

(2013) 01 AP CK 0026

Andhra Pradesh High Court

Case No: Writ Petition No. 781 of 2013

N.V.S.J. Rama Rao

APPELLANT

Vs

Broadcasting Corporation of
India and Others

RESPONDENT

Date of Decision: Jan. 9, 2013

Citation: AIR 2013 AP 165 : (2013) 3 ALD 569 : (2013) 2 ALT 210

Judgement

@JUDGMENTTAG-ORDER

Sanjay Kumar, J.

The party-in-person, a practising Advocate, seeks a declaration that the action of the State in not taking steps to stop the broadcasting of the news item "Akbaruddin Owaisi - Hate Speech at Adilabad and Nizamabad" is illegal, arbitrary, unjust and violative of Articles 21 and 25 of the Constitution of India. The petitioner states that fiery speeches were addressed by Sri Akbaruddin Owaisi, MLA, at Nirmal in Adilabad on 24.12.2012 and thereafter, at Nizamabad, which are being broadcast repeatedly and being debated/discussed, thereby hurting the sentiments of both the communities and were likely to lead to a flare up. He apprehends that it would be difficult to control law and order. He refers to the fact that criminal proceedings have already been launched against Sri Akbaruddin Owaisi, MLA, at Nizamabad, Hyderabad and various other places, and states that his grievance is only with regard to the action of the media in repeatedly disseminating the contents of the alleged speeches of the MLA without realizing that it may lead to a law and order problem and incite the religious sentiments of both communities. He states that there is a threat to peace and likelihood of communal violence, which may ultimately affect the right to life.

2. The Preamble to the Constitution of India demonstrates that the endeavour of our founding fathers was to secure to all the citizens of this country, amongst other ideals, the liberty of thought, expression, belief, faith and worship. This quest for liberty of thought and expression translated into Article 19(1)(a) of the Constitution

which protects the right of the citizen to freedom of speech and expression. However, this right is not absolute but is subject to the safeguards contained in Article 19(2). Thereby, the State is empowered, by law, to impose reasonable restrictions on the exercise of the right in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence. The party-in-person states that the alleged speeches of Sri Akbaruddin Owaisi, MLA, have an adverse effect upon public order and may also result in incitement to commit offences. He therefore asserts that the State should curb the press and the media from giving publicity to the same.

3. We are however not persuaded to agree. It must be remembered that freedom of speech and consequently, the freedom of the press, is interminably woven into the fabric of our social and democratic polity and any move to impose a restraint on the exercise of this right must be rigorously tried and tested.

4. The right to freedom of speech and expression is recognized internationally as a human right under the Universal Declaration of Human Rights and also under the International Covenant on Civil and Political Rights (ICCPR). Article 19 of the ICCPR states that to the effect that everyone shall have the right to hold opinions without interference and everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. Article 19 goes on to state that the exercise of this right carries "special duties and responsibilities" and may therefore be subject to certain restrictions for respecting the rights and reputations of others or for the protection of national security, public order, public health or morals.

5. The First Amendment to the U.S. Constitution provides thus: "Congress shall make no law ... abridging the freedom of speech, or of the press." This amendment is absolute in terms and brooks for no exception to the exercise of this right. However, the American Courts developed the rule of "clear and present danger" to cut down the ambit of the right, whereby the Court could determine where discussion would end and incitement would begin. The First Amendment was held to protect only utterances that seek acceptance through democratic process of discussion and agreement and not words that may have the effect of force, calculated to achieve the goal by circumventing the democratic process. Our Constitutional guarantee of freedom of speech stands on a different footing as it is fettered by the restrictions postulated by Article 19(2) of the Constitution, referred to supra.

6. The Indian Constitutional scheme therefore aims at striking a balance between the liberty given under Article 19(1)(a) and the social interests covered by Article 19(2). ([Santokh Singh Vs. Delhi Administration](#),)

7. The essence of the freedom of speech and expression mandates tolerance within reason and, per our Constitutional charter, without infringing Article 19(2).

8. There can be no gainsaying the fact that freedom of speech in a democracy manifests itself most significantly through a free and independent press/media. The freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments. So said George Mason, an American patriot, popularly referred to as "The Father of the Bill of Rights". One of the most notable proponents of the link between freedom of speech and democracy is Alexander Meiklejohn². He argued that the concept of democracy was that of self-government by the people. For such a system to work, an informed electorate was necessary. In order to be appropriately knowledgeable, there must be no constraints on the free flow of information and ideas. According to Meiklejohn, democracy would not be true to its essential ideal if those in power are able to manipulate the electorate by withholding information and stifling criticism. Meiklejohn acknowledged that the desire to manipulate opinion can stem from the motive of seeking to benefit society. However, he argued that choosing manipulation negated, in its means, the democratic ideal. Therefore, notwithstanding a well-intentioned motive, any move by the authorities to shackle the press would inevitably abridge the constitutional guarantee, unless such interference is protected by Article 19(2) of the Constitution. It would do us well to remember this penetrating dictum:

9. "Without a free press there can be no free society. That is axiomatic. However, freedom of the press is not an end in itself but a means to the end of a free society. The scope and nature of the constitutional guarantee of the freedom of the press are to be viewed and applied in that light"³. This notwithstanding, if the publication or telecasting of any news item has the effect of offending the rights of any citizen, or bringing about any volatile situation in general, there are mechanisms provided under the law to take care of the situation. However any restrictions on freedom of speech, which takes in its fold, that of the press, or any steps in that direction must be on the basis of definite and irrefutable material. While freedom is the rule, restriction must be an exception.

10. Coming to the facts of the case on hand, the press and the media have documented the speeches alleged to have been made by Sri Akbaruddin Owaisi, MLA, at Nirmal and Nizamabad, the contents of which are said to constitute offences punishable under the Indian Penal Code. It is also an admitted fact that the process of law has already been set in motion in this regard and cases have been registered against the MLA which will eventually take their own course as per law. The issue presently is whether any grounds are made out, in terms of the restrictions envisaged by Article 19(2) of the Constitution, to muzzle the freedom of the press and the media from airing programmes in connection with this issue.

11. An adverse impact on public order or a propensity to incite commission of offences, constituting grounds for restriction of the freedom protected by Article 19(1)(a) of the Constitution, cannot be understood or applied in a vacuum. There must be a real threat perception in this regard before the State can invoke its powers under Article 19(2) of the Constitution. Though the incidents that we are concerned with are said to have taken place some time ago, the petitioner is not able to establish that they have created any discernible threat to the law and order situation or instigated commission of offences. But for a few sporadic demonstrations and utterances there has been no religious or communal strife or any threat to peace.

12. In [Ramesh Dalal Vs. Union of India \(UOI\) and Others](#), , popularly known as the "TAMAS case", Sabyasachi Mukharji, J., speaking for the Court, quoted with approval the following observations of Vivian Bose, J. in AIR 1947 1 (Nagpur) :

... that the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. This in our opinion is the correct approach in judging the effect of exhibition of a film or of reading a book. It is the standard of ordinary reasonable man or as they say in English law, "the man on the top of a Clampham omnibus".

13. Thus, applying the standard of the reasonable man's response to the press and media reports of the alleged speeches of the MLA, we find the party-in-person's apprehensions to be exaggerated and without basis. The sagacity and equilibrium shown by the general public in so far as this issue is concerned belie his fears.

14. We therefore find no grounds to interfere in the matter. The writ petition is accordingly dismissed. No costs.

2. Alexander Meiklejohn (February 1, 1872 - December 17, 1964) was a philosopher, University administrator, and free-speech advocate. He served as the Dean of Brown University and President of Amherst College.

3. Felix Frankfurter, Associate Justice of the Supreme Court of the United States.