

TATA PRESS LTD. VS MAHANAGAR TELEPHONE NIGAM LTD. – CASE COMMENT

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1. INTRODUCTION

“The Constitution is not a mere a Lawyer’s document. It is a vehicle of life and its spirit is always the spirit of age.” - Dr. B.R. Ambedkar.

The Constitution of India has taken 2 years, 11 months, and 18 days to complete after which it was adopted and was therefore enacted. Currently, the Constitution constitutes 395 articles, 22 schedules, and 8 schedules. As known the Constituent Assembly has framed the Constitution whereby the Indian Constitution has been framed and drafted by being adopted from different countries. One of the most salient parts of the Constitution Part III is the Fundamental Rights. Fundamental Rights range from Article 12 to Article 35 covering a variety of topics where citizens, as well as non-citizens, have been given certain privileges to enforce their rights in case of violation of any of them in either case. This idea of fundamental rights has been adopted from the constitution of the USA in the Indian Constitution. The ‘Bill of Rights’ was a formal and documented declaration regarding every essential English right and duty at present in the U.S. Constitution. The Constituent Assembly has provided the country with such a list of Fundamental Rights that protects the interest of all groups, societies, minorities, and majorities, inclusive of religious and linguistic groups and at times also includes non-citizens. The Fundamental Rights available in Part III are broadly classified as follows:- a. Right to Equality (Art.14 to Art.18), Right to Freedom (Art.19 to Art.22), Right Against Exploitation (Art.23 to Art.24), Right to Freedom of Religion (Art.25 to Art.28), Cultural and Educational Rights (Art.29 to Art.30), Right to Constitutional Remedies (Art.32). In this Part III, there is the presence of Golden Triangle comprising Article 14, Article 19, and Article 21¹. The case is dealt with revolves around the Golden Triangle.

The case of Tata Press Ltd vs Mahanagar Telephone Nigam Ltd² is being discussed with respect to Article 19 of this Golden Triangle. According to the Indian Constitution, Article 19 refers to

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¹ Constitution of India 1950

² Tata Press Ltd vs Mahanagar Telephone Nigam Ltd (1995) AIR 2438

the protection of certain rights regarding freedom of speech, etc. Additionally, there are restrictions also provided within this article alongside the rights given. Basically, this case deals with Art.19(1)(a) with its restrictions being mentioned in Art.19(2)³. Art.19(1)(a)⁴ of the Indian Constitution speaks about freedom of speech and expression while Art.19(2)⁵ speaks regarding the imposition of reasonable restrictions on the exercise of this right being conferred namely:- sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public order, decency or morality, or about contempt of Court, defamation/ incitement to an offense.

Art.19(1)(a)⁶ that talks about Freedom of Speech and Expression also encompasses in its ambit the concept of commercial speech. Commercial Speeches are entitled to an additional degree of security within the scope of Art.19⁷. This case has overturned the position of commercial speech and is likewise considered to be a landmark judgment concerning Art.19(1)(a)⁸. As a general rule, every democratic country has the right to speak up and express their own thoughts which comprises advertisements and commercial speeches. It is already complicated to differentiate between commercial and non-commercial speech. Moreover, the courts adopt narrow and unclear methods for this differentiation that make it all the more tough.

Tata Press Ltd vs Mahanagar Telephone Nigam Ltd has given a new shape and form to Art.19(1)(a) of the Indian Constitution and the concept of Commercial Speech in India. Now, this case has been discussed in depth further.

2. FACTS

The government owned a company namely Mahanagar Telephone Nigam Ltd. It maintained licenses and authorizations to oversee telecommunication activities under the Indian Telegraph Act within the geographical boundaries of the Union Territory of Delhi, Municipal Corporations of Bombay, New Bombay, and Thane. MTNL issued a telephone directory consisting of two types of pages namely:- White pages (free listing) and Yellow pages (paid advertisement). MTNL issued exclusively white pages till the year 1987. Post 1987 it started circulating yellow pages as well. The conflict commenced when the respondents (MTNL)

³ Constitution of India 1950, s 19(2)

⁴ Constitution of India 1950, s 19(1)(a)

⁵ Constitution of India 1950, s 19(2)

⁶ Constitution of India 1950, s 19(1)(a)

⁷ Constitution of India 1950, art 19

⁸ Constitution of India 1950, s 19(1)(a)

stated that the legal right to issue this directory solely lies with MTNL being the licensee under the Indian Telegraph Act, of 1885. Later, the Yellow Pages issued by Tata Press Ltd. comprised commercials, marketing, and promotional materials taken from merchants, traders, dealers, investors, shopkeepers, etc. The sole prerequisite for anything to be permitted to be printed in the Yellow Pages in Tata Press Ltd. was that it must contain contact data and information of professionals, specialists, entrepreneurs, and merchants. It was issued and printed in Bombay in three editions in the following years 1992, 1993, and 1994⁹.

In this way, the Union of India and MTNL(Mahanagar Telephone Nigam Ltd.) filed a lawsuit against Tata Press Pvt Ltd. stating that Tata Press Ltd. lacks the authority to print and publish this telephone subscriber list since MTNL (Mahanagar Telephone Nigam Ltd.) only had this control under Indian Telegraph Act, 1885¹⁰.

3. ISSUES

The issues faced in the above case are as follows:-

1. Will the printing and release of Yellow Pages come under the Telecom Rules (1957) Indian Telegraph Act, 1885 (S.457, S.458)¹¹?
2. Can the appellants be prevented from broadcasting, advertising, and disseminating this collection?
3. If the concept of Commercial Speech fall within the ambit of Art.19(1)(a) Freedom of Speech and Expression of the Indian Constitution?¹²

⁹ Sweety Kumari, 'Tata Press Ltd. vs Mahangar Telephone Nigam Ltd. Case Analysis' (Law Foyer, 28 June 2022) < [TATA PRESS LIMITED. v. MAHANAGAR TELEPHONE NIGAM LIMITED \(lawfoyer.in\)](#)> accessed 21 June 2024

¹⁰ Indian Telegraph Act 1885

¹¹ Indian Telegraph Act 1885, s.457, s.458

¹² Harsh Kumar, 'Tata Press Ltd. vs Mahangar Telephone Nigam Ltd. Case Analysis' (Slideshare, 6 April 2022) < [Tata Press Limited vs Mahanagar Telephone-Nigam.pptx \(slideshare.net\)](#) > accessed 21 June 2024

4. ANALYSIS

When a country stands on the pillars of democracy it has to provide freedom for not only political speeches but also include commercial speeches in its ambit. The word 'democracy' when stated in the preamble and constitution is of great importance and significance which conveys to the legislature, executive, judiciary as well as the people of India that in every field democracy is required.

This debate on commercial speeches has further paved the way for various amendments in India and the U.S.A. In the USA, it led to the First Amendment where freedom of speech and press was further added. In India, it has led to several landmark judgments, one such is being analyzed today.

Speech includes Commercial advertisements which are protected under Art.19(1)(a) of the Indian Constitution. For any such misleading, deceptive commercial speeches there are restrictions as mentioned under Art.19(2). Basically, there are 2 aspects when speaking regarding commercial speech as a part of advertising. This publicizing is no more than an economic transaction that collects data regarding the product that is being promoted. Each person has the right to know about the data and information related to the marketing of the product. Without the freedom of commercial speeches, the financial system of such democratic countries would be impaired. Hence, currently, commercial speeches come and are even protected within the ambit of Art.19(1)(a).

In the light of commercial speeches as under Art.19(1)(a) above case of Tata Press Ltd. vs MTNL is discussed along with various other related judgments.

In the case Hamdard Dawakhana Wakf Lal vs Union of India¹³; where petitioners had complained and questioned regarding the legality of drugs being advertised in the market. In the above case, the Hon'ble Supreme Court further held that selling illegal narcotics was against the public interest and did not fall within the ambit of speech and expression under Art.19(1)(a). It was even stated that advertisement is no doubt a form of speech but such publicizing and marketing should be used for the benefit of the society and improving their knowledge thereby in a way the economic system of the country would also get improved. Hence, in this case, advertising was not considered to be a part of Art.19(1)(a) of the

¹³ Hamdard Dawakhana vs Union of India (1959) AIR 1960

Constitution. When we come back to the Tata Press Ltd. case there by way of freedom of speech and expression and not curbing the rights of other companies just because of MTNL, it was held by the Supreme Court that commercial speeches do come under Art.19(1)(a) if the Indian Constitution. This in turn overturned the judgment of the Hamdard Dawakhana case.

In the case of Sakal Papers (P) Ltd vs Union of India¹⁴, the Newspaper (Price and Page) Act, 1956¹⁵ was held unconstitutional. This Act balanced the size and price of the newspaper and balanced them while providing adequate space for marketing. Further, it was decided by the Court that instead of making a hike in the prices of newspapers it could be done by decreasing the prices of advertisements. Similarly, this can also be seen in the present case where commercial advertisements are promoted. Where it was held that the monopoly of MTNL should not be encouraged and even Tata Press Ltd has the right to publish Yellow Pages of the same nature.¹⁶

In the case of Bennett Coleman & Co. vs Union of India¹⁷, it was held that uncontrolled restrictions being put upon the press regarding the number of pages, circulation, advertisement, marketing, etc. was indirectly harming their Freedom of Speech and Expression (Freedom of Press) Art.19(1)(a). On similar lines in the Tata Press Ltd. case, it has also been held the same where commercial advertisements being of economic importance cannot be prevented because without such prevention the economy would become impaired. Furthermore, the right of people to free speech and expression is not merely curbed to its political limits. It expands beyond that and there is something more to it than just being political.

The case of Indian Express Newspaper vs Union of India¹⁸, revolved around the imposition of tax on newspapers and whether the imposition of tax on newspapers breached freedom of speech and expression. It was held by the Hon'ble Supreme Court that the imposition of tax on newspapers led to no such breach of freedom of speech and expression. There was no harm to political or commercial speech due to the imposition of tax. Similarly, due to granting Tata Press Ltd. to do the same business which was priorly being conducted only by MTNL the Court

¹⁴ Sakal Papers (P) Ltd. And Others vs Union of India (1962) AIR 305

¹⁵ Newspaper (Price and Page) Act 1956

¹⁶ Manoj Mitta, 'SC identifies advertising as a part of speech' (India Today,31 August 1995) <[Landmark verdict - India Today](#)> accessed 21st June 2024

¹⁷ Bennett Coleman & Co. & Ors vs Union of India & Ors (1972) AIR 106

¹⁸ Indian Express Newspaper vs Union of India (1986) AIR 515

rather has in a way benefitted the merchants, and traders. This is because now they would have a choice and promoting this will itself benefit them and the society at large.

The case of Virginia State Pharmacy Board vs Virginia State Consumer Council¹⁹ is one of those first cases where the First Amendment of the U.S.A. Constitution was applied to commercial speeches. This case can be said to be extremely relatable to Tata Press Ltd vs MTNL (Mahanagar Telephone Nigam Ltd.). In this US case there was a law that prevented pharmacists from marketing drug prices and those who did that would be held accountable for unethical behavior. One of the individuals being a consumer and one consumer group challenged this law and fought this case in the Supreme Court of U.S.A. Justice Blackburn had given his majority opinion where the case involved not only commercial advertising and marketing of these drugs but also free flow of information. Here commercial advertising was brought under the First Amendment under Freedom of Speech and Expression. Similarly, it can be seen in the Tata Press Ltd case, that along with commercial speech, the consumers should also have adequate information regarding the products, goods, or services being purchased or hired.

5. JUDGMENT

Art.19(1)(a) of the Indian Constitution which deals with Freedom of Speech and Expression also has some reasonable restrictions present as mentioned in Art.19(2). Advertisements falling within the ambit of commercial speeches are a part of Freedom of Speech and Expression as decided by the Hon'ble Supreme Court.

The Government is permitted to supervise, monitor, and regulate commercial advertisements. This process is done because those commercial advertisements that are fraudulent, deceitful, incorrect, and arbitrary can be examined and checked by the Government. Such commercial advertisements that transmit information, knowledge, and awareness by not affecting the safety, peace, and tranquility of the public need not be intervened by the government.

The Hon'ble Supreme Court held that MTNL's plea was dismissed and that Tata Press Limited was not permitted to issue white pages like that of MTNL. The issuing of Tata Press Ltd. was being done according to international standards and patterns like the U.S.A. had done in the past.

¹⁹ Virginia State Pharmacy Board vs Virginia State Consumer Council 425 US 748 (1976)

Kuldip Singh J. who had passed the judgment on this case had stated that Tata Press Ltd. could not publish the same thing as that of MTNL (Mahanagar Telephone Nigam Ltd.) because for that the sole right remained with MTNL under the Indian Telegraph Act. A permanent injunction was further passed to ensure that Tata Press Ltd. would not do such a thing and publish the same thing as that of MTNL (Mahanagar Telephone Nigam Ltd.).

But Tata Press Ltd. was entitled to receive protection under Art.19(1)(a) of the Indian Constitution.

It was further stated by the Court that India has a Democratic economy hence the commercial and economic circulation of information has to be permitted. This is done with the idea that people can select their goods and services with rational thought, reason, and understanding. For the public to make such informed, sound, and practical decisions the data being delivered via advertisements is necessary to educate and empower people. Now every citizen has the right to attend and experience commercial speech in the wake of commercial and economic changes. When there is democracy in the country politically, economically, and financially then in such cases Commercial Speech has to be present otherwise the whole framework would fall apart and cease to function.

It was held that via Art.19(1)(a) of the Indian Constitution guarantees Freedom of Speech and Expression citizens are further protected by being provided the right to listen, read, and receive the said speech. This protection of Art.19(1)(a) is being provided to all including commercial speeches.

6. CASE COMMENT

Tata Press Ltd. vs MTNL²⁰ being a landmark judgment has marked its importance in the constitution of India. It has highlighted the importance of commercial speech within the ambit of Art.19(1)(a) Freedom of Speech and Expression. The ideas of advertising, marketing, and promoting are important for the consumers to know as they even create awareness among people at large. They even help us to distinguish between genuine and replica products. It conveys an important message that there should be a free flow of information and data among the people in the country. Because if that is present then only will the financial system of the country not remain curtailed.

²⁰ Tata Press Ltd (n 2).

It has given a new meaning to the word 'speeches'. Apart from being political in nature, they have this other side of being commercial which helps in promotion and advertising. For a long time, there have been disputes regarding the inclusion of commercial speeches within the ambit of Art.19(1)(a). But finally, commercial speeches in India are now included within Art.19(1)(a) Freedom of Speech and Expression.

7. CONCLUSION

To conclude this case *Tata Press Ltd. vs MTNL*²¹ has glorified some of the important aspects of the Indian Constitution while also throwing light on past landmark judgments. This in turn has led to a change of thought regarding future cases.

The inclusion of the term Commercial Speech within the limits of Art.19(1)(a) Freedom of Speech and Expression has given a new direction to Indian cases. This has left an impact on the Freedom of the Press.

This case has however highlighted the importance of commercial speech for the free flow of information within the economic system. It was even said that the telecom rules S.457²² (General Rules of Telecom Directory) and S.458²³ (Publishing of Telecom Directory) do affect the issuing of Yellow Pages by Tata Press Ltd.

In this way, various new concepts and ideologies have been brought to the surface because of this case.

In attaining our ideals, our means should be as pure as the end. - Dr. Rajendra Prasad

²¹ *Tata Press Ltd (n 2)*.

²² *Indian Telegraph Act 1885, s.457*

²³ *Indian Telegraph Act 1885, s.458*