* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: November 08, 2013*
Judgment Delivered on: December 17, 2013

\+ **W.P.(C) No.2986/2013**

DR. SUBRAMANIAN SWAMY .....Petitioner
Represented by: Petitioner in person

versus

THE REGISTRAR, OFFICE OF REGISTRAR
FOR NEWSPAPERS OF INDIA .....Respondent
Represented by: Mr.Rajeeve Mehra, ASG with
Mr.Joginder Sukhija, CGSC and
Mr.Aditya Malhotra, Advocate for
UOI
Mr.Imran Ahmad Abbasi, Advocate
for Mr.Gagan Gupta, Advocate for
R-4

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR.JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. The writ petitioner seeks a direction from this Court to rectify what the petitioner perceives to be a lacuna in the Press and Registration of Books Act, 1867 (hereinafter referred to as the said Act) regarding the definition of 'Editor' in the context of the proviso to sub-Section 8 of Section 5 of the said Act.

2. The prayer in the petition to remove respondent No.3 from the post of Editor of the daily newspaper : 'The Hindu', was rendered infructuous

because during the pendency of the writ petition the respondent No.3 resigned from the post of Editor of 'The Hindu' and thus the issue was argued in Court on the larger issue : Whether citizenship of India should be the pre-requisite for a person to be appointed as the Editor of a publication in India.

3. A journey, concerning the interpretation of a statute, must commence by highlighting the statutory provision around which the debate centers, including its historical perspective, and thus we straight away proceed to note the applicable statutory provisions.

4. The word '*Editor*' has been defined by the said Act:-

> *'Editor' means the person who controls the selection of the matter that is published in a newspaper.*

5. The proviso to sub-Section 8 of Section 5 of the said Act, which is the focus of attention, reads as under:-

> *"Provided that no person who does not ordinarily reside in India or who has not attained majority in accordance with the provisions of the Indian Majority Act, 1875 (9 of 1875), or of the law to which he is subject in respect of the attainment of majority, shall be permitted to make the declaration prescribed by this Section, nor shall any such person edit a newspaper."*

6. A plain reading of the proviso would make it apparent that it concerns two distinct categories of persons who are the subject matter of the proviso. The first is those who are obliged to make a declaration prescribed by Section 5; and the second are those who edit a newspaper. As regards the persons who are obliged to make a declaration prescribed by the Section, sub-Section 2 would evidence that they would be the printer and/or the publisher of a newspaper. The second would be the persons who edit a newspaper.

7. We are concerned in the writ petition with the second category i.e. the persons who edit newspapers.

8. The proviso requires that the persons making the declaration required by Section 5 as also persons who edit a newspaper should '*ordinarily reside in India*'.

9. Originally enacted in the year 1867, the proviso was sans the words '*who does not ordinarily reside in India or*'. The proviso as originally enacted read as under:-

> *"Provided that no person who has not attained majority in accordance with the provisions of the Indian Majority Act, 1875 (9 of 1875), or of the law to which he is subject in respect of the attainment of majority, shall be permitted to make the declaration prescribed by this Section, nor shall any such person edit a newspaper."*

10. The said Act, as proclaimed by its preamble, was enacted to regulate the printing press, newspapers and books. Newspapers would include periodicals as per the definition of a newspaper.

11. The statement of objects and reasons to Act No.26 of 1960 : '*The Press and Registration of Books (Amendment) Act, 1960*', concerning the amendment to the proviso to sub-Section 8 of Section 5 of the said Act clarifies, that though the Act contemplated that the printer, publisher and editor of a newspaper should ordinarily be residents in India, there was no specific provision to this effect in the Act and thus the proposed amendment was to make clear, beyond the possibility of doubt, what was already implicit in the statute book.

12. The law was well-settled by the year 1960, on the subject of the civil and criminal liability of the printer, publisher and the editor of a newspaper, with reference to the contents of the publication. Whereas a

printer and publisher were vicariously liable for the matter published in a newspaper, the editor was personally liable for the same because of the definition of the editor; being the person who controls the selection of the matter published in a newspaper.

13. The jural principle warranting the person concerned to be ordinarily resident of the country in which the publication was made would be discussed by us at the appropriate stage of our decision and thus we proceed now to note the reasoning advanced by the petitioner in support of the prayer made in the writ petition : to read the current statute to include being a citizen of India, as a pre-requisite for being regarded as ordinarily resident in India. The petitioner has two strings to his bow. The first is that the foreign direct investment policy of the Government of India, in the domain of publications, allows 74% foreign direct investment with the pre-condition that in the print media at least three-fourth of the board of a print media company must be Indians and all key editorial posts must also lie with resident Indians. The arrow shot, using the first string in the bow, is that it would be a contradiction if being an Indian resident i.e. a citizen of India, is a qua non for a person to be an editor of a publication if the holding company has a foreign direct investment up to 74%, but a foreigner i.e. a person who is not a citizen of India could function as the editor of a newspaper the holding company whereof has 100% domestic capital. The arrow shot using the second string in the bow is the argument that the press is an important pillar in a democracy. The freedom of speech guaranteed by the Constitution of India, as held by the Supreme Court in the decisions reported as AIR 1963 SC 1811 *STC Vs. CTO*, (1971) 3 SCC 104 *Anwar Vs. State of J&K* and (1991) 3 SCC 554 *Louis De Raedt Vs. UOI* is only to the

citizens of India and not to foreigners; for that matter the fundamental rights under Article 19 of the Constitution are guaranteed in favour of the citizens of India and not foreigners present in India. This has been recognized even by the Parliament evidenced by the fact that the '*Press and Registration of Books and Publications Bill, 2011*', pending consideration before the Parliament, has proposed to define editor to mean a person who is a citizen of India and ordinarily resides in India and who controls the selection of the matter that is brought out in a publication. With the march of times, the arrow shot through the second string in the bow, requires to read the current statute purposively to embrace the concept of citizenship and weave the same in the concept of '*ordinary reside*'. To put it pithily, the arrow shoots in the trajectory to read the proviso as follows:- *Provided that no person who does not ordinarily reside in India and is not a citizen of India or who has not attained majority in accordance with the provisions of the Indian Majority Act, 1875 (9 of 1875), or of the law to which he is subject in respect of the attainment of majority, shall be permitted to make the declaration prescribed by this Section, nor shall any such person edit a newspaper.* Meaning thereby to read into the proviso the words '*and is not a citizen of India'.*

14. At least one interpretative correction is warranted in the statute and the same is that the word '*or*' in the expression '*provided that no person who does not ordinarily reside in India or who has not attained majority in accordance with the provisions of the Indian Majority Act, 1875'* has to be read as '*and*'.

15. But this is just by the way. The issue before us is not whether the word '*or*' should be read as '*and*' i.e. as a conjunction and not disjunctively.

16. Back to the meat of the matter. Does the rule of purposive interpretation warrants its application to read the proviso as suggested by the petitioner.

17. The argument would be something like this : Burke said '*There were three Estates in Parliament; but in the Reporters Gallery yonder, there sat a fourth Estate more important than they all. It is not a figure of speech, or a witty saying; it is a literal fact. Printing, which comes necessarily out of writing, I say often, is equivalent to democracy : invent writing, democracy is inevitable. Whoever can speak, speaking now to the whole nation, becomes a power, a branch of government, with inalienable weight in lawmaking, in all acts of authority. It matters not what rank he has, what revenues or garnitures : the requisite thing is that he have a tongue which others will listen to; this and nothing more is requisite'*. If being a citizen of India is the pre-requisite of the three pillars of democracy : The Legislature, The Executive and The Judiciary; no person can be elected to a legislature unless he is a citizen of India, no person can hold a public post if he is not a citizen of India, no person can hold the office as a Judge if he is not a citizen of India, it would be illogical that a person who is the pivot of the fourth Estate is not to be a citizen of India.

18. Historically, the media was born as an organ of the people against feudal oppression. Media has played a major role in the transformation of feudal societies and writing was used as a powerful medium of change by great writers like Voltaire, Thomas Paine, Rousseau etc. Media was used

by people to express themselves, and since the established organs of power were in the hands of a few, a new organ i.e. print media was created and came to be known as the Fourth Estate because it was the watch dog of the people to keep a check on the other organs and to give the people a forum to voice their opinion. The Constitution Assembly Debates (Vol.IX dated August 31, 1949) records a statement in the Constituent Assembly by Dr.Naziruddin Ahmed and we quote:-

> *"**Mr. Naziruddin Ahmad** : The matter would really depend not upon the intention, because, that is a matter which cannot be understood, ascertained or measured except from the words of the statute. It can only be judged by the terms of the Act and by the effect that it may produce. The main argument of the American Court was to the effect that though it is a mere, tax and apparently not in derogation of freedom of opinion and freedom of expression, still it will have the effect of reducing the circulation of many newspapers. We cannot therefore, go into the intention, whether it is good or whether it is bad, because that is a matter which cannot be ascertained otherwise than through the wording. We are to consider the tax mainly by its effect. There is no doubt that the tax will have the effect of suppressing many newspapers; in that way it will curtail freedom of expression and of opinion if the lax has the effect of reducing the circulation however slightly. **It is well known, Sir, that a free press stand as an interpreter between the Government and the people. To allow it to be fettered is to fetter ourselves**.*
>
> *Then, if course, there is the question of merit; but that is a different matter But as we have guaranteed the freedom of expression and opinion by article 13, clause (1), and also taken some power to curtail the right under clause (2) in specified directions, there should be no further attempt to curtail these rights I submit that this is a matter which has to be carefully considered.*

I readily admit the fact that there is no question of intention involved. We cannot attribute any bad intention to the legislature at all. But under the guise of a tax freedom of opinion will be curtailed consciously or unconsciously.

Sir, one of the elements which ensures freedom in a democratic country is the Press. It is called the Fourth Estate of the Realm, the other three being the Legislature, the Judiciary and the Executive. Any attempt in any way to curtail the liberty of the press should, therefore be carefully considered by us.*"* (Emphasis supplied)

19. In the decision reported as 2011 (9) SCALE 532 *Sanjoy Narayan Editor in Chief Hindustan & Ors. Vs. Hon'ble High Court of Allahabad through Registrar General*, the Supreme Court observed as under:

"5. The media, be it electronic or print media, is generally called the fourth pillar of democracy. The media, in all its forms, whether electronic or print, discharges a very onerous duty of keeping the people knowledgeable and informed.

6. The impact of media is far-reaching as it reaches not only the people physically but also influences them mentally. It creates opinions, broadcasts different points of view, brings to the fore wrongs and lapses of the Government and all other governing bodies and is an important tool in restraining corruption and other ill-effects of society. The media ensures that the individual actively participates in the decision-making process. The right to information is fundamental in encouraging the individual to be a part of the governing process....."

20. The Oxford Dictionary defines residence as '*dwell permanently or for a considerable time; to have one's settled or usual aboard, to live in or at a particular place'*. Black's law dictionary defines reside as '*live, dwell, abide, stay, remain, lodge, settle oneself or a thing in a place, to have a settled aboard for a time, to have one's residence or domicile*'. Thus, the word residence has different meanings and must be distinguished

from a mere presence or the state of being found in a country. As per the decision reported as (1971) 2 QB 602 *Brokelmann Vs. Barr*, it was held that *prima facie at least the residence involved some degree of permanence*. The view accepted the definition of reside in Oxford English Dictionary to mean to dwell permanently or for a considerable time; to have one's settled or usual aboard.

21. In the decision reported as AIR 1963 SC 1521 *Jagir Kaur Vs. Jaswant Singh*, discussing residence and contrasting the same with domicile, the backdrop facts being that Jagir Kaur and Jaswant Singh were married and were residing in Africa and upon return of the wife to India even Jaswant Singh returned on a five months' leave and the couple resided in the house of Jaswant Singh's mother at Hans Kalan and returned to Africa. Jagir Kaur initiated proceedings for maintenance under Section 488 of the Code of Criminal Procedure, 1898 in India and the issue of jurisdiction was raised by Jaswant Singh. Section 488 (8) of the Code read : '*Proceedings under this Section may be taken against any person in any district where he resides or is, or where he last resided with his wife, or, as the case may be, the mother of the illegitimate child.'* It is apparent that the crucial words of the provision are '*resides*', '*is'* and '*where he last resided with his wife*'. In paragraph 6, the Supreme Court observed:-

> *"The first word is resides. A wife can file a petition against her husband for maintenance in a Court in the District where he resides. The said word has been subject to conflicting judicial opinion. In the Oxford Dictionary it is defined as : 'dwell permanently or for a considerable time; to have one's settled or usual abode; to live in or at a particular place'. The said meaning, therefore, takes in both a permanent dwelling as well as a temporary living in a place. It is, therefore, capable of different meaning, including domicile in the strictest and the*

most technical sense and a temporary residence. Whichever meaning is given to it, one thing is obvious and it is that it does not include a casual stay in, or a flying visit to a particular place. In short, the meaning of the word would, in the ultimate analysis, depend upon the context and the purpose of a particular statute. In this case the context and purpose of the present statute certainly do not compel the importation of the concept of domicile in its technical sense. The purpose of the statute would be better served if the word 'resides' was understood to include temporary residence. The juxtaposition of the words 'is' and 'last resided' in the sub-section also throws lights on the meaning of the word 'resides'. The word 'is', as we shall explain later, confers jurisdiction on a Court on the basis of a casual visit and the expression 'last resided', about which also we have something to say, indicates that the Legislature could not have intended to use the word 'resides' in the technical sense of domicile. The word 'resides' cannot be given a meaning different from the word 'resided' in the expression 'last resided' and, therefore, the wider meaning fits in the setting in which the word 'resides' appears."

22. The judgment guides that the concept of a permanent dwelling as well as a temporary living are capable of different meanings which may include domicile in the strictest and the most technical sense. The judgment further guides that it is the rule of purposive interpretation which should guide the Court to adopt said concept of residence which furthers the legislative intent. In paragraph 5, the Court noted that the proceedings under the Section are in the nature of civil proceedings providing a summary remedy to a helpless wife and thus jurisdiction of the Court with reference to residence must be clothed adopting said concept of residence which furthers the cause of the helpless wife.

23. The decision needs a little explanation in the context of the two lines in paragraph 6 being : *The said meaning, therefore, takes in both a*

permanent dwelling as well as a temporary living in a place. It is, therefore, capable of different meaning, including domicile in the strictest and the most technical sense and a temporary residence.

24. It is not to be understood that ordinary residence and domicile are the same. In the decision reported as 1983 (2) AC 309 *R. Vs. Barnet London Borough Council* it was held that Courts have to approach '*ordinarily resident*' on the basis that it bears its modified meaning and is not modified by the statutory context and that the concept of ordinarily resident has to be understood with the reference to a right of a Board. It is not a term of art. It is a question of fact. Residence adopted voluntarily and for settled purpose becomes ordinary residence. Except for matrimonial jurisdictions to equate ordinary residence with domicile would be a dangerous confusion. After surveying decisions pertaining to tax, matrimony and immigration it was observed that Parliament in England has evinced a strong legislative difference between ordinary residence and domicile and the choice has to be respected by the Courts.

25. In the Indian context said view is apposite and we only emphasize that whereas law recognizes a person having more than one residence and a person being ordinarily resident of two places, law does not recognize a person having more than one domicile.

26. Another useful decision would be the Constitution Bench decision of the Supreme Court reported as (2006) 7 SCC 1 *Kuldeep Nayar & Ors. Vs. UOI & Ors.* wherein the Supreme Court was concerned with a challenge to the Representation of the People (Amendment) Act, 40 of 2003, the effect whereof was the requirement of '*domicile*' in the State concerned for getting elected to the Council of States being deleted, which

according to the petitioner violated the principle of federalism; a basic structure of the Constitution as per the petitioner. There was a further challenge to the amendments concerning open ballot system introduced violating the principle of secrecy pleaded to be essential for a free and fair election. The argument was that the test of '*ordinary residence*' as inherent in Section 3 of the RP Act, 1951 could be modified by Parliament only so as to provide some other characteristic of effective representation. After discussing the concept of federalism including those of Canada and the United States of America as also a plethora of decisions in India, the Supreme Court noted a gradual shift on the concept of representation as a National Institution rather than as a champion of local interest warranting a change with time in the concepts of residence and representative (see para 237). The Supreme Court observed that there cannot be one uniform, consistent and internal definition or connotation of concepts because they undergo change with the passage of time and that words, expressions and concepts cannot be decided etymologically by reference to dictionaries. The Supreme Court noted the decision reported as (1980) 3 All ER 689 *Cicutti Vs. Suffolk County Council* to bring home the point that depending upon the context of a statute the word '*resident*' qualified by the word '*ordinarily*' may or may not ensure a nexus between the person and the place in question i.e. the place of residence.

27. Thus, ordinarily resident and domicile being different jural concepts, the distinction has to be maintained unless, as in matrimonial laws, the context of the statute may warrant ordinarily resident to be equated with domicile.

28. The decisions reported as (1868) L.R. 1 SC. & Div. 307 *Bell Vs. Kennedy*, 154, 157, 51 N.E. 531, 532 (1898) *Bergner & Engel Brewing Co. VS. Dreyfus* and (1964) P.356 (CA) *Garthwaite Vs. Garthwaite* guide us that domicile is an idea of law which differs from the notion of permanent home in two principal aspects. Firstly, the elements required for acquisition of domicile go beyond those required for a permanent home. In order to acquire a domicile by choice in a country (for otherwise domicile is acquired by birth) a person must intend to reside in a country permanently and indefinitely. Secondly, domicile differs from the concept of a permanent home inasmuch as law in some cases states that a person is domiciled in a country whether or not he has his permanent home there.

29. It is apparent that the term '*ordinarily resident*' is not derived from common law but is a creation of the legislature. It is for this reason that the use of this term has exercised the minds of Judges on several occasions. The fundamental propositions evolved by the Courts in England for determining the application of this term has been to construe the same according to the ordinary and natural meaning of those words unless the statutory framework requires a different meaning. As per '*Dicey and Morris*' on the conflict of laws 10th Edition, 1980 Page 111 the purpose of determining a person's domicile is to '*connect him for the purpose of a particular inquiry with some system or rule of law*'. That law '*becomes the measure of his personal capacity, upon which his majority or minority, his succession and testacy or intestacy must depend*'. This would determine the forms of matrimonial relief available to him, legitimacy of his children would also depend on this. It is a neutral rule of law for determining that system of personal law with which an individual

has the appropriate connection so that it will govern his personal status and questions relating to him and his affairs.

30. A word needs to be spoken about nationality and domicile before we proceed to discuss, the ultimate chapter of our destination i.e. the concept of citizenship. In a State, a person may be a Member of its civil society as distinguished from its political society; or he may be a member of both. His membership of the political society determines his political status and we find that this political status links him to not only nationality but even citizenship for from either of the two i.e. nationality or citizenship, flows his permanent allegiance or personal association with his sovereign. His membership of the civil society, of a particular locality, determines his civil status, and this is what we understand as flowing from domicile. It is at this juncture that the inherent differences in the concepts of domicile, residence, nationality and citizenship begin to become distinct and yet remain blurred. The political status known as nationality and the civil status known as domicile connect the individual with the sovereign state distinctly. Whereas nationality depends, apart from neutralization, on the place of birth or parentage; domicile is constituted by residence '*animo mandedi*'. It follows that a man may be national of one country but domiciled in another.

31. According to Aristotle, in ancient Greece the population of Attica was divided into groups which were brotherhoods (phratriai) and of clans (gene). Groups of brotherhoods formed tribes (phylai). The entire citizen body was thus included in the tribes and brotherhoods but the wealthy formed the clans. When monarchy was abolished through the efforts of the clans, the citizenship of the members of the brotherhoods was in name

only because they had not civil rights. Draconian reforms created four classes according to wealth and Solon gave to the four classes the right of act in a political capacity (ecclesia) and also in a judicial capacity (heliaia) and thus earned the title 'the first champion of the people'. But even under him, the concept of citizenship was immature. The first recognition of citizenship came with Cleisthenes under whose reforms there was a distribution of the population on a geographical basis and an enfranchisement of persons of pure or partial Athenian descent. Resident foreigners had inter-married and though there was a partial recognition of foreigners permanently settled (domiciled) in Athens even from the days of Peisistratus there was no recognition of the offsprings of mixed marriages as citizens. These were added to the list of citizens because citizenship no longer depended on membership of the phratries. The state of affairs continued till Pericles abrogated the enlightened measure. He limited citizenship to those of Anthenian descent on both sides. Had he come earlier some famous men of Athens like Themistocles would have been barred from not only office but other civic rights. It is not necessary to follow the history of Athens further. It is reasonable to believe that all other States in Greece except Sparta followed this kind of citizenship. The Spartans had their own system of rule with two kings and an elected council (gerusia) elected by the citizens which was both advisory and judicial. There was also an assembly of all citizens over twenty called the appella which elect the magistrates and met monthly. The right of vote in the election of the gerusia and membership of the appellate was open to those who were selected at the birth by the partiate. All children were inspected at birth by the heads of the tribe and those who were sickly were

exposed in a ravine of Mt.Taygetus and of the others, those that lived, all boys were taken away at the age of seven and trained as citizens. All the Hellenic States followed Athens but Crete perhaps was influenced by Sparta.

32. In the opinion reported as AIR 1963 SC 1811 *STC Vs. CTO & Ors.* noting treatise on International Law on the concept of citizenship and nationality, often used interchangeably, in paragraph 96 the Supreme Court observed as under:-

> *"96. Citizenship and nationality emphasize different facets of a single concept of association with or membership of a political community. The form and content of the association have varied in their historical evolution with the complexion of the governmental machinery, but in essence they denote the relation which a person bears to the sovereign authority. Citizenship is the relation that a person bears to the State in its national or municipal aspect; nationality appertains to the domain of International Law, and represents the political status of a person, by virtue of which he owes allegiance to a particular sovereign authority. `Citizen' and 'national' are frequently used as interchangeable terms, but the two terms are not synonymous. Citizenship in most societies is the highest political status in the State, it is employed to denote persons endowed with full political and civil rights. There are in some States nationals who though owing allegiance, lack citizenship such as those belong to colonial possessions which are not included within the metropolitan territory, and do not participate in the Government. Even in States where association of nationals in the governmental machinery does not exist or is too tenuous to be effective, the national endowed with capacity to exercise personal and political rights may be called a citizen. Again there may be citizens even in States having a form of government, which permits an effective association of its citizens with the administration, who do not participate in the government, or who by reason of sex, minority or personal disqualification are*

incompetent or are unable to participate. Citizenship is therefore membership of a jural society investing the holder with all the rights and privileges which are normally enjoyed by its nationals, and subjecting him to corresponding duties; nationality is the link between a person and a State, ensuring that effect be given to his rights in international affairs. Every citizen is a national, but every national is not always a citizen. The tie which binds the national and the citizen is the tie of allegiance to the State; it arises by birth, naturalization or otherwise in a political society which is called a State, Kingdom or Empire."

33. But one thing is clear. Citizenship is a term of municipal law and denotes the possession, within the particular state of full civil and political rights. The conditions on which citizenship is acquired are regulated by municipal law. Domicile is different from citizenship inasmuch as a person may have one nationality or citizenship and a different domicile or he may have a domicile but no nationality. Domicile may not affect or alter a person's nationality. Domicile is concerned with the permanent home/abode of a person. But domicile has no relevance to the applicability of municipal laws. Citizenship on the other hand connects a person with municipal laws of the country. In order to accord civil rights to an individual and allow him to hold posts in the Government or participate in the democratic processes of a State, a high-degree of allegiance and connection with the State is imperative. Full political rights are given only to citizens and not to those who have their domicile in a State. Citizenship can invoke different meanings in varying contexts. It has been described both as an instrument and an object of closure. As an instrument of closure it is pre-requisite for the enjoyment of certain rights or for participation in certain types of interaction. As an object to closure

it is status to which access is restricted. In other words citizenship includes access to a bundle of rights and also the status of membership itself, the identity of citizen. Thus, whereas citizenship is the public law status while domicile and ordinary resident are the civil law status in the private law context. Citizenship is a political concept and political rights remain at its center. In the decision reported as AIR 1955 SC 334 *D.P.Joshi v. The State of Madhya Bharat & Anr.*, the Supreme Court held as under:-

> *"7.…Under the Constitution, article 5, which defines citizenship, itself proceeds on the basis that it is different from domicile, because under that article, domicile is not by itself sufficient to confer on a person the status of a citizen of this country."*

34. Considering whether a company incorporated under the Indian Companies Act prior to the Constitution could claim protection of fundamental rights under Art. 19(1)(g) of the Constitution of India in the decision reported as AIR 1957 SC 699 *The State of Bombay v. R.M.D. Chamarbaugwala*, it was observed as under:-

> *"…'Citizen' has not been defined by the Constitution and the only provision which is relevant is the provision contained in Art. 5. But that article only deals with the citizenship at the commencement of the Constitution and it lays down who was a citizen at the commencement of the Constitution* ***….although domicile is a question of private international law, rights and acquisition of citizenship is a creation of municipal law and it is only Parliament by municipal law that can determine who is a citizen.*** *" (Emphasis supplied)*

35. In the decision reported as AIR 1984 SC 1420 *Dr.Pradeep Jain & Ors. v. Union of India & Ors.*, the Supreme Court observed as under:

> *" 8. Now it is clear on a reading of the Constitution that it recognizes only one domicile namely, domicile in India. Article 5 of the Constitution is clear and explicit on this point and it refers only to one domicile, namely, "domicile in the territory of India." Moreover, it must be remembered that India is not a federal state in the traditional sense of that term. It is not a compact of sovereign states which have come together to form a federation by ceding a part of their sovereignty to the federal states. It has undoubtedly certain federal features but it is still not a federal state and it has only one citizenship, namely, the citizenship of India. It has also one single unified legal system which extends throughout the country. It is not possible to say that a distinct and separate system of law prevails in each State forming part of the Union of India…**The concept of 'domicile' has no relevance to the applicability of municipal laws, whether made by the Union of India or by the States**. It would not, therefore, in our opinion be right to say that a citizen of India is domiciled in one state or another forming part of the Union of India…" (Emphasis supplied)*

36. Having understood clearly that citizenship, domicile and ordinarily resident are distinct legal concepts, the question would arise whether on the argument made by the petitioner, the rule of purposive interpretation or ongoing construction would propel to read the statute as urged by the petitioner.

37. The argument of the petitioner was that with the march of times, words and phrases in a statute have to be given a meaning relevant to the time period of history in which they have to be understood to give effect to the legislative intent.

38. Where words or phrases have a known legal meaning and content, it has to be presumed that while legislating, the legislature has used the word or the phrase knowing its legal meaning and content. Further, legislature

is presumed to intend that in construing an Act the Court, by advancing the remedy which is indicated by the words of the Act for the mischief being dealt with, and the implications arising from those words, would aim to further every aspect of the legislative purpose. Harmonizing the said two presumptions, in the context of the Rule of purposive construction, it logically follows that the pre-requisite of applying the Rule of purposive construction is a grammatically ambiguous enactment or an enactment capable of two interpretations or a patent legislative omission. Three conditions must be fulfilled in order to justify taking recourse to straining the language. Firstly, from a consideration of the provisions of the enactment read as a whole to determine precisely what was the mischief intended to be remedied i.e. the purpose of the legislation; secondly, it should be apparent that the draftsman had, by inadvertence, overlooked and so omitted to deal with, an eventuality that required to be dealt with if the purpose of the Act was to be achieved; and thirdly, it was possible to state with certainty what were the additional words that would have been inserted by the draftsman and approved by the legislature had its attention been drawn to the omission before the bill passed into law. It would thus be apparent that where the Court is unable to find out the purpose of an enactment, or is doubtful as to its purpose, the Court is unlikely to depart from the literal meaning.

39. Now, the purpose of the legislation requiring an editor to be an ordinary resident in India is not expressly forthcoming from the statement of purpose/objects and reasons of the enactment, but one can discern the same. The same being the personal liability of the editor for the contents of the publication and since civil and criminal liability is fasten by law if

the contents of a publication are found to be defamatory, the requirement of the editor of a publication being available to be answerable to the Courts established by law. He should be a person available within the territorial jurisdiction of the Courts of India and thus must have his residence in India which must not be a fleeting residence but must be of a permanent nature.

40. The purpose of the statute would not be furthered, and in any case not diminish, if the person concerned is not a citizen of India. Thus, the Rule of purpose construction does not warrant the statute to be read as suggested by the petitioner.

41. That takes us to the second limb of the Rule of construction, being purposive in its historical content.

42. The development of the Rules of interpretation of statutes, we find have dealt with the Rule pertaining to updating the language of an Act in the context of the time in which a word or a phrase has to be construed with reference to the principles of *contemporanea exposition.* It means that with regard to updating, it has to be ascertained whether the Act is intended to develop in meaning with developing circumstances or is intended to be of unchanging effect i.e. whether the Act can be called an ongoing Act or a fixed time Act. Whereas it may be presumed that the legislature intended the Court to apply to an ongoing Act a construction that continuously updates its words to allow for changes since the Act was initially framed (an updating construction). For the enactment would be treated as always speaking. This would mean that the language of the Act, though necessarily embedded in its own time, has to be construed in the current time according to the need. A fixed time Act has to be applied in

the same way whatever changes might occurred after its passing. Updating construction is therefore not applied. How to determine whether the Act is an ongoing or a fixed time Act? The meaning understood at the time it was passed and its meaning today would determine the same and for this reference has to be made to contemporary sources (*contemporanea exposition)*.

43. So understood, we are doubtful whether the Rule of updating construction would be applicable for the reason the legal concept of ordinarily resident, domicile and citizenship have remained unchanged since when the Act was passed till today.

44. It may be true that in today's context, media, both print and electronic, have become much more powerful due to their reach and the evolving concept of what is called paid news. As literacy increases the media becomes powerful and influences the political and social thinking of the targeted audience. It may be true that citizenship kindles a sense of patriotism and loyalty and thus it may be desirable that a person who is not a citizen of India should not be an editor of publication in India. It may be true that even the legislature has so opined evidenced by the fact that the Press and Registration of Books and Publication Bill, 2011 which has been cleared by the Select Committee and is pending before Parliament has suggested amendment to the Act by defining editor to mean a person who is not only an ordinary resident in India but is also a citizen of India. But it is for the legislature to consider the bill at the floor of the House and not for the Court to legislate.

45. Hoping that the Parliament would find some time to consider the Press and Registration of Books and Publication Bill, 2011 which is

pending consideration now for over two years, we dismiss the writ petition declining relief as prayed for.

46. Since the issue raised was in public interest and merited a serious consideration, notwithstanding the petitioner being vanquished we direct that there shall be no order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

DECEMBER 17, 2013
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