imposed was held to be bad in law and the notification was quashed. Viewed in this light, it would be appreciated that in fact there is not much conflict in the judgment rendered by this Court in *M/s Jaswant Theatre's case* (supra) and *M/s V. P. Theatre's case* (supra). Although there is not much conflict between these two judgments but with respect to the learned Judges of the Division Bench, we do not find ourselves in agreement with the reasoning adopted and conclusions reached in these two judgments and for the reasons stated in this judgment we over rule the same.

(21) For the reasons stated above, we find no merit in this writ petition and the same is dismissed. However, there will be no order as to costs.

R.N.R.

(FULL BENCH)

Before : *J. S. Sekhon, A. P. Chowdhri & H. S. Brar, JJ.*

BARJINDER SINGH,—*Petitioner.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 15625 *of* 1991.

11th March, 1993.

Code of Criminal Procedure, 1973 (*II of* 1974)—*Ss.* 95 & 96—*Constitution of India,* 1950—*Arts.* 14, 19 & 21—*Objectionable news-items—Censorship—Constitutional validity of S.* 95—*Restrictions imposed by duly constituted Press Relations Committee under Chairmanship of Governor of State involving Editors and other representatives of various newspapers—Opportunity to give pre-decisional hearing before such imposition—Not necessary where effective remedy is available—S.* 95 *is constitutionally valid and intra-vires the Constitution—Reasonableness of restrictions—Determination thereof.*

Held, that it is not practicable to give an opportunity of being heard to the person concerned before passing the order of forfeiture under S. 95. In the nature of things the newspapers are engaged in a battle against time in ensuring the release of its edition to meet its commitment to the readers advertisors etc. The process of hearing involves a consideration and a decision of the various points to which the attention of the State Government may be invited by the person concerned. It involves application of mind and we are, therefore, of

the view that it is not possible to afford an opportunity of being heard before passing the order under S. 95. The power under S. 95 of the Code has been vested in the State Government. The section contains in built safeguards. The State Government is required to state the grounds of its opinion. The power can be exercised only in cases which appear to the State Government to contain any matter the publication of which is punishable under the specified sections of the Indian Penal Code. Effective and adequate remedy is provided under S. 96 of the Code of Criminal Procedure. We are clearly of the view that the restriction imposed by S. 95 is not disproportionate to the evil sought to be remedied. We are further of the view that S. 95 satisfies the requirement of Article 21 as expounded by the apex Court and the same must be held to be constitutionally valid and *intra vires* the Constitution.

(Paras 21 & 22)

Held further, that the Press is a mighty institution wielding enormous powers which are expected to be exercised for the protection and good of the people but which may conceivably be abused and exercised for anti-social purposes by exciting the passions and prejudices of a section of the people against another section and thereby disturbing the public order and tranquility and in support of a policy which may be of a subversive character. The powerful influence of the newspapers, for good or evil, on the minds of the readers, the wide sweep of their reach, the modern facilities for their swift circulation to territories, distant and near have to be kept in view in order to determine the reasonableness of the restrictions upon the Press. In the facts and circumstances, therefore, we have come to the conclusion that the restrictions are reasonable.

(Paras 17 & 19)

Petition under Article 226 *of the Constitution of India for the declaration of section* 95 *Cr.P.C. so far as it relates to the Daily newspapers,* ultra vires *of Article* 19, 14 *and* 21 *of the Constitution, praying that the provision of section* 95 *Cr.P.C. so far they relates to the newspapers, be declared* ultra vires *of the Constitution.*

And the imposition of censorship under the garb; of powers u/s 95 *Cr.P.C. be quashed.*

And the unwritten policy of the State Government to harass Ajit on small pretexts be stopped.

It is further prayed that forfeiture of Ajit under section 95 *Cr.P.C. be stayed and service of advance notices be dispensed with.*

And the Writ be allowed with costs.

(This case was referred by the Division Bench consisting of Hon'ble Mr. Justice A. L. Bahri & Hon'ble Mr. Justice V. K. Bali to a larger Bench on 14*th January,* 1992, *as in the opinion of their lordship*

the matter involved was of considerable general importance and deserved to be considered by a larger Bench. The larger Bench consisting of Hon'ble Mr. Justice J. S. Sekhon, Hon'ble Mr. Justice A. P. Chowdhri & Hon'ble Mr. Justice H. S. Brar, finally decided the case on 11th March, 1993).

G. S. Grewal, Sr. Advocate (S/Shri H. S. Nagra & S. S. Bajwa, Advocates & Miss Jarnail Kaur with him), *for the petitioner.*

G. K. Chathrath A.G. (Pb.) with S. S. Saron. D.A.G. Pb. S/Shri Sushant Maini, Rajpal Singh & A. G. Masih, Avdocates *for the State of Punjab.*

S. K. Pipat, Sr. Central Government Standing Counsel with D.D. Sharma, Advocates & Joginder Sharma & Vivek Bhatia, Advocates for U.O.I., *for the respondents.*

JUDGMENT

A. P. Chowdhri, J.

This. judgment would dispose of C.W.P. No. 15625 of 1991 and six applications under section 96 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') being Crl. Misc. Nos. 3250-M of 1985, 6401-M and 8116-M of 1987, 1886-M of 1988 and 10674-M and 11413-M of 1991 directed against different orders of forfeiture passed under section 95 of the Code. As the material points arising in these petitions are common and overlapping, it would be convenient to dispose of the same by a common judgment.

(2) The writ petition came up for hearing before A. L. Bahri and V. K. Bali, JJ. The learned Judges were of the opinion that the matter involved was of considerable general importance and deserved to be considered by a larger Bench. That is how the same is before us.

(3) The writ petition was filed by Shri Barjinder Singh, Chief Editor of the daily Punjabi newspaper The Ajit published from Jalandhar. It seeks three reliefs:—

(1) Section 95 of the Code be declared constitutionally invalid and *ultra vires* Articles 14, 19 and 21 of the Constitution.

(2) The unwritten policy of the state Government to forfeit various issues of the Ajit be quashed.

(3) Censorship, though not formally imposed on the publication of the newspaper The Ajit, be removed.

(4) Though the question of constitutional validity of section 95 of the Code is a question of Law, a bare minimum factual background would help put the question in perspective.

(5) The petition was filed in October, 1991 when the State was being governed under the President's Rule for more than five preceding years. Militancy increased during that period. According to the petitioner, the people in general were either silent or they supported the militants and it was their writ which ran in the State. The situation was made worse, according to the petitioner because the person at the helm of affairs were not accountable to the public and resort had been made to drastic laws like the Terrorists and Disruptive Activities (Prevention) Act. It was in this difficult situation that the Press in general and The Ajit in particular was making efforts to play its legitimate role of informing the people truthfully and impartially of the events and circumstances taking place in the State. It was believed that instructions were issued sometimes in April, 1990 that the Press be taught a lesson and an undeclared censorship was imposed on the Press. Almost every day officers of the State Government visited the premises of the newspapers and issued oral instructions that certain news-items be not published. No difficulty arose where the newspaper concerned caved in and the objected news-item was either deleted or altered to the satisfaction of the officers or altogether censored. In certain cases, the actual seizure of various issues of the newspaper was done under oral instructions to the police from various places in the State and the order of forfeiture passed on a later convenient date. There were also instances where the news-item which had been objected to, was omitted from the later editions of the same date. In spite of the omission, the Authorities nevertheless continued to seize even later editions bearing the same date. There were also instances where a certain newspaper was declared forfeited by the State Government, yet another newspaper having circulation in the State and carrying the same news-item was not forfeited. The petitioner gave some instances to illustrate the above points. It was further averred that the daily Ajit appeared to have been chosen for a specially hostile and invidious treatment.

(6) It was in this background that constitutional validity of section 95 of the Code was challenged on various grounds.

(7) A return was filed by Deputy Secretary to Government in Home Department on behalf of respondent No. 1. It was stated by way of preliminary objection that the petitioner had earlier filed civil Writ petition No. 4829 of 1991, which was dismissed by judgment dated July 30, 1991. The dismissal of the earlier writ petition barred the present writ petition. It was further stated that the State Government had been acting with a great sense of responsibility and with due restraint. A Press Relations Committee under the Chairmanship of the Governor of Punjab was constituted. The Editors and other representatives of various newspapers and the media were involved in an effort to evolve by consensus certain basic agreed self-imposed restrictions to tide over this critical period in the history of our country. Based on the discussions which took place in the aforesaid meeting held at Jalandhar on June 26, 1990, a Code of Conduct was evolved on the basis of the consensus at the meeting. It was further stated that the Press Council of India had appointed a Sub-Committee under section 8 read with section 15 of the Press Councils Act, 1978, to examine the pressures and problems confronting the press and its personnel in the State of Punjab. The Sub-Committee consisted of leading Journalists, namely, Shri B. G. Verghese, Shri Jamna Dass Akhtar and Shri K. Vikram Rao. The Sub-Committee went into the question and was given full co-operation by the State Government in fulfilling its task. The various instances referred to and relied on by the petitioner in the writ petition were controverted and explained in the return. It was stated that order of forfeiture is directed only against such issue of the newspaper as carries the objectionable item. The Government was not aware of any instructions having been issued in or about April, 1990 for imposing an undeclared censorship on the press. It was denied that officers of the State Government visited the premises of newspapers to issue oral instructions with regard to certain news-items. It was denied that the Daily Ajit had been picked up for a hostile treatment. Action was taken against another daily Aj-Di-Awaaz dated July 25, 1991, on the ground that the newspaper carried news captioned 'Call for 48 hours Punjab Bandh'. Alongwith the return, minutes of the meeting of the Press Relations Committee of Punjab dated June 26, 1990, Annexure R-1, and copy of the report of the Sub-Committee appointed by the Press Council of India, Annexure R-2, were also filed.

(8) A separate return was filed on behalf of Union of India (respondent No. 3) by the Desk Officer in the Ministry of Home Affairs, Government of India. It was pointed out that the constitutional validity of section 95 of the Code had been upheld by at least

two High Courts in the country, namely, Andhra Pradesh and Bombay. It was further stated that if the order of forfeiture was set aside by the High Court under section 96 of the Code, the aggrieved person could have his remedy of compensation under the law.

(9) We have heard Mr. G. S. Grewal, Senior Advocate for the Petitioner and Mr. G. K. Chatrath, Advocate-General, Punjab and Mr. S. K. Pipat, Sr. Advocate and Senior Standing Counsel for Union of India.

(10) The contentions raised by Mr. Grewal may be summarised as under:—

(1) The expression 'personal liberty' occurring in Article 21 of the Constitution had received a very wide construction so as to comprise of the residue of freedoms other than those specifically enumerated in various clauses of Article 19 (A.I.R. 1978 S.C. 597).

(2) The principle of reasonableness which is an essential element of equality or non-arbitrariness pervades Article 14 and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14 (*vide E. P. Royappa* v. *State of Tamil Nadu*. A.I.R. 1974 S.C. 555).

(3) Natural justice is an essential element of the procedure established by law.

(4) The concept of natural justice implies 'fair play in action'. Fair play in action demands that before any prejudicial or adverse action is taken against a person he must be given an opportunity to be heard.

(5) The dividing line between an administrative power and a *quassi* judicial power is quite thin and is being gradually obliterated. There can be no distinction between *quasi* judicial function and administrative function in so far as application of the doctrine of natural justice is concerned. Till very recently the Courts held the view that unless the authority concerned was required by the law under which it functioned to act judicially, there was no room for the application of the rules of natural justice. The validity of that limitation was questioned in later decisions. The

reason being that if the purpose of the rules of natural justice is to prevent miscarriage of justice, one fails to see why those rules should be made inapplicable to administrative actions (*vide A. K. Kraipak* v. *Union of India*, A.I.R. 1970 S.C. 150). The law must, therefore, be taken to be well settled that in an administrative proceedings, which involved civil consequences, the doctrine of natural justice must be held to be applicable (*vide D.F.O. South Kheri* v. *Ram Sanehi Singh*, A.I.R. 1973 S.C. 205).

(6) Though our Constitution has no 'due process' clause or the VIII Amendment but in this branch of law after *R. C. Cooper* v. *Union of India*, A.I.R. 1970 S.C. 564 and *Smt. Maneka Gandhi* v. *Union of India*, A.I.R. 1978 S.C. 597 the consequence is the same, and where the procedure provided is unfair, the same falls foul of Article 21 (*vide Sunil Batra* v. *Delhi Administration* A.I.R. 1978 S.C. 1675).

(7) The last word on the question of justice and fair play does not rest with the Legislature. Just as reasonableness of restrictions under clause (2) to (6) of Article 19 is for the Courts to determine, so is it for the Courts to decide whether the procedure prescribed by a law for depriving a person of his life or liberty is fair, just and reasonable (*vide Mithu Singh* v. *State of Punjab*, A.I.R. 1983 S.C. 473).

(8) Neither the form of the order nor the object sought to be achieved determines the invasion of the right. What determines invasion of the right and attracts jurisdiction of the Courts is the effect of the law and the action upon the right. (*Bank Nationalisation case* A.I.R. 1979 S.C. 564 quoted in *Indian Express Private Limited* v. *Union of India*, A.I.R. 1986 S.C. 782). The Courts have to guard fundamental rights by considering the scope and provisions of the Act and its effect upon the fundamental rights.

(9) The daily newspapers had a short-lived life, in that after a few hours of its publication the value of a newespaper was reduced to that of a waste paper. By a forfeiture order the real mischief is done and the damage inflicted. The remedy of getting the declaration of forfeiture set aside under section 96 of the Code may, at the most, vindicate the stand of the newspaper but it can never restore

the damage suffered by it. The remedy of claiming damages by filing a civil suit was dilatory, expensive and, therefore, hardly satisfactory.

(10) An important fact of the right to life under Article 21 is the right to livelihood. Any procedure prescribed by law for depriving a person of the right conferred by Article 21 must, therefore. be fair, just and reasonable. (*Olga Tellis and others* v. *Bombay Municipal Corporation and others,* A.I.R. 1986 S.C. 180).

(11) In brief, according to Mr. Grewal, section 95 invested the State Government with unreasonable wide powers. In the absence of any guidelines, the powers could be and had, in fact, been exercised arbitrarily. No opportunity was required to be given to the person concerned before declaring the newspaper, book or other document forfeited to Government. No adequate and effective remedy was provided against misuse of the power.

(11) The submissions of Mr. Chatrath are these :—

(1) Even fundamental rights were not absolute. Those rights were subject to reasonable restrictions.

(2) Section 95 of the Code contained inbuilt safeguards. The power had been vested in no less an authority than the State Government itself. The power was confined only to matters the publication of which was punishable under the specified sections of the Indian Penal Code. The State Government was required to state the grounds of its opinion. A right of post-decisional hearing was provided under section 96 of the Code. The hearing was to be by a Special Bench of the High Court consisting of three Judges.

(3) The mere possibility of the alleged misuse of the power was by itself not enough to strike down the provision. Only such order can be set aside.

(4) Same type of provisions, in broadly similar situation, had been upheld in *Virendra* v. *State of Punjab*, A.I.R. 1957 S.C. 896 and *Santokh Singh* v. *Delhi Administration*. A.I.R. 1973 S.C. 1091.

(5) The constitutional validity of section 99-A of the Code of Criminal Procedure, 1898, which was replaced by the present section 95 of the Code of 1973 had been upheld by two special Benches, namely, *V. Veerabrahmam* v. *State of Andhra Pradesh*, A.I.R. 1959 A.P. 572 and *Gopal Vinayak Godse* v. *The Union of India and others*, A.I.R. 1971 Bombay 56.

(12) Mr. S. K. Pipat referred to the fundamental duties under Article 51-A inserted in the Constitution as a result of the Forty-Sixth Amendment and contended that Articles 14, 19 and 21 were required to be read along with the fundamental duties, especially those laid down in clauses (c) and (e) thereof. He pointed out that section 99-A, the fore-runner of section 95 Cr.P.C., was inserted in the Code of Criminal Procedure, 1898, by the Press Law Repeal and Amendment Act (No. XIV of 1922). The provision had held the field for over 70 years. It was next contended by Mr. Pipat that the scope of Article 21 was confined to life and personal liberty and it did not include economic matters, such as, trade or business. For this proposition, Mr. Pipat placed reliance on the observations in paragraph 20 in *Sodan Singh etc.* v. *New Delhi Municipal Committee and another* (1), Mr. Pipat further submitted that in the nature of things, it was not practicable to give an opportunity of being heard before passing the order of forfeiture in the case of newspapers. The effect of an objectionable writing falling within the ambit of section 95 was so vast and far-reaching that immediate action was required and such action could not be delayed for giving a pre-decisional hearing to the person concerned. Section 96 had provided a very effective remedy to the aggrieved persons. This could be followed by a suit for damages. In appropriate cases, the High Court could exercise its powers under Section 482 of the Code to grant suitable compensation. Further, according to Mr. Pipat, the power to forfeit included the power to rescind an order under the General Clauses Act. Where the aggrieved person satisfies the State Government that the opinion formed by it was not justified in the facts and circumstances of the case, it was open to the State Government to rescind the order of forfeiture.

(13) We have given our deep and anxious consideration to the rival contentions.

(1) A.I.R. 1989 S.C. 1988.

(14) We find no substance in the preliminary objection. The earlier writ petition No. 4829 of 1991, which was dismissed and which is reported as *Sadhu Singh Hamdard Trust, Jalandhar* v. *State of Punjab and others* (2), was confined to executive instructions dated February 20, 1991, to the District Magistrates in the State of Punjab to consider passing appropriate orders under section 95 in respect of certain subjects mentioned therein. It was held that the instructions were only guidelines and did not constitute a mandate to the District Magistrates. The question of constitutional validity of section 95 was not raised or gone into. The decision, therefore, does not operate as a bar to the present writ petition.

(15) Section 95 of the Code, which is under challenge, reads as under:—

"95. POWER TO DECLARE CERTAIN PUBLICATIONS FORFEITED AND TO ISSUE SEARCH WARRANTS FOR THE SAME:— (1) Where

(a) any newspaper, or book, or

(b) any document.

wherever printed, *appears to the State Government* to contain any matter the publication of which is punishable *under Section 124-A or Section 153-A or Section 153-B or Section 292 or Section 293 or Section 295-A of the Indian Penal Code* (45 of 1860), the State Government may, by notification, *Stating the grounds of its opinion,* declare every copy of the issue of the newspaper containing such matter, and every copy of such book or document to be forfeited to Government, and thereupon any police officer may seize the same wherever found in India and any Magistrate may by warrant authorise any police officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonable suspected to be.

(2) In this section and in Section 96,—

(a) "newspaper" and "book" have the same meaning as in the Press and Registration of Books Act, 1867 (25 of 1867);

(2) 1991 (2) P.L.R. 522.

(b) "document" includes any painting, drawing or photograph, or other visible representation.

(3) No order passed or action taken under this section shall be called in question in any Court otherwise than in accordance with the provisions of Section 96." (Emphasis added)

(16) The constitutional validity of the analogous provision, namely, Section 99-A in the Code of Criminal Procedure, 1898, directly came up for consideration. The challenge was repelled and the said provision was upheld as constitutionally valid by two special Benches in *N. Veerabrahmam* v. *State of Andhra Pradesh* (3), and *Gopal Vinayak Godse* v. *The Union of India and others* (4). Though *N. Veerabrahmam's case* (supra) was impliedly overruled in *Harnam Dass* v. *State of U.P.* (5), it was so only on the question whether consideration by the Special Bench of the High Court under Section 96 was confined to the grounds mentioned in the order of forfeiture passed under section 95 or the same could be examined on the basis of the material independently. While the Special Bench of the Andhra Pradesh High Court held that if there was enough material to justify the action of the Government independently of the grounds of the opinion set out in the order of forfeiture, the High Court will not interfere with the order of forfeiture. Their Lordships of the Supreme Court held in *Harnam Dass's case* (supra) as under:—

"...We are, therefore, of the opinion that under section 99-D, it is the duty of the High Court to set aside an order of forfeiture if it is not satisfied with the grounds on which the Government formed its opinion that the books contained matters the publication of which would be punishable under any or more of sections 124-A, 153-A or 295-A of the Penal Code could justify that position. It is not its duty to do more and to find for itself whether the book contained any such matters whatsoever."

With regard to the constitutional validity of section 99-A, however, the decision of the Special Bench was not interfered with by the Supreme Court.

(3) A.I.R. 1959 A.P. 572.
(4) A.I.R. 1971 Bombay 56.
(5) A.I.R. 1961 S.C. 1662.

(17) In *State of Madras* v. *V. G. Row* (6), the Supreme Court laid down the test for reasonableness in the following words:—

> "It is important in this context to bear in mind that the test of reasonableness wherever prescribed should be applied to each individual statute impugned and no abstract standard or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing condition at the time should all enter into the judicial verdict."

This dictum has been adopted and applied by the apex Court in several subsequent cases. It must be borne in mind "that the Press is a mighty institution wielding enormous powers which are expected to be exercised for the protection and good of the people but which may conceivably be abused and exercised for anti-social purposes by exciting the passions and prejudices of a section of the people against another section and thereby disturbing the public order and tranquility and in support of a policy which may be of a subversive character. The powerful influence of the newspapers, for good or evil, on the minds of the readers, the wide sweep of their reach, the modern facilities for their swift circulation to territories, distant and near have to be kept in view in order to determine the reasonableness of the restrictions upon the Press.

(18) It is necessary to recall what was laid down by the Supreme Court in *Virendra* v. *The State of Punjab and another* (7), that the Court is wholly unsuited to gauge the seriousness of the situation, for it cannot be in possession of materials which are available only to the executive Government. It was further laid down that the determination of the time when and the extent to which restrictions should be imposed on the Press must of necessity be left to the judgment and discretion of the State Government and that is exactly what the Parliament has done by enacting section 95.

(19) With regard to the contention based on Article 19 (1) (g) of the Constitution it is sufficient to observe that section 95 of the Code seeks to place only a limited restriction as distinguished from a total

(6) A.I.R. 1952 S.C. 196 (200).
(7) A.I.R. 1957 S.C. 896.

prohibition. In the facts and circumstances we have come to the conclusion that the restrictions are reasonable.

(20) No new argument was raised by Mr. Grewal with regard to the validity of section 95 of the Code in the context of Articles 14 and 19 of the Constitution. We are in respectful agreement with the reasoning and conclusion of two special Benches referred to in the earlier part of this judgment.

(21) Faced with this difficulty Mr. Grewal contended that neither the Andhra Pradesh High Court nor the Bombay High Court had considered the question of the validity of section 95 of the Code in the context of Article 21 of the Constitution especially as that branch of law had been expounded in later decisions of the Supreme Court, especially in *Smt. Maneka Gandhi and Sunil Batra cases* (supra) and reiterated in still later decisions in *Mithu Singh* and *Express Newspapers cases* (supra). It cannot be disputed and in fact it has not been disputed that the procedure contemplated by Article 21 of the Constitution must answer the test of reasonableness in order to be in conformity with Article 14. It is also not disputed that such procedure must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise it would not be procedure at all and the requirement of Article 21 would not be satisfied. It cannot also be disputed that natural justice is an essential element of the procedure established by law and natural justice implies fair play in action. The question arises whether the fairness in action in the context of section 95 demands that an opportunity be afforded to the person concerned before passing the order of forfeiture. In our considered view, it is not practicable to give an opportunity of being heard to the person concerned before passing the order of forfeiture under section 95. In the nature of things the newspapers are engaged in a battle against time in ensuring the release of its edition to meet its commitment to the readers advertisors etc. The process of hearing involves a consideration and a decision of the various points to which the attention of the State Government may be invited by the person concerned. It involves application of mind and we are, therefore of the view that it is not possible to afford an opportunity of being heard before passing the order under section 95." Mr. Grewal with his usual candour almost conceded that it was not practicable to give such a notice before passing the order. In *Smt. Maneka Gandhi's case* (supra) the Supreme Court itself noticed that in administrative law right to prior notice and opportunity to be heard may be held to be excluded by implication where obligation to give notice and

opportunity to be heard would obstruct the taking of prompt action, especially action of a preventive or remedial nature. It was further observed in paragraph 63 at page 629 of the report as under:—

> "The *audi alteram partem* rule is intended to inject justice into the law and it cannot be applied to defeat the end of justice or to make the law 'lifeless' absurd, stultifying, self defeating or plainly contrary to the common sense of the situation.' Since the life of the law is not logic but experience and every legal proposition must, in the ultimate analysis, be tested on the touchstone of pragmatic realism, the *audi alteram partem* rule would, by the experimental test, be excluded, if importing the right to be heard has the effect of paralysing the administrative process or the need for promptitude or the urgency of the situation so demands."

In the same paragraph, it was further observed as under:—

> "..... What opportunity may be regarded as reasonable would necessarily depend on the practical necessities of the situation. It may be a sophisticated full fledged hearing or it may be a hearing which is very brief and minimal : it may be a hearing prior to the decision or it may even be post decisional remedial hearing. The *audi alteram partem* rule is sufficiently flexible to permit modifications and variations to suit the exigencies of myrbid kinds of situations which may arise."

(22) The power under section 95 of the Code has been vested in the State Government. The section contains inbuilt safeguards. The State Government is required to state the grounds of its opinion. The power can be exercised only in cases which appear to the State Government to contain any matter the publication of which is punishable under the specified sections of the Indian Penal Code. Effective and adequate remedy is provided under section 96. We are clearly of the view that the restriction imposed by section 95 is not disproportionate to the evil sought to be remedied. We are further of the view that section 95 satisfies the requirement of Article 21 as expounded by the apex Court and the same must be held to be constitutionally valid and *intra vires* the Constitution.

(23) In view of the categorical denial by the State Government and in the facts and circumstances of the case, we find that no case

has been made out with regard to reliefs mentioned as Nos. (2) and (3) in the beginning of the this judgement. We are unable to hold that the State Government is or has been following any policy of forfeiting various issues of the daily Ajit. We are also not in a position to hold that the State Government has imposed any *de facto* precensorship on the paper without formally saying so.

(24) This brings us to a consideration of the six Crl. Misc. applications under section 96 of the Code.

(25) Before dealing with individual cases, it would be convenient to refer to settled law bearing on the subject under consideration. As expressly laid down in section 95 itself, it is a mandatory requirement of a valid order under section 95 for the State Government to state the grounds of its opinion. Where the grounds of its opinion are not stated, the order must be set aside on this short ground. At one point of time, there existed a conflict of judicial opinion amongst the various High Courts in the country as noted in *State of Uttar Pradesh* v. *Lalai Singh Yadav* (8). The conflict was resolved in the aforesaid decision by the apex Court and it was held that the grounds of its opinion must be stated by the State Government in the order of forfeiture under section 95 and it is not open to the High Court under section 96 to find out the grounds on an independent appraisal of the material placed before it. Their Lordships of the Supreme Court rejected the contention that a mere reference to the matter, sufficiently particularised, functionally supplies, by implicit reading or necessary implication, the legal requirement of statement of grounds. The apex Court laid down the law in unequivocal terms as under:—

> "71. The conclusion is in escapable that a formal authoritative setting forth of the grounds is statutorily mandatory."

Their Lordships clarified :

> "We do not mean to say that the grounds or reasons linking the primary facts with the forfeiture's opinion must be stated at learned length. That depends in some cases, a laconic statement may be enough, in other a longer ratioconation may be proper but never laches to the degree of taciturnity. An order may be brief but not blank."

(8) A.I.R. 1977 S.C. 202 (Para 18 at page 207).

It is also settled law that merely repeating the words of a certain section of the relevant statute is not a compliance of the said mandatory provision (See *Narain Dass* v. *State of Madhya Pradesh*) (9).

26. We have carefully gone through the impugned order of forfeiture passed by the State Government under section 95 of the Code in Crl. Misc. Nos. 3250-M of 1985, 6401-M of 1987, 8116-M of 1987 and 1886-M of 1988. It will be sufficient to set out the material portion of the impugned order Annexure P-2 in Crl. Misc. No. 3250-M of 1985. It is fairly representative of the order under challenge in the other Crl. Misc. applications, referred to above. It reads as under:—

> "And whereas after carefully going through the aforesaid issue of the magazine "SANT SIPAHI" placed before him, the President of India is of opinion that the matter at pages 27, 28 and 52 in the aforesaid issue of the magazine "SANT SIPAHI" brings and excites disaffection towards Government established by law in India, and hence, the publication thereof constitutes an offence under Section 124-A of the Indian Penal Code, 1860."

It will be seen that instead of stating the grounds of its opinion, the State Government reproduced certain words of section 124-A of the Indian Penal Code after making a reference to certain pages of the book which has been forfeited. The order otherwise fails to state the grounds of the opinion of the State Government. The impugned order in these cases must, therefore, be set aside.

(27) In Crl. Misc. No. 10674-M of 1991 a news-item, English transliteration whereof is Annexure P-2, was published in the Daily Ajit dated 25th June, 1991. According to the news-item, various militant groups, who are otherwise well known by their names, were reported to have passed certain resolutions. The first resolution was that those who had made an unsuccessful attempt to contest elections in defiance of the direction of the Panthic Committee of Dr. Sohan Singh would be kept under a watch and shall be punished in accordance with Sikh traditions. The second resolution was that the office bearers of the various federations were asked to wind up their respective federations without one month, failing which they shall be punished for causing split in the Panth. In the third resolution, various Akali leaders and leaders of the federations were accused of being traitors of the Panth. In the fourth resolution, four militant

(9) A.I.R. 1972 S.C. 2086.

organisations welcomed the postponement of the elections and the same was described as the first victory of Khalistan. The issue of the newspaper was forfeited by the impugned order Annexure P-1. Reference was made to the aforesaid news-item in terms of the heading under which the same was published at page 6 of the issue of the newspaper dated 25th June, 1991. It was further stated in the notification that the President of India (the State being under President's rule at that time) was of the opinion that the publication of this material relating to threat to candidates who participated in electioneering process in the said newspaper attracts the provisions of section 153-B of the Indian Penal Code. In our view, the notified order of forfeiture Annexure P-1 (also filed with the return as Annexure R-1) successfully crossed the first hurdle of stating the grounds for the opinion. It was stated that the news-item constituted a threat to the candidates who had participated in the electioneering process. It may be stated here that elections to the Legislative Assembly of the State of Punjab had been announced. The elections were boycotted by the militant organisations. The Akalis nevertheless decided to take part in the elections and electioneering went on until on the eve of the day of elections the same were postponed. It has already been stated that the grounds for the opinion of the State Government under section 95 can be brief.

(28) Sub-section (4) of secion 96 of the Code requires the High Court to examine whether the issue of the newspaper, book or other document in question "contained any such matter" as is referred to in sub-section (1) of section 95. Sub-section (1) of section 95 refers to any matter the publication of which is punishable under any of the specified sections of the Indian Penal Code. In other words, the High Court is required to examine whether the matter objected to by the State Government is *prima facie* punishable under any or more of the offences specified in section 95. The notified order of forfeiture stated that the publication of the news-item constituted an offence under section 153-B of the Indian Penal Code. Section 153-B reads as under:—

> "153-B. IMPUTATIONS, ASSERTIONS PRE-JUDICIAL TO NATIONAL INTEGRATION.—(1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise,—
>
> (a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of

any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or

(b) asserts, consents, advices, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India, or

(c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reasons of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or *is likely to cause disharmony* or feelings of enmity or hatred or ill-will between such members and other persons,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) whoever commits an offence specified in sub-section (1), in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine."

(*Emphasis supplied*)

(29) It will be seen that sub-section (3) of section 96 uses the word "tendency" and clause (c) of section 153-B uses the words "is likely to cause". It has also to be borne in mind that what satisfies the requirement of section 95(1) of the Code is that the objected material appears to the Government to contain any matter the publication of which is punishable under any of the sections of the Indian Penal Code mentioned in this behalf. It is, therefore, the pernicious tendency of the words which is enough to bring it within the four corners of sections 95(1) and 96(4) of the Code. In the facts and circumstances, we are satisfied that the publication of the news item had the requisite pernicious tendency which would *prima facie* constitute an offence under section 153 (B)(c) of the Indian Penal Code.

(30) In Crl. Misc. No. 11413-M of 1991, a news-item, English transliteration whereof is Annexure P-2 (also Annexure R-3/T filed with the return) was published in the Daily Ajit dated 25th July, 1991. According to the news-item, four militant outfits led by the Panthic Committee (Dr. Sohan Singh) had given a 48 hours Punjab Bandh call for July 26 and 27, to protest against killing of a Khalistan Commando Force Lt. General and Sikh Students Federation Vice-President. It was added that the leaders had appealed to the people to keep their business establishments and offices closed for two days and to perform Ardas (Prayer) for the spiritual peace of the killed militants. Newspaper and doctors were, however, exempted from the Bandh. The relevant part of the order of forfeiture, Annexure P. 1 (also Annexure R-1 filed with the return) reads :

> "And whereas the President of India is of the opinion that the publication of this material relating to appeal to people to observe bandh on 25th and 26th July, in the said newspaper attracts the provisions of section 124-A and 153-B of the Indian Penal Code."

(31) A careful perusal of the above shows that instead of spelling out the grounds of its opinion, the State Government merely stated that appeal to the people to observe Bandh attracted the provisions of sections 124-A & 153-B of the Indian Penal Code. In other words, the grounds for its opinion were not stated. In view of the settled law, it was incumbent on the State Government to have stated the grounds of its opinion. The impugned order must, therefore, be set aside.

(32) It was suggested during the course of hearing that in appropriate cases order of compensation can be passed in exercise of the inherent powers of the High Court under section 482 of the Code. We entertain no doubt that this is possible. We, however, prefer to leave the parties to have their remedy according to law, because the aggrieved party can set out its facts claiming a certain amount. The State can controvert those facts. The Court can go into the same and on the basis of facts found by it, determine a reasonable amount of compensation. In this view of the matter, we do not propose to pass any order in exercise of the inherent powers under section 482 of the Code to award compensation in cases where order of forfeiture has been set aside. There is another angle why we have preferred not to pass an order of compensation. The setting aside of the order of forfeiture under section 96 of the Code does not debar the State Govern-

ment from passing a fresh order stating the grounds of its opinion for the forfeiture of the book or other document concerned. This aspect stands covered by the decision of the Supreme Court in the *State of Uttar Pradesh* v. *Lalai Singh Yadav* (10).

(33) Under the scheme of the Code of Criminal Procedure, applications under section 96 of the Code are required to be heard without any avoidable delay. It would, therefore, be desirable that the Registry obtains suitable directions of the Hon'ble Chief Justice to ensure that such applications are fixed for hearing without any undue delay.

(34) For the foregoing reasons, C.W.P. No. 15625 of 1991 and Crl. Misc. No. 10674-M of 1991 are dismissed. Crl. Misc. Nos. 3250-M of 1985, 6401-M and 8116-M of 1987, 1886-M of 1988 and 11413-M of 1991 are allowed with Rs. 1,500 as costs in each and the orders of forfeiture impugned therein are set aside.

J.S.T.

Before : *S. D. Agarwala, C.J. & H. S. Bedi, J.*

GURDEV KAUR AND ANOTHER,—*Petitioners.*

versus

DEPUTY COMMISSIONER, PATIALA AND OTHERS,
—*Respondents.*

Civil Writ Petition No. 2941 *of* 1993.

6th May, 1993.

Punjab Gram Panchayat Act, 1952—*Constitution of India*, 1950—*Art.* 15(3) & (4)—*Election to Gram Panchayat*—*S.* 6 (4) *providing for two women Panches*—*Manner of co-option and of deemed election of women Panches stated*—*S.* 6 (4)—*Interpretation of.*

Held, that the same interpretation should be given to sub-section (4) of Section 6 of the Act as sub-section (4-B) of S. 6 as the intention behind the promulgation of sub-section (4) as well as sub-section (4-B) is the same. In our opinion the words 'and the number of unsuccessful contesting women candidates is two or more' are relateable to a case where there are two or more unsuccessful women candidates meaning thereby that out of them women having the highest number of valid votes should be deemed to have been elected but by the use of these words it cannot be said that the intention of the Legislature was different than what it was while enacting sub-section (4-B) of the

(10) A.I.R. 1977 S.C. 202 (Para 17).