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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 19th February, 2018

Pronounced on: 26th February, 2018

+ **W.P.(C) 9776/2017**

AJAY GAUTAM

.... Petitioner

Through: Petitioner in person

versus

PRESS COUNCIL OF INDIA

..... Respondents

Through: Mr. Manan Verma, Adv.
for R-1

Mr. Anil Soni, CGSC with Mr.
Nivesh Sharma, Adv. for R-2.

Mr. Rishi Kapoor and Mr. Satish
Rai, Adv. for R-3.

CORAM:-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR JUSTICE C. HARI SHANKAR

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(JUDGMENT)

C. HARI SHANKAR, J.

1. The petitioner, who claims to be a “priest doing his practice in accordance with Sanatan Dharam” has petitioned this Court, in public interest, venting his ire principally against the “Hindustan” and M/s. Reliance Industries Ltd. (hereinafter referred to as “RIL”). It may be immediately noted, here, that though the “Hindustan” has been arrayed as Respondent No.3 in these proceedings, the RIL has not been so arrayed.

2. The gravamen of the petitioner's grievance, qua both these entities is, however, substantially similar. The petitioner is aggrieved by the practice, being followed by the "Hindustan" and by RIL, of displaying the names, images and photographs, of high constitutional functionaries such as the President of India, the Prime Minister of India, the Home Minister, the Chief Minister, etc., in private advertisements, thereby conveying a misleading impression, to the public, that the product/products being advertised are endorsed or supported by the said functionaries. He has cited specific examples in this regard. It is stated that, on 20th February, 2016, an advertisement was published, by Mr. Kumar Swami and Mr. Arun Govil, the President and General Secretary of an organization known as the "Bhagwan Shree Lakshmi Narayan Dham", which contained photographs of the President of India, the Prime Minister of India and the Chief Minister of Himachal Pradesh, with their messages, and showed Mr. Kumar Swami conferring the "Brahmand Rattan Award" to the President of India. He claims that, on enquiry with the President's Secretariat as well as the Office of the Prime Minister, he was informed that no such award had actually been conferred on the President of India by Mr. Kumar Swami and that no such letter had been issued to Mr. Kumar Swami either.

3. He has also referred to other such advertisements, all of which figured in the "Hindustan"

4. The grievance of the petitioner, qua RIL, is directed against the usage, by RIL, of the name and photograph of the Prime Minister of India in an advertisement dated 21st July 2017, published in respect of its product “JIO”.

5. The petitioner states that he had represented against the above misleading and unauthorized usage of the names and images of high political and public functionaries in advertisements, etc. to various authorities, but that the said representations were merely deflected from one authority to other.

6. Para 9 of the writ petition acknowledges that the Press Council of India (impleaded as Respondent No. 1 herein), did issue a Show Cause Notice, dated 09th August 2017 under the Press Council (Enquiry Procedure) Rules 1979, to the Editor, “Hindustan”, to show cause as to why action not be initiated against it under Section 14 of the Press Council of India Act, 1978 (hereinafter referred to as “the PCI Act”). However, it is stated, no further action has been taken thereon, and illegal and unauthorized usage of the names and pictures/photographs, of high constitutional and political functionaries, in advertisements by various private parties seeking to promote or propagate their products/activities, continues unabated.

7. In these circumstances, the writ petition exhorts this Court to issue a writ of mandamus, prohibiting the publishing, telecasting and misuse of the photographs/names of the persons

holding constitutional posts, such as the President, Prime Minister, Home Minister, Governor, Chief Minister, Cabinet Minister etc., in private/classified advertisements.

8. We may advert, here, to one somewhat disquieting feature of this litigation. Though the petitioner has couched his writ petition as a public general interest litigation, generally complaining against the usage of photographs and names of persons holding constitutional posts, in private classified advertisements, we, on going through the representations annexed with the petition and referred to therein, find that they are in the nature of a single minded tirade, directed essentially against Mr. Arun Govil and Mr. Kumar Sharma, with respect to the advertisement published by them in the “Hindustan”. The writ petition annexes a representation, dated 30th May 2017 and a reminder thereto dated 19th June 2017, both addressed to the MIB, as the only representations, made by the petitioner before approaching this Court.

9. The representation dated 30th May 2017 first refers to certain guidelines, issued by the Supreme Court, regarding the usage and publication of photographs of political functionaries in Government advertisements, but complains that no such guidelines have been framed/issued, either by the Supreme Court or by any Government authority regarding usage of such photographs and messages in private advertisements aimed at securing personal gains, which, it has alleged, has resulted in

several persons openly misusing the names or photographs of such constitutional authorities with impunity.

10. Having made this generalized assertion, the representation goes on to recite, in paras 5 to 12 thereof is as under:-

“5. THAT for example, Sh. Kumar Swami, President and Sh. Arun Govil, General Secretary of Bhagwan Shree Lakshmi Narayan Dham, C-27, Greater Kailash Enclave-1, New Delhi-110048 having its Registered Office at Arihanta House, 5/120, Sant Nirankari Colony, Delhi-09, are not only openly misusing names and messages as well publishing photographs of the persons holding key constitutional posts, in their private advertisements of religious congregations for their ulterior motives, but they are also cheating the innocent people of the country by their misleading advertisements and it is virtually an exploitation of the people.

6. . THAT apart from misusing the names, photos and messages etc., of the persons holding constitutional posts in their private advertisements of the above said so-called religious organization and its office bearers, the other claims which they make through their respective advertisements are –

- (a) Devotees will be given a special mantra for treatment of all diseases;*
- (b) Deadly skin diseases e.g. dandruff and sikari etc., will be cured within one hour only;*
- (c) Dukh Nivarak Vibhuti Yog will be held in the congregation for immediate cure of all problems;*
- (d) Dukh Nivarak Adbhut Beejmantra will be distributed on the occasion of Holi for the first time;*
- (e) No medicine is fully effective without mantras; and*
- (f) Favoring judgment of Court after a gap of 23 years etc. etc. and other claims of curing deadly diseases.*

7. *THAT an advertisement was published by Shri Kumar Swami, President and Shri Arun Govil, General Sectary of Bhagwan Shree Lakshmi Narayan Dham, C-27, Greater Kailash Enclave-1, New Delhi-110048 having its Registered office at Arihanta House, 5/120, Sant Nirakari Colony, Delhi-09, in the newspaper Hindustan on 20.2.2016 and in this advertisement they have published a photograph according to which Shri Kumar Swami is shown giving Brahmand Rattan Award to the President of India. Thereafter applicant sought an information from the President's Secretariat on 22.3.2016 under Right to Information Act i.e. whether any such award as reported in the newspaper Hindustan on 20.2.20165 has been actually awarded to the Hon'ble president by Shri Kumar Swami or not? Thereafter President's Secretariat vide its letter no. 2058/RTI/15-16 dated 10.03.2016 replied that no such Award has been awarded to the Hon'ble President.*
8. *THAT thereafter another advertisement was published by the aforesaid organization and its office bearers in which they have published the Photographs and message of Shri Virbhadra Singh, Chief Minister of Himachal Pradesh. Thereafter Applicant sought an information from the Chief Minister's Office under Right to Information Act i.e. Whether consent of the Chief Minister was obtained prior to use/publication of his photograph and message in the advertisement and whether the claims made in the advertisement contravene the provisions of the Medical Remedies Act or not? Thereafter Chief Ministers office vide its letter no. 1-PR-HQ (A)-3-1/2013-Volume IV-RTI-3701 dated 31.3.2016 replied that no consent was ever given by the Office of the Chief Minister to Kumar Swani for publication of the*

message of the Chief Minister in the news paper Hindustan on 20.2.2016.

- 9. THAT thereafter another advertisement was published by the aforesaid organization and its office bearers in the newspaper Hindustan on 20.2.2016 in which they have published photograph and message of the Prime Minister, Shri Narendra Modi. Thereafter Applicant sought an information from the Prime Minister's Office under Right to Information Act i.e. Whether consent of the Prime Minister's Office was obtained prior to use/publication of his photograph and message in the advertisement? Thereafter Prime Minister's Office replied that no such letter or message has been issued to Kumar Swami.*
- 10. THAT the advertisements like above, have not been published by the aforesaid organization and its office bearers for the 1st time. In fact they have published several advertisements and they have been openly cheating and misleading innocent people of the country. Such advertisements were published on 15.3.2016, 10.3.2017 and on several other dates. These people have no fear of law.*
- 11. THAT result of the above is that a common man falls prey and becomes victim of such advertisements which carry messages and photographs of person holding Constitutional posts e.g. President, Prime Minister, Home Minister, Governor, Chief Minister, Cabinet Minister etc., in the private advertisements. Because such advertisements claim support of the persons holding constitutional posts. In this manner lakhs and crores of citizens of this country are exploited by such advertisements which depict messages and photos of the persons holding constitutional posts. Although the actual position stands revealed from the reply given under R.T.I.*

12. THAT though applicant through Shankacharya contacted aforesaid organization and its office bearers and repeatedly requested them to desist from their illegal activities. But they didn't pay any attention to the applicant's requests and on the contrary claimed that they have very high connections behind them. Hence applicant has been left with no other choice, but to submit their representation to your goodself."

The representation concludes with a prayer for issuance of directions completely banning publication, printing and misuse of photographs of persons holding constitutional posts, in private advertisements.

11. This was followed by a reminder dated 19th June 2017, which merely requests for a decision on the earlier representation dated 30th May 2017.

12. We do not find anything, in the writ petition or in the communications/representations annexed thereto, to indicate that the petitioner has, at any time or with any authority, voiced any grievance regarding the advertisement issued by RIL in respect of its product "JIO". It appears that, without approaching any authority in this regard, the petitioner has complained about the acts of RIL, for the first time in this Court, and that too, without impleading RIL as a party to the proceedings. In our view, this is totally impermissible. We, therefore, abjure from returning any finding with respect to RIL or the advertisement issued by it, reserving liberty however, to the petitioner, to re-agitate his

grievance in this regard, by separate proceedings, in accordance with law.

13. Counter-affidavits, in response to the writ petition have been filed by the Press Council of India and by the Ministry of Information & Broadcasting being Respondents 1 and 2 in the writ petition.

14. The Press Council of India has, in its counter-affidavit, adverted to the Show Cause Notice, dated 9th August, 2017 (*supra*) issued by it to the “Hindustan”, stating that, with the Show Cause Notice, a copy of the complaint of the petitioner was also attached. The counter-affidavit suggests that the petitioner ought to have awaited the outcome of the said proceedings, before moving this Court.

15. Respondent No. 2, the Ministry of Information and Broadcasting, has, in its counter affidavit, emphasized the fact that, while, as a matter of policy, the Union Government does not prefer to interfere with the working of the media, “Norms of Journalists’ Conduct” have been issued by the Press Council of India, which empower the Press Council of India to take cognizance, *suo motu*, as well as otherwise, of any infraction of the said Norms by the print media. Hence, it is averred that the appropriate authority, to be approached in such cases, is Respondent No. 1 i.e. the Press Council of India, which has also

been conferred powers, under Section 14 of the PCI Act, to admonish the newspaper agencies, news agencies, auditors or journalists for disapproved conduct, audit or journalism.

16. The counter affidavit of Respondent No. 2 further asserts that the subject matter of the writ petition is otherwise relatable to “**The Emblems and Names (Prevention of Improper Use) Act, 1950**”, Section 3 of which reads as under:

“3. Prohibition of improper use of certain emblems and names- Notwithstanding anything contained in any law for the time being in force, no person shall, except in such cases and under such conditions as may be prescribed by the Central Government, use, or continue to use, for the purpose of any trade, business, calling or profession or in the title of any patent, or in any trade mark or design, any name or emblem specified in the Schedule or any colourable imitation thereof without the previous permission of the Central Government or of such officer of Government as may be authorized in this behalf by the Central Government.”

(Emphasis by us)

17. It is averred, in the counter-affidavit of Respondent No.2, that an Advisory, dated 23rd February, 2017, was issued by the Registrar of Newspapers for India, functioning under Respondent No. 2, containing specific directions, to all publications, to adhere to the mandate of Section 3 of the aforesaid Act, the custodian of which is the Department of Consumer Affairs, Ministry of Public Distribution. Accordingly,

the counter affidavit of Respondent No. 2 also seeks substitution of the said Department as Respondent No. 2, in its place.

18. We may, for ready reference, reproduce the aforesaid advisory, dated 23rd February 2017, issued by the Registrar of Newspapers for India as under:-

Government of India
Ministry of Information and Broadcasting
Registrar of Newspapers for India

ADVISORY

File No. 5/DPR (RNI) 2017

23rd February, 2017

Sub: Adherence to the Emblems and Names (Prevention of Improper Use) Act, 1950, by Newspapers.

Instances have come to notice where some commercial organizations have released advertisement in newspapers promoting their brands or products using names or pictorial representation of emblems of institutions or individuals in contravention of the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950 and more specifically of Section 3 thereof.

Section -3 of the Emblems and Names (Prevention of Improper Use) Act, 1950 stipulates that “no person shall, except in such cases and under such conditions as may be prescribed by the Central Government, use, or continue to use, for the purpose of any trade, business, calling or profession, or in the title of any patent, or in any trade mark or design, any name or emblem specified in Schedule or any colourable imitation thereof without the previous permission of the Central Government or of such officer of Government as may be authorized in this behalf by the Central Government.”

Since an unauthorized use of the names or emblems has the potential to invite objections/legal action, it is requested that all publications should adhere to the provision of the act ibid and should check-up the permission/authority from Competent authority before issuing any advertisement wherein the Emblem and Names specified under the Act are mentioned.

s/d

(S.M. Khan)

*Registrar of Newspapers for India”
(Emphasis supplied)*

19. Apropos the issue that the petitioner seeks to flag, we note that the Press Council of India has been specifically conferred with the authority, both by the “Norms of Journalists” as well as by the PTI Act, to take appropriate action in cases of infraction of Section 14 of the Press Council Act, 1978, which reads thus:

“Section 14: Procedure in respect of complains etc. under Section 13- The procedure prescribed by these regulations in respect of complaints under Section 14(1) of the Act shall apply, as far as may be, to complaints or representations received by the Council with regard to any subject falling within the provisions of Section 13.

20. We also find that the **Press Council (Procedure of Enquiry) Rules, 1979**, provides a detailed procedure, for enquiry, on receipt of any complaint, which would lead the Press Council of India to believe that a newspaper or news agency has offended the standard of journalists’ ethics of public taste, or otherwise infringed the provisions of the Press Council Act, 1978, or any Norms issued by the Press Council of India thereunder. The said course of action, qua the complaint

received from the petitioner against the “Hindustan”, has already been set in motion in by the Press Council of India by issuance, to the “Hindustan”, of the Show Cause Notice dated 09th August 2017 (*supra*). In these circumstances, we find justification in the submission of the Press Council of India in its counter affidavit, that the petitioner has rushed to this Court, *vide* the present petition (which was filed on 30th August 2017), without waiting for the outcome of said proceedings.

21. While it may be true that, in an emergent case, it is open to a socially committed citizen to invoke the sanctified public interest jurisdiction conferred by Article 226 of the Constitution of India, without waiting for the executive to act, ordinarily, in all other cases, reasonable time should be granted, to the governmental authorities, to act on the grievance of the petitioner, before the petitioner knocks on the doors of the writ court. Assumption, by a writ court, of a function which statutorily vests in the executive, without allowing the executive a reasonable opportunity to discharge the same, would result in judicial overreach, which can be perilously counterproductive in the long run, bound, as it is, to instill, in the authorities concerned, a sense of complacency. The cause espoused by the petitioner merits consideration, but does not, in our view, admit of such urgency as would justify cognizance, by us, when the Press Council of India is already *in seisin* of the issue.

22. We are not, therefore, inclined to pass any directions, with respect to the petitioner's grievances, against Respondent No. 3 ("the Hindustan") as the matter is pending before the Press Council of India consequent to the Show Cause Notice dated 09th August 2017 (*supra*).

23. We hope and trust, however, that the Press Council of India would dispose of the said proceedings as expeditiously as possible, keeping in view the grievances urged by the petitioner and bearing in mind the purpose and import of the Press Council of India Act and the Emblems and Names (Prevention of Improper Use) Act, 1950.

24. We reiterate that, insofar as the petitioner's grievance against RIL is concerned, it would not be proper for us to pass any direction thereon, especially as the petitioner has not approached any competent authority with the said grievance, as also because RIL has not been impleaded in these proceedings.

25. The writ petition is disposed of in the above terms.

26. No order as to costs.

C. HARI SHANKAR, J.

ACTING CHIEF JUSTICE

FEBRUARY 26th, 2018

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This print replica of the raw text of the judgment is as appearing on court website (authoritative source)

Publisher has only added the Page para for convenience in referencing.