

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.2737 of 2017

(Arising out of order dated 13-9-2017 vide No.13/0009/1718-MR&C of the learned Director, Directorate of Advertising & Visual Publicity, Ministry of Information & Broadcasting, Government of India, New Delhi and also of order dated 3-3-2017 vide SI.No.15-H F.No.14/902/14-16-PCI of the learned Press Council of India with communication dated 17-7-2017)

Order reserved on: 7-11-2017

Order delivered on: 7-12-2017

Haribhoomi Communications Pvt. Limited, C-11, Rajouri Garden, Near Gurudwara, Ring Road, New Delhi-110027, Through Editor, Haribhoomi Daily Newspaper, Haribhoomi Complex, Tikrapara, Dhamtari Road, Raipur, District Raipur (C.G.)

---- Petitioner

Versus

1. Press Council of India, Through Its Chairman, Soochna Bhawan, 8-CGO Complex, Lodhi Road, New Delhi 110 003
2. Directorate of Advertisement and Visual Publicity (DAVP), Through its Director, Ministry of Information and Broadcasting, Phase-IV, Soochna Bhawan, 8-CGO Complex, Lodhi Road, New Delhi 110 003
3. Election Commission of India, Through its Under Secretary, Nirvachan Sadan, Ashoka Road, New Delhi, Delhi 110 001
4. Chief Electoral Officer, Chhattisgarh, Shastri Chowk, Old Mantralaya Premises, Raipur (C.G.)

---- Respondents

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For Petitioner: Mr. Kanak Tiwari, Senior Advocate with Mr. Vikash Dubey, Mr. Varun Sharma, Mr. Faiz Kazi and Mr. Rishabh Mishra, Advocates.

For Respondent No.1: None present.

For Respondent No.2: Mr. B. Gopa Kumar, Assistant Solicitor General of India.

For Respondents No.3 and 4: -  
Mr. Rajeev Shrivastava, Advocate.

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Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. "Hari Bhoomi" is a national level daily newspaper owned by Hari Bhoomi Communications Private Limited, the petitioner herein, which is a company registered under the provisions of the Indian Companies Act, 1956. The petitioner has filed this writ petition impugning legality, validity and correctness of order dated 3-3-2017 passed by Press Council of India (hereinafter called as 'PCI') and also calling in question the order dated 13-9-2017 passed by the Directorate of Advertising and Visual Publicity (hereinafter called as 'DAVP') suspending the petitioner from DAVP panel for a period of two months with effect from 13-9-2017 to 12-11-2017 in exercise of power conferred under Clause 25(d) of the Print Media Advertisement Policy, 2016, as procedurally ultra vires and contrary to law.

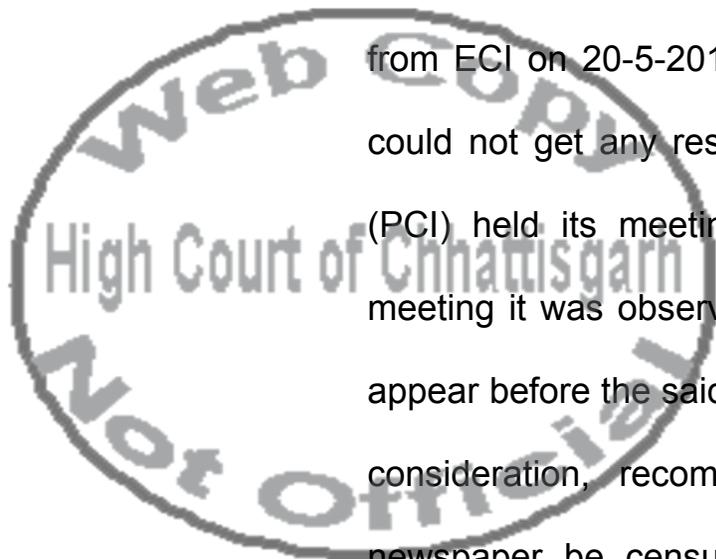
2. Essential facts, shorn of all paraphernalia to adjudicate legality and validity of the impugned orders, as mentioned herein-above, are as under: -

2.1) Election Commission of India (hereinafter called as 'ECI') issued notification for General Elections, 2014 on 5-3-2014. The election period can be presumed from 5-3-2014 to 28-5-2014. During the aforesaid period, on 12-4-2014, the newspaper owned by the petitioner namely Hari Bhoomi, Raipur Edition, published a news item under the caption "सरोज जीतेगी सवा दो लाख वोटो सें : प्रेम प्रकाश". A complaint to this effect was made and the said complaint was taken cognizance of by the Chief Electoral Officer (CEO), Chhattisgarh, which was forwarded by the CEO to the ECI and the ECI, acting

through Mr. S.K. Das, Under Secretary, ECI, forwarded it to the PCI terming the published news as suspected paid news case by memo dated 20-1-2015.

2.2) On receipt of the said letter along with the suspected case of published news from the ECI, PCI issued show cause notice to the petitioner on 18-4-2016 and getting no response, the matter was referred to the enquiry committee of PCI constituted under Section 8(1) of the Press Council Act, 1978 (hereinafter called as the 'PC Act'). The enquiry committee of PCI sought certain information from ECI on 20-5-2015 followed by reminder dated 3-7-2015, but could not get any response from ECI and the enquiry committee (PCI) held its meeting at Lucknow on 15-12-2016 and in that meeting it was observed that despite notice, the petitioner did not appear before the said committee and the said committee after due consideration, recommended to PCI that Dainik Hari Boomi newspaper be censured. PCI on consideration of record and recommendation of the enquiry committee, accepted the reasons and finding, and decided to censure the newspaper Hari Bhoomi by its order dated 3-3-2017 under Section 14(1) of the PC Act and also forwarded a copy to respondent No.2 DAVP for necessary action.

2.3) Respondent No.2 / DAVP in exercise of power conferred on the Director General, DAVP vide clause 25(d) of the Print Media Advertisement Policy, 2016, decided to suspend Hari Bhoomi newspaper from their panel for two months from 13-9-2017 to 12-



11-2017. Feeling aggrieved and dissatisfied with the order passed by PCI dated 3-3-2017 inflicting penalty of censure upon the petitioner's owned Hari Bhoomi daily newspaper and consequent action of the DAVP suspending the newspaper from DAVP panel for two months, this writ petition has been filed by the petitioner questioning legality, validity and correctness of the orders as unsustainable and bad in law.

2.4) Pursuant to the notice issued by this Court, notice was duly served along with the copy of writ petition to respondent No.1 (PCI) on 16-10-2017, but despite due service of notice with petition, no one has entered into appearance on its behalf

2.5) Respondent No.2 DAVP has filed its return opposing the writ petition justifying the suspension of empanelment of the petitioner for the purpose of issuance of advertisement for two months stating inter alia that the order has been passed on the basis of order dated 3-3-2017 passed by PCI under Section 14 of the PC Act.

2.6) Respondents No.3 and 4 have entered into appearance and filed their separate return stating inter alia that no relief has been sought against them and as the writ petition is mainly directed against the orders passed by the DAVP and PCI, therefore, the writ petition against them is not maintainable.

3. Mr. Kanak Tiwari, learned Senior Counsel appearing for the petitioner, would vehemently submit as under: -

1. The impugned order passed by PCI is procedurally ultra vires and manifestly illegal and contrary to facts and law available

on record.

2. While passing impugned order, none of the conditions laid down in Section 14 of the PC Act have been fulfilled, as only on the basis of alleged finding that paid news has been published, order under Section 14 of the PC Act has been passed imposing penalty of censure, whereas in order to impose censure under Section 14, PCI must have recorded a finding that the Council has reason to believe that the newspaper has offended against the standards of journalistic ethics or public taste or that an editor or a working journalist has committed any professional misconduct. None of these findings has been recorded and merely on the finding of publication of alleged paid news by the petitioner, the impugned order has been passed, which is liable to be set-aside.

3. No reasonable and adequate opportunity of hearing has been granted to the petitioner to defend itself while passing the impugned order passed by PCI and same is contrary to Section 14 of the PC Act read with the provisions contained in the Press Council (Procedure for Inquiry) (Amendment) Regulations, 2006, as the petitioner was neither served with notice nor served with the copy of the complaint allegedly forwarded by ECI to PCI. Therefore, the enquiry, if any, held beyond the back of the petitioner would amount to depriving the petitioner of a reasonable opportunity of being heard and



consequently, the impugned order passed by PCI is liable to be quashed.

4. Respondent No.2 DAVP has committed illegality in acting upon the alleged order of censure which was not an executable order.

5. The suspension of empanelment of the petitioner for two months in exercise of power conferred under clause 25(d) of the Print Media Advertisement Policy of the Government of India, 2016, is apparently illegal, as the said policy came into force with effect from 7-6-2016, whereas in case of the petitioner, the alleged news came to be published on 12-4-2014 and hence, this policy is not applicable in case of the petitioner. Even otherwise, under clause 25(d), a newspaper can be suspended from empanelment by the DAVP with immediate effect, if it is indulged in unethical practices as found by the Press Council of India or indulged in anti-national activities. PCI has not recorded any such finding that the petitioner at any point of time was found indulged in unethical practices or found indulged in anti-national activities. In absence of the condition precedent laid down in clause 25(d) of the Policy of 2016, the order suspending the petitioner from empanelment by the DAVP is absolutely without jurisdiction and without authority of law, even if it is held that the said Policy is applicable to the alleged paid news published as back as on 12-4-2014. Therefore, the

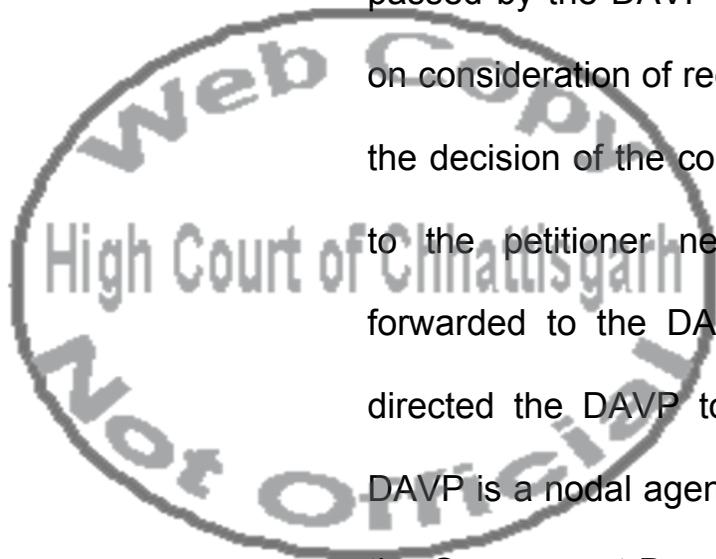


order of PCI as well as DAVP deserves to be quashed and consequential relief which the petitioner has suffered on account of suspension of empanelment for two months be granted to it by applying the principle of restitution.

4. None has entered into appearance on behalf of respondent No.1 despite due service of notice to Press Council of India.

5. Mr. B. Gopa Kumar, learned Assistant Solicitor General of India, appearing for respondent No.2, would support the impugned order passed by the DAVP and would submit that respondent No.1 PCI on consideration of records and reports of the committee accepting the decision of the committee, decided to inflict penalty of censure to the petitioner newspaper and the order of censure was forwarded to the DAVP for taking necessary action. PCI also directed the DAVP to submit action taken report and since the DAVP is a nodal agency of the Government of India for advertising the Government Departments / PCI, in accordance with the policy, the order passed by the DAVP suspending empanelment of advertising for two months is strictly in accordance with law and based on the order of PCI which is punitive punishment, as such, the order passed by the DAVP is strictly in accordance with law and the writ petition deserves to be dismissed.

6. Mr. Rajeev Shrivastava, learned counsel appearing for Election Commission of India (ECI), would support the impugned orders and would submit that ECI as per clause 8 of the circular dated 27-8-2012, finding the case to be the suspected case of paid news,



forwarded the matter to PCI for further action. In alternative, Mr. Shrivastava submits that the impugned order has been passed either by PCI or by the DAVP and therefore the relief as claimed by the petitioner in clause 10(iv) of the writ petition is not maintainable qua respondents No.3 and 4 and as such, the writ petition deserves to be dismissed.

7. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection and critically as well.

8. The Press Council Act, 1978 has been enacted to establish a Press Council for the purpose of preserving the freedom of the Press and of maintaining and improving the standards of newspaper and news agencies in India. Press Council of India is a statutory body, apart from performing the functions envisaged under Section 13 of the PC Act, it also performs quasi judicial functions and examines complaints in respect of news agency and other working journalists under Section 14(1) of the PC Act and in accordance with the Press Council (Procedure for Inquiry) Regulations, 1979 substituted by the Press Council (Procedure for Inquiry) (Amendment) Regulations, 2006 framed in exercise of powers conferred by clause (c) of Section 26 of the PC Act.

9. The Press Council of India is incorporated under Section 4 of the PC Act and its composition is provided under Section 5 as the Council shall consist of a Chairman and 28 other members. Section 8 of the PC Act provides for constitution of Committees of



the Council. Section 8(1) provides that for the purpose of performing its functions under this Act, the Council may constitute from among its members such Committees for general or special purposes as it may deem necessary and every Committee so constituted shall perform such functions as are assigned to it by the Council. Section 13, under Chapter III, provides for objects and functions of the Council. Chapter III also includes Section 14 which is power to censure and jurisdiction of the Press Council of India to pass the order of censure.

10. In order to appreciate the point in dispute and to decide the *lis* between the parties, it would be expedient to notice Section 14 of the PC Act. Section 14 (1) of the PC Act provides as under: -

**“14. Power to censure.—**(1) Where, on receipt of a complaint made to it or otherwise, the Council has reason to believe that a 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 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:

Provided that the Council may not take cognizance of a complaint if in the opinion of the Chairman, there is no sufficient ground for holding an inquiry.”

11. A focused glance of the aforesaid provision would show that on receipt of a complaint made to it or otherwise, the Council has reason to believe that a newspaper or news agency has,

1. offended against the standards of journalistic ethics, or
2. public taste, or
3. that an editor or a working journalist has committed any professional misconduct,

the Council may, after giving the newspaper, or news agency, the editor or journalist concerned an opportunity of being heard, hold an inquiry in such manner as may be provided by the Regulations of 1979 read with the Regulations of 2006 and, if it is satisfied that it is necessary so to do, it may, for reasons to be recorded in writing,

1. warn, admonish or censure the newspaper, the news agency, the editor, or the journalist or
2. disapprove the conduct of the editor or the journalist, as the case may.

The proviso appended to sub-section (1) of Section 14 of the PC act states that the Council may not take cognizance of a complaint if in the opinion of the Chairman, there is no sufficient ground for holding an inquiry.

12. The power to impose censure has been given to the Council. "Council" means a full Council, the composition of which is provided in Section 5(1) of the PC Act, as the Council shall consist of a Chairman and twenty-eight other members and censure can be done if the Council has reason to believe.
13. The expression "reason to believe" employed in Section 3(2)(j) of

the Essential Commodities Act, 1955, has been interpreted by the Supreme Court to mean that even though formation of opinion may be subjective but it must be based on material on the record. It cannot be arbitrary, capricious or whimsical. (See **N. Nagendra Rao & Co. v. State of A.P.**<sup>1</sup>.)

14. The expression “reason to believe” is not synonymous with subjective satisfaction of the Officer. The belief must be held in good faith, it cannot merely be a pretence. It is open to the court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section. (See **Pratap Singh v. Director of Enforcement**<sup>2</sup>.)

15. The conditions precedent for exercise of power by the Council who has reason to believe that a newspaper, as in the instant case, has offended against the standards of journalistic ethics or public taste by giving an opportunity of being heard and holding an enquiry in such manner as may be provided, after having satisfied either of the conditions precedent for exercise of power to censure, penalty of censure can be imposed.

16. At this place, it would be appropriate to mention the regulations framed for exercise of power under Section 14 i.e. the Press Council (Procedure for Inquiry) Regulations, 1979. In exercise of powers conferred by clause (c) of Section 26 of the PC Act, the Press Council of India had earlier enacted the Press Council

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1 (1994) 6 SCC 205

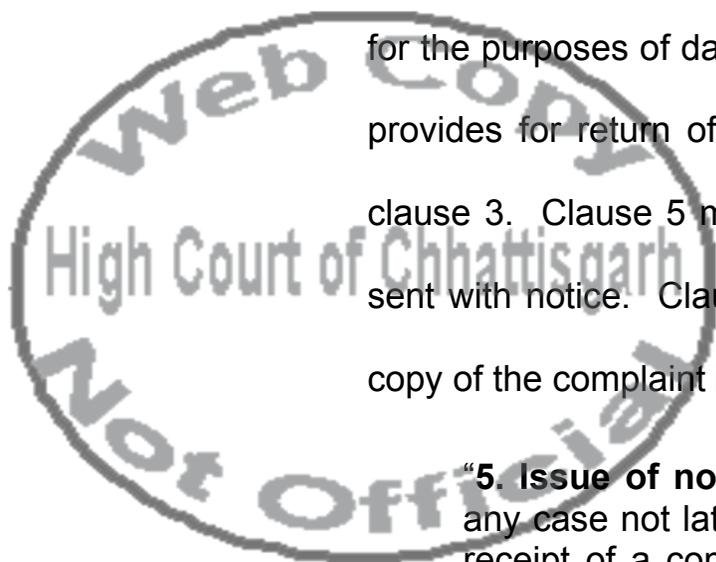
2 (1985) 3 SCC 72

(Procedure for Inquiry) Regulations, 1979 which have now been substituted by the Press Council (Procedure for Inquiry) (Amendment) Regulations, 2006 (hereinafter called as 'the Regulations, 2006'). The said Regulations, 2006 govern the field of inquiry by the Council. Clause 3(1)(c) of the Regulations, 2006, makes it obligatory to any complainant to firstly bring into notice of the publisher, the material which is considered as offensive by the complainant. Clause 3(1)(f) specifically provides for limitation for filing complaints which is two months from the date of publication for the purposes of dailies, news agencies and weeklies. Clause 4 provides for return of complaint, if not found in consonance with clause 3. Clause 5 mandates that copy of any complaint is to be sent with notice. Clause 5 of the Regulations, 2006 provides that copy of the complaint is to be sent with notice and states as under:-

**5. Issue of notice.—**(1) As soon as possible, and in any case not later than forty five days from the date of receipt of a complaint complete in all respects, under the direction of the Chairman, a copy thereof shall be sent to the newspaper, news agency, editor or other working journalist against which or whom the complaint has been made, under regulation 3 along with a notice requiring the newspaper, new agency, editor or other working journalist, as the case may be, to show cause why action should not be taken under Section 14 of the act.

Provided that in appropriate cases the Chairman shall have the discretion to extend time for the issuance of the notice.

Provided further that the Chairman may decide not to issue a notice to show cause to the newspaper, news agency, editor or working journalist where, in his opinion, there is no sufficient ground for holding an inquiry. The Council at its next meeting shall be apprised by the Chairman of the reasons for his decision not to issue a "Show Cause" notice and it may



pass such orders as it deems fit.

(2) The notice issued under sub-regulation (1) above shall be sent to the newspaper, news agency, editor or other working journalist concerned by registered post, acknowledgement due, at the address furnished in the complaint.”

17. The manner of sending notice by registered post with acknowledgement due at the address furnished in the complaint is also provided in sub-clause (2) of Clause 5 of the Regulations, 2006. Clauses 6, 7, 8 and 9 of the Regulations, 2006 pertain to enquiry by the Council which include getting written statement, additional particulars and enquiry by the Committee. Clauses 9 and 10 of the Regulations, 2006 provide as under: -

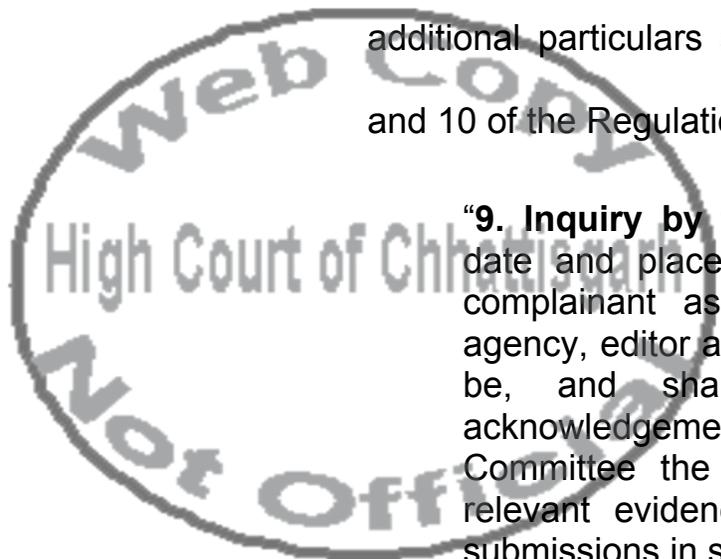
**“9. Inquiry by the Committee.**—Notice of the time, date and place of hearing shall be served on the complainant as well as on the newspaper, news agency, editor and working journalist, as the case may be, and shall be sent by registered post, acknowledgement due. In the inquiry before the Committee the parties shall be entitled to adduce relevant evidence, oral or documentary, and make submissions in support of their contentions.

(2) At the close of the Inquiry the Committee shall make a report of its findings on the allegations contained in the complaint together with its reasons and submit the record of the case to the Council.

**10. Decision by the Council.**—(1) The Council shall after perusing the record of the case, pass orders giving its decision or it may remit the case to the Committee for such further inquiry as the Council may deem necessary and after receipt of its report dispose of the case.

(2) Every case shall be determined by a majority of votes of the members of the Council present and voting, and in the event of the votes being equal, the Chairman shall have a casting vote and shall exercise the same.

(3) The order of the Council shall be communicated in

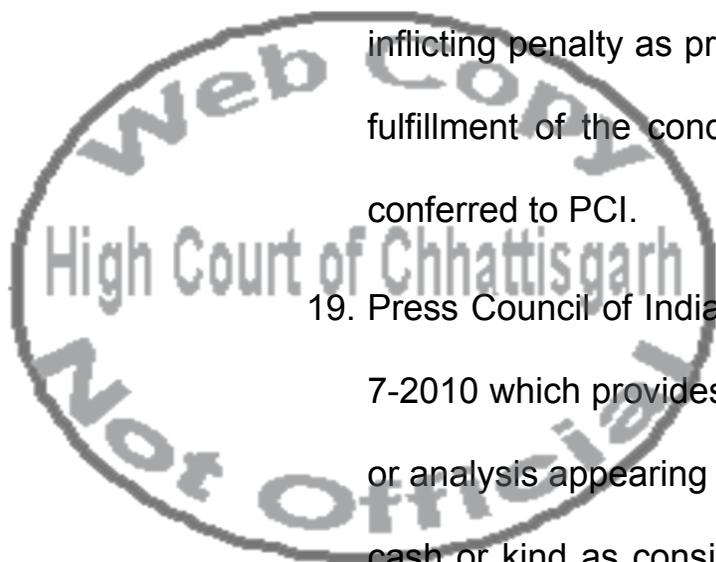


writing to the parties to the case.”

18. Clause 9 of the Regulations, 2006 enables the newspaper or news agency, as the case may be, that they are entitled to adduce relevant evidence, oral or documentary, and to make submissions in support of their contentions. Clause 10 provides for decision by the Council. But there is no clause pertaining to enforcement of order passed under Section 14 of the PC Act in clause 10 of the Regulations, 2006. Thus, a complete and full procedure has been prescribed under the Regulations, 2006 for holding enquiry and inflicting penalty as provided in Section 14 of the PC Act subject to fulfillment of the condition precedent for exercising the power so conferred to PCI.

19. Press Council of India has published a report on paid news on 30-7-2010 which provides that paid news can be defined as “any news or analysis appearing in any media (Print & Electronic) for a price in cash or kind as consideration”. The Press Council recommended that it (PCI) should be fully empowered to adjudicate the complaints of “paid news” and give final judgment in the matter.

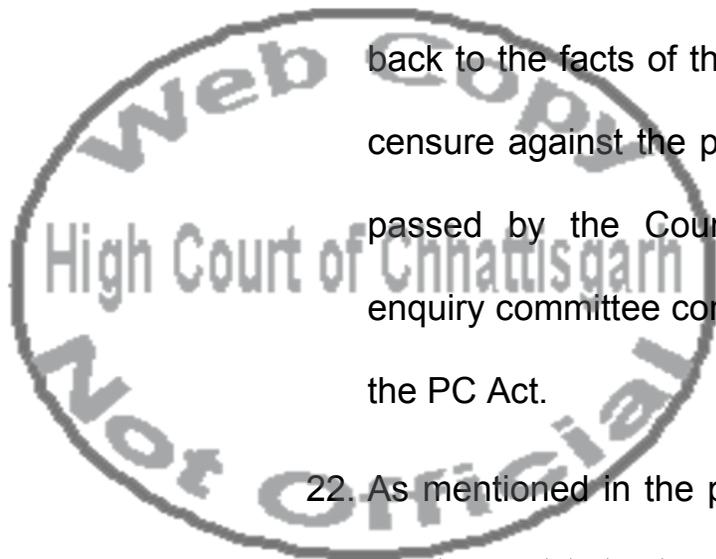
20. At this stage, it would also be pertinent to notice that Election Commission of India has issued notification dated 27-8-2012 providing measures to check 'paid news' during elections and issued revised guidelines and directed for constitution of District Level Media Certification and Monitoring Committee (MCMC) consisting of DEO / RO, ARO, Central Government I & B Ministry Official, Independent Citizen / Journalist as may be recorded by



PCI and DPRO / District Information Officer as Member Secretary and further directed constitution of State level MCMC. It further provides that appeal against the order of State level MCMC on paid news stating that wherever complaints on Paid News cases are made to the Commission directly, the Commission shall forward cases to the State level MCMC for initial consideration.

21. Having noticed the provisions contained in the PC Act for imposing penalty of censure and the manner of holding enquiry of such complaint by PCI under the Regulations, 2006, now, I would come back to the facts of the present case in hand in which the order of censure against the petitioner's newspaper Hari Bhoomi has been passed by the Council accepting the recommendation of the enquiry committee constituted under sub-section (1) of Section 8 of the PC Act.

22. As mentioned in the preceding paragraph, a news item "सरोज जीतेंगी सवा दो लाख वोटों से : प्रेम प्रकाश" was published in the Hari Bhoomi daily newspaper owned by the petitioner on 12-4-2014 and treating the same to be the suspected case of paid news, the Chief Electoral Officer of the State of Chhattisgarh forwarded it to the ECI for proceeding in accordance with law and the ECI, in turn, forwarded the matter by its memo dated 20-1-2015 to PCI and the PCI in turn, said to have issued notice to the petitioner on 18-4-2016, and it has been stated in the impugned order that the petitioner neither appeared nor filed any response. According to the petitioner, it has neither received copy of show cause notice nor copy of the



complaint forwarded by ECI to PCI. It is also the case of the petitioner that it was not served with notice by the enquiry committee of the PCI constituted under Section 8(1) of the PC Act as provided in Regulation 9 of the Regulations, 2006 enabling it to adduce relevant evidence, oral or documentary, and to make submissions in support of its contentions. It is also the case of the petitioner that even Regulation 3 of the Regulations, 2006 has not been complied with which provides for limitation of two months for the purpose of daily newspaper, as the case of the petitioner, and Regulation 3(1)(c) has also not been followed which makes it obligatory to any complainant to firstly bring it to the notice of the publisher, the material which is considered as offensive by the complainant.

23. The adjudication order passed by Press Council of India did not state whether clause 3 (1) (a) and (c) of the Regulations, 2006 has been complied with and any complaint has been brought to the notice of the petitioner by the complainant. Originally, it is the ECI which has forwarded the complaint to PCI and even the limitation provided in clause 3(1)(f) of the Regulations, 2006, of two months for daily newspaper has not been complied with, as the news is said to have been published on 12-4-2014 and notice is said to have been issued to the petitioner by PCI on 18-4-2016 much after the expiry of prescribed time limit and by the enquiry committee of PCI on 15-12-2016. Section 14(1) of the PC Act provides opportunity of being heard and to hold an enquiry in the manner as may be provided by the Regulations.

24. A Constitution Bench of the Supreme Court in the matter of **Khem Chand v. Union of India and others**<sup>3</sup> summarised the reasonable opportunity of hearing as provided in Article 311(2) of the Constitution of India by observing as under: -

“19. To summarise: the reasonable opportunity envisaged by the provision under consideration includes:

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally

(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant.”

25. At this stage, it would be appropriate to notice the authoritative pronouncement of the Supreme Court in the matter of **A. Madan Mohan v. Kalavakunta Chandrasekhara**<sup>4</sup> in which the Supreme Court has clearly held that statutes containing stringent provisions must be literally and strictly construed to promote object of the Act and observed as under: -

“12. It is a well settled principle of interpretation of statute that wherever a statute contains stringent provisions they, must be literally and strictly construed so as to promote the object of the Act. ...”

3 AIR 1958 SC 300

4 AIR 1984 SC 871

26. It is the basic principle of law long settled, that, if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in the matter of **Taylor v. Taylor**<sup>5</sup>, which was followed by Lord Roche in the matter of **Nazir Ahmed v. King Emperor**<sup>6</sup>, who stated as under: -

“Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.”

27. Similar is the proposition laid down in the matter of **State of U.P. v. Singhara Singh and others**<sup>7</sup> in which the Supreme Court has clearly held that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that the other methods of performance are necessarily forbidden.

28. A power under a statute has to be exercised in accordance with the provisions of the statute and in no other manner. (See **J.N. Ganatra v. Morvi Municipality, Morvi**<sup>8</sup> and **Commissioner of Income Tax, Mumbai v. Anjum M.H. Ghaswala and others**<sup>9</sup>.)

29. At this stage, it would be appropriate to notice Regulation 5 of the Regulations, 2006, which provides for sending of copy of the complaint to the newspaper along with notice requiring to show cause and notice shall be sent by registered post with acknowledgement due. This clearly shows that the provisions are in mandatory form. Regulation 9 of the Regulations, 2006 also

5 (1876) 1 Ch D 426

6 AIR 1936 PC 253 (2)

7 AIR 1964 SC 358

8 (1996) 9 SCC 495

9 (2002) 1 SCC 633

provides the right of the newspaper to adduce relevant oral and documentary evidence and to make submissions in support of its contentions.

30. A careful perusal of the impugned order would show that reasonable and sufficient opportunity of hearing has not been granted to the petitioner and the impugned order has been passed, as it has not been established on record that the petitioner was duly served along with copy of the complaint by PCI and the enquiry committee so constituted as well as Regulations 3(1)(c) and 3(1)(f) have not been complied with.

31. The law in this regard is well settled that an order of an authority exercising judicial or quasi-judicial powers passed in violation of principles of *audi alteram partem* is procedurally ultra vires, as it is the case of the petitioner that copy of the complaint was not supplied to it and as such the petitioner was deprived of adequate opportunity of defending himself effectively. (See **R.S. Naik v. Union of India**<sup>10</sup>.)

32. This would bring me to the next part of the order that is the order imposing penalty of censure. The condition precedent for imposing penalty of censure is that either newspaper concerned has offended against the standards of journalistic ethics or public taste or that an editor or a working journalist has committed any professional misconduct. PCI or its enquiry committee has even not conducted enquiry in this aspect of the matter that the petitioner newspaper has offended against the standards of journalistic ethics

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10 AIR 1994 SC 1558

or public taste and only conducted enquiry confined to publication of paid news by the petitioner's newspaper which is not the condition precedent for imposing the penalty of censure under Section 14 of the PC Act. Once the condition precedent for exercising the power is not fulfilled, the order becomes vulnerable. The finding of publication of paid news itself would not amount to offend the standards of journalistic ethics or public taste, as PCI itself has released the Norms of Journalistic Conduct such as fraudulent activities, plagiarism, unauthorised lifting of news, etc..

This is not the case here. Likewise, no finding with regard to public taste has been recorded. There is also no such finding that the Editor of Hari Bhoomi newspaper has committed any professional misconduct. Therefore, imposition of penalty of censure upon the petitioner's newspaper is contrary to law, following the law laid down by the Supreme Court in **A. Madan Mohan** (supra) in which Their Lordships have clearly held that wherever a statute contains stringent provisions, it must be literally and strictly construed so as to promote the object of the Act. Therefore, the order passed by PCI imposing censure runs contrary to Section 14 (1) of the PC Act and as such it deserves to be quashed.

33. This would bring me to the consequential order of suspension of empanelment of the petitioner from the DAVP panel passed by the DAVP, respondent No.2 herein, in exercise of power conferred under clause 25(d) of the Print Media Advertisement Policy of the Government of India, 2016.

34. The question would be whether the order of censure is an order executable by which a newspaper can be suspended from empanelment by the DAVP. The word “censure” has not been defined in the PC Act, therefore, it would be appropriate to refer dictionary meaning of “censure”.

35. According to the Black's Law Dictionary, Sixth Edition, the definition of the word 'censure' is as under: -

“**Censure** – The formal resolution of a legislative, administrative, or other body reprimanding a person, normally one of its own members, for specified conduct. An official reprimand or condemnation.”

36. Advanced Law Lexicon, 3<sup>rd</sup> Edition 2005 defines the word 'censure' as under: -

“**Censure** – Expression of disapproval. The word “censure” is synonymous with the words “reproach” and “obloquy”.

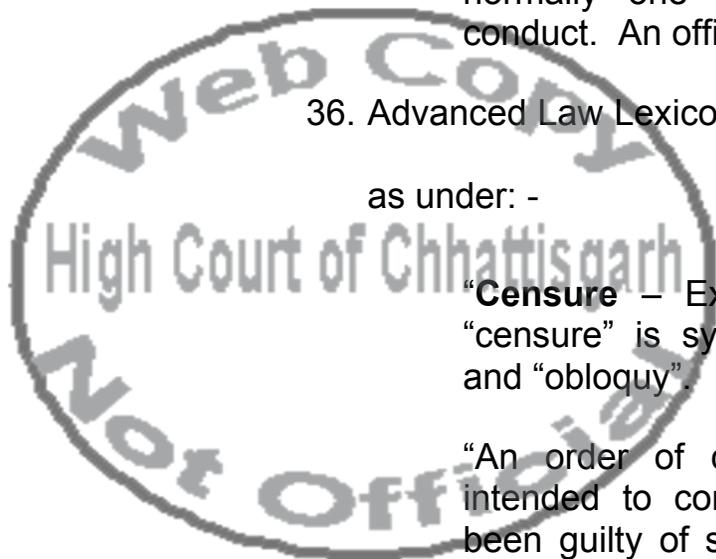
“An order of censure is a formal and public act intended to convey that the person concerned has been guilty of some blameworthy act or omission for which it has been found necessary to award him a formal punishment and nothing can amount to censure unless it is intended to be such a formal punishment and imposed for good and sufficient reasons”.

37. Longman Dictionary of Contemporary English defines the word 'censure' as under: -

“**Censure** – *n.* – Formal the act of expressing strong disapproval and criticism: a vote of censure.

“*v.* - Formal to officially criticize someone for something they have don wrong: He was officially censured for his handling of the situation.”

38. So censure is an act of expressing strong disapproval recorded by the competent authority and it is not an order to be acted upon, and



once order of censure is passed, it stands acted upon against a person or a company against whom it is passed and nothing remains to be executed by the other authority to whom it is forwarded.

39. The matter can be examined from another angle. The policy of the DAVP, 2016 i.e. the Print Media Advertisement Policy of the Government of India, 2016 came into force with effect from 7-6-2016. Here, in the instant case, paid news is allegedly published by the petitioner's newspaper on 12-4-2014, therefore, the policy in force at the date of publication of the said news has to be seen for imposing penalty on the basis of order of censure. Admittedly, the policy of 2016 came into force with effect from 7-6-2016 much later from the date of publication of the alleged paid news (that is 12-4-2014), therefore, the policy of 2016 cannot be made applicable retrospectively to the news published on 12-4-2014. Even otherwise, under clause 25 of the said policy, a newspaper may be suspended from empanelment by Pr. DG/DG, DAVP with immediate effect if the newspaper is indulged in unethical practices as found by the Press Council of India or indulged in anti-national activities. Again, it is not the finding and observation of PCI that the petitioner's newspaper Hari Bhoomi is found indulged in unethical practices or indulged in anti-national activities, except publication of paid news. No such finding has been recorded or forwarded by Press Council of India to the DAVP that the newspaper is involved in such an unethical practices or indulged in anti-national activities, the only finding of paid news has been



recorded and consequent penalty of censure has been imposed and forwarded by PCI to the DAVP. Unless the finding of having indulged in unethical practices or anti-national activities is recorded and forwarded by PCI, no order of suspension from empanelment can be passed by the DAVP exercising power under clause 25(d) of the Print Media Advertisement Policy, 2016. Therefore, examining the order of the DAVP from either of the angles, the inevitable conclusion is that the order passed by the DAVP is without jurisdiction and without authority of law.

40. At this stage, it would be most appropriate to notice the submissions made on behalf of the Press Council of India before the Supreme Court in the matter of **Ajay Goswami v. Union of India and others**<sup>11</sup> that the Press Council has no punitive powers and the DG, DAVP can impose penalty only if the newspapers found indulged in unethical practices or anti-national activities. Their Lordships of the Supreme Court recorded the statement of PCI as under :-

“25. Mr P.H. Parekh, learned counsel appearing for Respondent No.2, Press Council of India, submitted that the Press Council enjoys only limited authority, with its power limited to giving directions, censure etc. to the parties arraigned before it, to publish particulars relating to its enquiry and adjudication, etc. The powers of the Council insofar as its authority over the press is concerned are enumerated under [Section 14](#) of the Press Council Act, 1978. However, it has no further authority to ensure that its directions are complied with and its observations implemented by the erring parties. Lack of punitive powers with the Press Council has tied its hands in exercising control over the erring publications.

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11 (2007) 1 SCC 143

26. Learned counsel further submitted that despite various requests to the Central Government from the year 1999 to amend the [Press Council Act, 1978](#) the same has not been amended. Recently, on 1-6-2006, under clause 18(d), an advertisement policy was issued by the Directorate of Audio-Visual Publicity under the Central Government Advertisement Policy stating that the newspapers will be suspended from empanelment by DG, DAVP with immediate effect if it indulged in unethical practices or anti-national activities as found by the Press Council of India.”

41. The aforesaid statement made on behalf of the Press Council of India before the Supreme Court would make the things quite vivid that the Press Council of India has no punitive powers to ensure compliance of its direction and suspension from empanelment can only be made only if the newspaper is found indulged in unethical practices or anti-national activities as found by the Press Council of India which is blissfully missing in the instant case on account of no such finding having been recorded by the Press Council of India in its impugned order except directing imposition of censure which is not an executable order and which order has been held to be unsustainable in the preceding paragraph by this Court.

42. For the foregoing reasons, the order passed by the Press Council of India dated 3-3-2017 inflicting penalty of censure upon daily newspaper Hari Bhoomi owned by the petitioner Company and the consequential order passed by the DAVP dated 13-9-2017 suspending its empanelment for a period of two months from 13-9-2017 to 12-11-2017, are not only procedurally ultra vires, but substantially contrary to the provisions contained in Section 14 (1) of the PC Act read with Regulations 5 and 9 of the Regulations, 2006. Moreover, the order passed by the DAVP is without



jurisdiction and without authority of law.

43. As a fallout and consequence of afore-stated discussion, the order dated 3-3-2017 passed by PCI and the order dated 13-9-2017 passed by the DAVP are hereby quashed.

44. Now, the question is, what consequential relief can be granted to the petitioner, as on account of the order passed by the DAVP dated 13-9-2017, the petitioner has been deprived of getting advertisement for the aforesaid period of two months (from 13-9-2017 to 12-11-2017). Since the orders passed by PCI and the

DAVP have been quashed, the petitioner is at liberty to make representation before respondent No.2 for granting it additional / compensatory advertisement for the period for which he has been deprived of and similarly situated newspapers were granted on account of the order passed by the DAVP and in turn, the DAVP will consider and dispose of the said representation within two weeks from the date of submission of certified copy of this order and representation, strictly in accordance with law, keeping in view that the orders passed by it and PCI have been set aside by this Court and the petitioner has been deprived of the advertisement / other monetary benefits due to existence of the said order during the aforesaid period and that the matter remained pending before this Court.

45. The writ petition is allowed to the extent sketched herein-above, leaving the parties to bear their own cost(s).

Sd/-  
(Sanjay K. Agrawal)  
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.2737 of 2017

Haribhoomi Communications Pvt. Limited

Versus

Press Council of India and others

Head Note

Order passed by Press Council of India imposing penalty of censure on the daily newspaper – Haribhoomi on the finding of publication of paid news, is not covered under Section 14(1) of the Press Council Act, 1978.

शीर्ष टिप्पण

दैनिक समाचारपत्र हरिभूमि पर मूल्य प्राप्ति पर समाचार के प्रकाशन के निष्कर्ष पर परिनिंदा की अधिरोपित करते हुए भारतीय प्रेस परिषद द्वारा पारित आदेश शास्ति परिषद अधिनियम, 1978 की धारा 14(1) के अन्तर्गत समाविष्ट नहीं है।

