

The Management of 'The Hindu' Vs. the Working Journalists of 'The Hindu' and Anr.

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Court : Chennai

Decided On : Apr-07-1959

Reported in : (1959)2MLJ272

Appellant : The Management of 'The Hindu'

Respondent : The Working Journalists of 'The Hindu' and Anr.

Judgement :

ORDER

Balakrishna Ayyar, J.

1. From about the middle of 1950 R. Narasimhan was a Sub-editor of The Hindu. It was part of his duties to edit the reports of mofussil correspondents of the paper from the Tamil Nad area. On 23rd June, 1957 C.R. Sampath, the Salem Correspondent of The Hindu, sent a report which ran as follows:

KrishnasWami Chetti, a member of the local Dravida Munnetra Kazhagam, was stabbed with a knife on June 21, at 1 a.m. near Salem Market Railway Station and received injuries on the hand and stomach. He was admitted into Government Headquarters Hospital and was later discharged. In his complaint to the police, the injured man stated that he was stabbed by one Anbananciam, belonging to Dravida Kazhagam, due to party feelings. Sub-Inspector S. Gopalakrishnan of

Shevapet has registered a case under Section 324, Indian Penal Code (voluntarily causing hurt by dangerous weapons) against Anbanandam. No arrest have (sic) been made so far.

News exclusive to The Hindu : Security proceedings under Section 145, Criminal Procedure Code (sic) has been launched against the D.M.K. and D.K. members of the locality regarding Self-Respecters Association Buildings. The trial comes before R.D.O., Salem, on 24th June, 1957.

R. Narasimhan edited this report and published it in The Hindu, dated 24th June 1957, in the following form:

Mr. KrishnasWami Chetti, a member of the local Dravida Munnetra Kazhagam, died of stabbed (sic) injuries on June 21.

In a declaration to the Police, Mr. Krishnaswami Chetti had stated that he was stabbed in the stomach and hand near the Salem Market Railway Station by a Dravida Kazhagamite.

It will be noticed that during the process of editing, the story underwent a complete metamorphosis. A case of hurt grew into a case of murder. The Salem correspondent had merely stated that Krishnaswami Chetti had been stabbed with a knife, and, he had clearly mentioned in his report that Krishnaswami Chetti was later discharged from the Government Hospital into which he had been admitted. In the news, as Narasimhan edited it, it was made to appear that Krishnaswami Chetti had died of stab-injuries. When copies of the paper containing the news as edited by Narasimhan reached Salem the local correspondent of The Hindi appears to have been put to some annoyance and on 25th June, 1957, he wrote to the Editor taking exception to the news as published. The Chief News Editor called for the explanation of Narasimhan who admitted:

I edited the Salem copy under the mistaken impression that the man had died of stab-injuries' I regret the error.

2. The Chief News Editor could take no action against Narasimhan himself, so on 5th July, 1957, he placed the papers before the Chief Editor on his return from

abroad. On 9th July, 1957, the Chief Editor called upon Narasimhan to show cause why he should not be removed from service. In that notice he set out the report which Sampath had sent from Salem and the news as edited by Narasimhan, and then, observed:

You will realise that this is a very serious matter. In the state of tension that exists between the D.M.K. party and D.K. party in Salem and other places and having regard to the fact that security proceedings have been taken by the police against the D.M.K. party, and D.K. party as stated by the correspondent in that report the wrong information published in The Hindu might have easily led to a flare-up and our Salem correspondent might have been exposed to serious risk. Your editing of the report and its publication in The Hindu are also calculated to undermine the reputation of our newspaper for accuracy of news.

Having regard to the clear and unambiguous report of our Salem correspondent it is impossible to understand how any one could have mutilated that report and edited it in the way you have done. It shows a degree of irresponsibility or utter incompetence for the job on your part which the management cannot be expected to condone.

3. The Editor also pointed out:

This is not the first time you have exhibited such irresponsibility in the discharge of your duties. You had committed a number of mistakes in the past in editing the reports. You will remember that in January, 1956, you were severely warned by the Managing Editor and you were definitely informed that drastic action would be taken against you if you were found to be careless in your work again. In July, 1956, you were warned by the Editor and told that repetition of such mistake would compel the Management to take severe action against you. All these warnings seem to have had no effect on you, as is shown by your editing of the report of the Salem incident.

4. The notice went on to say that the Management was unable to accept Narasimhan's explanation that he was under a mistaken impression that the man had died.

5. On 11th July, 1957, Narasimhan submitted an explanation in the course of which he stated:

I submit that the mistake was due to an impression I had wrongly got that the man had died of the injuries.

6. He also mentioned that he showed the edited copy

to my senior colleague Sri P.K. Balasubramaniam, who approved it, also evidently under the same mistaken impression.

7. He further explained:

It is a well-known fact that, despite the most perfectly devised machinery, mistakes of this kind occur in the best newspapers in the world. I do not seek to defend mistakes; I am merely pointing out that the pressure in a newspaper office where we work to a deadline is such that it is in the very nature of things for mistakes to creep in. This can be verified from the records of any office, including ours....

I Wish to submit that the punishment you contemplate, namely, the termination of my services, bears no relation to the offence. Even this mistake, I may add, does not warrant the charge that you have chosen to make that I have been irresponsible or displayed incompetence in the discharge of my duties. All my colleagues, including those in a supervisory capacity, I am confident, will bear testimony to the fact that I am a very competent sub-editor and that I am among the very few subeditors in The Hindu who have handled every kind of news-item 'as may be seen from the news allocation register), and have not been found deficient in any o the departments. It is against this background that I firmly repudiate your allegation that my editing of the item was 'calculated to undermine the reputation of our newspaper for accuracy of news'. It must be obvious that my personal reputation is as much involved and I submit it is wrong to suggest that any Working journalist will deliberately place himself in such a position.

May I also submit in this connection that similar and sometimes even graver mistakes have occurred in The Hindu in the past and that no such drastic action was contemplated, let alone taken action against the employees responsible for

them. The procedure adopted in all those cases was to draw the attention of the person concerned to the mistake and administer a warning. That is why I am compelled to express my surprise that in my case alone you have chosen to hold out a threat of removal from service, unless it be that this is part of the attempts you have been making for over a year now to force me to abandon my trade union activities. When the Madras Union of Journalists, of Which I was the then Vice-President, and of which I am now the General Secretary, raised a dispute regarding proof-readers, you called me to your room and rudely rebuked me for having been a party to the decision to fight the case in Court. On another occasion when you came to know that I was responsible for the formation of the Hindu Office and National Press Employees' Union, you charged me with indulging in 'subversive activities'. All these facts cannot but compel me to draw the conclusion that the threatened drastic action is meant more as a punishment for my trade union activity rather than for the mistake committed. This feeling is further strengthened by the fact that on the same day as the notice was issued to me you have pulled up several other colleagues who are members of the Madras Union of Journalists for mistake of a kind that Were not taken serious notice of in the past-all immediately after the conclusion of the Protest Week, sponsored by the Madras Union of Journalists.

It is clear that Narasimhan was trying to establish that the Management was trying to victimise him for his trade union activities.

8. On 12th July, 1957, the Editor passed an order which ran as follows:

The Managing Editor considers that the explanation you have given in your reply of the 11 th instant is unacceptable. Your reply deliberately ignores the fact that on previous occasions you were warned and you were definitely informed that drastic action would be taken against you in case you were again found to be careless in your work.

The Managing Editor repudiates the various irrelevant and false allegations contained in your reply. The statement in your reply that the Editor had been making attempts for over a year to force you to abandon your trade union activities, that your were called to his room and rudely rebuked for having been a

party to fight the proof-readers' case in Court and that on another occasion you were charged by the Editor with indulging in ' subversive activities ' is false. The conclusion you have built on these false premises, namely, that you are being punished for your trade union activities rather than for the mistake committed is therefore untenable.

In the circumstances the Management have decided to terminate your services and your services are accordingly terminated with effect from 14th July, 1957. The Management is, however, prepared to permit you to resign your job with effect from 14th instant and if you accordingly submit your resignation before 5 p.m. on 13th instant your resignation will be accepted.

9. Narasimhan, however, did not avail himself of the option to resign which this letter gave him. The result of it was that his services stood terminated with effect from 14th July, 1957.

10. On 12 th July, 1957, the day on which the Editor passed the order I have quoted above some fifteen Working Journalists of The Hindu prepared a petition in the course of which they stated:

We know that Mr. R. Narasimhan's mistake regarding a Salem item was unfortunate. But he is conscientious in the discharge of his duties and indeed it was his desire to edit copy as Well as he could that made him rewrite the correspondent's copy. In doing so, he made a mistake, thus altering the sense of the report. This is a kind of mistake for which there is no excuse but Which any of us is likely to commit. We pray that you kindly see your Way to forgiving him this time.

11. The Labour Court, however, found:

The receipt of it is denied by the Management and there is no sufficient proof that it was actually handed over to the Editor.

12. On 13th July, 1957, the Working Journalists of The Hindu belonging to the Madras Union of Journalists resolved to go on strike with effect from the following day and to remain on strike till the order terminating the services of Narasimhan

was suspended and the matter was considered afresh. Later the same day the Executive Committee of the Madras Union of Journalists passed a resolution giving full support to the decision taken by the Working Journalists of The Hindu. It called upon all the Working Journalists and all other newspaper employees in this State and elsewhere to rally behind the employees of The Hindu ' in this hour of trial'. No strike, however, materialised because, as I was told, conciliation proceedings were initiated. On 14th July, 1957, the Madras Union of Journalists wrote to the Management of The Hindu that for the reasons stated in that letter they were calling off the strike.

13. On 17th July, 1957, Government passed an order referring the following question for determination to the Labour Court, Madras:

Whether the termination of services of Sri R. Narasimhan, sub-editor, is justified and to what relief he is entitled.

The order of reference contained two mistakes. One consisted in overlooking the provisions of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955. The other consisted in assuming that Narasimhan was a workman within the meaning of Section 2(s) of the Industrial Disputes Act. On 20th September, 1957, Government passed another order amending their earlier order rectifying these two mistakes.

14. On nth November, 1957, Mr. Ramamurthi who appeared for The Hindu in the Labour Court raised the preliminary objection that after the amendment which Government had made on 20th September, 1957, the dispute, should be treated as a new dispute as new parties had been substituted as a result of the amendment. On that the Labour Court recorded the following order ;

Mr. Viswanathan has no objection to this course. So this is treated by consent as a new dispute under the amended reference. The parties have filed a joint consent memo, saying that all proceedings taken prior or the amendment shall be deemed to be proceedings in the new dispute. Mr. Ramamurthi wants to file an additional counter and he is directed to do so in a Week and reply if any to be filed in a week thereafter. This dispute is posted for framing additional issues if any on 28th

November, 1957.

15. On 18th November, 1957, the Management of of The Hindu filed a counter in the course of which they stated:

The dispute referred is one affecting an individual, viz., Sri R. Narasimhan and not one affecting the employees of The Hindu as a Whole or a considerable section of those employees. The employees of The Hindu as a whole or of the editorial department to which Sri R. Narasimhan belonged have not made common cause with Mr. Narasimhan and treated his dispute with the Management as their own....

The mere fact that the Madras Union of Journalists has taken up the cause of Sri R. Narasimhan will not make the dispute one between the Working Journalists of The Hindu and the Management. The Madras Union of Journalists is not connected with any particular newspaper establishment Its membership is open to all journalists in the Madras, State. The allegation in the Claims Statement that the majority of Working Journalists employed in The Hindu are members of the Madras Union of Journalists is not correct. The Madras Union of Journalists is, therefore, not competent to represent or speak on behalf of the Working Journalists of The Hindu.

16. On 25th November, 1957, the Union filed a reply in the course of which they stated:

The dispute referred by the State Government for adjudication by this Hon'ble Court in an industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act, read with Section 3(1) of the Working Journalists Act. The Union submits that the dispute referred for adjudication is one taken up by the Madras Union of Journalists which has among its members Working Journalists from various different newspaper establishments, including The Hindu....

The Union submits that there is a dispute between the Working Journalists of The Hindu and the Management within the meaning of Section 2(k) of the Industrial Disputes Act, read with Section 3(1) of the Working Journalists Act. In any event, in view of the fact that at no previous stage was this questioned at all, and in view

of the fact that the dispute was referred by the Government for adjudication as a dispute between the Working Journalists of The Hindu and the Management, the burden will now rest upon the Management to show that there is no dispute....

The Union further puts the Management to strict proof of its assertion that the Working Journalists of The Hindu had not collectively espoused the cause of Sri R. Narasimhan.

On 28th November, 1957, G. Narasimhan, the Manager of The Hindu, swore to an affidavit in the course of which he stated that the editorial staff of The Hindu comprised 36 members, that besides, there were 22 reporters, and, that the number of proofreaders was 31. Out of these, 29 members of the editorial staff and 18 of the reporters had signed and sent a letter to The Hindu, a Photostat copy of which was attached. Likewise, 23 out of the 31 proof-readers had sent a letter to the Editor of which Exhibit B was a Photostat copy. In the affidavit it was also stated that on 13th November, 1957, Narasimhan had obtained the signatures of some of the members of the editorial staff and of the reporters and proof-readers to a certain document, and that some of the individuals who had signed that document had written to the Editor of The Hindu withdrawing their signatures and explaining that they had signed the document under a wrong impression. Photostat copies of those letters were also attached. The affidavit concluded ;

The exhibits speak for themselves and afford very clear evidence that there is no dispute at all between the Working Journalists of The Hindu and the Management with reference to the termination of service of Mr. R. Narasimhan and that the vast majority of the Working Journalists of The Hindu do not make common cause with him or the Madras Union of Journalists and that they are of opinion that the allegation as to Mr. R. Narasimhan being victimised by the Editor is unfounded.

On 3rd December, 1957, the Labour Court framed this additional issue:

Is there no industrial dispute between the Working Journalists of The Hindu on the one hand and the Management of The Hindu on the other in relation to the termination of the services of Sri R. Narasimhan as contended by the

Management

On 20th December, 1957, 25 persons employed in the Proof-Examiners Department of The Hindu swore to an affidavit, in the course of which they stated:

The dispute between Sri R. Narasimhan and the Management of The Hindu regarding the termination of the service of the former is purely his affair. We have not made common cause with him in regard to that matter or adopted his dispute as our own. We do not either individually or collectively support Sri R. Narasimhan in that dispute or the stand taken by him and the Madras Union of Journalists in that regard.

The same day 29 persons employed in the editorial staff of The Hindu also swore to an affidavit to the same effect. On 21st December, 1957, 4 reporters of The Hindu also swore to an affidavit in the same terms. On 26th December, 1957, the Labour Court insisted that the deponents of these affidavits should be called as witnesses. In pursuance of that order some 41 persons were examined and they adhered to their affidavits.

17. On 7th December, 1958, the Union filed a memo, in these terms:

In view of the fact that, out of the seventy-six signatures to the affidavits, dated 20th December, 1957' the 23 witnesses so far examined have given detailed evidence regarding the circumstances in which the affidavits were signed, the Union dispenses with the production of the witnesses mentioned in Schedule A and requests that only the witnesses mentioned in Schedule B be produced by the respondent for examination. The Union accepts the affidavits and letters M-1 to M-9 in respect of the persons mentioned in Schedule A whose presence in Court has been dispensed with.

Accordingly 18 out of the 20 persons mentioned in Schedule B attached to the memo. were examined. The resulting position has been summarised in this manner by the Labour Court:

Therefore it must be found that 75 out of 100 working journalists of this concern have given evidence saying that they are not now supporting this dispute. About

45 to 50 of them are persons who Were parties either to the resolution or to Exhibit W-2 and their evidence must be treated as a Withdrawal of their support even though some of them have deposed to the effect that they never supported the cause, that they were never aware of the resolution and that they were under misapprehension about the true facts when they signed the Exhibit W-2 or that their signatures were obtained in Exhibit W-2 under express promises that it should not be used in the Court.

18. Before the Labour Court a contention appears to have been put forward to the effect that the Management must have exercised undue influence and exerted undue pressure on its employees ; that is why they no longer supported the cause of Narasimhan. On this the Labour Court observed:

In view of my finding on the other main point put forward by him it is unnecessary to discuss this contention in detail. There is no sufficient and reliable evidence to come to a finding that the Editor exercised any undue influence or pressure or threatened those who attended the conference. No doubt M.W. 32 deposed that when he saw other people signing Exhibit M-6 he thought it better to sign it under the impression that he might lose his employment as he was liable to commit mistakes often. The Editor cannot be made responsible for the thoughts of this witness, as there is nothing to show that he was one of those Who at least attended the Editor's Conference. On the evidence relating to the conference it is not possible for me to find that any undue influence or pressure was used on these Working Journalists. Evidently as soon as these persons came to know that the Editor was feeling sore about their supporting Sri Narasimhan's cause they immediately began to withdraw their support, probably feeling that it was better for them to throw their lot on the side of the Management rather than the union or Sri Narasimhan. It only demonstrates the lack of grit and trade union spirit, and their over-anxiety to please the employer.

19. On the first sentence in this paragraph I would make only one comment. To the extent that it suggests that undue influence was exerted on the employees by the Management it is inconsistent with the observations made earlier in the same paragraph that

it is not possible for me to find that any undue influence or pressure was used on these Working Journalists.

20. In view of the fact that 75 out of 90 Working Journalists had made it plain that they no longer supported the cause of Narasimhan, Mr. Ramamurthi on behalf of the Management contended before the Labour Court that the dispute had ceased to be an industrial dispute and that therefore the Labour Court had no jurisdiction to proceed further in the matter.

21. Mr. Mohan Kumaramangalam on the other side argued that the additional issue framed on 3rd December, 1957, should be decided with reference to the facts at the time the Government made the reference and that subsequent facts should not be taken into account.

22. On these contentions the Labour Court reached this conclusion:

I am inclined to accept the contention of Sri Kumaramangalam that the crucial date for deciding about the existence of an industrial dispute is the date of reference as admitted by the Management in their counter. The fact that the supporters have withdrawn their support makes no difference and does not convert this dispute into an individual dispute. I am also of the view that once a proper industrial dispute is referred for adjudication the only course open to the Labour Court is to decide it unless the parties choose to settle it among themselves. I am therefore unable to uphold the contentions of the Management that it is no longer necessary to adjudicate this dispute and that it had ceased to be an industrial dispute.

23. The question I have to decide is whether a Labour Court would have jurisdiction to proceed with the adjudication of an industrial dispute when the dispute loses its character as an industrial dispute and becomes an individual dispute. There are no decisions directly on this point. Reference was made to P. S. Mills Ltd. v. P.S. Mills Mazdoor Union : (1957)ILLJ235SC but it has really no application here. So far as that case may be said to have any bearing on the problem before me, all that it decided was this.

We think that on a true construction of Section 3, the power of the Slate to make a reference under that section must be determined with reference not to the date on which it is made but to the date on which the right which is the subject-matter of the dispute arises, and that the machinery provided under the Act would be available for working out the rights which had accrued prior to the dissolution of the business.

But that is not the question I have to decide here.

24. Mr. Ramamurthi argued that a Labour Court has jurisdiction only over industrial disputes and that once it is established that a dispute is not an industrial dispute or that it has ceased to be an industrial dispute, the Labour Court would have no jurisdiction to proceed further in the matter.

25. Mr. Kumaramangalam, however, replied that the duties of a Labour Court and of an Industrial Tribunal are laid down in Section 15 of the Industrial Disputes Act and that once a reference is made by Government under Section 10 of the Act, the Court or Tribunal must go on to pass its award. He did not dispute that a Labour Court or Tribunal cannot refuse to take notice of subsequent events, but he contended that it cannot take notice of subsequent events which affect its jurisdiction. He argued that otherwise employers might try to win over employees to their side so as to make it appear that the dispute has ceased to be an industrial dispute, and, contrariwise, the employees in their turn might try to win back their colleagues who had gone over to the side of the Management, and, that such a see-saw battle might go on indefinitely.

26. When considering these arguments two circumstances must be borne in mind. One is that the jurisdiction of a Labour Court or Labour Tribunal is not a general jurisdiction like that of an ordinary civil Court: it is a limited jurisdiction, limited by the statute which has created it. The statute confers on it power to deal with disputes of a particular class, viz., industrial disputes, and, once a dispute goes out of that category it would normally lose its jurisdiction to proceed further in the matter. In the present case, during the pendency of the proceedings before the Labour Court, the dispute which was referred to it lost its character as an industrial dispute and ceased to be such. The second consideration that must be borne in

mind is that Courts cannot issue orders in a vacuum, that they must deal with the actual facts before them and that to refuse to take notice of facts subsequent to the date on which a Court takes cognizance of a matter would be to act very unrealistically. Let us take the familiar case of a suit for partition. The plaintiff or the defendant dies. The Court directs that his legal representative should be brought on record. The Court does not say that it will not take notice of the death of the plaintiff or of the defendant. During the pendency of the suit some part of the property may be destroyed. In passing its final order the Court will not refuse to take notice of that fact. Again, during the pendency of the suit legislation may have been enacted cutting down the amount of money that might otherwise have been available to the family whose properties are sought to be partitioned. The Court will not say that it will not take notice of the fact, but will proceed on the basis that the money due to the family was as it stood on the date the suit was instituted. Let us take another kind of proceeding. A petition is filed to appoint a guardian for a minor. During the pendency of the proceedings the minor attains majority. Surely, thereafter the Court will not appoint a guardian for the minor. An application may be made for appointing a manager of the estate of a person of unsound mind. During the pendency of the proceedings the person concerned may become sane. No Court will say that it will proceed on the basis of the facts as they stood on the date when the petition was taken on file and that it will appoint a manager for the person's estate. Yet again, an application may be made for the leave of the Court to marry a ward of Court to a particular person. At the time the petition is presented the person proposed may have appeared to be eminently suitable. But subsequent events may show that the proposal is one to which the Court should not give its sanction. The person to whom it was first proposed that the ward might be married may have in the meantime become bankrupt or he may have been convicted for some offence, or, for some other reason it might be discovered that he is a most undesirable person. Surely no Court would insist that the matter should be dealt, with as on the date on which the application was presented. Courts have to mould their remedies to actual facts, and, it seems to me, that a Labour Court, just like any other Court, must take notice of facts which have happened after the institution of the proceedings.

27. Mr. Mohan Kumaramangalam, however, contended that these considerations would not apply to facts which affect jurisdiction. As I said before, no authority appears to exist on this question and Mr. Kumaramangalam was not able to suggest on what principle a distinction should be drawn between facts affecting jurisdiction and other facts. I find it difficult to discover any. Let us take our criminal Courts. A Second Class Magistrate has jurisdiction to try an offence under Section 324, Indian Penal Code, but he has no jurisdiction to try an offence under 326, Indian Penal Code. Let us take this case. A person complains to a Second Class Magistrate that he has been stabbed. The Magistrate takes the case on file and issues summons to the accused. But later it is found that the injuries are such that the complainant has to stay in hospital for more than 21 days. When that happened the offence would fall under Section 236, Indian Penal Code and the Second Class Magistrate would have no jurisdiction to try the accused for that offence. Here we have a case where after the Magistrate assumes jurisdiction events have happened which deprive him of jurisdiction. Numerous similar instances can be cited from the criminal law. And, I see no reason why this principle should not be applied to Labour Courts also. Let us suppose that the question whether a particular workman who has been discharged should be reinstated is referred to a Labour Court. During the pendency of the proceedings the man dies. It does not seem to be very reasonable to insist that the Labour Court should go on and pass an award directing that he should be reinstated if in its view his original discharge was improper. (The question of any moneys payable to him or his estate would of course stand on a different footing). Section 15 of the Industrial Disputes Act does not require that futile orders should be passed.

28. As for the objection of Mr. Mohan Kumaramangalam that if Labour Courts are allowed to take notice of facts that may happen after Government make a reference both parties might be tempted to win over the workmen to their respective sides, I would remark that it is quite possible to pass orders appropriate to the situations that may arise. That would be only another aspect of a not uncommon problem that arises where factions exist and individuals change sides.

29. As I said before, Courts have to mould their remedies to the actual facts before them and they cannot refuse to take notice of facts which have happened during

the pendency of the proceedings before them. I can see no justification in principle for making a distinction between facts relating to jurisdiction and facts relating to other rights.

30. Since it is clearly established in the present case that the dispute referred to the Labour Court lost its character as an industrial dispute and is no longer such, it seems to me that the Labour Court would have no jurisdiction to proceed further in the matter. The rule nisi is therefore made absolute in both cases. There will be no order as to costs.

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