

CHAPTER VI

ADVERTISEMENT AND FREEDOM: PRINCIPLES

From the Council's rulings in the cases relating to advertisement and freedom of the press the following principles emerge :

(1) The expression freedom of the press is to be understood as signifying the freedom of the newspaper to publish news and express its views on matters of public importance, e.g., freedom as regards its editorial policy.¹

(2) One of the main objectives of the Press Council is safeguarding liberty of the press and preserving it from government interference or preventing the government from influencing editorial policy.²

(3) If a clear case of a threat to or violation of the freedom of the press is brought to its notice, the Council can take cognizance, conduct an enquiry, and adjudicate on the complaint. In this connection it can require the production of documents and other evidence.³

(4) The giving or withholding of advertisements, whether by individuals or the government as a lever to influence the editorial policy constitutes a threat to and jeopardises the liberty of the press, meaning in this context the freedom of the editor. This is especially so in the case of the government since it is a trustee of public funds and, therefore, bound to utilise them without discrimination.⁴

(5) What is of importance as regards freedom of the press is not whether the withholding of advertisements "had actually had any effect on editorial policy but the impropriety of the action taken to achieve that end." The question of liberty of the press does not arise where in choosing the media for advertisements both private individuals and the government select those which are more economical and have the maximum number of readers.⁵

(6) Advertisements from any party including the government cannot be claimed as a matter of right by a newspaper.⁶ The government can frame its policy of placing advertisements based on objective criteria. But this should be based upon publicly stated principles without taking into consideration the editorial policy of the paper.⁷ At any rate the

1. Case of *Tribune*, 1970 Ann. Rep. 45.

2. *Ibid.*

3. *Ibid*; see also case of *Gujarat Herald*, 1970 Ann. Rep. 87.

4. Case of *Tribune*, *ibid.*

5. *Ibid.*

6. Cases of *Saptahik Mujahid*, July 1983 P.C.1. Rev. 44; *Sankata Uvaach*, 1980 Ann. Rep. 53; *Tribune*, *ibid.*

7. Case of *Tribune*, *ibid.*

conditions laid down by the government itself for the release of advertisements must be fulfilled.⁸

(6a) Withholding of advertisements by the government is justified where a paper habitually indulges in journalism which is obscene and scurrilous.^{8a}

(7) Non-release of advertisements to a newspaper is justified if, (i) it fails to conform to the advertisement policy;⁹ or (ii) it is the result of a policy decision as for instance reduction of budget.¹⁰

(8) Withholding of advertisements by the government or authority is a threat to freedom of the press, if this is, (i) for publishing matter not liked by the government; or (ii) attempted to coerce the editor to toe the line of the government; or (iii) by way of unlawful discrimination at the executive level; or (iv) by way of punishment for the editorial policy of a paper or criticism of its policies. If authorities regard the writings as scurrilous or scandalous they can approach the Council or the court for appropriate action.¹¹

(9) The right of the state government to fix its own advertisement rates based on generally accepted equitable criteria, cannot be questioned. But the attention of the government can be drawn by the Council if the rates of "display" advertisements are palpably lower than the rates fixed by D.A.V.P.¹²

(10) Non-publication of "display" advertisements, oriented towards "educating and informing the public and on occasions appealing to them for communal harmony" may be self-defeating as regards the newspapers' claim for advertisements.¹³

(11) A newspaper may be disqualified from receiving government advertisements in the event of its having indulged in, (a) publishing matter contrary to law; or (b) encouraging violence; or (c) creating disturbances of public order; or (d) publishing objectionable matter.¹⁴

(12) The government has a *prima facie* right to determine whether the impugned writings fall into the category of publication of objectionable matter which would justify the punitive action taken against the newspaper. However, if such action is challenged it is the Council's duty to examine for itself the impugned articles and news-items. This duty flows from its function of maintaining the freedom of the press.¹⁵

8. Case of *Sankata Uvaach*, *supra* note 6.

8a. Case of *Tribune*, *supra* note 1.

9. Case of *Saptahik Mujahid*, *supra* note 6.

10. Case of *Campus Reporter*, 1980 Ann. Rep. 18.

11. Cases of *Tribune*, *supra* note 1; *Dainik Sambad*, 1971 Ann. Rep. 63; *Charitra Vikas*, 1980 Ann. Rep. 41; *Sankata Uvaach*, *supra* note 6.

12. Case of *Dainik Sambad*, April 1982 P.C.I. Rev. 27.

13. *Ibid.*

14. Case of *Tribune*, *supra* note 1.

15. Case of *Searchlight and Pradeep*, 1974 Ann. Rep. 11.

(13) Stoppage of advertisements will not be justified if a direct link exists between such stoppage and the articles appearing in the concerned paper.¹⁶

(14) Non-maintenance of proper journalistic ethics and publication of writings/reports tending to fan a communal passion which were also baseless and motivated constitute good grounds for non-release of advertisements so long as the paper fails to conform to the advertisement policy.¹⁷

(15) If an authority withholds or discontinues the release of advertisements or publicity material on account of something adverse, (i) to its function; or (ii) to any action taken by it or its officers having appeared in a newspaper, it will constitute a serious interference with the freedom of the press unless the authority is able to justify such action.¹⁸

(16) Withdrawing an advertisement or a decision not to release it is an administrative action and not of a judicial nature. There is no question of any legal right of the paper being adversely affected or any punishment inflicted by such withdrawal.¹⁹

(17) Withdrawal of advertisements on the ground of indulgence in communal writings without issuing a notice or drawing the editor's attention to the impugned articles is not proper. The Council has the jurisdiction to examine whether the concerned articles are really communal or not and express its opinion on it.²⁰

(18) Whether or not a particular newspaper is on the "approved list", the fact that it has been getting advertisements from the government, would entitle the paper not to be discriminated against as regards the release of advertisements.²¹

(19) Comments and editorials can be lifted from one newspaper by other newspapers after due acknowledgement or permission but that would not entitle the government to stop release of advertisements to that paper.²²

(20) Denial of advertisements is not a matter for the Council to look into unless it can be proved that the advertiser attempted to pressurise the newspaper to write as he so desired.²³

(21) The policy of directing magistrates to verify circulation of newspapers does not infringe freedom of the press so long as the same criteria and guidelines followed by chartered accountants are adopted. This practice, should however be resorted to only where for some reason

16. Case of *Manush Patrika*, 1981 Ann. Rep. 49.

17. Case of *Saptahik Mujahid*, *supra* note 6.

18. Case of *Urja*, 1980 Ann. Rep. 36.

19. Case of *Swadesh*, 1972 Ann. Rep. 49.

20. Case of *Tarun Bharat*, 1972 Ann. Rep. 59.

21. *Suo motu* action by Press Council, April 1984 P.C.I. Rev. 49.

22. Case of *Manush Patrika*, *supra* note 16.

23. Case of *Tarun Bharat*, *supra* note 20.

newspapers are unable to produce a certificate from a chartered accountant.²⁴

(22) The complaint to the Council should not be used by the newspaper as a lever to persuade the government to effect an increase in the advertisement rates or release of advertisements.²⁵

(23) While a complaint may be withdrawn, the complainant is expected to give full and necessary assistance to the Inquiry Committee to enable it to determine whether freedom of the press has been "jeopardised by political mechanisms, if those allegations are made with a proper sense of responsibility."²⁶

(24) The issue of a show-cause notice and affording of an opportunity to be heard before "delisting" a paper is proper and desirable. It is evidence of an objective as distinguished from a vindictive approach. However, failure to do so would not by itself render the withdrawal of advertisements illegal.²⁷

(25) As regards allegations against the editor in relation to "delisting" a paper there are two aspects, namely :

(i) If an editor is guilty of an action or impropriety *de hors* his paper he can be proceeded against personally, but this would not justify denial of advertisements to the paper of which he happens to be editor. This applies even to an employee or proprietor of a paper.

(ii) The outside activities of the editor or other journalist might throw light on what he wrote for the paper and in the event of such writings being improper, action against the paper is justified. However, this is for improper publication and not for the employees' activities *de hors* the paper.²⁸

24. Case of *Dainik Sambad*, *supra* note 12.

25. Case of *Hitavada*, 1980 Ann. Rep. 44.

26. *Ibid.*

27. Case of *Searchlight and Pradeep*, *supra* note 15.

28. *Ibid.*