the youth in various fields.

4. It is stated that the first respondent is having various depots throughout the State of Andhra Pradesh for operating its bus services and it has leased out certain premises for the purpose of selling various items apart from newspapers and magazines. It is stated that, their magazines are put to sale in the said counters at various depots along with other magazines. It is stated in the affidavit that on 7.9.2000, all of a sudden respondents 2 and 3 visited the shops, namely, Jai Durga Book Stall and Jai Bhavani Book Stall in the premises of Mahatma Gandhi Bus Station and asked the vendors to stop the sale of some of the spurious magazines and in that process, they asked to stop the said of the magazines that are being published without authorisation from the competent authority though the vendors have brought to the notice of the respondents about the authorisation of publishing those magazines. It is stated that no authorisation has been received from the competent authority prohibiting the sale. Hence, this writ petition has been filed.

5. The respondents filed counter stating that the magazines Neti Prapancham and Yuva Sanchalanam are not meant for contemporary issues and a reading of the magazines goes to prove that 90% of the contents are pertaining to pornographic literature and no contemporary or political issues are covered in the magazines and that the magazines give an impression that they are attracting the sex appeal in the human being. It is also stated that pursuant to publication of a news item that sex books are being sold freely in the book stalls of the Bus Station, the respondents have taken steps to curb the sale of such books in the bus stalls. It is also stated that the sale of such books violates the terms and conditions of the licence and that as per the terms and conditions of the Deed of Licence, the license is authorised to sell only newspapers, magazines which are standard publications and not any prohibited books.

6. It is contended by the learned Counsel for the petitioner Sri Satya Prasad that the respondents have no authority, even though they are owners of the premises which has been leased out, and hence they have no right whatsoever to interfere with or stop the sale of the said magazines. In case the respondents feel that there is pornographic literature or any other material which is against the public, they can avail the remedies under the Press and Registration of Books Act, 1867 and Press Council Act, 1978, which envisages the remedies for making a compliant.

7. In support of his contention, the learned Counsel has relied upon Sections 5, 8, 8-A and 8-B of the Press Registration and Books Act 25 of 1867 which mandates that

every publisher has to file a declaration according to the said enactment. The Counsel has also relied upon the provisions of the Press Council of India Act, 1978. Section 8 of the Press Council of India Act, 1978 deals with the Committees of the Council and the powers and functions of the Council are contained u/s 13(2) of the Press Council Act, 1978. As per Sub-clause (b) of Section 13(2) of the said Act, the Council has to maintain and improve the standards to build up a code of conduct for newspapers, news agencies and journalists in accordance with high professional standards. Sub-clause (c) of the said Act also envisages that to ensure on the part of newspapers, news agencies and journalists, the maintenance of high standards of public taste and foster a due sense of both the rights and responsibilities of citizenship. Clause (3) of Section 13(2) of the Act gives power to the Council to keep under review the development which is likely to restrict the supply and dissemination of news of public interest and importance. Section 14 of the Act envisages the power to censure. According to that Section, on receipt of any complaint made to the Council, if the Council believes that the newspaper or news agency has offended against the standards of journalistic ethics or public taste or that an editor or a working journalist has committed any professional misconduct, the Council may, after giving the newspaper or the news agency, the editor or journalist concerned an opportunity of being heard, hold an inquiry in such manner as may be provided by regulations made under this Act and, if it is satisfied that it is necessary so to do, it may, for reasons to be recorded in writing, warn, admonish or censure the newspaper, the news agency, the editor or the journalist or disapprove the conduct of the editor or the journalist, as the case may be.

8. Thus, as per Section 14 of the Act, the Council has got the power to afford an opportunity of being heard on a complaint made to it if there is any reason to believe that a newspaper or news agency has offended against the standards of the journalistic ethics and pass appropriate orders in writing. The proviso to Section 14 of the Act provides that the Council may or may not take cognizance of a complaint if in the opinion of the Chairman, there is no sufficient ground for holding an enquiry. Section 14 of the Act makes it clear that a complaint has to be lodged to the Press Council u/s 14 of the Act and the Press Council has to act in accordance with the powers under the said Section.

9. In this case, the respondents did not report to the Press Council about the pornographic literature in the magazines in dispute and no action has been initiated under the Act. It is the case of the petitioner that the respondents have no power whatsoever to interfere with the selling of the books i.e., *Neti Prapancham* and *Yuva Sanchalanam* and the action of the respondents in seizing the books would amount to interference with his right to trade and also the right to publish the books.

10. The Supreme Court in the case of [Romesh Thappar Vs. The State of Madras](#), , speaking through Patanjali Sastri, J., has observed as follows:

"Thus, every narrow and stringent limits have been set to 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 organisations, for without free political discussion no public education, so essential for the proper functioning of the process of popular Government, is possible. Xxxx

Every free man has an undoubted right to lay what sentiments he pleases before the public; to forbid this is to destroy the freedom of the press; but if he publishes what is improper, mischievous or illegal, he must take the consequence of his own temerity."

11. In the present case, the learned Counsel for the petitioner has further argued that the implications of the action of the respondents in seizing the books would amount to violation of the provisions of the Act. So long as the publication and the sale of books are not declared to be in contravention of any law, the petitioner has got every right to publish the same and the respondents being the lessors cannot take the law into their own hands and prohibit the sale of the books by way of seizing the same. The learned Counsel for the petitioner has also argued that if the respondents have been aggrieved by the sale of books, the remedies open to them are under the Press Council of India Act and also to bring to the notice of the other authorities. However, the action of the respondents in seizing the books and not allowing them to sale the same, is in violation of Article 19(1)(g) of the Constitution of India as they have no right to seize the books and also prohibit the sales.

12. On the other hand. Mr. K. Harinath, the learned Standing Counsel for the respondents submits that the respondents being the Lessors and they are the owners of the stalls and as the two books, namely, Neti Prapancham and Yuva Sanchalanam contain the objectionable material, they have every right to seize them.

13. As per Section 4 of the Young Persons (Harmful Publications) Act, 1956, the Government has the power to declare harmful publications to be forfeited. Section 4 of the above Act reads as follows:

"4. Power of Government to declare harmful publications forfeited :--(1) The State Government may, if it is of opinion after consultation with the principal law officer of the State, whether called the Advocate-General or by any other name, that any publication is harmful publication, declare, by order notified in the Official Gazette, that every copy of such publication shall be forfeited to the Government and every such notification shall state the ground for the order.

(2) Without prejudice to the provisions contained in Sub-section (1) of Section 6, where there is an order of forfeiture under Sub-section (1) in respect of any publication, it shall be lawful for any police officer to seize the same wherever found in the territories to which this Act extends."

14. In view of the above provisions contained in the Act, the respondents have I a remedy to bring to the notice of the concerned authorities to act in accordance with the provisions contained under the said Act. In view of the above provisions of law, without going into the merits as to whether the publication has got any objectionable material, it has to be held that the respondents have no power whatsoever to seize the publications of the books in question merely because they are the lessors as the interference in selling the books by way of seizing the same would amount to interference with right of trade by the petitioner. It has to be held that the restraint placed by the respondents would amount to a direct infringement of freedom of right of speech and expression.

15. Hence, without going into the aspect whether the books in question have contained objectionable material or not, liberty is granted to the respondents to approach the appropriate authority for taking necessary action as per law.

16. Accordingly, this writ petition is disposed of. No costs.