

## SPECIAL BENCH (CIVIL).

Before Sir Arthur Page, Kt., Chief Justice, Mr. Justice Mya Bu, and  
Mr. Justice Baguley.

1934

## IN THE MATTER OF THE SUN PRESS, LTD.\*

Dec. 11.

*Enmity or Hatred between different classes of His Majesty's subjects, promoting—Motive or intention of promotor—Effect of article on readers—Tendency of the newspaper—Articles in previous issues—Offending passage in a letter—Indian Press (Emergency Powers) Act (XXIII of 1931), ss. 4 (1) (i), 23, 26.*

In considering the application of a person to set aside an order of the Government forfeiting his security under s. 23 of the Indian Press (Emergency Powers) Act, 1931, the Court will not take into account the motive or intention of such person, except in cases which fall within Explanation 4 of section 4 of the Act. What has to be considered is the effect likely to be produced upon persons who may be expected to read the passages in question, and for that purpose not only ought the article to be read as a whole, but under s. 26 of the Act it is permissible for the Court to have regard to what is contained in other issues of the same publication with a view to ascertaining what would be the probable effect of the offending passages upon those persons who normally would see the articles that are published in the newspaper. It makes no difference that the offending passage occurs in a letter published in the newspaper. *In the matter of the "Advance"*, I.L.R. 61 Cal. 36; *Besant v. Advocate-General of Madras*, I.L.R. 43 Mad. 146—referred to.

*Thein Maung* for the applicant. The passage to which objection has been taken, if read as a whole, will come within Explanation 4 to s. 4 of the Indian Press (Emergency Powers) Act, 1931, as containing words which point out, without any malicious intention, matters which are promoting feelings of hatred or enmity between different classes of His Majesty's subjects. Isolated expressions should not be singled out for consideration; but the article should be read as a whole. In considering whether any publication comes within s. 4 the Court should not lose sight of the undesirability of preventing any *bonâ fide* argument for reform being made. *Besant v. Advocate-General, Madras* (1); *P. K. Chakravarti v. Emperor* (2).

\* Civil Miscellaneous No. 189 of 1934.

(1) I.L.R. 43 Mad. 146, 163.

(2) I.L.R. 54 Cal. 59, 69.

The reference to "the British" in the article is only incidental, and is a foolish illustration of the evil which the author of the article was attempting to reform. *Joy Chandra Sarkar v. Emperor* (1).

1934  
IN THE  
MATTER OF  
THE SUN  
PRESS, LTD.

A. *Eggar* (Government Advocate) for the Crown. The newspaper, as its heading indicates, circulates chiefly amongst Burmans, and its object is to influence Burmese opinion. Under s. 26 evidence to show the general tendency of the paper is relevant, and the tendency of the paper has been to incite one class of His Majesty's subjects against another. *In the matter of the "Advance"* (2).

PAGE, C.J.—This is an application to the High Court under section 23 of the Indian Press (Emergency Powers) Act (XXIII of 1931) by U Po Hnyin, keeper of the Sun Press, Ltd., No. 65/67, Fraser Street, Rangoon, to set aside an order passed by the Local Government against the applicant under section 4, sub-section (1) (i) of the Act. Under that order the Local Government forfeited a sum of Rs. 200 being part of the security deposited by the applicant in compliance with an order of the 29th of June 1934 passed under section 3, sub-section (3), upon the ground that a letter, set out in the issue of a newspaper known as "New Burma" of the 31st of August 1934 and printed at the Sun Press, contained words which "tend directly or indirectly to promote feelings of enmity or hatred between different classes of His Majesty's subjects" within section 4 (1) (h) of the Act.

Now, in considering an application such as the one before us the Court should, I think, have regard to the following observations of Lord Phillimore and Mukerji J.

(1) I.L.R. 38 Cal. 214, 225.

(2) I.L.R. 61 Cal. 36, 42.

1934  
 IN THE  
 MATTER OF  
 THE SUN  
 PRESS, LTD.  
 PAGE, C.J.

In *Besant v. Advocate-General of Madras* (1) Lord Phillimore pointed out that the Court in such cases should bear in mind

“two important public considerations, the undesirability of anything tending to excite sedition or to excite strife between classes, and the undesirability of preventing any *bona fide* argument for reform.”

In the matter of the “*Advance*” (2) Mukerji J. stated that

“it is the effect of the words as published in the newspaper, and not merely the meaning of the words taken by themselves, that has to be considered in order to see whether the statement which is complained of is hit by section 4.”

The motive or intention of the person against whom the order has been passed would appear to be *nihil ad rem*, except in cases which fall within Explanation 4 of section 4 of the Act. What has to be considered is the effect likely to be produced upon persons who may be expected to read the passages in question, and for that purpose not only ought the article to be read as a whole, but under section 26 of the Act it is permissible for the Court to have regard to what is contained in other issues of the same publication with a view to ascertaining what would be the probable effect of the offending passages upon those persons who normally would see the articles that are published in the newspaper.

Now, in the fore-front of each issue of the newspaper “*New Burma*” it is stated to be “an impartial independent tri-weekly, financed, controlled and published by Burmans.” It does not require a great stretch of imagination in such circumstances to conclude that it is a newspaper produced by

(1) (1919) I.L.R. 43 Mad. 146 at p. 163. (2) (1933) I.L.R. 61 Cal. 36 at p. 43.

Burmans for Burmans. That does not mean, of course, that it will only reach its Burmese readers, but it is not unreasonable, I think, to assume that it is primarily intended for Burmans.

1934  
 IN THE  
 MATTER OF  
 THE SUN  
 PRESS, LTD.

The specific words of which complaint is made in the order of the Local Government are ·

PAGE, C.J.

“Shwe Daung Nyo, therefore, requests his Indian friends not to give any chance to the younger section of the Burmans to feel that Indians are worse than the British in sucking the blood of Burmans and blocking their progress in life.”

It was urged on behalf of the applicant that the Court ought to take into account the fact that the offending passage occurs in a letter ; but, in my opinion, that makes no difference, for it is a common journalistic practice that a newspaper should set forth its political views and principles under the guise of an open letter published in its columns.

The main contention of the learned advocate for the applicant was that the words of which complaint is made may well be disregarded if the Court bears in mind the tendency and effect of the letter as a whole. He claimed the benefit of Explanation 4 of section 4 of the Act, and contended that “the matter” with which the letter dealt, and which was promoting or had a tendency to promote feelings of enmity or hatred between Indians and Burmans, was that the Indians in Burma were endeavouring to exploit the Burmans in the same way that others had exploited the Indians in their own country ; that the tendency and effect of the letter was to call upon the Indians to take their share in removing this cause of bitterness between the Indians and the Burmans, and that the exhortation to do so contained in the letter was written without any malicious intention, and with the *bonâ fide* object of

1934  
 IN THE  
 MATTER OF  
 THE SUN  
 PRESS, LTD.  
 PAGE, C.J.

removing the grievance. The learned advocate for the applicant urged that, read as a whole, the reference to "the British" in the letter was merely parenthetical though unfortunate, and ought not to be given any significance when the Court was considering whether the letter was within the ambit of section 4 (1) (h) of the Act. I cannot so interpret the letter, nor do I think that it has merely the tendency and effect which the learned advocate for the applicant has pressed upon us. In my opinion the plain object of the letter was to point out to the Indians in Burma that they were doing their best to exploit the Burmans as others had exploited them in India. Who were the others who had exploited the Indians in India? Manifestly, "the British." The attention of the readers of the newspaper is drawn to the fact that the Indians,

"having experienced a bad time in India and having seen others exploiting in your land, you naturally exerted hard in Burma and followed their clever policy of exploitation in Burma",

and it is pointed out that

"in Bengal the cry is Bengal for the Bengalee; in Bihar, Bihar for the Biharee' etc. . . . Why cannot we in Burma do the same? Why should you be in our way and why should you befriend your foe of India in Burma?"

Who is the foe of the Indians in Burma? Again, obviously "the British." The Indians are then conjured to be fair to the Burmans in Burma, and "the Indian leaders" are urged

"to support Burman candidates whenever they are fully qualified for a post. It is only fair that they should. That policy is now being followed in the interests of Indians in India."

The letter then concludes with the passage to which specific exception is taken.

I am clearly of opinion that no one among the persons likely to read the letter under consideration could fail to gather therefrom that the newspaper was counselling the Indians in Burma to give up their evil practice of attempting to exploit Burma as "the British" had exploited both Burma and India, and that the newspaper was calling upon the Indians in Burma to adopt the same policy as that which the Burmans ought to adopt, namely, to refuse to take sides with the common foe, that is, "the British", whose policy it was to suck the blood of Burmans and to block their progress in life.

If the construction which I put upon the letter is reasonable and right, no one can doubt that the letter "tends directly or indirectly to promote feelings of enmity or hatred between different classes of His Majesty's subjects." That being so, I am of opinion that the application fails, and must be dismissed.

MYA BU, J.—I am of the same opinion.

BAGULEY, J.—I agree.