PRABHA DUTT

v.

UNION OF INDIA & ORS.

November 7, 1981

[Y. V. CHANDRACHUD, C. J., A.P. SEN & BAHARUL ISLAM, JJ.]

Constitution of India—Article 19(1)(a)—Journalist if has a right to means of information—If could claim right to interview a prisoner sentenced to death.

Jail Manual—Rule 549(4) Journalist—If could claim to be friend of society and can claim right of interview with condemned prisoner.

The constitutional right to freedom of speech and expression conferred by article 19(1)(a) of the Constitution, which includes the freedom of Press, is not an absolute right; nor indeed does it confer any right on the Press to have an unrestricted access to means of information. The Press is entitled to exercise its freedom of speech and expression by publishing a matter which does not invade the rights of other citizens and which does not violate the sovereignty and integrity of India the security of the State, public order, decency and morality. [1185 FG]

The right claimed by the petitioner in the present case, a newspaper reporter, to interview two convicts under sentence of death is not a right to express any particular view, or opinion but the right to means of information through the medium of an interview with them. No such right can be claimed by the Press unless the person sought to be interviewed is willing to be interviewed. [1185 H]

The existence of a free Press does not imply or spell out any legal obligation on the citizens to supply information to the Press, such as there is under section 161(2) of the Criminal Procedure Code. [1186 A]

Rule 549(4) of the Jail Manual provides that a prisoner under a sentence of death shall be allowed interviews and other communications with relatives, friends and legal advisers, journalists and newspapermen, though not expressly referred to in this rule cannot be denied the opportunity of interview without good reasons. There is no reason why newspapermen who could be termed as friends of the society be denied the right of interview under rule 549(4). [1186 D-F]

There can be no doubt that a person, who desires to interview a prisoner may have to subject himself or herself to the search in accordance with the rules and regulations governing the interviews. [1187 A-B]

Whether representatives of the Press should be allowed to be present at the time of the execution of the death sentence is a matter for the Superintendent to consider on merits and in accordance with the jail regulations. It is not a matter for the Court to decide. [1187 G]

ORIGINAL JURISDICTION : Writ Petition No. 8193 of 1981. A
(Under article 32 of the Constitution of India.)

R. K. Garg and *C.S. Vaidyanathan* for the Petitioner.

Miss A. Subhashini for Respondent No. 1.

N. C. Talukdar, K.S. Gurumoorty and *R. N. Poddar* for Respondents Nos. 2 to 4. B

P. N. Lekhi and *K. C. Dua* for the Applicants.

P. K. Bahardwaj in person for Times of India. C

B. M. Srivastava for U.N.I

V. S. Karnic for P.T.I.

The Order of the Court was delivered by

CHANDRACHUD, C.J. This is a petition under article 32 of the Constitution by the Chief Reporter of the Hindustan Times, Smt. Prabha Dutt, asking for a writ of mandamus or any other appropriate writ or direction directing the respondents, particularly the Delhi Administration and the Superintendent of Jail, Tihar, to allow her to interview two convicts Billa and Ranga who are under a sentence of death. We may mention that the aforesaid two prisoners have been sentenced to death for an offence under section 302 Indian Penal Code and the petitions filed by them to the President of India for commutation of the sentence are reported to have been rejected by the President recently. D E

Before considering the merits of the application, we would like to observe that the constitutional right to freedom of speech and expression conferred by article 19(1)(a) of the Constitution, which includes the freedom of the Press, is not an absolute right, nor indeed does it confer any right on the Press to have an unrestricted access to means of information. The Press is entitled to exercise its freedom of speech and expression by publishing a matter which does not invade the rights of other citizens and which does not violate the sovereignty and integrity of India, the security of the State, public order, decency and morality. But in the instant case, the right claimed by the petitioner is not the right to express any particular view or opinion but the right to means of information through the medium of an interview of the two prisoners who are sentenced to death. No such right can be claimed by the Press unless in the first instance, the person sought to be interviewed is F G H

willing to be interviewed. The existence of a free Press does not imply or spell out any legal obligation on the citizens to supply information to the Press, such for example, as there is under section 161(2) of the Criminal Procedure Code. No data has been made available to us on the basis of which it would be possible for us to say that the two prisoners are ready and willing to be interviewed. We have, however, no data either that they are not willing to be interviewed and, indeed, if it were to appear that the prisoners themselves do not desire to be interviewed, it would have been impossible for us to pass an order directing that the petitioner should be allowed to interview them. While we are on this aspect of the matter, we cannot overlook that the petitioner has been asking for permission to interview the prisoners right since the President of India rejected the petitions filed by the prisoners for commutation of their sentence to imprisonment for life. We are proceeding on the basis that the prisoners are willing to be interviewed.

Rule 549(4) of the Manual for the Superintendence and Management of Jails, which is applicable to Delhi, provides that every prisoner under a sentence of death shall be allowed such interviews and other communications with his relatives, friends and legal advisers as the Superintendent thinks reasonable. Journalists or newspapermen are not expressly referred to in clause (4) but that does not mean that they can always and without good reasons be denied the opportunity to interview a condemned prisoner. If in any given case, there are weighty reasons for doing so, which we expect will always be recorded in writing, the interview may appropriately be refused. But no such consideration has been pressed upon us and therefore we do not see any reason why newspapermen who can broadly, and we suppose without great fear of contradiction, be termed as friends of the society be denied the right of an interview under clause (4) of rule 549.

Rule 559A also provides that all reasonable indulgence should be allowed to a condemned prisoner in the matter of interviews with relatives, friends, legal advisers and approved religious ministers. Surprisingly, but we do not propose to dwell on that issue, this rule provides that no newspapers should be allowed. But it does not provide that no newspapermen will be allowed.

Mr. Talukdar who appears on behalf of the Delhi Administration contends that if we are disposed to allow the petitioner to interview the prisoners, the interviews can be permitted only subject to the rules and regulations contained in the Jail Manual. There

can be no doubt about this position because, for example, rule 552A provides for a search of the person who wants to interview a prisoner. If it is thought necessary that such a search should be taken, a person who desires to interview a prisoner may have to subject himself or herself to the search in accordance with the rules and regulations governing the interviews. There is a provision in the rules that if a person who desires to interview a prisoner is a female, she can be searched only by a matron or a female warden.

Taking an overall view of the matter, we do not see any reason why the petitioner should not be allowed to interview the two convicts Billa and Ranga.

During the course of the hearing of this petition, representatives of the Times of India, India Today, PTI and UNI also presented their applications asking for a similar permission. What we have said must hold good in their cases also and they, in our opinion, should be given the same facility of interviewing the prisoners as we are disposed to give to the petitioner in the main writ petition.

We therefore direct that the Superintendent of the Tihar Jail shall allow the aforesaid persons, namely the representatives of the Hindustan Times, the Times of India, India Today, the Press Trust of India and the United News of India to interview the aforesaid two prisoners, namely, Billa and Ranga, today. The interviews may be allowed at 4 O'Clock in the evening. The representatives agree before us that all of them will interview the prisoners jointly and for not more than one hour on the whole.

There will be no order as to costs.

Mr. Lekhi who appears on behalf of the magazine India Today as also Mr. Jain who appears on behalf of the Hindustan Times has requested us to direct the Superintendent of Jail to allow the aforesaid representatives to be present at the time of the execution of the death sentence. That is not a matter for us to decide. If such an application is made to the Superintendent of Jail, he will be free to consider the same on merits and in accordance with the jail regulations.

P.B.R.