

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 12.03.2020

Date of decision: May 20 , 2020

+ **W.P.(C) 8584/2019**

ANIL CHAMADIA

..... Petitioner

Through: Mr.Salman Khurshid, Sr. Adv.
with Mr.Fuzail Ahmad Ayyubi,
Ms.Anshu Kapoor, Mr.Ibad
Mushtaq and Ms.Aditi Gupta,
Advs.

versus

THE CHAIRMAN MEDIA ADVISORY COMMITTEE RAJYA
SABHA AND ORS. Respondents

Through Ms.Tatini Basu, Adv.for R-l.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

1. The petitioner by way of the present petition challenges the decision of the Media Advisory Committee of the Rajya Sabha (hereinafter referred to as MAC) taken in the meeting held on 06.07.2017 restricting the issuance of passes to the journalist under the freelance category to only sessional passes thereby discontinuing its earlier practice of issuing an annual pass to the journalist under the freelance category. The petitioner further prays for a Writ of Mandamus directing the respondents to issue a permanent pass to the petitioner for covering the proceedings of the Rajya Sabha.

2. The petitioner claims himself to be a freelance journalist with an extensive and long career having various contributions based on his reporting of the Indian Parliament. He claims that in 1990, the petitioner was granted a pass to cover the proceedings in the Bihar Legislative Assembly as a freelance journalist. He claims to have been covering the proceedings in the Rajya Sabha as well as the Lok Sabha since 1991 as also appearing on various news channels, contributing to several news portals, newspapers, etc. The petitioner further claims to have delivered lectures for three years at the Indian Institute of Mass Communication (IIMC) and claims to be the editor of two monthly journals, namely Mass Media and Jan Media, published in English and Hindi respectively. He also claims to have authored a book titled “*Sansad Aise Chalti Hai*”.

3. In the meeting of the MAC held on 23.01.2009, the request of the petitioner for issuance of a permanent Rajya Sabha Press Gallery Pass was considered and accepted observing as under:

“Permanent/Sessional Passes Freelance Journalists”

9. *The Committee in its meeting held on 19 September 2008 observed that a known freelance journalists who had been contributing regularly in various newspapers might also be considered for permanent/sessional Rajya Sabha Press Gallery passes. The Committee would consider such a request keeping in view the valuable contribution of the journalist. Accordingly, the request of Shri Anil Chamaria – a freelance journalist for permanent Rajya Sabha Press Gallery pass was considered by the Committee. The Committee while acceding to his request observed that Shri Chamaria, a well known journalist had been writing regularly in various newspapers. The Committee, however, observed that Shri Chamaria’s request for a*

permanent pass may be treated as a special case and may not be cited as precedent in future.”

4. The petitioner held the Permanent Rajya Sabha Press Gallery till the Impugned Decision taken by the MAC on 06.07.2017.

5. The petitioner challenges the above decision on the ground that the said decision is not only violative of the Fundamental Right of the petitioner guaranteed under Article 19(1)(a) of the Constitution of India but also under Article 14 inasmuch as it fails to give any reasonable basis for treating the freelance journalist as a separate category from the accredited journalist for issuance of the Rajya Sabha Press Gallery Pass. It is contended that Impugned Decision seeks to create a divide and treat freelance journalists unequally and as being inferior to those journalists who are affiliated to media houses or news agencies. The learned senior counsel for the petitioner has placed reliance on the judgments of the Supreme Court in **Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India**, (1985) 1 SCC 641 and **Naveen Jain v. Union of India & Ors.**, AIR 2019 SC 5087 in support of his submissions.

6. On the other hand, it is the case of the respondents that the freelance journalists were not being given annual/sessional Press Gallery Passes till 2008. The MAC in its meeting held on 19.09.2008 decided to consider the request from freelance journalists of repute for issuance of sessional/annual Rajya Sabha Press Gallery Pass based on merit, on a case-to-case basis. Accordingly, in 2009, the petitioner and three other journalists were recommended for annual pass under freelance category. One of them, however, did not avail the pass.

7. She submits that in the meeting of the MAC held on 19.11.2011, it was decided to issue only sessional passes to the freelance journalists. The recommendations were to take effect prospectively. Based on the said recommendations, on 16.03.2015, 'Guidelines for Accreditation of Journalists under the Freelance Category' (hereinafter referred to as the 'Guidelines') were adopted. While clause 5 of the Guidelines restricted the number of passes for the Freelance Journalists, clause 6 of the Guidelines provided that only sessional passes and not more than two temporary passes not exceeding two weeks in a session shall be issued to journalist admitted under Freelance category. Clause 5 and 6 of the Guidelines are reproduced hereinunder:

- “5. The number of passes to be issued in this category shall be 25% of the total number of seats available in the Rajya Sabha Press Gallery. The maximum passes which can be issued under this category at any given time shall not exceed 25*.*
- 6. Only sessional passes shall be issued to journalists admitted under Freelance category. However, Media Advisory Committee may also recommend issuance of not more than two temporary passes under this category not exceeding two weeks in a session.”*

8. The respondents claim that with the adoption of the above Guidelines, an anomalous situation arose wherein three freelance journalists, including the petitioner herein, were holding annual pass, while others admitted to the Press Gallery were holding sessional passes. A Sub-Committee of MAC was set up in May 2017 to examine and recommend the number of freelance journalists to be admitted to the

Press Gallery of the Rajya Sabha and also to rationalize the existence of two types of passes in freelance category.

9. The Sub-Committee in its report observed that such practice of issuing two types of passes for freelance journalists, who are professionally equal, is discriminatory and unjust and recommended only sessional passes to be issued to freelance journalists. The committee also recommended that the annual passes issued to three journalists under the freelance category should be discontinued and they should also be given sessional passes like other journalists in the said category.

10. The recommendations of the Sub-Committee were accepted by the MAC in its meeting held on 06.07.2017, aggrieved by which the petitioner filed the present petition.

11. The respondents further assert that two other freelance journalists who had been granted permanent passes have since got themselves issued sessional passes under the freelance category from 2018, after the expiry of their respective annual passes of 2017.

12. The respondents, placing reliance on the judgment dated 18.01.2016 passed by this court in W.P.(C) 117/2016 titled **Dr. Jagdish Prasad Gaur v. The Secretary General, Rajya Sabha & Ors.**, submit that entry into the Parliament House is in the nature of a privilege and it is open to the Secretariat of the two Houses to regulate the entry therein. No person has an unfettered right to enter the same. The decision to issue only sessional passes to freelance journalists was taken on 19.11.2011. Even the Guidelines adopted in 2015 provided for issuance of only

sessional passes to the freelance journalists. The decision taken on 06.07.2017 merely does away with a discriminatory practice whereunder only three journalists were issued permanent passes in the category of freelance journalist, while the others were issued only sessional passes.

13. The learned counsel for the respondents submits that the Impugned Decision is neither violative of any right of the petitioner under Article 19(1)(a) or Article 14 of the Constitution of India. She submits that the petitioner can still report the proceedings of the Rajya Sabha on the basis of the sessional pass.

14. I have considered the submissions made by the learned counsels for the parties. At the outset it is to be noted that the petitioner has challenged only the decision dated 06.07.2017 of the MAC, which merely did away with the discrimination between the same class of journalists, which is the freelance journalist, with only three of them holding the annual pass, while the others being issued only sessional passes. The decision taken by the MAC on 19.11.2011 to issue only sessional passes to the freelance journalists, albeit only prospectively, is not in challenge before this Court. This is of some significance as the submissions of the learned senior counsel for the petitioner have in fact, sought to challenge the decision of the MAC taken on 19.11.2011.

15. As far as the Impugned Decision of the MAC dated 06.07.2017 is concerned, the same, in fact, is aimed at doing away with the discriminatory practice of issuing two types of passes, that is, annual and sessional pass, to the freelance journalist. The submission of the petitioner that no freelance journalist had applied for grant of an annual

pass for the last five years, is of no merit. As noted hereinabove, with the decision of the MAC taken on 19.11.2011, no freelance journalist could have applied for an annual pass after that date. The said decision, however, being applied prospectively, had created a separate class of freelance journalists who had been issued an annual pass prior to the taking of that decision. This was clearly discriminatory and has been rightly sought to be done away with by the Impugned Decision.

16. In view of the above, as this petition challenges only the decision of the MAC taken on 06.07.2017, I find no merit in the same.

17. As a postscript, however, I must observe that under Article 19(1)(a) of the Constitution of India, though the expression “Freedom of the Press” has not been used, it has been held to be comprehended within the same. It has been held that freedom of expression has four broad social purposes to serve: (i) it helps an individual to attain self fulfilment, (ii) it assists in the discovery of truth, (iii) it strengthens the capacity of an individual in participating in decision – making, and (iv) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. All members of society should be able to form their own beliefs and communicate them freely to others. In sum, the fundamental principle involved here is the people’s right to know. Freedom of speech and expression should, therefore, receive general support from all those who believe in the participation of people in the administration. (Refer: ***Sakal Papers (P) Ltd. v. Union of India***, AIR 1962 SC 305, ***Indian Express Newspapers*** (supra)).

18. In *Secretary, Ministry of Information & Broadcasting, Govt. of India and Ors. v. Cricket Association of Bengal and Ors.*, (1995) 2 SCC 161, the Supreme Court held that the freedom to receive and to communicate information and ideas without interference is an important aspect of the freedom of free speech and expression. The law on the Freedom of Speech and Expression under Article 19(1)(a) as restricted by Article 19(2) was summarized by the Court as under:

“43. We may now summarise the law on the freedom of speech and expression under Article 19(1)(a) as restricted by Article 19(2). The freedom of speech and expression includes right to acquire information and to disseminate it. Freedom of speech and expression is necessary, for self-expression which is an important means of free conscience and self-fulfilment. It enables people to contribute to debates on social and moral issues. It is the best way to find a truest model of anything, since it is only through it that the widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy. Equally important is the role it plays in facilitating artistic and scholarly endeavours of all sorts. The right to communicate, therefore, includes right to communicate through any media that is available whether print or electronic or audio-visual such as advertisement, movie, article, speech etc. That is why freedom of speech and expression includes freedom of the press. The freedom of the press in terms includes right to circulate and also to determine the volume of such circulation. This freedom includes the freedom to communicate or circulate one's opinion without interference to as large a population in the country, as well as abroad, as is possible to reach.

44. This fundamental right can be limited only by reasonable restrictions under a law made for the purposes mentioned in Article 19(2) of the Constitution.

45. The burden is on the authority to justify the restrictions. Public order is not the same thing as public safety and hence no restrictions can be placed on the right to freedom of speech and expression on the ground that public safety is endangered. Unlike in the American Constitution, limitations on fundamental rights are specifically spelt out under Article 19(2) of our Constitution. Hence no restrictions can be placed on the right to freedom of speech and expression on grounds other than those specified under Article 19(2).

46. What distinguishes the electronic media like the television from the print media or other media is that it has both audio and visual appeal and has a more pervasive presence. It has a greater impact on the minds of the viewers and is also more readily accessible to all including children at home. Unlike the print media, however, there is a built-in limitation on the use of electronic media because the airwaves are a public property and hence are owned or controlled by the Government or a central national authority or they are not available on account of the scarcity, costs and competition. ”

19. It was further held that the right to Freedom of Speech and Expression also includes the right to educate, to inform and to entertain and also the right to be educated, informed and entertained. In relation to the broadcasting service, the court held as under:

“78. There is no doubt that since the airwaves/frequencies are a public property and are also limited, they have to be used in the best interest of the society and this can be done either by a central authority by establishing its own broadcasting network or regulating the grant of licences to other agencies, including the private agencies. What is further, the electronic media is the most powerful media both because of its audio-visual impact and its widest reach covering the section of the society where the print media does not reach. The right to use the airwaves and the content of the programmes, therefore, needs regulation

for balancing it and as well as to prevent monopoly of information and views relayed, which is a potential danger flowing from the concentration of the right to broadcast/telecast in the hands either of a central agency or of few private affluent broadcasters. That is why the need to have a central agency representative of all sections of the society free from control both of the Government and the dominant influential sections of the society. This is not disputed. But to contend that on that account the restrictions to be imposed on the right under Article 19(1)(a) should be in addition to those permissible under Article 19(2) and dictated by the use of public resources in the best interests of the society at large, is to misconceive both the content of the freedom of speech and expression and the problems posed by the element of public property in, and the alleged scarcity of, the frequencies as well as by the wider reach of the media. If the right to freedom of speech and expression includes the right to disseminate information to as wide a section of the population as is possible, the access which enables the right to be so exercised is also an integral part of the said right. The wider range of circulation of information or its greater impact cannot restrict the content of the right nor can it justify its denial. The virtues of the electronic media cannot become its enemies. It may warrant a greater regulation over licensing and control and vigilance on the content of the programme telecast. However, this control can only be exercised within the framework of Article 19(2) and the dictates of public interests. To plead for other grounds is to plead for unconstitutional measures. It is further difficult to appreciate such contention on the part of the Government in this country when they have a complete control over the frequencies and the content of the programme to be telecast. They control the sole agency of telecasting. They are also armed with the provisions of Article 19(2) and the powers of pre-censorship under the Cinematograph Act and Rules. The only limitation on the said right is, therefore, the limitation of resources and the need to use them for the benefit of all. When, however, there are surplus or unlimited resources and the public interests so demand or in any case do not prevent telecasting, the validity of the argument

based on limitation of resources disappears. It is true that to own a frequency for the purposes of broadcasting is a costly affair and even when there are surplus or unlimited frequencies, only the affluent few will own them and will be in a position to use it to subserve their own interest by manipulating news and views. That also poses a danger to the freedom of speech and expression of the have-nots by denying them the truthful information on all sides of an issue which is so necessary to form a sound view on any subject. That is why the doctrine of fairness has been evolved in the US in the context of the private broadcasters licensed to share the limited frequencies with the central agency like the FCC to regulate the programming. But this phenomenon occurs even in the case of the print media of all the countries. Hence the body like the Press Council of India which is empowered to enforce, however imperfectly, the right to reply. The print media further enjoys as in our country, freedom from pre-censorship unlike the electronic media.”

20. The above observation of the Supreme Court is important to the facts of the present case, inasmuch as, it recognises an inherent limitation of resources and the need to use them for the benefit of all, while determining the right guaranteed under Article 19(1)(a).

21. In ***Shreya Singhal v. Union of India***, (2015) 5 SCC 1, the Supreme Court observed that it cannot be over emphasized that when it comes to democracy, liberty of thought and expression is a cardinal value that is of paramount significance under our constitutional scheme. Under our constitutional scheme, it is not open to the State to curtail Freedom of Speech to promote the general public interest. The Court, however, rejected the challenge to Section 66-A of the Information Technology Act, 2000 on the ground that as it created a separate offence for the internet, it was violative of Article 14 of the Constitution of India . The

Court held that there is intelligible differentia between speech on the internet and other medium of communication for which separate offences can certainly be created by legislation. This aspect is important in the present case in as much as the challenge is also laid by the petitioner on basis of Article 14 of the Constitution of India.

22. Recently, in **Anuradha Bhasin v. Union of India & Ors.**, 2020 SCC OnLine 25, the Supreme Court observed as under:

“33. The right provided under Article 19(1) has certain exceptions, which empowers the State to impose reasonable restrictions in appropriate cases. The ingredients of Article 19(2) of the Constitution are that:

- a. The action must be sanctioned by law;*
- b. The proposed action must be a reasonable restriction;*
- c. Such restriction must be in furtherance of interests of the sovereignty and integrity of India, 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.*

34. At the outset, the imposition of restriction is qualified by the term ‘reasonable’ and is limited to situations such as interests of the sovereignty, integrity, security, friendly relations with the foreign States, public order, decency or morality or contempt of Court, defamation or incitement to an offence. Reasonability of a restriction is used in a qualitative, quantitative and relative sense.

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54. The suitability of proportionality analysis under Part III, needs to be observed herein. The nature of fundamental rights has been extensively commented upon. One view is that the fundamental rights apply as ‘rules’, wherein they apply in an

'all-or-nothing fashion'. This view is furthered by Ronald Dworkin, who argued in his theory that concept of a right implies its ability to trump over a public good. Dworkin's view necessarily means that the rights themselves are the end, which cannot be derogated as they represent the highest norm under the Constitution. This would imply that if the legislature or executive act in a particular manner, in derogation of the right, with an object of achieving public good, they shall be prohibited from doing so if the aforesaid action requires restriction of a right. However, while such an approach is often taken by American Courts, the same may not be completely suitable in the Indian context, having regard to the structure of Part III which comes with inbuilt restrictions.

55. However, there is an alternative view, held by Robert Alexy, wherein the 'fundamental rights' are viewed as 'principles', wherein the rights are portrayed in a normative manner. Rules are norms that are always either fulfilled or not; whereas principles are norms which require that something be realized to the greatest extent possible given the legal and factual possibilities. This characterisation of principles has implications for how to deal with conflicts between them: it means that where they conflict, one principle has to be weighed against the other and a determination has to be made as to which has greater weight in this context. Therefore, he argues that nature of principles implies the principle of proportionality.

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77. In view of the aforesaid discussion, we may summarize the requirements of the doctrine of proportionality which must be followed by the authorities before passing any order intending on restricting fundamental rights of individuals. In the first stage itself, the possible goal of such a measure intended at imposing restrictions must be determined. It ought to be noted that such goal must be legitimate. However, before settling on the aforesaid measure, the authorities must assess the existence of any alternative mechanism in furtherance of the aforesaid goal. The appropriateness of such a measure depends on its

implication upon the fundamental rights and the necessity of such measure. It is undeniable from the aforesaid holding that only the least restrictive measure can be resorted to by the State, taking into consideration the facts and circumstances. Lastly, since the order has serious implications on the fundamental rights of the affected parties, the same should be supported by sufficient material and should be amenable to judicial review.

78. The degree of restriction and the scope of the same, both territorially and temporally, must stand in relation to what is actually necessary to combat an emergent situation.

79. To consider the immediate impact of restrictions upon the realization of the fundamental rights, the decision maker must prioritize the various factors at stake. Such attribution of relative importance is what constitutes proportionality. It ought to be noted that a decision which curtails fundamental rights without appropriate justification will be classified as disproportionate. The concept of proportionality requires a restriction to be tailored in accordance with the territorial extent of the restriction, the stage of emergency, nature of urgency, duration of such restrictive measure and nature of such restriction. The triangulation of a restriction requires the consideration of appropriateness, necessity and the least restrictive measure before being imposed.”

23. Applying the above principles to the facts of the present case, it must be noted that no person, be a journalist or otherwise, can claim an open access to the precinct of the Parliament. No person has an unfettered right to enter the same. In fact, even in United Kingdom and the United States of America, rules have been framed governing the entry of journalists into the House of Commons and the United States Congress. We must also keep in view the ghastly attack perpetrated by the terrorists on the Indian Parliament on 13th December, 2001.

24. As per the website of the Office of Registrar of Newspapers for India, 1,18,239 are the number of registered publications as on 31.03.2018. The website of the Press Information Bureau gives a list of 2494 persons in the 'PIB Accredited Media Person List 2020'. Therefore, necessarily a criteria has to be adopted for issuing passes to the journalist for entry into the Parliament House.

25. As stated by the respondents, it is with this intent that MAC has been formed by the respondent no.2. It has a wide-ranging representation. In fact, the petitioner claims that he was also a member of the MAC in 2010-2011.

26. The 'Rules/Regulations for Admission to Rajya Sabha Press Gallery/Central Hall' makes a distinction between newspapers on the basis of their circulation, news agencies, non-wire news-agency and feature service, for purpose of weekly, fortnightly and monthly passes. It also provides for issuance of Temporary Press Gallery Card to a freelance journalist. Without going into the number of passes and the nature of passes issued to these categories, the distinction made between various categories on the basis of circulation or the nature of agency et cetera, cannot be said to be arbitrary.

27. However, as contended by the learned senior counsel for the petitioner, issuance of only sessional passes to freelance journalists would restrict their right to access information when the Parliament is not in session. He submits that even when the Parliament is not in session, meetings of various Parliamentary Committees are held within the precinct of the Parliament House. Non-issuance of an annual pass would

therefore, deny the freelance journalist of first-hand access to information regarding the decisions taken in such meetings and the deliberations therein.

28. Therefore, clearly there are two conflicting interests that are to be balanced and tested on the touchstone of doctrine of proportionality.

29. As noted hereinabove, there is no challenge to the decision of the MAC taken in its meeting on 19.11.2011. Therefore, this Court refrains itself from proceeding further with such consideration. However, it would be advisable for the respondents to revisit its Rules and Guidelines for issuance of passes keeping in view the mandate of Article 19(1)(a) of the Constitution of India.

30. The present petition is dismissed with the above observations. There shall be no order as to costs.

NAVIN CHAWLA, J

MAY 20, 2020

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