1961

September 25.

SAKAL PAPERS (P) LTD., AND OTHERS

v.

THE UNION OF INDIA

(B. P. SINHA, C. J., A.K. SARKAR, K.C. DAS GUPTA, N. RAJAGOPALA AYYANGAR and J. R. MUDHOLKAR, JJ.)

Fundamental Right—Freedom of speech—Statute regulating number of pages in newspaper according to price charged—Constitutionality of—Newspaper (Price and Page) Act, 1956 (45 of 1956)—Daily Newspaper (Price and Page) Order, 1960—Constitution of India, Art. 19 (1) (a).

The Newspaper (Price and Page) Act, 1956, empowered the Central Government to regulate the prices of newspapers in relation to their pages and sizes and to regulate the allocation of space for advertising matter. Under this Act the Central Government made the Daily Newspapers (Price and Page) Order, 1960, thereby fixing the maximum number of pages that might be published by a newspaper according to the price charged and prescribing the number of supplements that could be issued. The petitioner challenged the Act and the order as contravening Art. 19 (1) (a) of the Constitution.

Held, that the Act and the Order were void as they violated Art. 19(1) (a) of the Constitution and were not saved by Art. 19(2). The freedom of speech and expression guaranteed by Art. 19(1) (a) included the freedom of the press. For propagating his ideas a citizen had the right to publish them, to disseminate them and to circulate them, either by word of mouth or by writing. The right extended not merely to the matter which he was entitled to circulate but also to the

volume of circulation. The impugned Act and Order placed restraints on the latter aspect of the right. But its very object the Act was directed against circulation and thus interfered with the freedom of speech and expression. Article 19(2) did not permit the State to abridge this right in the interests of the general public.

Brij Bhushan v. *The State of Delhi*, [1950] S. C. R. 605, *Express Newspapers (P) Ltd.* v. *The Union of India*, [1959] S. C. R. 12, *Ramesh Thappar* v. *State of Madras* [1950] S.C.R. 594, *State of Madras* v. *V. G. Row*, [1952] S. C. R. 597, *Dwarkadas Shrinivas* v. *The Sholapur & Weaving Co.,Ltd.* [1954] S. C. R. 674, *Virendra* v. *The State of Punjab*, [1958] S. C. R. 308 and *Hamdard Dawakhana (wakf)* v. *Union of India*, [1960] 2 S. C. R. 671, referred to.

Held, further, that the State could not make a law which directly restricted one guaranteed freedom for securing the better enjoyment of another freedom. Freedom of speech could not be restricted for the purpose of regulating the commercial aspect of the activities of newspapers.

ORIGINAL JURISDICTION : Petitions Nos. 331 of 1960 and 67-68 of 1961.

Petitions under Art. 32 of the Constitution of India for enforcement of Fundamental Rights.

G. S. Pathak, R. Ganapathy Iyer, S. S. Shukla and *G. Gopalakrishnan* for the petitioners.

M. C. Setalvad, Attorney-General of India, B. Sen, R. H. Dhebar and *T. M. Sen*, for the respondent.

H. P. Nathwani, J. B. Jadachanji, S. N. Andley, Rameshwar Nath and *P. L. Vohra*, for the respondent No. 1.

J. B. Dadachanji, S. N. Andley, Rameshwar Nath and *P. L. Vohra*, for the interveners Nos. 2 and 6.

K. R. Choudhri, for intervener No. 3.

S. T. Desai, E. Udayarathnam and *S. S. Shukla*, for intervener No. 4.

W. S. Barlingay and *A. G. Ratnaparkhi*, for intervener No. 5.

S. T. Desai, E. Udayarathnam and *S. S. Shukla*, for the petitioners (In petitions Nos. 67 and 68 of 1961).

1961

Sakal Papers (P) Ltd.,
v.
The Union of India

Mudholkar J.

1961. September 25. The Judgment of the Court was delivered by

MUDHOLKAR, J.—A matter of far-reaching importance affecting the freedom of the press is raised in these three petitions wherein the constitutionality of the Newspaper (Price and Page) Act, 1956, and the Daily Newspaper (Price and Page) Order, 1960, is questioned.

The first petition is by a private limited company carrying on business *inter alia* of publishing daily and weekly newspapers in Marathi named "Sakal" from Poona and by two persons who are the only shareholders in that company. The second and third petitions are preferred by two readers of "Sakal" who also challenge the constitutionality of the Act. Certain parties were allowed to intervene. They supported the Union of India, the respondent, in all these petitions and sought to uphold the validity of the Act and the Order. In view of the common argument adduced before us it would be convenient to deal with the first petition only in full.

The newspaper "Sakal" was started in the year 1932 and it is claimed that it has a net circulation of 52,000 copies on week days and 56,000 copies on Sundays in Maharashtra and Karnataka and as such plays a leading part in the dissemination of news and views and in moulding public opinion in matters of public interest.

The daily addition of the newspaper contains six pages a day for five days in a week and four pages on one day. This edition is priced at 7 nP. The Sunday edition consists of ten pages and is priced at 12nP. About 40% of the space in the newspaper is taken up by advertisement matter and the rest is devoted to news, articles, features, views etc. It is claimed on behalf of the petitioners that one of the special features of the newspaper is coverage of foreign news and despatches on foreign affairs. It is claimed on behalf of the petitioners that this

paper is not aligned with any political party and that upon controversial questions the public look up to it for impartial appraisement of the issues involved and for guidance.

Briefly stated the effect of the Act and of the impugned Order is to regulate the number of pages according to the price charged, prescribe the number of supplements to be published and prohibit the publication and sale of newspapers in contravention of any Order made under s. 3 of the Act. The Act also provides for regulating by an Order under s. 3, the sizes and area of advertising matter in relation to the other matters contained in a newspaper. Penalties are also prescribed for contravention of the provision of the Act or Order.

We may mention here that in the year 1952 the Government of India appointed a Press Commission for enquiring into a large number of matters concerning the Press and one of the recommendations of the Commission was to enact a law such as the one impugned before us. This law is alleged by the respondent to have been made to give effect to that recommendation. Both the sides place reliance upon the finding of the Press Commission and have invited us to accept these findings, though not necessarily the recommendations.

The petitioners point out that since the total number of pages which "Sakal" gives to its reading public on six days in a week is 34, and that as a result of the impugned Order they will either have to raise its price from 7 nP. to 8 nP. per day or to reduce the total number of pages to 24. They further point out that while at present all newspapers can issue any number of supplements as and when they choose, under the Order they would be prevented from doing so except with the permission of the Government. According to them the Order would have the effect of either compelling them to increase the price or to reduce the number of pages of practically every newspaper in the country as

1961

Sakal Papers (P) Ltd.,
v.
The Union of India

Mudholkar J.

also of preventing them from publishing supplements without extraneous restrictions, which they are able to do at present.

It is the petitioners' case that the impugned Act and the impugned Order are pieces of legislation designed to curtail and which would in effect curtail the freedom of the press and as such are violative of the right guaranteed under Art. 19(1)(a) of the Constitution. They point out that if they continue to give in their newspaper the same number of pages as at present, they would have to increase its selling price and that this will adversely affect its circulation. If, on the other hand, they reduce the number of pages in order to conform to the impugned order their right to disseminate news and views will be directly interfered with. Thus in either event there will be an interference with their right under Art. 19(1)(a) of the Constitution.

The petitioners point out that the impugned Order reserves to the Central Government the power to permit issue of supplements, except those on January 26 and August 15, and that the result of this would be to place them at the mercy of the Government and thus interfere with their freedom of expression.

They further pointout that the Act and the Order are violative of the provisions of Art. 14 of the Constitution inasmuch as their avowed object is to promote arbitrarily the interests of some newspaper at the expense of others. They contend that inequality is writ large in the provisions of the Act and of the Order and that there is no reasonable classification or basis or any rational relationship between the restrictions imposed and the objects sought to be achieved. According to them, while the established newspapers will be hardly affected by these provisions those that are endeavouring to come up will be hampered in their progress.

On behalf of the respondent, the Union of India, in the Ministry of Information and Broadcasting, while it is admitted that the object of the Act is to regulate the prices charged for newspapers in relation to their pages, it is pointed out that this is being done to prevent unfair competition amongst newspapers as also to prevent the rise of monopolistic combines so that newspapers may have fair opportunities of freer discussion. The effect of the provisions of the Act is said to be to provide for the maximum matter which a newspaper could make available to the public at a certain price and that this does not in any way restrict the rights of the petitioners to propagate their ideas. The respondent, while admitting that by the operation of the impugned Order a limitation is placed on the space which a newspaper would be able to devote to the propagation of its ideas and to news, says that it would be open to those newspapers to increase the space by raising the price. According to the respondent the circulation of a newspaper will not be adversely affected by raising its price. It is then contended that even if the circulation is adversely affected thereby the fundamental rights of the newspaper propritors guaranteed by Art. 19(1)(a) of the Constitution will not be infringed. It is also contended that the legislation in question does not directly or indirectly deal with the subject of freedom of speech and expression and that consequently no question of the violation of the provisions of Art. 19(1)(a) at all arises. The effect of the Act and the Order, according to the respondent, would be to promote further the right of newspapers in general to exercise the freedom of speech and expression. Thus, according to the respondent, neither the intention nor the effect of the operation of the law is to take away or abridge the freedom of speech and expression of the petitioners.

It is further pointed out that all newspapers publish advertisements and that this is a trading activity. It is, therefore, necessary to differentiate

1961

Sakal Papers (P) Ltd.,
v.
The Union of India

Mudholkar J.

between this activity and an activity which would fall under Art. 19(1)(a). The impugned Act and the Order, according to the respondent provide in the public interest for restrictions on the trading activity of newspapers. It is pointed out that the space allocated to advertisements by newspapers varies from 46% to 59% and that these advertisements bring in a substantial revenue which enables the newspapers to be sold at a price below the cost of production. Placing reliance upon the statement contained in the Report of the Press Commission it is contended on behalf of the respondent that newspapers of long standing which have built up a large and stable advertisement revenue being in a more advantageous position than newcomers in the field of journalism are in a position to squeeze out such newcomers with the result that they are able to destroy the freedom of expression of others. A free press, it is said, cannot mean a press composed of a few powerful combines and that in order to ensure freedom of press it is necessary to secure full scope for the full development of smaller newspapers.

It is further pointed out on behalf of the respondent that the diminution of advertisement revenue which would result from the operation of the Price Page Schedule cannot be regarded as an infringement of the right under Art. 19(1)(a). According to the respondent the economies of newspapers and the maximum number of pages that a paper can give with a reasonable margin for advertisement space was worked out by the Press Commission which also suggested a tentative Price Page Schedule. In formulating the schedule the Press Commission took into account various factors such as cost of (1) newsprint, (2) composing and printing, (3) distribution, (4) commission payable, (5) editorial and managerial expenses and (6) general overhead charges. The present Price Page Schedule is said to be based upon the one formulated by the Press Commission.

It is further stated that the present measures have been adopted upon the recommendation of the Press Commission which after stating that the proper functioning of democracy requires that every individual should have equal opportunity to put forward his opinions suggested that measures should be adopted to reduce the differences due to economic advantages and other causes to enable newcomers to start with a fair chance of success. It is with this end in view that the present rates are stated to have been prescribed. The respondent further points out that the bulk of the Indian language newspapers priced at 7nP. will not find any difficulty whatsoever in conforming to the requirements of the order because they give five or less than five pages on week days. Only a few newspapers will be remotely affected by the order but in their case the issue of large number of pages is due to factors not connected with the functioning of the freedom of speech and expression but for reasons connected with their business activities. Newspapers, according to the respondent, are able to give more pages because of their large advertisement revenue or because they belong to a group or chain of newspapers which do not entirely depend upon the individual income of each newspaper.

It is said that the petitioners in particular are able to give additional number of pages because they devote a larger volume of space to advertisements than others and that this is not something done in the lawful exercise of their right of freedom of speech and expression or of the right of dissemination of news and views. It is, however, as already stated, admitted on behalf of the respondent that a newspaper is a product sold below the cost of production. The conclusion suggested by the respondent is that it is only by increasing the revenue from advertisement that a newspaper can increase the number of its pages.

According to the respondent, the true purpose of the impugned legislation being the prevention

1961

Sakal Papers (P) Ltd.,
v.
The Union of India

Mudholkar J.

of unfair competition which has resulted in denying to others a right of propagation of ideas by publishing newspapers, this legislation cannot be said to infringe the right of freedom of expression of a newspaper but on the other hand said to be one which promotes and encourages healhty journalism. The impugned provisions will, according to the respondent, affect only those classes of newspapers which unfairly compete with the smaller one—a kind of competition which is considered by the Press Commission as unhealthy and against the interests of healthy journalism in a growing democracy. It is then said that "it is necessary to avoid unfair competition and even to promote healthy competition that papers have to be put on a criteria of equality and that this could only be done by directly restricting the publication of large number of pages as against the price charged." Then it is contended that what is aimed at by the impugned legislation is the avoidance of concentration of ownership without interfering with healthy competition between equals equally situated.

It is further stated that not only was the statute enacted on the recommendation of the Press Commission but that the Price Page Schedule itself was introduced in response to the demand pressed by the Indian Language Newspapers Association. It is pointed out on behalf of the respondent that the quantity of import of newsprint is based on the average number of pages of newspapers published in 1957 and that, therefore, no newspaper has the unrestricted right to increase the number of pages over the 1957 figure. It is also pointed out that the draft Price Page Schedule has been approved by the Indian Language Newspapers Association and that this Association has recommended that the life of the Price Page Act and Order should be extended by another five to ten years. It is denied that the provisions of the Act infringe the rights conferred by Art. 14 of the Constitution.

We have already indicated earlier, briefly, the effect of the impugned Act and the Order. In order to appreciate fully the contentions raised before us it would be useful to give in brief a summary of the provisions of the Act and of the impugned Order.

First, there is the preamble which says that the object of the Act is to secure to newspapers fuller opportunities of freedom of expression by preventing unfair competition. This is sought to be achieved by the regulation of prices charged for newspapers in relation to their pages. In this manner the legislature expects to prevent unfair competition among newspapers.

Sub-section 3 of s. 1 provides that the Act shall cease to have effect on the expiration of a period of five years from its commencement except as respects things done or omitted to be done before the expiration. The Act came into force on September 7, 1956 and was thus due to expire on September 6, 1961. The Attorney-General, however, told us that it was proposed to extend to the life of the Act by a further period of five years and we understand that its life has now been extended for an indefinite period. Section 2 defines "daily newspaper" and "newspaper".

Section 3 is the most important provision in the Act. It is this provision which empowers the Central Government to regulate prices and pages of newspapers. Sub-section (1) of s. 3 empowers the Central Government to regulate the prices of newspapers in relation to their pages and sizes if it is of opinion that it is necessary to do so for the purpose of preventing unfair competition among newspapers and in particular those published in Indian languages. It also empowers the Government to regulate the allocation of space to be allotted for advertising matter. Sub-section (2) of that section provides for an order under sub-s. (1) to be made in relation to newspapers generally or in relation to

1961

Sakal Papers (P) Ltd.
v.
The Union of India

Mudholkar J.

any class of newspapers and further provides for the making of different provisions for daily newspapers and newspapers appearing at other periodical intervals as well as for different classes of newspapers. Sub section (3) provides that the Central Government, in making the Order, shall have due regard to a reasonable flexibility with respect to the fall of news and flow of advertisements and other matters connected with the normal working of newspapers. Sub-section (4) makes it obligatory upon the Central Goverment to consult associations of publishers and such publishers as are likely to be affected by the Order as it may think fit with respect to the action proposed to be taken. Section 4 prohibits publication or sale of newspapers in the territories to which the Act extends in contravention of any of the provisions of an order made under s. 3.

Section 5 provides for furnishing returns by newspapers to the Press Registrar. Sub-section (1) of s. 6 provides penalties for publication and sale of newspapers in contravention of the provisions of s. 4. Sub-section (2) of s. 6 provides penalties for some other contraventions with which we are not concerned. Section 7, which is the last section, prohibits the Court from taking cognizance of offences under the Act except upon a complaint in writing by the Press Registrar or by an officer authorised by him.

It will thus be seen that the Act can be brought into practical operation only after the Central Government has taken action under sub-s. (1) of s. 3 and made an order regulating any of the matters referred to in that section.

On October 24, 1960 in exercise of the powers conferred by s. 3 the Central Government, after consultation with the Association of Newspapers and Publishers likely to be affected thereunder, made the Daily Newspapers (Price and Page) Order, 1960. This Order came into force on December 12, 1960. It contains a schedule to the Act which is in two

Parts, Part I and Part II. Part I applies to daily newspapers published on six days in a week and Part II applies to weeklies. Paragraph 3 of the Order provides that where the price charged for daily newspapers is any of the prices specified in col. 1 of Part I of the Schedule the total number of pages of all the issues of that newspaper published during six days in a week shall not exceed the maximum number of pages shown against that price in that part. Paragraph 4 deals with weekly editions of daily newspapers. Paragraph 5 provides that the total number of pages of all the issues of a daily newspaper published shall not exceed the maximum number of pages assigned under paragraphs 3 and 4 or under paragraph 3, according as the newspaper is published on seven days in a week or on six days. Then there is a proviso to this paragraph which runs thus :

> "Provided that where there is a weekly edition of any newspaper referred to in clause (b) and the price charged therefor is different from that charged on other days, the total number of pages of all the issues of that newspaper published during a week shall not exceed the maximum number of pages assigned to such newspaper under paragraph 4 and five-sixths of the maximum number of pages assigned to it under paragraph 3."

Paragraph 6 permits the publication of additional number of pages during the week not exceeding six. Paragraph 7 permits the publication of supplements on January 26 and August 15 each year and also once in every quarter on such special occasion as the publisher thinks fit. Paragraph 8 empowers the Central Government to permit the publication of additional supplements or special editions in excess of those referred to in paragraph 7 and prescribes the number of pages which could be published. Paragraph 9 relaxes to a certain extent the rigour of the provisions of paragraphs 4 to 6,

1961

Sakal Papers (P) Ltd., v. The Union of India

Mudholkar J.

in that it provides that the daily newspaper shall not be deemed to have contravened the provisions of the Order unless the number of pages of all the issues of that newspaper published during any period of twelve consecutive weeks exceeds the quota assigned to such newspaper during that period.

A bare perusal of the Act and the Order thus makes it abundantly clear that the right of a newspaper to publish news and views and to utilise as many pages as it likes for that purpose is made to depend upon the price charged to the readers. Prior to the promulgation of the Order every newspaper was free to charge whatever price it chose, and thus had a right unhampered by State regulation to publish news and views. This liberty is obviously interfered with by the Order which provides for the maximum number of pages for the particular price charged. The question is whether this amounts to any abridgment of the right of a newspaper to freedom of expression. Our Constitution does not expressly provide for the freedom of press but it has been held by this Court that this freedom is included in "freedom of speech and expression" guaranteed by cl. (1)(a) of Art. 19, vide *Brij Bhushan* v. *The State of Delhi*(1). This freedom is not absolute for, cl. (2) of Art. 19 permits restrictions being placed upon it in certain circumstances. That clause runs thus :

> "Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

(1) [1950] S.C.R. 605, 610.

It is not claimed on behalf of the State that either the Act or the Order made thereunder can be justified by any of the circumstances set out in this clause. The right to propagate one's ideas is inherent in the conception of freedom of speech and expression. For the purpose of propagating his ideas every citizen has a right to publish them, to disseminate them and to circulate them. He is entitled to do so either by word of mouth or by writing. The right guaranteed thus extends, subject to any law competent under Art. 19(2), not merely to the matter which he is entitled to circulate, but also to the volume of circulation. In other words, the citizen is entitled to propagate his views and reach any class and number of readers as he choses subject of course to the limitations permissible under a law competent under Art. 19(2). It cannot be gainsaid that the impugned order seeks to place a restraint on the latter aspect of the right by prescribing a price page schedule. We may add that the fixation of a minimum price for the number of pages which a newspaper is entitled to publish is obviously not for ensuring a reasonable price to the buyers of newspapers but for expressly cutting down the volume of circulation of some newspapers by making the price so unattractively high for a class of its readers as is likely to deter it from purchasing such newspapers.

It is not disputed that every newspaper evolves a plan of its own for carrying on its activities. Bearing in mind factors such as the place of publication, the class of the reading public which may be excepted to subscribe to the paper, the conditions of labour, the price of material, the availability of advertisements and so on it decides upon its size, the proportion of different kinds of matter published in the newspaper, such as news, comments, views of readers, advertisements etc., and the price to be charged. The plan evolved by it is sought to be rudely shaken if not completely upset by an order which it is open to the Central

1961

Sakal Papers (P) Ltd.
v.
The Union of India

Mudholkar J.

Government to make under s. 3(1) with a view to curtailment of circulation of newspapers. No doubt, under s. 3(4) the Government is required to consult associations of publishers. Apart from the fact that the Government is not bound by the opinion of the associations, the mere circumstance that consultation with them is made obligatory, the action of the Government in formulating an order does not cease to be a direct interference with the freedom of speech and expression of a citizen.

After the schedule comes into force it will not be open to a newspaper proprietor to charge less than a certain minimum price if he wants to give a particular number of pages in his newspaper. If he should contravene this order he will incur a penalty. Similarly he cannot publish supplements in excess of four as and when he chooses, except with the permission of Government. The Order does not indicate the circumstances which would entitle a newspaper proprietor to secure the special permission of Government. Apparently, whether to allow an additional supplement or not would be dependent on the sweet will and pleasure of the Government and this would necessarily strike at the root of the independence of the press.

In *Express Newspapers (Private) Ltd.*, v. *The Union of India*(1) this Court has laid down that while there is no immunity to the press from the operation of the general laws it would not be legitimate to subject the press to laws which take away or abridge the freedom of speech and expression or adopt measures calculated and intended to curtail circulation and thereby narrow the scope of dissemination of information or fetter its freedom to choose its means of exercising the right or would undermine its independence by driving it to seek Government aid. This Court further pointed out that a law which lays upon the Press excessive and prohibitive burdens which would restrict the

(1) [1959] S. C. R. 12.

circulation of a newspaper would not be saved by Art. 19(2) of the Constitution.

It must be borne in mind that the Constitution must be interpreted in a broad way and not in a narrow and pedantic sense. Certain rights have been enshrined in our Constitution as fundamental and, therefore, while considering the nature and content of those rights the Court must not be too astute to interpret the language of the Constitution in so literal a sense as to whittle them down. On the other hand the Court must interpret the Constitution in a manner which would enable the citizen to enjoy the rights guaranteed by it in the fullest measure subject, of course, to permissible restrictions. Bearing this principle in mind it would be clear that the right to freedom of speech and expression carries with it the right to publish and circulate one's ideas, opinions and views with complete freedom and by resorting to any available means of publication, subject again to such restrictions as could be legitimately imposed under cl. (2) of Art. 19. The first decision of this Court in which this was recognized is *Romesh Thapar* v. *State of Madras* (1). There, this Court held that freedom of speech and expression includes freedom of propagation of ideas and that this freedom is ensured by the freedom of circulation. In that case this Court has also pointed out that freedom of speech and expression are the foundation of all democratic organisations and are essential for the proper functioning of the processes of democracy. There and in other cases this Court pointed out that very narrow and stringent limits have been set to permissible legislative abridgment of the right of freedom of speech and expression. In *State of Madras* v. *V. G. Row* (2) the question of the reasonableness of restrictions which could be imposed upon a fundamental right has been considered. This Court has pointed out that the nature

(1) [1950] S.C.R. 594. (2) [1952] S.C.R. 597.

1961

Sakal Papers (P) Ltd. v. The Union of India

Mudholkar J.

of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and scope of the evil sought to be remedied thereby, the disproportion of the imposition and the prevailing conditions at that time should all enter into the judicial verdict. In *Dwarkadas Shrinivas* v. *The Sholapur Spinning & Weaving Co., Ltd.* (1) this Court has pointed out that in construing the Constitution it is the substance and the practical result of the act of the State that should be considered rather than its purely legal aspect. The correct approach in such cases should be to enquire as to what in substance is the loss or injury caused to the citizen and not merely what manner and method has been adopted by the State in placing the restriction. In *Virendra* v. *The State of Punjab* (2) this Court has observed at p. 319 as follows :

> "It is certainly a serious encroachment on the valuable and cherished right of freedom of speech and expression if a newspaper is prevented from publishing its own or the views of its correspondents relating to or concerning what may be the burning topic of the day".

The impugned order requires all newspapers to raise their prices if they want to maintain the present number of pages. The effect of raising the selling price of newspaper has been considered by the Press Commission. In Paragraph 164 of the Report it is observed :

> "The selling price of a paper would naturally have an important effect on its circulation. In this connection we have examined the effect of price-cuts adopted by two English papers at Bombay on the circulation of those two papers as well as of the leading paper which did not reduce its price. Prior to 27th October, 1952, Times of India which had the highest circulation at Bombay was being sold at Rs.0-2-6

(1) [1954] S.C.R. 674. (2) [1958] S.C.R. 308.

while Free Press Journal and National Standard which rank next in circulation were being sold for Rs.0-2-0. On 27th October, 1952, Free Press Journal reduced its price to Rs. 0-1-0 and within a year had claimed to have doubled its circulation. On 1st July, 1953, the National Standard was converted into a Bombay edition of Indian Express with a selling price of Rs. 0-1-6. Within six months it too claimed to have doubled its circulation...During this period the Times of India which did not reduce its selling price continued to retain its readership. Thus it would appear that Free Press Journal and Indian Express by reducing their price have been able to tap new readership which was latent in the market but which could not pay the higher prices prevailing earlier".

Then in paragraph 165 it is observed :

"There is another instance illustrating the effect of selling price on the circulation. The two leading Tamil papers Swadesamitran and Dinamani in Madras, anticipating towards the end of 1950 a steep rise in the price of newsprint, came to an understanding and raised the price of their papers from Rs.0-1-0 to Rs 0-1-6. (These papers normally carried 30 to 36 pages per week). The increase in price from Rs. 0-1-0 per copy to Rs. 0-1-6 was brought into effect from 1st January, 1951. The result was a drastic fall in circulation in both their cases. Subsequently in view of this fall in circulation they agreed to reduce their prices to the old figure. While the original fall in circulation came about in three months duration one paper took more than 9 months to recover its old circulation, while the other had not done so.....It may be mentioned in this connection that the circulation of a competing paper, Thanthi.....did not rise during the three

1961

Sakal Papers (P) Ltd.
v.
The Union of India

Mudholkar J.

months when the two leading papers had increased the price.....nor did it fall when the prices of the leading papers were lowered again. The conclusion, therefore, appears to be that over 33,000 readers had stopped taking any papers because the price had been raised; ..... The period examined coincided with an accentuation of draught conditions in Tamil Nad; a certain fall in circulation all round can be attributed to these conditions. Nevertheless, it cannot be denied that a change in price did have a profound effect on the circulation of those two papers".

Though the prices of newspapers appear to be on the low side it is a fact that even so many people find it difficult to pay that small price. This is what has been pointed out by the Press Commission in paragraph 52 of its report. According to it the most common reason for people in not purchasing newspapers is the cost of the newspaper and the inability of the household to spare the necessary amount. This conclusion is based upon the evidence of a very large number of individuals and representatives of Associations. We would, therefore, be justified in relying upon it and holding that raising the price of a newspaper even by a small amount such as one nP. in order that its present size be maintained would adversely affect its circulation.

It is, however, said that it is not necessary for newspapers to raise their prices but that they could reduce their number of pages. For one things, requiring newspapers to reduce their sizes would be compelling them to restrict the dissemination of news and views and thus directly affecting their right under Art. 19(1)(a). But it is said that the object could be achieved by reducing the advertisements. That is to say, the newspapers would be able to devote the same space which they are devoting today to the publication of news and views by reducing to the necessary extent the space allotted to advertisements. It is pointed out that news-

papers allot a disproportionately large space to advertisements. It is true that many newspapers do devote very large areas to advertisements. But then the Act is intended to apply also to newspapers which may carry no or very few advertisements. Again, after the commencement of the Act and the coming into force of the Order a new spaper which has a right to publish any number of pages for carrying its news and views will be restrained from doing so except upon the condition that it raises the selling price as provided in the schedule to the Order. This would be the direct and immediate effect of the Order and as such would be violative of the right of newspapers guaranteed by Art. 19(1)(a).

Again, s. 3(1) of the Act in so far as it permits the allocation of space to advertisements also directly affects freedom of circulation. If the area for advertisements is curtailed the price of the newspaper will be forced up. If that happens, the circulation will inevitably go down. This would be no remote, but a direct consequence of curtailment of advertisements.

We would consider this matter in another way also. The advertisement revenue of a newspaper is proportionate to its circulation. Thus the higher the circulation of a newspaper the larger would be its advertisement revenue. So if a newspaper with a high circulation were to raise its price its circulation would go down and this in turn would bring down also the advertisement revenue. That would force the newspaper either to close down or to raise its price. Raising the price further would affect the circulation still more and thus a vicious cycle would set in which would ultimately end in the closure of the newspaper. If, on the other hand, the space for advertisement is reduced the earnings of a newspaper would go down and it would either have to run at a loss or close down or raise its price. The object of the Act in regulating the space for advertisements is stated to

1961

Sakal Papers (P) Ltd. v. The Union of India

Mudholkar J.

be to prevant 'unfair' competition. It is thus directed against circulation of a newspaper. When a law is intended to bring about this result there would be a direct interference with the right of freedom of speech and expression guaranteed under Art. 19(1)(a).

Since the very object of the impugned law is to affect the circulation of certain newspapers which are said to be practising unfair competition it is difficult to appreciate how it could be sustained. The right to freedom of speech and expression is an individual right guaranteed to every citizen by Art. 19(1)(a) of the Constitution. There is nothing in cl. (2) of Art. 19 which permits the State to abridge this right on the ground of conferring benefits upon the public in general or upon a section of the public. It is not open to the State to curtail or infringe the freedom of speech of one for promoting the general welfare of a section or a group of people unless its action could be justified under a law competent under cl. (2) of Art. 19. It is admitted that the impugned provisions cannot be justified on the grounds referred to in the aforesaid clause.

It was, however, contended on behalf of the State that there are two aspects of the activities of newspapers—the dissemination of news and views and the commercial aspect. These two aspects, it is said, are different from one another and under cl. (6) of Art. 19 restrictions can be placed on the latter right in the interest of the general public. So far as it is relevant for the purpose of the argument cl. (6) reads thus:

"Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes or prevent the State from making any law imposing in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause....."

It may well be within the power of the State to place, in the interest of the general public, restrictions upon the right of a citizen to carry on business but it is not open to the State to achieve this object by directly and immediately curtailing any other freedom of that citizen guaranteed by the Constitution and which is not susceptible of abridgement on the same grounds as are set out in cl. (6) of Art. 19. Therefore, the right of freedom of speech cannot be taken away with the object of placing restrictions on the business activities of a citizen. Freedom of speech can be restricted only in the interests of the security of the State, friendly relations with foreign State, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. It cannot, like the freedom to carry on business, be curtailed in the interest of the general public. If a law directly affecting it is challenged it is no answer that the restrictions enacted by it are justifiable under cls. (3) to (6). For, the scheme of Art. 19 is to enumerate different freedoms separately and then to specify the extent of restrictions to which they may be subjected and the objects for securing which this could be done. A citizen is entitled to enjoy each and every one of the freedoms together and cl. (1) does not prefer one freedom to another. That is the plain meaning of this clause. It follows from this that the State cannot make a law which directly restricts one freedom even for securing the better enjoyment of another freedom. All the greater reason, therefore for holding that the State cannot directly restrict one freedom by placing an otherwise permissible restriction on another freedom.

Viewing the question from this angle it would be seen that the reference to the Press being a business and to the restriction imposed by the impugned Act being referable or justified as a proper restriction on the right to carry on the business of publishing a newspaper would be

1961

Sakal Papers (P) Ltd. v. The Union of India

Mudholkar J.

wholly irrelevant for considering whether the impugned Act infringes or does not infringe the freedom guaranteed by Art. 19(1)(a).

The only question that would then remain would be whether the impugned enactment directly impinges on the guarantee of freedom of speech and expression. It would directly impinge on this freedom either by placing restraint upon it or by placing restraint upon something which is an essential part of that freedom. The freedom of a newspaper to publish any number of pages or to circulate it to any number of persons is each an integral part of the freedom of speech and expression. A restraint placed upon either of them would be a direct infringement of the right of freedom of speech and expression. Perhaps an illustration would make the point clear. Let us suppose that the enactment had said that newspaper 'A' or newspaper 'B' (ignoring for the moment the objection to the illustration based upon Art. 14 shall not have more than a specified number of subscribers. Could such a law be valid in the face of the guarantee under Art. 19(1)(a)? The answer must unhesitatingly be no, because such a law would be recognized as directly impinging upon the freedom of expression which encompasses freedom of circulation and to restrain the citizen from propagating his views to any other beyond the limit or number prescribed by the statute. If this were so, the fact that the legislation achieves the same result by means of the schedule of rates makes no difference and the impact on the freedom would still be direct notwithstanding that it does not appear so on its face.

Here the Act by enacting ss. 4 and 5 directly prohibits a newspaper from exercising that right, should the newspaper fail to comply with the requirement of an order made under s. 3. This is a direct invasion of the right under Art. 19(1)(a) and not an incidental or problematic effect thereon as

was found in the *Express Newspapers case*(1). In that case the challenge to certain provisions of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 on the ground that it infringes the right guaranteed by Art. 19 (1)(a) of the Constitution. That challenge failed because the object of that enactment was to secure the amelioration of the condition of working journalists and also because the law did not have the effect of directly interfering with the right of the newspaper proprietors guaranteed under Art. 19 (1)(a) of the Constitution. The distinction between direct and indirect effect of a law upon the freedom of press has been adverted to in that case. At p. 135, Bhagwati, J., who spoke for the Court has said :

> "All the consequences which have been visualised in this behalf by the petitioners, *viz.*, the tendency to curtail circulation and thereby narrow the scope of dissemination of information, fetters on the petitioners' freedom to choose the means of exercising the right, likelihood of the independence of the press being undermined by having to seek government aid; .....etc. would be remote and depend upon various factors which may or may not come into play. Unless these were the direct or inevitable consequences of the measures enacted in the impugned Act, it would not be possible to strike down the legislation as having that effect and operation."

That the impugned Act was intended to effect circulation and thus directly affect the freedom of speech is discernible also from the preamble which we may here quote. It runs thus:

> "An Act to provide for the regulation of the prices charged for newspapers in relation to their pages and of matters connected therewith for the purpose of preventing unfair

(1) (1959) S.C.R. 12.

1961

Sakal Papers (P) Ltd. v. The Union of India

Mudholkar J.

competition among newspapers so that newspapers may have fuller opportunities of freedom of expression."

Its object thus is to regulate something which, as already stated, is directly related to the circulation of a newspaper. Since circulation of a newspaper is a part of the right of freedom of speech the Act must be regarded as one directed against the freedom of speech. It has selected the fact or thing which is an essential and basic attribute of the conception of the freedom of speech *viz.*, the right to circulate one's views to all whom one can reach or care to reach for the imposition of a restriction. It seeks to achieve its object of enabling what are termed the smaller newspapers to secure larger circulation by provisions which without disguise are aimed at restricting the circulation of what are termed the larger papers with better financial strength. The impugned law far from being one, which merely interferes with the right of freedom of speech incidentally, does so directly though it seeks to achieve the and by purporting to regulate the business aspect of a newspaper. Such a course is not permissible and the courts must be ever vigilant in guarding perhaps the most precious of all the freedoms guaranteed by our Constitution. The reason for this is obvious. The freedom of speech and expression of opinion is of paramount importance under a democratic Constitution which envisages changes in the composition of legislatures and governments and must be preserved. No doubt, the law in question was made upon the recommendation of the Press Commission but since its object is to affect directly the right of circulation of newspapers which would necessarily undermine their power to influence public opinion it cannot but be regarded as a dangerous weapon which is capable of being used against democracy itself.

In these circumstances the Act and the Order cannot be sustained upon the ground that it merely

implements a recommendation of the Press Commission and was thus not made with an ulterior object. The decision in *Hamdard Dawakhana (Wakf)* v. *Union of India* (1) upon which reliance was placed by the respondent in support of the contention that where an enactment is challenged on the ground of violation of fundamental rights it is legitimate to take into consideration several factors including the purpose of the legislation, the mischief intended to be suppressed, the remedy purposed by the legislature and the true reason for that remedy does not, therefore, arise for consideration. Similarly, since the Act taken in conjunction with the order made thereunder operates as a restraint on the freedom of speech and expression of newspapers the mere fact that its object was to suppress unfair practices by newspapers would not validate them. Carrying on unfair practices may be a matter for condemnation. But that would be no ground for placing restrictions on the right of circulation.

It was argued that the object of the Act was to prevent monopolies and that monopolies are obnoxious. We will assume that monopolies are always against public interest and deserve to be suppressed. Even so, upon the view we have taken that the intendment of the Act and the direct and immediate effect of the Act taken along with the impugned order was to interfere with the freedom of circulation of newspapers the circumstance that its object was to suppress monopolies and prevent unfair practices is of no assistance.

The legitimacy of the result intended to be achieved does not necessarily imply that every means to achieve it is permissible; for even if the end is desirable and permissible, the means employed must not transgress the limits laid down by the Constitution, if they directly impinge on any of the fundamental rights guaranteed by the Constitution it is no answer when the constitutionality

(1) [1960] 2 S. C. R. 671.

1961

Sakal Papers (P) Ltd.
v.
The Union of India

Mudholkar J.

of the measure is challenged that apart from the fundamental right infringed the provision is otherwise legal.

Finally it was said that one of its objects is to give some kind of protection to small or newly started newspapers and, therefore, the Act is good. Such an object may be desirable but for attaining it the State cannot make inroads on the right of other newspapers which Art. 19(1)(a) guarantees to them. There may be other ways of helping them and it is for the State to search for them but the one they have chosen falls foul of the Constitution.

To repeat, the only restrictions which may be imposed on the rights of an individual under Art. 19(1)(a) are those which cl. (2) of Art. 19 permits and no other.

Coming to Writ Petitions 67 and 68 of 1961, considering that the relief granted by us in the main petition will redress the grievance of the petitioners in these two petitions it will be only of academic interest to decide whether they, as readers of newspapers, can complain of an interference with their right under Art. (19)(1)(a). We, therefore, refrain from making any Order on their petitions.

Upon the view we take it would follow that s. 3(1) of the Act, which is its pivotal provision, is unconstitutional and, therefore, the Daily newspaper (Price and Page) Order, 1960 made thereunder is also unconstitutional. If s. 3(1) is struck down as bad, nothing remains in the Act itself.

Accordingly we allow this petition with costs. The petitioners in W. Ps. 67 and 68 of 1961 as well as the interveners will bear their respective costs.

Petition allowed.