

## Notes

1. See, for instance, *Vinaya*.1:12.
2. Reference can be made to Dhammadinna, who becomes the spiritual director of her former husband (*Majjima Nikaya*, I:304-305) and Khema, who advised King Pasenadi (*Samyutta Nikaya*, IV X I).
3. *Therigatha*, Verse 6.
4. Ven. Walpola Rahula at the BMICH in July 1991, during a ceremony in his honour, claimed that *dasa sil matas* were not qualified to wear a yellow robe, since they were, in fact, still lay people. *The Island*, 25 July 1991.
5. *Anuguttara Nikaya*, V VI 55.
6. Nuns are particularly prominent in *Dipavamsa*, chs. 17 & 18.
7. The Buddhist rules of discipline state that a *bhikkhuni* must be ordained by both *bhikkhunis* and *bhikkhus*.
8. At the beginning of the 20th century, an educated Sri Lankan woman, Catherine de Alwis travelled to Burma, received training and ordination there, and returned to promote renunciation among women.
9. Dr. Chatsumarn Kabilsingh's translation of the different *Patimokkhas* (1991) shows that there is a striking uniformity between Theravada and those schools which formed the source of Mahayana develop-

ment. Differences between Theravada and the Mahasanghika occur mainly in the *Pacittiya* & *Sekhiya* sections, in each case the latter having more rules than the former.

10. To be Buddhist and Equal' - a report of the Conference by Suwana Asavaroengchai in *Focus*, 28 October 1991.

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# The Printer, the Police and the Penalty.

The sealing of the *Navamaga* Press and the destruction of its machinery and equipment by the Police, the fundamental rights application filed by the owner of the press and the judgement of the Supreme Court thereon are events relevant to the freedom of expression in Sri Lanka; they have, nevertheless received scant attention so far.

Since these events have not been adequately publicised in the English press, let us begin with a chronological narration of the events.

The *Navamaga* Press, located at 334, Galle Road, Ratmalana, a suburb south of Colombo, was first searched by the Police on September 18, 1991. Two press workers were taken into custody by the police who made one of them take the police to the residence of the owner of the press, Kelly Senanayake. Two policemen were stationed there till nightfall; the two workers were taken to the police station at Dehiwala. Mr. Senanayake reported to the police next morning, where he was asked to make a statement on work undertaken by him as a printer. The workers were later released.

The *Navamaga* Press is a commercial printing establishment undertaking work of a varied nature; it was also, at this time, the registered printer of *Yukthiya*, a fortnightly newspaper published by the Movement for Inter-Racial Justice and Equality.

This was probably the main concern of the police as a good part of the questioning centered round it; the lay-out artist who prepared the pages of *Yukthiya* for the press was also questioned by the police at the same time.

Police officers attached to the Mount Lavinia police searched the press again on October 4, 1991; it is alleged by the owner and some workers that they took away material, including work that was on the machines at the time and placed seals on both the front and back doors. Two armed policemen were placed on guard at the front entrance on Galle road.

Mr. Senanayake filed a fundamental rights application before the Supreme Court on October 8, 1991. The petition alleged that the police action was unlawful and illegal; since it was done in the purported discharge of their duties and as agents of the Republic of Sri Lanka, their conduct amounted to executive or administrative action in terms of article 126 (2) of the Constitution. The petition claimed that in these circumstances the petitioner's fundamental rights to

- (a) the freedom of speech and expression including publication, guaranteed by article 14 (1) (a) of the Constitution and

(b) the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise, guaranteed by article 14 (1) (g) of the Constitution

had been infringed by executive or administrative action.

The petitioner asked for the removal of all restraints on his work, the return of all material taken away and for compensation in a sum of Rs. 50000.

On October 9, the day after the filing of the fundamental rights application, Mr. Senanayake received information that some police officers had allegedly broken the seals placed on the press, had entered the premises and damaged the machines. He wrote to the Inspector General of Police on October 10, drawing attention to the police action.

The fundamental rights application came up before the Supreme Court on October 17, 1991 and hearing was fixed for February 1992.

On the same day, Mr. Senanayake received a letter asking him to appear before the Mount Lavinia Police for an inquiry into the matters mentioned in his letter to the IGP of October 10th. This inquiry was held on 29 and 30 October when a lengthy statement was recorded.

On November 11, 1991, Mr. Senanayake received a letter dated November 9th from the Officer-in-Charge, Security Coordinating Unit, Mount Lavinia Division asking him to meet the police on November 12th for the purpose of taking charge of the press.

Mr. Senanayake went to the press at the appointed time with his lawyer. A police officer officially handed over the press to him. On entering the press, all the equipment was found to be damaged. The offset printing machine had been dismantled into three parts and had been toppled on their sides; the other equipment too had been damaged and the parts strewn all over. A technician brought to the site declared that the equipment had been damaged beyond repair.

Mr. Senanayake brought all these matters to the notice of the Supreme Court by way of amendments to his original application. He also asked the Court to order an officer of the court to examine the press and to report on the condition of the equipment. This request was disallowed by the Court. It however entertained the amendments to the original application including a new claim for damages in a sum of Rs. 750,000.

The fundamental rights application was heard before three judges of the Supreme Court on February 3, 1992 and judgement was delivered on April 3, 1992. The respondents, i.e. the police, were represented by the Additional Solicitor General.

At the hearing, the police took up the following positions:

(a) the searches of the press had been authorized as they had reason to believe, on the basis of information received, that subversive literature was being printed at the *Navamaga* press and that an offence under the Emergency Regulations was likely to be committed. During the search on 16.9.1991, the police had taken away two copies of the Sinhala newspaper *Yukthiya* that were at the press; a police officer stated in his affidavit that its contents "are likely to bring or attempt to bring the President or the government into hatred or contempt or excite or incite feelings of disaffection or hatred or contempt of the President or the government."

(b) when they went to the press in the furtherance of the same inquiries on 4. 10 1991, they found the place untenanted with the back door closed but not locked; on entering the premises they found the printing machines dismantled and on the floor; the only material they found and removed were some copies of *Yukthiya*; two police officers were placed on guard since no one connected with the press was present.

The judgement summarises the implications of the police position as follows:

It is suggested therefore that

(a) (i) either the petitioner's employees got wind of the order to search the premises and because they were printing stuff not permitted by law they decided to flee and therefore quickly dismantled the printing machine, took printed materials and left the premises;

(ii) in the process of dismantling the machine in a hurry they caused damage to their own machine.

OR

(b) the petitioners had decided to move from the premises and so had dismantled their machine carelessly thereby causing damage to it.

It will be noted that the police by implication deny any sealing of the press under emergency regulations and any culpability for the destruction of the equipment. However, they did try to maintain that the press was engaged in subversive activity in printing *Yukthiya*.

The defence took up the position that the searches of the press, the destruction of the equipment and the harassment of the proprietor were politically motivated. At the time the press was sealed, he had been printing not only *Yukthiya*, but also a pamphlet about Joe Sim, a casino operator who had been deported by the government for his alleged involvement in gambling, drug trafficking and prostitution. This pamphlet alleged that Joe Sim had received state patronage in his activities and also contained photographs of Joe Sim with politically prominent persons on numerous public and private

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occasions. Copies of this pamphlet printed at the press with its imprint were produced in evidence.

The three judges, in a unanimous judgement, found that the petitioner's fundamental rights guaranteed by article 14(1)(g) of the constitution had been infringed and awarded him damages in a sum of Rs. 25,000.

With regard to the position taken up by the police on damage to the equipment, the judgement is quite forthright :

The progress of this application warrants a view adverse to the respondents' claims. The petitioner first only complained of the deprivation of the use of his printing press....If as the petitioner says he learnt of damage caused to his machine by the police, then the steps he has taken (viz) to complain immediately to the IGP and to inform this court and to invite it to inspect the premises appear to be steps that any person with a just complaint would bona fide take.... No questions whatsoever have been asked of the petitioner as to why he dismantled the machine and damaged it. This fact suggests that the position now taken by the police is palpably false.

It also disposes of the police argument that the owner had dismantled his machine because he was printing illegal material:

If, as is urged, the publication was lawfully printed at this press and the newspaper *Yukthiya*, which had never been banned had also been lawfully printed at this press and these are the only publications averred in these proceedings by the parties and the respondents have not challenged any aspect of the printing or publication of the newspaper *Yukthiya* then there would be no reason at all for the owners to damage their valuable printing machine.

The judgement accordingly concludes :

I accordingly reject the respondents' version that they found the printing press already damaged upon entry to the premises. We have outgrown the age of believing fairy tales but can recognise them for what they are. I am satisfied that wanton damage has been caused to the printing press by the Police who were in control of it between 4.10. 91 and 11.12. 91 and that the police have made a false entry in their notes that they found the printing machine dismantled.

Having come to this judgement, the Court directed the petitioner to seek his remedy for damages elsewhere, that is, by means of a civil action in the District courts.

This whole incident raises serious issues concerning the conduct of the police, the apparent readiness of the regime to stifle the publication of material adverse to its own interests and the use of the police for such purposes.

Two publications are at the heart of the incident. The pamphlet about Joe Sim was meant to strike at the very heart of a government morality campaign. Joe Sim had been operating in Sri Lanka for quite some time and was reputed to control several casinos and gambling operations in Colombo. He was very prominent in political and social circles and had contributed munificently to various charities, including state sponsored funds. He was also an honoured guest at the 100th anniversary celebrations of the Colombo Municipal Council. However, relations between him and the government soured; local casino operators were involved in a campaign against what they called foreign infiltration. He was ultimately deported; the state tried to take credit for this action on moral grounds. The pamphlet in question described, with photographic evidence, the close relations between Joe Sim and various members of the government and senior bureaucrats and called into question the moral bona fides of the government.

*Yukthiya*, the other publication, is a newspaper critical of Sinhala chauvinism and of the government's military operations against the Tamil groups, and campaigns for a political solution based on federalism as the only viable solution to the ethnic problem. It had increased its circulation through some investigative reporting during the impeachment crisis. When the *Navamaga* press was destroyed, it had to seek alternative printers; one was found with some difficulty and he too then became subject to threats.

Both publications in question are thus very critical of the government. And it was obviously to attack these two publications that the operation against the *Navamaga* press was launched.

This is indicative of the subservience of the whole police apparatus towards the perceived political interests of the regime.

Wilful damage to a printing press by the police is all the more heinous at a time when there is no overt censorship and the government, at various international fora, use this very absence of legal censorship to prove its democratic credentials.

The police in this case have been found guilty of giving false evidence, of falsifying their documents and wantonly damaging articles that were in their custody. Such highhandedness, particularly at a time when a fundamental rights case was pending before the Supreme Court, only implies that they were totally certain of the protection of their superiors and of their political masters. In any case, the IGP has now to be asked what action he proposes to take regarding his subordinates who have lied to court, who have falsified their evidence and who have deliberately infringed the fundamental rights and property of a citizen, the safeguarding of which should have been their prime responsibility.

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