

A RAILWAY BOARD, GOVT. OF INDIA

v.

M/S OBSERVER PUBLICATIONS (P) LTD.

March 16, 1972

**B [S. M. SIKRI, C.J., A. N. GROVER, A. N. RAY, D. G. PALEKAR
AND M. H. BEG, JJ.]**

C *Constitution of India Art. 14—Indian Railway Code, Clause 742—
News-weekly—Sold by licensees at railway bookstalls—Ban on sale of
such news-weekly—Ban is not justified under clause 742 sub-clause (v)
if the matter is not found to be obscene but only bordering on obscenity—
Similar publications not banned—Ban is violative of Art. 14 of Constitution.*

D The sale of the Indian Observer, a news weekly, at railway platforms was banned by an order of the appellant board in March 1965. The respondent who was owner and publisher of the Indian Observer filed a writ petition in the High Court alleging that the ban had been imposed because the news weekly had carried certain articles which were critical of the Railway administration. The appellant's case in the High Court was that the ban had been imposed because the news weekly carried sexy and obscene matter. The High Court allowed the writ petition holding that similar publications were allowed to be sold by the licensees of railway bookstalls and the ban on Indian Observer was therefore discriminatory. The High Court also held that under clause 742 of the Indian Railway Code the appellant had no authority to impose the ban. In appeal against the High Court's decision.

E HELD : (i) In the Indian Railway Code the policy and principle laid down in categorical terms in sub-clause (viii) of Clause 742 is that the contractor should provide equal opportunity to all the popular newspapers for sale in their stalls on the same terms. This was subject to certain conditions one of which in sub-clause (v) was that the sale of obscene books and pictures and publications by the government should be strictly banned. However the letter written by the railway dated **F** March 26, 1965 did not impose the ban on the ground that Indian Observer was an obscene publication which had been prohibited by the government. In that letter there was first a recital of what had come to the Board's notice *i.e.*, that the articles written in the said news weekly were in very low taste bordering on obscenity. There was no finding or decision that it was a publication which was obscene. The conclusion of the Board simply was that the Indian Observer was not fit for sale at Railway stations. The other condition laid down in sub-clause (v) **G** that its sale has been prohibited by the Government was neither mentioned nor had it been shown that any such order had been made by the government prohibiting the sale of the Indian Observer on the ground that it was obscene. The Central Government was not shown to have any power under the Railways Act or rules thereunder to ban the sale of any obscene book or publication and it was not claimed that the Railway Board could impose the ban under any other enactment. For the **H** above reasons the order imposing the ban could not be justified under clause 742 of the Indian Railway Code.

(ii) The High Court had found as a fact that publications which were freely on sale on the bookstalls to whom licences has been given were

such that they were hardly distinguishable from the Indian Observer on the ground of obscenity. It was not disputed before the High Court that the news weekly in question had been sold on railway platforms since 1963 nor was it suggested that the Railway Board had ever accorded individual sanction for the sale of every single book and publication at the book stalls of the Railway Administration. The Railway Administration had itself directed that the book stall contractors who were its licensees should provide equal opportunity to all the popular newspapers for sale in their stalls. These very contractors were now being directed to discriminate between the respondent and owners or publishers of other popular newspapers on grounds which had no legal basis or justification. The administrative act or order of the Railway Board (which fell within the definition of 'State' in Art. 12 of the Constitution), could therefore be challenged by the appellant in a petition under Art. 226 of the Constitution as violative of Art. 14. Since no proper or valid grounds had been shown for sustaining the discrimination made, the view of the High Court that the impugned order of the Railway Board was discriminatory must be upheld.

Railway Board v. Niranjan Singh, [1969] 3 S.C.R. 548, distinguished.

(iii) Judicial propriety and decorum demand that a Bench while considering the question of granting a certificate for appeal to this Court ought not to be critical of or express any dissent from the judgment appealed against because it has not such jurisdiction and all that it has to decide is whether the requirement of the Articles of the Constitution on which a certificate can be granted have been satisfied.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2097 of 1968.

Appeal from the judgment and order dated August 11, 1965 of the Delhi High Court in C.W. No. 197-D of 1965.

Jagdish Swarup, Solicitor-General of India, S. N. Prasad, B. D. Sharma and S. P. Nayar, for the appellant.

S. C. Manchanda, S. Balakrishnan and P. N. Lekhi, for the respondent.

The Judgment of the Court was delivered by

Grover, J. This is an appeal by certificate from a judgment of the Punjab High Court by which the petition under Art. 226 of the Constitution filed by the respondent was allowed and the ban imposed on the sale of a news weekly called "The Indian Observer" by the licensees of the Railway Book Stalls throughout the country under directions issued by the appellant was set aside.

According to the writ petition, the petitioner was the owner and publisher of a weekly newspaper known as "The Indian Observer" which had a wide sale in India, its weekly circulation being approximately 1,35,000 copies. Till March 1965 the aforesaid news weekly was being sold at all the railway stations

- A** which were managed and were under the administrative control of the Railway Board. It was alleged that the policy of the news weekly was to publish a constructive criticism and fair comment in public interest on the working of different departments of the Government and to suggest remedial measures. In some of the copies of the news weekly, certain matters regarding the mal-
- B** administration of the Railway had been published. Reference was made in particular to the issue of 11th September, 1964 in which allegations were made about the black-marketing in deluxe train tickets. It was stated to have attained the magnitude of a big racket operating in the country resulting in lot of gain by corrupt means to the Railway staff. It is unnecessary to give the
- C** details but according to the allegations made in the news weekly, the Railway staff was corrupt and the reasons for the corruption were also given. Other comments were made which reflected adversely on the working of the Indian Railways. According to the petitioner all these statements and resolutions annoyed the Railway Authorities and on 22nd September, 1964, the Circulation Manager of the Petitioner company received a letter from
- D** M/s. M. Gulab Singh (P) Ltd., one of the licensees, of the Railway Board for sale of printed matters intimating that the Northern Railways administration had banned the sale of "The Indian Observer" on the Railway Book Stalls. Subsequently, when the petitioner took up the matter with the authorities concerned, the General Manager, Northern Railways, wrote to him informing
- E** him that temporary permission had been given to the railway contractors of printed matters to sell the news weekly subject to proper review of that paper and final orders which would be given later. The General Manager asked the petitioner to supply copies of 12 old issues which was done. Finally, the petitioner was informed by means of a letter dated the 16th March 1965 that the
- F** sale of the weekly "The Indian Observer" could not be permitted on the railway stations.

- In the return which was filed by the Joint Director, Traffic (General), Railway Board, it was not denied that the news weekly "The Indian Observer" was being sold at the railway stations by the licensed contractors. It was asserted that the petitioner had been publishing "sexy and obscene literature" and the licensees had been raising objections on this score. The articles published in the news weekly were considered to be of low taste and it was decided that it would not be in public interest to allow its sale at the railway platforms by the licencees. The allegations made in the petition about the statements relating to corruption and mal-administration in the Railways which had been published in some of the issues of the news weekly was not denied. It was,
- H** however, maintained that the Railway Board had taken the action

not because of the publication of those articles but because of the sexy and obscene literature of low taste which was being published in the news weekly. A

Before the High Court, s. 28 of the Indian Railways Act 1890, hereinafter called the "Act"; and the relevant sub-clauses of clause 742 of the Indian Railway Code were pressed into service for challenging the ban which had been imposed on the sale of the news weekly. The High Court was of the view that the petitioner before it had cited and produced instances of publications which were freely on sale on the bookstalls on the railway platforms to show that the material which was sought to be excluded on grounds on obscenity, was hardly distinguishable from the other popular magazines of foreign and Indian origin. Reliance was placed on the provisions of clause 742 of the Indian Railway Code which established that a publication to attract the ban imposed by the Railway Board must have been previously prohibited by the Government. As the Railway Board was not authorised to exclude any publication from sale on its own determination that it was obscene, it was held that the order which was made by that Board was without authority. The ban had hit the writ petitioner who had been made the object of discriminatory treatment. Consequently, the restriction imposed on the sale of "The Indian Observer" was quashed. B
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Section 120A of the Act which was inserted for the first time by Act No. 13 of 1959 provides that if a person canvasses for any custom or hawk or exposes for sale any article whatsoever, in any railway carriage or upon any part of a railway except under and in accordance with the terms and conditions of a licence by the railway administration shall be punishable with fine which may extend to two hundred and fifty rupees. He can also be removed from the carriage or any part of the railway by any railway servant so authorised. It appears that prior to the insertion of this section, rules had been framed under s. 47(1) of the Act. E
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Rule 17 of Part II of the Rules laid down that no person could canvass for any custom or hawk or expose for sale any article whatsoever, on any train, station, platform or premises without a licence granted by the railway administration. Clause I of Rule 17 has been incorporated in s. 120A(1) of the Act in 1959, that clause having been deleted from the rule. The bookstalls on the railway platforms where books, manazines and newspapers are sold, belong to the licencees who have entered into an agreement with the President of India. It is not disputed that according to the usual clauses in these agreements of licence, the sale of newspapers shall not be stopped by the licencees at any time save when it is due to causes beyond the control of the G
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A licensee. The learned Solicitor General produced a sample agreement in court which was not objected to by the counsel for the respondent. According to clause 3(b) thereof the licensor can reserve to himself the right to require the licensee to sell specified books or types of books and periodicals and the licensee was bound to comply with such requirements. Under clause 5 the

B licensor had the right of prohibiting the sale or exhibition of any publication of an obscene or scurrilous nature, and of any publication to which good, sufficient, and reasonable objections could be shown and the decision of the licensor was to be final and binding on the licensee.

C The Railway Board which is the appellant before us has issued certain instructions and laid down essential principles and policy directions which have been published in the form of a Code called the "Indian Railway Code" for the Traffic Department (Commercial). It may be mentioned that the Solicitor General himself maintained that all those were of a mandatory nature and it is so stated in the preface to the Code.

D Chapter VII, Part A of this Code deals with catering and vending services. Part B relates to book-stalls, sale of newspapers and periodicals on railway platforms. Clause 742 to the extent it is material is reproduced below :—

E
 (v) The sale of obscene books and pictures and publications prohibited by the Government should be strictly banned.

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 (viii) The contractors should provide equal opportunity to all the popular newspapers for sale in their stalls on the same terms. A list of popular newspapers and magazines should be drawn up by the Railway Administration in consultation with the Zonal Railway Bookstall Advisory Committee".

G The main argument of the learned Solicitor General on behalf of the appellant is that sale of books on railway platforms or in railway carriages is a matter which is regulated by the terms of the agreement of licence between the bookstall contractors and the railway authorities and it is open to the appropriate authority to

H stop the sale of any newspaper or publication which was considered obscene or scurrilous or to which sufficient and reasonable objections could be shown. In the letter of the Railway Board dated March 26, 1965 it was stated that it had come to the Board's

notice that the "Indian Observer" generally contained "articles written in very low taste bordering on obscenity". It was further stated that after a perusal of few copies of the said weekly the Board had come to the conclusion that it was not fit for sale at railway stations. It was desired that the book stall contractors should be instructed to stop with immediate effect the sale of the "Indian Observer" from their bookstalls as well as on the platforms as also along train side and in station premises. According to the Solicitor General the action taken by the Railway Board was perfectly competent and was taken in accordance with the terms of the licence granted to the book stall contractors. It is urged that the respondent had no right or *locus standi* to insist on or ask for the sale of the Indian observer on the platforms etc., which are the private property of the railway and where the sale of any publication could only be subject to such terms and conditions as obtained between the licensor or licensee.

Before the High Court and before us the main complaint of the present respondent is based on an infraction of Article 14 of the Constitution and it has been asserted that the news weekly "Indian Observer" was singled out for discriminatory treatment inasmuch as publications containing similar material were not prohibited from sale by the Railway Board on the book-stalls at the platforms and in the trains etc. The High Court had found as a fact that publications which were freely on sale on the book-stalls to whom licences had been given were such that they were hardly distinguishable from the "Indian Observer" on the ground of obscenity. It was not disputed before the High Court that the news weekly in question had been sold on railway platforms since 1963 nor was it suggested that the Railway Board had ever accorded individual sanction for the sale of every single book and publication at the book stalls of the Railway Administration.

Now in the Indian Railway Code the policy or the principle laid down in categorical terms in sub-clause (viii) of Clause 742 is that the contractor should provide equal opportunity to all the popular newspapers for sale in their stalls on the same terms. This was subject to certain conditions, one of which was that the sale of obscene books and pictures and publications prohibited by the Government should be strictly banned. (vide sub-clause v). The letter written by the railway itself to which a reference has been made, does not impose the ban on the ground that the "Indian Observer" is an obscene publication which has been prohibited by the Government. In that letter there was first a recital of what had come to the Board's notice *i.e.* that the articles written in the said news weekly were in very low taste bordering on obscenity. There was no finding or decision that it was a publication which was obscene. The conclusion of the Board

- A** simply was that the "Indian Observer" was not fit for sale at the Railway stations. The other condition laid down in sub-clause (v) that its sale had been prohibited by the government was neither mentioned nor has it been shown that any such order had been made by the government prohibiting the sale of the "Indian Observer" on the ground that it is obscene. The learned Solicitor
- B** General contends that the word 'Government' in sub-clause (v) means the Railway Board because according to s. 2 of the Indian Railway Board Act 1905, Central Government may by notification in the official gazette invest the Railway Board either absolutely or subject to conditions with all or any of the powers or functions of the Central Government under the Act. Our attention has not
- C** been drawn to any provision in the Act or the rules framed there-under by which the Central Government can prohibit the sale of any obscene book, picture or publication. It appears that the aforesaid clause has reference to a prohibition imposed by the Central Government under some enactments other than the Act. It is not claimed that the Railway Board could impose a ban under any other enactment. Nor has it been suggested that the Central
- D** Government had passed any order prohibiting the sale of the Indian Observer under any statutory provision.

Even on the assumption that the Board could make such an order as is contemplated by sub-clause (v) of clause 742 it cannot take any advantage of that provision because in the letter dated

E March 26, 1965 it was nowhere stated that the publication of the news weekly was being banned on the ground of obscenity. It is thus apparent that the High Court was fully justified in taking the view that the "Indian Observer" had been singled out for being banned and this clearly amounted to a discriminatory treatment.

- F** The question that has next to be resolved is whether Art. 14 could be invoked by the respondent in the present case. It has not been and indeed cannot be disputed that the Railway Board will fall within the definition of "State" as given in Art. 12 of the Constitution. The learned Solicitor General has relied on *Railway Board v. Niranjana Singh*⁽¹⁾. It was laid down that there
- G** was no fundamental right under Art. 19(1) for anyone to hold meetings in government premises. The Northern Railway was the owner of the premises and was entitled to enjoy its property in the same manner as any private individual, subject to any such restrictions as the law or the usage placed on them. We are unable to appreciate how the ratio of that decision could be applied to the present case. The meetings of workers which had taken
- H** place there had been held inside workshops, stores and depots and within office compounds. Railway platforms may be the property

(1). [1969] 3 S.C.R. 548.

of the railways, but it cannot be disputed that every *bona fide* traveller or every other member of the public who buys a platform ticket can have access to the railway platforms. It is true that under Rule 15 of the General Statutory Rules and Orders, a railway administration may exclude and, if necessary, remove from the station platform or any part of the railway premises any person who is not a *bona fide* passenger and who does not have any business connected with the railway or any person who having arrived at a station by train and having no business connected with the railway refuses to leave the railway premises when required to do so. But that is a right which is reserved for being exercised only in the circumstances mentioned in the rule. There is no analogy between a station platform and a government office. Even otherwise the crux of the matter is that the respondent is not seeking to use the station platform or any part of the railway premises by sending any of its own representatives to hawk or sell the news weekly there. All that the respondent says is that the railway administration has itself directed that the book-stall contractors who were its licensees should provide equal opportunity to all the popular newspapers for sale in their stalls. These very contractors are now being directed to discriminate between the respondent and owners or publishers of other popular newspapers on grounds which have no legal basis or justification. The administrative act or order of the Railway Board can, therefore, be challenged under Art. 14. The respondent is not asking for the enforcement of any such fundamental right as would come within the rule laid down in the previous decision of this Court. In other words what the present respondent is challenging is the order of the Railway Board which led to the stoppage of the sale of the news weekly on the Railway platforms etc. If that order is discriminatory and cannot be justified on any of the well known grounds, the respondent can challenge it in a petition under Art. 226 of the Constitution as violative of Art. 14. There is no parallel between the facts of this case and the decision relied upon by the learned Solicitor General. We concur with the view of the High Court that the impugned order of the Railway Board was discriminatory. No proper or valid grounds have been shown for sustaining the discrimination made.

A certain amount of discussion took place before us with regard to the applicability of s. 28 of the Act which contains prohibition against undue preference being shown by the Railway Administration in any respect whatsoever. In the view that we have taken about the applicability of Art. 14 we do not consider it necessary to decide whether the respondent could take advantage of the provisions of that section.

- A** Lastly, we may refer to a preliminary objection which was raised on behalf of the respondent to the certificate which was granted by the High Court. It has been urged that the certificate is defective because in the order dated July 7, 1968 granting it the Bench has virtually given a decision as if an appeal was being entertained against the judgment dated August 11, 1965 by which
- B** the writ petition was allowed. It does appear that Deshpande J., who delivered the order of the Division Bench granting the certificate has made certain observations which seem to suggest that the previous decision was incorrect. Although such an order will not *per se* vitiate the certificate, both judicial propriety and decorum demand that a Bench while considering the question of granting a certificate for appeal to this Court ought not to be critical of
- C** or express any dissent from the judgment appealed against because it has no such jurisdiction and all that it has to decide is whether the requirement of the Articles of the Constitution on which a certificate can be granted, have been satisfied.

The appeal fails and it is dismissed with costs.

G.C.

Appeal dismissed.