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

Reserved on: 22.04.2008
Pronounced on: 13.04.2009

\+ **CS (OS) No.1102/2006**

PETRONET LNG LTD. ….PLAINTIFF

Through : Mr. Valmiki Mehta, Sr. Advocate with
Mr. Dhananjay Shahi and Mr. N.L. Ganapathi,advocates

Versus

INDIAN PETRO GROUP AND ANOTHER ….DEFENDANTS

Through : Mr. D.Moitra, Advocate for defendant No.1.
Mr. Shantanu Saikia, Defendant No.2 in person.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not?

3. Whether the judgment should be reported in the Digest?

S.RAVINDRA BHAT, J.

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1. The plaintiff seeks permanent injunction restraining the defendants, their successors, assigns, etc or anybody claiming through them, from publishing confidential and/or misleading information relating to the plaintiff's negotiations and contracts, in the form of articles or news items or in any other form, in the website www.indianpetro.com and its sister or other websites, or through e-mail alerts, without the written consent of the plaintiff; It also seeks mandatory injunction directing the defendants, their successors, assigns, etc. to unconditionally

remove the confidential and misleading information/news items/articles detailed in paragraph 19 of the plaint from the defendants' said website www.indianpetro.com.

2. The Plaintiff is a listed, joint venture company promoted by four Public Sector Undertakings, (viz, GAIL (India) Limited, Oil Natural Gas Corporation Limited Indian Oil Corporation Limited and Bharat Petroleum Corporation Limited with an authorized share capital of Rs.1200 crores, to import Liquefied Natural Gas (hereafter referred as "LNG") and set up LNG terminals in the country, Gaz De France, a French national gas company, through its investment subsidiary GDF International, holds a minority stake of 10% equity in the plaintiff as a strategic partner, Asian Development Bank holds 5.2% equity stake as an investor and 34.8% of the equity in the plaintiff is held by the general public.

3. The plaintiff is not aware of the exact legal status of defendant No.1. The particulars of defendant No.1 is based on the information provided in the website of defendant No.1, www.indianpetro.com. Defendant No.1 claims to be India's largest news and informal market intelligence provider on Indian Oil and Gas, power and Fertilizer sectors. It also claims to have long standing relationships and networking arrangements to provide the most comprehensive, macro and micro reports of the respective industries. The defendant No.1 owns and operates at least three websites, viz., www.indianpetro.com, www.energylineindia.com and www.indianfertilizer.com. Defendant No.2 is the Executive Editor of defendant No.1 and has registered the website www.indianpetro.com; the registration is for a period from 13.11.2001 to 13.11.2011.

4. The defendants have been publishing several news items/articles relating to the plaintiff in the suit website from time to time since 2003, and, barring a few items/articles published in June 2005, April and May 2006 they only published such information which was already in the public domain or which never affected its (the plaintiff's) interests in any manner. The plaintiff has no objection to the publication of news items or articles involving it, which are already in the public domain. It is, however, averred that unauthorized publishing of sensitive information shared between the plaintiff and international LNG sellers, present and/or prospective, or publishing of half-baked or misleading reports about the plaintiff or its

commercial transactions, as it is bound to have serious repercussions on the plaintiff, cannot be permitted. This is in view of facts relating to the terms of LNG sale and purchase, particularly terms like price and quantity are negotiated separately for each transaction, if published have impact on potential agreements, which could lead to failure of negotiations. The adverse impact on publication could also be existing Sale and Purchase agreements getting breached/terminated (if there are disclosures about that agreement), the plaintiff facing claims for damages, and even on adverse impact on the plaintiff in the stock market. It is contended that any adverse impact on the plaintiff's transactions or potential transactions would have an adverse chain reaction on other stake –holders in the petroleum sector.

5. It is alleged that the defendants, despite being aware of such adverse consequences, had published confidential information relating to the plaintiff in the suit website on 02.06.2005 and 07.06.2005, the details of which are as follows :

(a) On 02.06.2005, the defendants published information under following the headings:

(i) "PLL appoints Baker Botts as international legal advisor",

(ii) "Disagreement over routing of additional 2.5 mmtpa Ras Gas LNG through Petronet",

(iii) "Petronet has to look for LNG sources other than Ras Gas and Iran to regasify additional quantities".

(iv) "Petronet LNG not to hand our EPC contract for Dahej expansion project until LNG is tied up and GSPAs signed", and

(v) "Details of PLL's reconstitution of EPC and finance sub-committees",

(b) On 06.06.2005, the defendants published information under following the headings:

(i) "PLL Kochi LNG terminal: August 2009 is target completion date, BEP consultancy likely to be given to EIL",

(ii) "PLL Dahej expansion: Single EPC contract for both regasification and tank construction".

(iii) "PLL Dahej Expansion/Kochi Project I: Details of bidding consortia, eligibility criteria and tender committee recommendations" and

(iv) "PLL Dahej Expansion/ Kochi project II: Details of evaluation of proposals by shortlisted EPC consortia; and

(d) On 07.06.2005, the defendants published information under following the headings:

(i) "PLL-Kochi project: PLL starts marine studies on advice of Gaz de France" and

(ii) "PLL Dahej expansion : EIL beings work on bid packages".

6. The defendants, says the plaintiff, did not publish confidential/misleading information pertaining to it (the plaintiff) from 11.06.2005 to 26.04.2006. However, when the plaintiff's officials accessed the website on 27.04.2006, 28.04.2006, 03.05.2006 and 05.05.2006, it was found that the defendants had published, inter alia, three news items/articles on 27.04.2006, one news item/article each on 28.04.2006, 03.05.2006 and 05.05.2006 (hereafter referred as "the offending news items" pertaining to the plaintiff, which were also sent as e-mail alerts to subscribers, part of which made sensitive and confidential information public, and part of which was wrong and misleading. The offending news items are reproduced in the plaint; they are as follows:

A (i) "PLL to co-develop Kochi SEZ, CPT to be developer

April 26: Petronet LNG Ltd., (PLL) will be a co-developer of the Kochi Special Economic Zone (SEZ) along with Cochin Port Trust (CPT) which will be the developer. Besides, PLL will also share the cost of development of Kochi SEZ. On account of being a co-developer, PLL would get fiscal incentives as per the SEZ Act 2005. These would include waiver of customs duty on capital imports, waiver of taxes and levies including VAT for procurement of capital of capital goods within India to SEZ, income has holiday for 10 years and waiver of stamp duty and service tax. Besides, it would be exempted from taxes and other levies of local bodies such as Panchayat and municipalities. Though ensuring export earnings by the units situated in SEZ does not fall in the ambit of the co-developer's duty, it is expected to develop infrastructure in SEZ. Thus, of the Rs.20 crore expected to be spent on providing common internal roads, security, boundary wall, drains, street lights and gate office for sez, PLL will foot one-fourth of the bill. PLL will also bear half the expense of the Rs.18 crore expected to be spent on a direct road connectivity to Puthuvypeen."

(ii) **"LNG sourcing for Kochi terminal : PLL, Exxon Mobil and offtakers agree on various issues but pricing remains a problem.**

April 26 : Exxon Mobil is in active negotiations with Petronet LNG and the three offtakers of LNG- BPCL, IOC and GAIL for supply of LNG to the Kochi terminal from the Multinational's share of gas from the $7.30 billion Gorgon LNG Project in Australia. The following issues came up for discussion;

Completion of the terminal before the date of commencement of supply. This is to be done by removing obstacles preventing completion or facilitating adequate financing to cover all EPC or other costs associated with construction and completion of receiving facilities, Construction of necessary pipelines connecting Kochi terminal customers.

Till the receiving facilities are completed, obligation under Sales and Purchase agreement (SPA) will remain in place. However, to mitigate take-or-pay obligations in the event of delayed completion, diversion of cargoes will take place to other terminals in India. However, in the case of force-majeure, this guarantee shall not be enforceable. Though it was agreed that the off-takers would resolve the pattern of offtake between themselves and communicate it to Exxon Mobil, the later requested for a speedy decision in the matter. Exxon Mobil also said PLL should revisit the pricing agreement proposed in view of the rise in prices of petro products. PLL and the offtakers promised to take up the issue in the next meeting."

(iii) "LNG transportation : PLL shortlists shipowners, moots Speical Purpose Company

April 26: Petronet LNG Ltd., (PLL) is addressing the issue of long-term requirements of LNG through a two- fold strategy. They are :

Selection of shipowners for transportation of LNG, and Creating a Special Purpose Company for transportation of LNG to India by PLL or its subsidiary/ nominee. Regarding selection of shipowners for transportation of LNG for its Kochi terminal, a fresh bidding process is on. After extension of the last date for bidding from February 24, 2006 to March 3, 2006, the pre-qualification document was procured by 14 parties. Out of these, 6 companies have been short listed and these shall be issued the bidding document (RFP). The six companies are :

NYK Lines

MISC Berhad

Teekay Shipping Corp.

Oman Shipping Co.

Exmar Marine NV

A.P. Moller – Maersk

PLL has also mooted a special purpose company for the transportation of LNG to India. It is proposed that PLL would hold 49% equity in the company, (Click on details for a full analysis of the selection process."

B. The offending news item published on 28 April 2006;

"PLL resists PMO directive that bulk of Kochi LNG should go to NTPC

"*April 27 : Petronet LNG Ltd., (PLL) has sought the approval of its board to limit the supply of LNG from its Kochi terminal to NTPC's Kayamkulam power project at 0.3 MMTPA, which would meet the requirements of the power plaint's existing capacity of 350 MW.*

This is despite a specific directive form PMO – issued by Principal Secretary T.K.A Nair – that the Kayamkulam project should get 2.1 MMTPA of LNG, out of PLL's total terminal capacity of 2.5 MMTPA, to help meet the power palint's requirements when its capacity is enhanced to 2,340 MW. PMO had also directed that the 0.4 MMTPA is to go to BPCL for captive use at Kochi Refinery Ltd., (KRL), Clearly, LNG offtakers – GAIL, IOC and BPCL – are unhappy about the fact that the entire LNG quota would get earmarked to only two consumers. The trio had plans to market the gas to a clutch of industries – including fertilizer companies – which are currently using naphtha as fuel or feedstock. GAIL is also reported to be unhappy with PMO's direction that its petrochemical plant in Kochi – based on extraction of c2+ fractions from LNG – be put on hold until the terminal's LNG processing goes up to 5 MMTPA. The additional LNG – to take capacity to 5 MMTPA – is meant to have been sourced from Iran but GSA for the gas is yet to be ratified by the Iranians, casting a shadow over the availability of this gas for the Kochi Plant."

C. the offending news item published on 03.05.2006

PLL plans $ 100 million FCCB: ADB bailout in case of redemption pressure

"May 2 : The management of Petronet LNG Ltd., (PLL) is forced to conduct some tight maneuvering no picking up additional funds – to meet conditions precedent that financial closure be tied up by June 30, 2006 set by LNG supplier for its Kochi LNG Plant – without immediate placing any pressure on expanding the already high equity base – of Rs.750 crore- of the company. The management had mooted a $ 100- million foreign currency convertible bond (FCCB) issue to plug the financing gap but there were differing views – within a four member committee set up to took into the proposal – in resorting to this instrument. Finally, the Asian Development offered to help out in case FCCB redemption (expected five years after the issue. In 2011-2012) was not supported by adequate cash flows from within the company."

D. The offending news item published on 05.05.2006:

"PLL's $ 100 – million FCCB: Salient points

"May 4: Petronet LNG Ltd., (PLL) proposed issue of $100 million foreign currency convertible bonds (FCCB) to finance Kochi LNG terminal saw five merchant bankers making their detailed presentations to the board members of India's largest liquefied gas importer. The salinet point of the presentation were:

. the redemption of the bonds would be guaranteed by the merchant banker,

. In the event of the bonds being converted into shares, they would become zero coupon bonds. However, if conversion takes place after 5 years, the indicated yield to maturity (YTM) would be between 4.5% to 5.5% per annum.

. The indicated conversion premium for the bonds would be in the range of 30% and 40%

. To covert the bonds to shares, a premium would be charged on the market price prevailing after 15 months, thus effectively blocking conversion of the bonds for this period,

. Redemption or conversion may be enforced till the market price of the stock does not exceed 130% of the converted price plus cumulative YTM,

. The transaction can be completed within a period of 4 to 6 weeks.

. FCCBs could be denominated in either dollar or yen. However, yen-denominated FCCBs would be expensive considering the fully hedged cost. Therefore, dollar denominated FCCBs would be the right way to go,

. By law, FCCBs are required to be listed at least one stock exchange abroad. Singapore stock exchange is the preferred stock exchange in view of the low cost of listing and easy procedures involved in the stock exchange; and

Promoters can buy recover the 3.25% dilution in their holding through creeping acquisition route. This route has two advantages- ? cash outlay being spread over five years and low average cost of acquisition of shares on account of lower cost of shares in the initial years."

7. The plaintiff says that it would be seriously prejudiced and would suffer irreparable injury if the offending news items are allowed to remain in the suit website. It is claimed that the information contained in the news item reproduced in paragraph A (i) above falls within the purview of being *'price sensitive information'* as provided for in SEBI (Prohibition of insider Trading) Regulations, 1992 ("SEBI Regulations"); it is speculative in nature and contains disclosures relating to the plaintiff's business plans at the present only at the drawing board stage, with no certainty about if they would materialize wholly or in part. Such disclosure by unauthorized means of such price sensitive information of a publicly listed company could have a strong bearing on the market behavior of the shares of the company and may affect the interests of lakhs of investors adversely. Under the SEBI Regulations all listed companies are required to frame and comply with a code of internal procedures and conduct which casts an obligation on the plaintiff to protect and prevent the misuse of price sensitive information. In addition, any violation of the SEBI Regulations is an offence punishable with ten years imprisonment or fine up to Rs.25 crores or both. Further, under Section 21 of the Securities contract (Regulation) Act, 1956 {"Securities Act"), a company whose securities are listed on a recognized stock exchange has to comply with the listing Agreement of that stock exchange. Under the Listing Agreements that the plaintiff had entered into with the Bombay Stock Exchange and the National Stock Exchange, (where the plaintiff's securities are listed) there is an obligation on its part, to inform the respective stock exchanges of any significant business plans such as undertaking of new projects, new investments etc., before such information is

disclosed to the general public and non compliance is an offence punishable with ten years' imprisonment or fine up to Rs.25 crores or both.

8. The information in the news item reproduced in paragraph 5 A(ii) above, says the plaintiff, pertains to confidential negotiations between the plaintiff and certain Exxon Mobil companies which are covered by a Confidentiality agreement, in terms of which a party cannot make, or cause to be made any statement to a third party, the public or media regarding the occurrence or the substance of any communications, discussions or negotiations without the prior agreement in writing of others. Parties cannot even use or permit use of the name of the others or any of their affiliates in any publication, advertisement or other disclosure. The unauthorized publication of this offending news item by the defendants has the potential of being treated by the other parties to the confidentiality Agreement as a material breach committed by the plaintiff resulting in the other party's potential suspending on-going negotiations or altogether walking out of the negotiations. The consequence of this would be disastrous for the plaintiff both in terms of loss of business and loss of reputation. The plaintiff claims to have suffered embarrassment and the threat of potential default due to the unauthorized publication of the offending news items. It is alleged that Exxon Mobil companies have viewed it as a breach of the confidentiality agreement by the plaintiff and sought its explanation, which has been given. However, such embarrassment could have been well avoided if the defendants had acted with some sense of responsibility. The plaintiff is not in a position to give the details or produce documents in this regard as it claims to be bound by the confidentiality clauses; it undertakes to produce it for the perusal of this Court if and when directed to do so. It is contended that there are media reports that for a significant amount of the LNG that the plaintiff is presently negotiating, the seller has been in parallel negotiations with LNG buyers in China, Korea and Japan. In such situations unauthorized disclosure and publication of critical information relating to price, quantity, etc., of the plaintiff's ongoing negotiations with the LNG sellers gives its competitors an unfair advantage as they are at all times aware of confidential information. The disclosure of such information can mean that the plaintiff and in turn other oil and gas industry stakeholders may lose their share of LNG which would result in adverse impact on gas and energy consumers.

9. The news item reproduced in paragraph 5-A (iii) above which states that the plaintiff has selected ship owners, to be issued bid documents is incorrect, according to the plaintiff. The time charter contract to be awarded is of significant commercial value. Hence, the matter of selection of ship-owners is highly confidential and a closely guarded secret till the plaintiff's board of directors decides this finally, based on an evaluation of the recommendations of a committee appointed by it. The said news item was misleading at the time it was published by the defendants on the suit website. The true position was that the committee looking into the matter had only made its preliminary recommendations, which could be subject to variation from what had been reported and published on the website. There was always a possibility that till the formal approval was given by the plaintiff's Board some of the ship-owners (whose names were listed on the suit website) might have been excluded and other ship owners included. Such unauthorized and premature publication of confidential information put the plaintiff in an awkward position as it could end up facing unnecessary litigation, if the Board's decision on the ship owners was at variance with the said news item.

10. The plaintiff says that the information contained in the news item reproduced in paragraph 5-B above, in as much as it suggests that the plaintiff resisted directions/ orders of the Prime Minister's Office (hereafter referred to as 'PMO"), is false and misleading. The news item sensationalized confidential discussions involving the plaintiff and other stakeholders where participants merely expressed divergent views on the *pros* and *cons* of implementing a PMO directive. The issue was not finally decided; the plaintiff had not yet taken a definite stance on the matter. The said report also affected the plaintiff adversely as it conveyed the impression that the plaintiff did not respect the PMO, which is malicious.

11. It is claimed that information contained in the news item reproduced in paragraph 5-C and D above are also incorrect and misleading and were published with the sole intention of causing sensation by reporting confidential internal discussions of the plaintiff involving its fund and cash flows. The defendants have twisted internal discussions as conflicting views portraying that there is in-fighting within the plaintiff Company. As the defendants could not have published such confidential issues, even if the information published was accurate, till they had

been made available in the public domain, it goes without saying publishing of inaccurate information cannot be permitted at any cost. Further, this is also price sensitive information and therefore there is an obligation on the plaintiff to ensure that it is not leaked to the general public, before formal decisions were taken in this regard.

12. The plaintiff, in view of their allegations, seeks permanent injunction to restrain the defendants

The Defence

13. In their written statement, the defendants contend that the first Defendant had been regularly publishing news and information regarding four public sector undertakings who own 50% of the equity of the plaintiff, namely GAIL (India) Limited Oil and Natural Gas Corporation Ltd., Indian Oil Corporation Limited and Bharat Petroleum Corporation Limited and none of them ever complained about it. In fact, some of these entities are in the very business that the plaintiff is involved in. Defendant No. 1 has been publishing news and views on contractual and commercial negotiations involving import of LNG by some of these entities without eliciting any legal action or litigation there from. For example, Defendant No.1 has published a total of 1781 news articles relating to GAIL India's activities concerning LNG. Similarly, there are 837 news items on Indian Oil Corporation and issues relating to LNG. None of those companies ever sought legal recourse in respect of such news items. This shows that those companies understood the principle Freedom of Press to report on commercial matters involving billions of dollars of investments of public money in commercial ventures.

14. The defendants deny that they are in the habit of publishing confidential information or any information which could harm the plaintiff's interest, and that of the public. They say that the plaintiff contradicts itself as the "highly confidential' information about itself could not have fallen in the hands of the defendants. It is averred that if, as the plaintiff claims, the information published in the website had such serious repercussions on its ongoing negotiations for multi billion LNG projects, the plaintiff should have kept such information to itself. That the media had access to such information implied either that the information is not confidential or that the plaintiff failed in its duty to its shareholders and business partners to keep such information

from the public. To subsequently blame the media, particularly defendants No.1 & 2 for imagined loss of business by publication of so-called confidential information is to make them convenient scapegoats. The defendants say that it will be ironic should a multi-billion dollar transaction be predicated on the mere publication of a news item in a limited subscriber website such as that belonging to Defendant No.2 .

15. The defendants allege that the plaintiff seems to have made a habit of quoting Confidentiality Agreements with LNG suppliers and greater interest of the consumer and public good served by keeping commercial negotiations for procurement of LNG under wraps – ostensibly on the ground that shrouding such negotiations in total secrecy would lead to either an LNG contract being inked or a lower price of LNG – as reason for seeking a permanent injunction against the Defendants from publishing any information without its written consent. It is pertinent to note that an unfettered commercial transaction on import of LNG may not always be in the consumer's interest. Even though the plaintiff is a 'Public company' with public and government shareholding, it is still a commercial entity and not a trust or a government department. By definition, a commercial entity – however 'public' it may be or however much it is committed to public good- is governed by commercial principles of profit maximization. This is the raison *d'etre* of a commercial entity. The interest of its shareholders comes first and then comes the interest of the public or the consumers. Under these circumstances, commercial entities sometimes find it convenient to quote confidentiality agreements and price sensitivity' of information – to deflect, hide or manipulate information and situations. It is the task of the media to ensure objectivity of commercial decision making by fearless and honest reporting so that the averment that such decisions are in the greater good of the consumer or the public is indeed followed in principle and spirit.

16. The defendants state that 130 news items pertaining to the plaintiff were published by them during the period from 11.06.2005 to 26.4.2006. By the yardstick used by the plaintiff, quite a few of them could have been defined as "sensitive" or "confidential" yet the plaintiff decided not to take any legal action on their publication. It is stated that the plaintiff has arbitrarily chosen news items in the period 27.04.06 to 05.05.2005 to claim that sensitive

information is being disseminated. The defendants deny having published any sensitive or any confidential information in the news items under consideration. An analysis of the news items in question would itself reveal that there is nothing confidential or sensitive about the same.

17. The defendants say, on information in Para 5 A(i) above, that the news item published on 27.4.2006 PLL to co-devlop Kochi SEZ, CPT to be developer. A reading of this would reveal that there is actually promotional in nature and cannot in any way adversely affect the plaintiff's business. It is submitted that other entities and even the state governments are developing Special Economic Zones and this knowledge falls within public domain and in fact is given wide publicity to invite investments. There is nothing confidential about this.

18. The defendants say, about the news item described in para 5A . (ii) above, viz. *"LNG sourcing for Kochi terminal : PLL Exxon Mobil and offtakers agree on various issues but pricing remains a problem"* that a similar news item was published in BUSINESS LINE which is a part of the Hindu Group of News papers and media on 3rd May 2000; yet the plaintiff did not react action against that publication. That a widely read newspaper like "BUSINESS LINE" had access to this information showed that there was nothing confidential about It.

19. The defendants contend, about the news item described in Para 5A.(iii) above, *`:LNG transportation : PLL shortlists ship owners, moots special purpose company"* that a similar news item was published in BUSINESS LINE and media on 25th May 2006 but the plaintiff did not take any action against the publications. In fact, in the 21st June, 2006 issue of the Hindustan Times a news item pertaining to shipping of LNG by the plaintiff was published but the plaintiff did not initiate any legal proceedings against the newspaper. This news item was published after the filing of the preset suit.

20. The defendants say that the content in news item in Para 5 B, viz of 28th April 2006, *" PLL resists PMO directive bulk of Kochi LNG should go to NTPC"* (Under the heading "Petronet LNG resists PMO directive') also appeared in a news paper by the name of PROJECT MONITOR on May 22, 2006. Again no legal action of any kind was taken against the news paper by the plaintiff. The publication of this new item in PROJECT MONITOR shows that there was nothing confidential about the information. As regards the news item in Para 5 C, dated 3.5.2006 viz.

"PLL plans $ 100 million FCCB: ADB bailout in case of redemption pressure" the defendants deny that it is sensational in nature.

21. According to the defendants, the article dated 05.05.2006 (Para 5 D) *"PLL's $ 100 million FCCB Salient points*" was found news worthy by the entire business press. The issuance of foreign currency convertible bonds was covered on 4th May 2006 in three major Business news papers namely business line which as mentioned earlier is a part of "The Hindu Group" of new papers, and "Economic Times" which is a part of the Times of India Group of news papers and also in Financial Express which is the part of the (Express group of news papers). These clearly showed that the management of the plaintiff chose and singled out the defendants and not other bigger organizations. In fact, by its very nature the issuance of foreign currency convertible bonds falls within the realm of common commercial news.

22. During the pendency of the suit, this court had issued an *ex-parte* injunction against the defendants, restraining them from publishing anything pertaining to the plaintiff without its consent. After pleadings were complete, the parties agreed that the suit and the pending applications could be heard on the merits, without the need to record oral evidence, since publication of the articles were not controverted facts; the defendants contested the plaintiff's right to maintain the suit, and claim the injunctions it does. Accordingly, the plaintiff's counsel, and the defendants were heard, and judgment reserved.

23. The follow issues arise for consideration:

Issue No. 1. Whether the plaintiff can claim right to privacy, and seek injunction against the defendants from publishing articles or reports in their website;

Issue No.2 : Whether the plantiff proves that it can maintain the Suit on ground of entitlement to confidentiality of information;

Issue No.3 If the answer to Issue No. 2 is in the affirmative, does the plaintiff prove its entitlement to injunction sought for in this case;

Issue No. 4: Relief

Issue No. 1. Whether the plaintiff can claim right to privacy, and seek injunction against the defendants from publishing articles or reports in their website;

24. The plaintiff says that by virtue of Article 21 of the Constitution, it possesses the fundamental right to privacy. It contends that the "right to be left alone" is an intrinsic part of the right guaranteed under Article 21. Being a corporate entity, though with some public sector shareholding, the plaintiff has the necessary right to assert that in all its internal matters and affairs, control of information is vested in it. The right to such information, and grant or withhold it from prying eyes, which could seriously jeapordize its functioning and viability, cannot be undermined. In such circumstances, the plaintiff can maintain the present suit, and obtain permanent injunction

25. The plaintiff relies on the judgments of the Supreme Court, reported as *Kharak Singh* v. *State of U.P.* (1964) 1 SCR 332; *Gobind v. State of M.P.,* (1975) 2 SCC 148; *R. Rajagopal v. State of T.N.,* (1994) 6 SCC 632; and *District Registrar and Collector v. Canara Bank,*(2005) 1 SCC 496, to say that as against the defendants, who are either individuals or private concerns, the right to maintain the present suit, for asserting privacy rights cannot be denied; such action is the most efficacious remedy, seeking injunction.

26. The defendants say that the plaintiff cannot assert any so called right to privacy to stifle their right to comment about public matters. According to them, the question of how the plaintiff functions and conducts its affairs is a matter which the people have a right to know and correspondingly, they as members of the media, have a right to disseminate such information. Being a company in which Central Public sector corporations have 50% share, the plaintiff cannot seek exemption from gaze over its functioning. It is also contended that the court cannot grant an injunction which will entirely deny the defendants' fundamental right to free speech under Article 19(1) (a) of the Constitution of India. The defendants say that the plaintiff, as a company, cannot claim right to privacy, which is available to individuals.

27. Privacy is defined variously as "an autonomy or control over the intimacies of personal identity" (Gerety, in *"Redefining Privacy"*, (1977) 12 Harv. C.R.-C.L. L. Rev. 233, 284-91); Laurence H. Tribe, in *American Constitutional Law*, (1st Edn., 1978), 893 identifies the concept, in relation to individuals, to *"those attributes of an individual which are irreducible in his selfhood"*. Tribe underlines the notion of personhood. Stephen J. Schnably, in *"Beyond*

Griswold: Foucauldian and Republican Approaches to Privacy", (1991) 23 Conn. L. Rev. 861, 861-62 theorizes that personhood entails *"a distinctive conception of private life as a haven from State power"* and that *"our personal lives, particularly our explorations of sexuality, are the most important sites of individual self-realisation".* In one of the earliest formulations, on the issue, it was thus held that the right to privacy is the *"right to be let alone"* a phrase coined by Justice Brandeis in his memorable dissent, in *Olmstead* v. *United States*, 277 US 438 (1928). He called this right *"the most comprehensive of rights and the right most valued by civilised men"*.

28. In India, one of the earliest judgments, to deal with the issue was *M.P. Sharma v. Satish Chandra,*1954 SCR 1077. The assertion of right to privacy, made in the context of the right under Article 20(3) of the Constitution of India, was brushed aside, by the Supreme Court, in the following terms:

> *"When the Constitution makers have thought fit not to subject such regulation to constitutional limitations by recognition of a fundamental right to privacy, analogous to the Fourth Amendment, we have no justification to import it, into a totally different fundamental right, by some process of strained construction."*

In *Kharak Singh* v. *State of U.P.* (1964) 1 SCR 332 the majority judgment of the Supreme Court said that "personal liberty" in Article 21 includes all varieties of rights which go to make *up the personal liberty of a man other than those dealt with in Article 19(l)(d)*. According to the Court, while Article 19(1)(*d*) deals with the particular types of personal freedom, Article 21 takes in and deals with the residue. The Court said:

> *"We have already extracted a passage from the judgment of Field, J. in Munn v. Illinois where the learned Judge pointed out that 'life' in the 5th and 14th Amendments of the U.S. Constitution corresponding to Article 21 means not merely the right to the continuance of a person's animal existence, but a right to the possession of each of his organs — his arms and legs etc. We do not entertain any doubt that the word 'life' in Article 21 bears the same signification. Is then the word 'personal liberty' to be construed as excluding from its purview an invasion on the part of the police of the sanctity of a man's home and an* 153 *intrusion into his personal security and his right to sleep which is the normal comfort and a dire necessity for human existence even as an animal? It might not be inappropriate to refer here to the words of the preamble to the Constitution that it is designed to 'assure the dignity of the individual' and therefore of those cherished human values as the means of ensuring his full development and evolution. We are referring to these objectives of the framers merely to draw*

attention to the concepts underlying the Constitution which would point to such vital words as 'personal liberty' having to be construed in a reasonable manner and to be attributed that sense which would promote and achieve those objectives and by no means to stretch the meaning of the phrase to square with any pre-conceived notions or doctrinaire constitutional theories."

The minority judgment of Subba Rao, J, held that:

"It is true our Constitution does not expressly declare a right to privacy as a fundamental right, but the said right is an essential ingredient of personal liberty. Every democratic country sanctifies domestic life; it is expected to give him rest, physical happiness, peace of mind and security. In the last resort, a person's house, where he lives with his family, is his "castle"; it is his rampart against encroachment on his personal liberty. The pregnant words of that famous Judge, Frankfurter J., in Wolf v. Colorado pointing out the importance of the security of one's privacy against arbitrary intrusion by the police, could have no less application to an Indian home as to an American one. If physical restraints on a person's movements affect his personal liberty, physical encroachments on his private life would affect it in a larger degree. Indeed, nothing is more deleterious to a man's physical happiness and health than a calculated interference with his privacy. We would, therefore, define the right of personal liberty in Article 21 as a right of an individual to be free from restrictions or encroachments on his person, whether those restrictions or encroachments are directly imposed or indirectly brought about by calculated measures. It so understood, all the acts of surveillance under Regulation 236 infringe the fundamental right of the petitioner under Article 21 of the Constitution."

29. Later, in *Gobind v. State of M.P.,* (1975) 2 SCC 148, the Supreme Court had to consider a challenge to the validity of provisions of the Madhya Pradesh Police Regulations, that empowered the police to keep an obtrusive surveillance on individuals suspected of perpetrating crime. The court held that:

"20. There can be no doubt that the makers of our Constitution wanted to ensure conditions favourable to the pursuit of happiness. They certainly realized as Brandeis, J. said in his dissent in Olmstead v. United States the significance of man's spiritual nature, of his feelings and of his intellect and that only a part of the pain, pleasure, satisfaction of life can be found in material things and therefore they must be deemed to have conferred upon the individual as against the Government a sphere where he should be let alone.

21. "The liberal individualist tradition has stressed, in particular, three personal ideals, to each of which corresponds a range of 'private affairs'. The first is the ideal of personal relations; the second, the Lockean ideal of the politically free man in a minimally regulated society; the third, the Kantian ideal of the morally autonomous man, acting on principles that he accepts as rational"

22. There can be no doubt that privacy-dignity claims deserve to be examined with care and to be denied only when an important countervailing interest is shown

to be superior. If the Court does find that a claimed right is entitled to protection as a fundamental privacy right, a law infringing it must satisfy the compelling State interest test. Then the question would be whether a State interest is of such paramount importance as would justify an infringement of the right. Obviously, if the enforcement of morality were held to be a compelling as well as a permissible State interest, the characterization of a claimed right as a fundamental privacy right would be of far less significance. The question whether enforcement of morality is a State interest sufficient to justify the infringement of a fundamental privacy right need not be considered for the purpose of this case and therefore we refuse to enter the controversial thicket whether enforcement of morality is a function of State.

23. Individual autonomy, perhaps the central concern of any system of limited Government, is protected in part under our Constitution by explicit constitutional guarantees. In the application of the Constitution our contemplation cannot only be of what has been but what may be. Time works changes and brings into existence new conditions. Subtler and far reaching means of invading privacy will make it possible to be heard in the street what is whispered in the closet. Yet, too broad a definition of privacy raises serious questions about the propriety of judicial reliance on a right that is not explicit in the Constitution. Of course, privacy primarily concerns the individual. It therefore relates to and overlaps with the concept of liberty. The most serious advocate of privacy must confess that there are serious problems of defining the essence and scope of the right. Privacy interest in autonomy must also be placed in the context of other rights and values.

24. Any right to privacy must encompass and protect the personal intimacies of the home, the family, marriage, motherhood, procreation and child rearing. This catalogue approach to the question is obviously not as instructive as it does not give analytical picture of the distinctive characteristics of the right of privacy. Perhaps, the only suggestion that can be offered as unifying principle underlying the concept has been the assertion that a claimed right must be a fundamental right implicit in the concept of ordered liberty.

25. Rights and freedoms of citizens are set forth in the Constitution in order to guarantee that the individual, his personality, and those things stamped with his personality shall be free from official interference except where a reasonable basis for intrusion exists. "Liberty against Government" a phrase coined by Professor Corwin expresses this idea forcefully. In this sense, many of the fundamental rights of citizens can be described as contributing to the right to privacy.

26. As Ely says:

> *"There is nothing to prevent one from using the word 'privacy' to mean the freedom to live one's life without governmental interference. But the Court obviously does not so use the term. Nor could it, for such a right is at stake in every case."*

27. There are two possible theories for protecting privacy of home. The first is that activities in the home harm others only to the extent that they cause offence resulting from the mere thought that individuals might be engaging in such activities and that such "harm" is not constitutionally protectible by the State. The second is that individuals need a place of sanctuary where they can be free from societal

control. The importance of such a sanctuary is that individuals can drop the mask, desist for a while from projecting on the world the image they want to be accepted as themselves, an image that may reflect the values of their peers rather than the realities of their natures.

28. The right to privacy in any event will necessarily have to go through a process of case-by-case development. Therefore, even assuming that the right to personal liberty, the right to move freely throughout the territory of India and the freedom of speech create an independent right of privacy as an emanation from them which one can characterize as a fundamental right, we do not think that the right is absolute."

30. In *R. Rajagopal (*supra) the Supreme Court had to consider the tension and relationship between freedom of the press and the right to privacy of citizens. One "Auto" Shankar, sentenced to death for committing six murders, chronicled his life, through a biography and wanted it to be published in a Tamil weekly magazine. In some parts of the work, he alleged his proximity with several Indian Administrative Serivice and other high ranking officers, stating that they were his partners in crime. The Court revisited the law of privacy, and summarized the principles, in the following manner:

"22. We may now consider whether the State or its officials have the authority in law to impose a prior restraint upon publication of material defamatory of the State or of the officials, as the case may be? We think not. No law empowering them to do so is brought to our notice. As observed in New York Times v. United States, popularly known as the Pentagon papers case, "any system of prior restraints of (freedom of) expression comes to this Court bearing a heavy presumption against its constitutional validity" and that in such cases, the Government "carries a heavy burden of showing justification for the imposition of such a restraint". We must accordingly hold that no such prior restraint or prohibition of publication can be imposed by the respondents upon the proposed publication of the alleged autobiography of "Auto Shankar" by the petitioners. This cannot be done either by the State or by its officials. In other words, neither the Government nor the officials who apprehend that they may be defamed, have the right to impose a prior restraint upon the publication of the alleged autobiography of Auto Shankar. The remedy of public officials/public figures, if any, will arise only after the publication and will be governed by the principles indicated herein.

xxxxxx xxxxxxxxx

26. We may now summarise the broad principles flowing from the above discussion:

(1) The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen

has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent — whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interests of decency [Article 19(2)] an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media.

(3) There is yet another exception to the rule in (1) above — indeed, this is not an exception but an independent rule. In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true. Of course, where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages. It is equally obvious that in matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as explained in (1) and (2) above. It needs no reiteration that judiciary, which is protected by the power to punish for contempt of court and Parliament and legislatures protected as their privileges are by Articles 105 and 104 respectively of the Constitution of India, represent exceptions to this rule.

(4) So far as the Government, local authority and other organs and institutions exercising governmental power are concerned, they cannot maintain a suit for damages for defaming them.

(5) Rules 3 and 4 do not, however, mean that Official Secrets Act, 1923, or any similar enactment or provision having the force of law does not bind the press or media.

(6) There is no law empowering the State or its officials to prohibit, or to impose a prior restraint upon the press/media."

31. The latest in the series of judgments of the Supreme Court was *District Registrar and Collector v. Canara Bank,*(2005) 1 SCC 496. Recollecting the opinions in its previous judgments, the court applied the right of privacy, in considering search and seizure provisions. The Andhra Pradesh amendment to the Stamp Act, 1899 was assailed *inter alia* as permitting any person to "enter upon any premises", public or private, and seize and impound documents. The Supreme Court declared that state action – either executive policy or legislative enactments had to be reasonable.

> *"Unless there is some probable or reasonable cause or reasonable basis or material before the Collector for reaching an opinion that the documents in the possession of the bank tend to secure any duty or to prove or to lead to the discovery of any fraud or omission in relation to any duty, the search or taking notes or extracts therefore, cannot be valid. The above safeguards must necessarily be read into the provision relating to search and inspection and seizure so as to save it from any unconstitutionality."*

32. What is immediately apparent to the court is that the right to privacy, as shaped through judgments of the Supreme Court, from *Kharak Singh* onwards, were all in the context of *individual* rights. The clearest articulation of this may be seen in Justice Mathew's perceptive observations that the right enfolded "personal intimacies of the home, the family, marriage, motherhood, procreation and child-bearing." This articulation was taken further in the summary, of the law in *Rajgopal,* where the court declared that:

> *"The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent — whether truthful or otherwise and whether laudatory or critical."*

While on the subject, a slightly discordant note appears to have been struck, even at the time *Rajgopal* was being considered; thus, in *People's Union for Civil Liberties* v. *Union of India* (1997) 1 SCC 301, the legality of "telephone-tapping" was considered. Even after conceding that telephone conversations could be confidential and intimate in character, and declaring that

such telephone tapping was, unless sanctioned through legislation, unconstitutional, the Court reasoned that the right to privacy was *"too broad and moralistic".*

33. The second aspect which stares one at the face, in all the judgments, is that the right to privacy was asserted in the context of the state's intrusive behavior; *Kharak Singh,* and *Gobind* were judgments in the context of surveillance regulations; *Rajgopal* was an individual's plea against the attempt by the State and public officials to muffle his right to air his views and experiences. None of the judgments were premised on assertion of privacy rights by artificial entities, against individual, non-state actors. One more aspect also is that unlike in other parts of the world, the right to privacy here is not rooted in any specific statute, which poses problems, as would be apparent in this case itself.

34. Now, it is well settled that while certain fundamental rights like Article 14 are available to artificial or juristic personalities, like companies, Article 19 rights are however, unavailable; shareholders or directors can approach the court for relief, if they can establish that the impugned action impairs their rights (See *R.C. Cooper* -v- *Union of India;* 1970 (2) SCC 248; *Bennett Coleman & Co. v. Union of India,* (1972) 2 SCC 788). In this background, what has to be seen is whether a juristic, or artificial entity such as a corporation or company, can assert right to privacy, which intrinsically has been seen as an essential trait of human personhood.

The position in Australia

35. There are no Indian cases on the subject. However, a 2001 decision of the Australian High Court is illuminative on the question. Thus, in *Australian Broadcasting Corporation v. Lenah Game Meats Pty Ltd* 2001 HCA 63, the respondent, Lenah Game Meat, an incorporated company, sought a restraint against the Australian Broadcasting Corporation from distributing, publishing, copying or broadcasting a video tape or video tapes filmed by a trespasser or trespassers showing [Lenah's] brush tail possum processing facility at Tasmania. The main ground urged for the action was that Lenah's right to privacy would be breached. The full court of the Supreme Court of Tasmania, granted the injunction; ABC appealed; the High Court of Australia allowed the appeal. Chief Justice Gleeson, in his judgment, said that:

"There is no bright line which can be drawn between what is private and what is not. Use of the term "public" is often a convenient method of contrast, but there is a large area in between what is necessarily public and what is necessarily private. An activity is not private simply because it is not done in public. It does not suffice to make an act private that, because it occurs on private property, it has such measure of protection from the public gaze as the characteristics of the property, the nature of the activity, the locality, and the disposition of the property owner combine to afford. Certain kinds of information about a person, such as information relating to health, personal relationships, or finances, may be easy to identify as private; as may certain kinds of activity, which a reasonable person, applying contemporary standards of morals and behaviour, would understand to be meant to be unobserved. The requirement that disclosure or observation of information or conduct would be highly offensive to a reasonable person of ordinary sensibilities is in many circumstances a useful practical test of what is private.

43 It is unnecessary, for present purposes, to enter upon the question of whether, and in what circumstances, a corporation may invoke privacy. United Kingdom legislation recognises the possibility. Some forms of corporate activity are private. For example, neither members of the public, nor even shareholders, are ordinarily entitled to attend directors' meetings. And, as at present advised, I see no reason why some internal corporate communications are any less private than those of a partnership or an individual. However, the foundation of much of what is protected, where rights of privacy, as distinct from rights of property, are acknowledged, is human dignity. This may be incongruous when applied to a corporation. The outcome of the present case would not be materially different if the respondent were an individual or a partnership, rather than a corporation. The problem for the respondent is that the activities secretly observed and filmed were not relevantly private. Of course, the premises on which those activities took place were private in a proprietorial sense. And, by virtue of its proprietary right to exclusive possession of the premises, the respondent had the capacity (subject to the possibility of trespass or other surveillance) to grant or refuse permission to anyone who wanted to observe, and record, its operations. The same can be said of any landowner, but it does not make everything that the owner does on the land a private act. Nor does an act become private simply because the owner of land would prefer that it were unobserved. The reasons for such preference might be personal, or financial. They might be good or bad. An owner of land does not have to justify refusal of entry to a member of the public, or of the press. The right to choose who may enter, and who will be excluded, is

an aspect of ownership. It may mean that a person who enters without permission is a trespasser; but that does not mean that every activity observed by the trespasser is private."

Gummow, J rested his conclusions on the following reasoning:

"Nothing in Douglas suggests that the right to privacy which their Lordships contemplate is enjoyed other than by natural persons. Further, the necessarily tentative consideration of the topic in that case assumes rather than explains what "privacy" comprehends and what would amount to a tortuous invasion of it. The difficulties in obtaining in this field something approaching definition rather than abstracted generalisation have been recognised for some time.

117 In submissions, it was suggested that the present position in New Zealand could provide no guidance and that this was because the outcome in the decided cases had been controlled by statute, the Privacy Act 1993 (NZ). However, that law has a limited scope and does not confer an enforceable cause of action for damages (s 11(2)). There are decisions of the High Court of New Zealand, at the interlocutory level, which do not turn upon the statute and which favour the development of a tort of breach of privacy in respect of public disclosure of true private facts, where the disclosure would be highly offensive and objectionable to a reasonable person of ordinary sensibilities. But there appears to be no decision to that effect at trial and no discussion of the subject by the Court of Appeal. In the interlocutory decisions, the plaintiffs were natural persons."

Kirby, J, fascinatingly, referred to judgments from various countries, including the judgment of the Indian Supreme Court in *Gobind* (footnote 258) and reasoned that:

"Privacy and corporations:

*The fact that the respondent is a corporation is a further reason for delaying a response to this question. This is because doubt exists as to whether a corporation is apt to enjoy any common law right to privacy**258"** In so far as, in Australia, the elucidation of this aspect of the common law is influenced by the content of universal principles of fundamental rights, Art 17 of the International Covenant on Civil and Political Rights**259** appears to relate only to the privacy of the human individual. It does not appear to apply to a corporation or agency of government**260**. The foregoing view is reinforced by the way in which the right to privacy has developed in the United States, where it has had a long gestation**261**.*

191 Because it is unnecessary for me to reach a final conclusion on this question, I will refrain from doing so. Cases from other jurisdictions (and some from Australia) demonstrate that there are many instances of invasions of the privacy of individual human beings that are likely to present the question raised by the respondent in circumstances more promising of success than the present. It appears artificial to describe the affront to the respondent as an invasion of its privacy."

The position in the United States

36. In what may be termed as prescient foresight, the US Supreme Court rejected a claim for right to privacy, made by a corporation, complaining unlawful entry, in search of its premises by a Federal Commission, during the course of its investigation. The court said, in *United States v. Morton Salt,* 338 U.S. 632 (1950) that:

"The Commission's order is criticized upon grounds that the order transgresses the Fourth Amendment's proscription of unreasonable searches and seizures and the Fifth Amendment's due process of law clause.

It is unnecessary here to examine the question of whether a corporation is entitled to the protection of the Fourth Amendment. Cf. Oklahoma Press Publishing Co. v. Walling, 327 U. S. 186. *Although the "right to be let alone -- the most comprehensive of rights and the right most valued by civilized men," Brandeis, J., dissenting in* Olmstead v. United States, *277 U. S. 438, 277 U. S. 471 at 277 U. S. 478, is not confined literally to searches and seizures as such, but extends as well to the orderly taking under compulsion of process,* Boyd v. United States, *116 U. S. 616;* Hale v. Henkel, *201 U. S. 43, 201 U. S. 70, neither incorporated nor unincorporated associations can plead an unqualified right to conduct their affairs in secret.* Hale v. Henkel, supra; United States v. White, *322 U. S. 694.*

While they may and should have protection from unlawful demands made in the name of public investigation, cf. *Federal Trade Comm'n v. American Tobacco Co.,* 264 U. S. 298, *corporations can claim no equality with individuals in the enjoyment of a right to privacy.* Cf. United States v. White, supra. *They are endowed with public attributes. They have a collective impact upon society, from which they derive the privilege of acting as artificial entities. The Federal Government allows them the privilege of engaging in interstate commerce. Favors from government often carry with them an enhanced measure of regulation. Cf. Graham v. Brotherhood of Locomotive Firemen,* 338 U. S. 232; *Steele v. Louisville & Nashville R. Co.,* 323 U. S. 192; *Tunstall v. Brotherhood of*

Locomotive Firemen & Engineers, 323 U. S. 210; *Wickard v. Filburn,* 317 U. S. 111, at 317 U. S. 129…"

37. It would also be useful to recollect that the right to privacy was seen as a "penumbral" though un-enumerated right, in the United States (the existence of such "unenumerated" or "penumbral" or residual rights was rejected in *Maneka Gandhi –V.- Union of India* AIR 1978 SC 597). The growth of that branch of law has been in the context of individuals' claims for privacy, against unwarranted state action or intrusion, be it in *Griswold* v. *Connecticut*, 381 US 479, 486 (1965), or *Katz* v. *United States*, 389 US 347 (1967); *Terry* v. *Ohio*, 392 US 1 (1968); *Stanley* v. *Georgia*, 394 US 557 (1969), the celebrated *Jane Roe* v. *Henry Wade* 410 US 113 (1973). Recently, privacy rights were also affirmed in declaring that statutes that criminalized same sex relationships were Unconstitutional : *Lawrence V. Texas* 539 US 558 (2003).

38. In view of the above discussion, it is held that the present suit, so far as it is founded on a claim for breach of the plaintiff's right to privacy, as part of Article 21 of the Constitution of India, is not maintainable. Neither is the plaintiff a person, entitled to the right to life and concomitant attributes of that right –which includes the right to privacy- nor is such right, assuming it to be applicable to companies and corporations, available against non-state individuals, or "actors". This issue is, accordingly answered against the plaintiff.

Issue No.2 : Whether the plantiff proves that it can maintain the Suit on ground of entitlement to confidentiality of information;

39. The plaintiff argues that the information published by the defendants is "Price Sensitive Information" under the SEBI regulations quoted in an earlier part of the judgment. It is argued more importantly that confidentiality negotiations between the plaintiff and Exxon Mobil Company entities are covered by confidentiality agreement under which parties cannot make disclosures to the media in regard to discussions or negotiations without prior agreement in writing, to others. Such disclosure cannot even be permitted by third parties after advertisements. It is claimed that such unauthorized publication of offending news items have the "potential of being treated to the other parties" to the confidentiality agreement. The

plaintiff argues having suffered embarrassment and threat of default due to unauthorized publication of offending news items which could have been avoided had it not been disclosed.

40. It is argued that the right to maintain the present Suit to prevent breach of an obligation, even implicit in its terms, flows from Section 9 of CPC read with Sections 38 and 39 of Specific Relief Act. It is submitted that the right to disclose to what is essentially private and confidential information has to be subservient to the interest of the person who is entitled to maintain the confidentiality of that news or information. The plaintiff relies upon judgment of the House of Lords in *Campbell v. MGN Limited* 2004 (2) All ER 995 to say that there was a duty of confidence cast on the defendants not to make disclosure of the plaintiff's sensitive information. It was submitted that *Campbell (supra)* has now positioned the right to confidentiality as one whereby the concerned party can insist upon imposition of a duty upon a person receiving information which he knows or ought to know, is fairly and reasonably regarded as confidential.

41. It is submitted that the defendant's claim for unfettered right to publish any information which he comes across under the garb of freedom of press is not absolute for all time, and in all circumstances. It is claimed that allowing such unimpeded liberty would lead to anarchy; if all manner of information, regardless of its veracity or sensitivity, would be accessible and public, dangerous consequences would result. Learned counsel relied upon the judgment in *Rai Hari v. Jai Singh* 1996 (6) SCC 466 and the judgment reported as *S.M.D. Kiran Pasha v. Govt. of Andhra Pradesh* 1990 (1) SCC 328.

42. The defendants submitted that like in the case of privacy, the plaintiff cannot pitch its claim for an absolute right of withholding information that require critical examination by members of the public. It was argued that the plaintiff has not, in fact, stated what kind of injury ensued or was likely to be caused. He argued that reliance on *SEBI (Prohibition of Insider Trading) Regulations, 1992* is entirely misleading and misplaced. It is contended that there is nothing in those regulations preventing information received by non-corporate entities who have no connection with the concerned company subjected to the regulations, to disclose it. It was argued that in fact, the model rule of conduct listed in Schedule-I to the Regulations casts

an obligation only on the employees and the Directors to maintain confidentiality of price-sensitive information. Similarly, the Regulations restrict flow of information within certain zones, of the corporate structure, to prevent insider trading. There is nothing, contend the defendants, to prevent the press from exercising its right and duty to publish information relating to performance and functioning of institutions that have a wide ranging repercussions on members of the public.

43. It would therefore, be necessary to explore if there are implied obligations arising in law, on persons or individuals who come across information or news that is inherently sensitive and confidential, not to disclose, and which lead to corresponding right to those entitled to guard or protect such information, to maintain civil actions for that purpose. Before a discussion of the rival contentions on the question of confidentiality, it would be essential to set-out the relevant provisions; they are Section 9 of CPC, which reads as follows:

> *"9 COURTS TO TRY ALL CIVIL SUITS UNLESS BARRED.*
>
> *The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting the suits of which their cognizance is either expressly or implied barred.*
>
> *Explanation I : A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.*
>
> *Explanation II : For the purpose of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation 1 or whether or not such office is attached to a particular place."*

Sections 38 and 39 of the Specific Relief Act, read as follows:

> *"38 PERPETUAL INJUNCTION WHEN GRANTED.*
>
> *(1) Subject to the other provisions contained in or referred to by this chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.*
>
> *(2) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.*

(3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely, -

(a) where the defendant is trustee of the property for the plaintiff';

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(c) where the invasion is such that compensation in money would not afford adequate relief;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

39 MANDATORY INJUNCTIONS.

When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts."

44. The plaintiff, in the opinion of the Court, has not been able to establish how any provision of SEBI regulations is applicable in this case. Learned counsel did not point out the general bar to disclosure of information obtained by the members of the press and the overriding public interest in the suppression of its disclosure. Therefore, the argument that there was an obligation upon the plaintiff to maintain confidentiality, which would be breached in the event the defendant publishes it after having sourced it on its own initiative, cannot be accepted.

45. The second limb of confidentiality question is whether there is an implicit duty cast upon a person, who comes by confidential information, and wishes to disclose it. There cannot be any serious dispute that actions based on civil causes, not otherwise barred by statute – either expressly or by implication, can be brought by Courts in India. Under Section 9 of CPC (*Dhulabhai v. State of M. P.* AIR 1969 SC 78; *Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke* (1976) 1 SCC 496; *Munshi Ram v. Municipal Committee, Chheharta* (1979) 3 SCC 83; *Raja Ram Kumar Bhargava v. Union of India* (1988) 1 SCC 681).

46. Sections 38 and 39 of the Specific Relief Act empower the Civil Court, in exercise of its jurisdiction, to issue injunctions. Although, textually, Section 39 talks of mandatory injunction and does not advert to statute based rights, it speaks of such remedy being available to "prevent the breach of an obligation" existing in favor of the claimant. The last two illustrations to the Section 38 suggests that obligations not spelt-out in express terms and not found in either contract or statute, but arising out of the relationship or the peculiar conditions, are enforceable through injunction.

47. The earliest decision on what can be the obligation to maintain confidentiality was spelt-out in *Prince Albert* 1849 41 ER 1171. The approach of Courts was summarized, concerning the commercial secrets of the Courts in England as regards this aspect was discussed in *Duchess of Argyll v. Duke of Argyll* 1967 Ch 302, where the Court applied the principle that there is an obligation to maintain confidentiality in respect of domestic secrets as those passing between husband and wife during their marriage. The Court recognized that a wife could obtain restraint order against the husband from communicating such secrets. It was held that a contract or obligation could not be implied in such circumstances and breach of contract or trust or faith could arise independently of any right of privacy or contract and that the Court in exercise of equitable jurisdiction would restrain breach of confidence independently of any right, at law. In *Fraser v. Evans* 1969 (1) QB 349, the extension of the doctrine of confidence beyond commercial secrets was recognized. Later in *Coco v. A.N. Clark (Engineers) Limited* [1969] RPC 41; Megarry, J, after reviewing the previous judgments set-out the requirements necessary for an action based on breach of confidence to succeed; it was held:

> *"In my judgment, three elements are normally required, if, apart from contract, a case of breach of confidence is to succeed. First, the information, in the words of Lord Green M.R., 'must have the necessary quality of confidence about it. Secondly, that information must have been imparted in circumstances meriting an application of confidence. Thirdly, there must be an unauthorized use of that information to the detriment of the party communicating it."*

48. In *Attorney General v. Guardian Newspapers Ltd.* (No. 2) 1990 (1) AC 109, Lord Goff, extending the boundaries of the obligation to maintain confidentiality, with the corresponding

right to ensure its protection from the traditionally recognized contract-status confines, stated that:

> *"I realize that, in vast majority of cases, in particular those concerned with trade secrets, the duty of confidence will arise from a transaction or relationship between the parties, often a contract, in which event the duty may arise by reason of either an express or an implied term of that contract. It is in such cases as these that the expressions "confider" and "confidant" are perhaps most aptly employed. But it is well-settled that a duty of confidence may arise in equity independently of such cases; and I have expressed the circumstances in which the duty arises in broad terms, not merely to embrace those cases where a third party receives information from a person who is under a duty of confidence in respect of it, knowing that it has been disclosed by that person to him in breach of his duty of confidence, but also to include certain situations, beloved of law teachers, where an obviously confidential document is wafted by an electric fan out of a window into a crowded street, or where an obviously confidential document, such as a private diary, is dropped in a public place, and is then picked up by a passer-by. I also have in mind the situations where secrets of importance to national security come into possession of members of the public…"*

46. In *Campbell's case (supra)*, the Court of Appeal in England had reversed the Trial Court's interim injunction, sought by the plaintiff, a well-known international model. The claim was based on both breach of privacy and confidentiality. The defendant had published photographs and particulars about her drug-rehabilitative treatment. The appeal was allowed; the House of Lords outlined the law, which may be discerned in the following three passages; the first, by Lord Nicholls; the second, by Lord Hoffman and the third, by Lord Hope:

> *"13. The common law or, more precisely, courts of equity have long afforded protection to the wrongful use of private information by means of the cause of action which became known as breach of confidence. A breach of confidence was restrained as a form of unconscionable conduct, akin to a breach of trust. Today this nomenclature is misleading. The breach of confidence label harks back to the time when the cause of action was based on improper use of information disclosed by one person to another in confidence. To attract protection the information had to be of a confidential nature. But the gist of the cause of action was that information of this character had been disclosed by one person to another in circumstances 'importing an obligation of confidence' even though no contract of non-disclosure existed: see the classic exposition of Megarry.J. in* ***Coco v. A.N. Clark (Engineers) Ltd*** *[1969] RPC 41, 47-48. The confidence referred to in the phrase 'breach of confidence' was the confidence arising out of a confidential relationship.*

14. This cause of action has now firmly shaken off the limiting constraint of the need for an initial confidential relationship. In doing so it has changed its nature. In this country this development was recognized clearly in the judgment of Lord Goff of Chieveley in ***Attorney-General v. Guardian Newspapers Ltd*** *(No 2) [1990] 1 AC 109, 281. Now the law imposes 'a duty of confidence' whenever a person receives information he knows or ought to know is fairly and reasonably to be regarded as confidential. Even this formulation is awkward. The continuing use of the phrase 'duty of confidence' and the description of the information as 'confidential' is not altogether comfortable. Information about an individual's private life would not, in ordinary usage, be called 'confidential'. The more natural description today is that such information is private. The essence of the tort is better encapsulated now as misuse of private information.*

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46. In recent years, however, there have been two developments of the law of confidence, typical of the capacity of the common law to adapt itself to the needs of contemporary life. One has been an acknowledgement of the artificiality of distinguishing between confidential information obtained through the violation of a confidential relationship and similar information obtained in some other way. The second has been the acceptance, under the influence of human rights instruments such as article 8 of the European Convention, of the privacy of personal information as something worthy of protection in its own right.

47. The first development is generally associated with the speech of Lord Goff of Chieveley in ***Attorney-General v General Newspapers Ltd*** *(No 2) [1990] 1 AC 109, 281, where he gave, as illustrations of cases in which it would be illogical to insist upon violation of a confidential relationship, the "obviously confidential document …. wafted by an electric fan out of a window into a crowded street" and the "private diary …. dropped in a public place." He therefore formulated the principle as being that*

> *"a duty of confidence arises when confidential information comes to the knowledge of a person….in circumstances where he has notice, or is held to have agreed, that the information is confidential, with the effect that it would be just in all the circumstances that he should be precluded from disclosing the information to others."*

48. This statement of principle, which omits the requirement of a prior confidential relationship, was accepted as representing current English law by the European Court of Human Rights in ***Earl Spencer v United Kingdom*** *(1998) 25 EHRR CD 105 and was applied by the Court of Appeal in* ***A v B Plc*** *[2003] QB 195, 207. It is now firmly established.*

49. The second development has been rather more subtle. Until the Human Rights Act 1998 came into force, there was no equivalent in English domestic law of article 8 the European Convention or the equivalent articles in other international human rights instruments which guarantee rights of privacy. So the courts of the United Kingdom did not have to decide what such guarantees meant. Even now that the equivalent of article 8 has been enacted as part of English law, it is not directly concerned with the protection of privacy against private persons or corporations. It is, by virtue of section 6 of the 1998 Act, a guarantee of privacy only against public authorities. Although the Convention, as an international instrument, may impose upon the United Kingdom an obligation to take some steps (whether by statute or otherwise) to protect rights of privacy against invasion by private individuals, it does not follow that such an obligation would have any counterpart in domestic law.

50. What human rights law has done is to identify private information as something worth protecting as an aspect of human autonomy and dignity. And this recognition has raised inescapably the question of why it should be worth protecting against the state but not against a private person. There may of course be justifications for the publication of private information by private persons which would not be available to the state – I have particularly in mind the position of the media, to which I shall return in a moment – but I can see no logical ground for saying that a person should have less protection against a private individual than he would have against the state for the publication of personal information for which there is no justification. Nor, it appears, have any of the other judges who have considered the matter.

51. The result of these developments has been a shift in the centre of gravity of the action for breach of confidence when it is used as a remedy for the unjustified publication of personal information. It recognizes that the incremental changes to which I have referred do not merely extend the duties arising traditionally from a relationship of trust and confidence to a wider range of people. As Sedley LJ observed in a perceptive passage in his judgment in ***Douglas v Hello! Ltd*** *[2001] QB 967, 1001, the new approach takes a different view of the underlying value which the law protects. Instead of the cause of action being based upon the duty of good faith applicable to confidential personal information and trade secrets alike, it focuses upon the protection of human autonomy and dignity – the right to control the dissemination of information about one's private life and the right to the esteem and respect of other people.*

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"85. The questions that I have just described seem to me to be essentially questions of fact and degree and not to raise any new issues of principle. As Lord Woolf CJ said in ***A v B plc*** *[2003] QB 195, 207, paras 11(ix) and (x), the need for the existence of a confidential relationship should not give rise to problems as to*

the law because a duty of confidence will arise whenever the party subject to the duty is in a situation where he knows or ought to know that the other person can reasonably expect his privacy to be protected. The difficulty will be as to the relevant facts, bearing in mind that, if there is an intrusion in a situation where a person can reasonably expect his privacy to be respected, that intrusion will be capable of giving rise to liability unless the intrusion can be justified: see also the exposition in ***Attorney-General v Guardian Newspapers Ltd*** *(No 2) [1990] 1 AC 109, 282 by Lord Goff of Chieveley, where he set out the three limiting principles to the broad general principle that a duty of confidence arises when confidential information comes to the knowledge of a person where he has notice that the information is confidential. The third limiting principle is particularly relevant in this case. This is the principle which may require a court to carry out a balancing operation, weighing the public interest in maintaining confidence about a countervailing public interest favouring disclosure.*

86. The language has changed following the coming into operation of the Human Rights Act 1998 and the incorporation into domestic law of article 8 and article 10 of the Convention. We now talk about the right to respect for private life and the countervailing right to freedom of expression. The jurisprudence of the European Court offers important guidance as to how these competing rights ought to be approached and analysed. I doubt whether the result is that the centre of gravity, as my noble and learned friend Lord Hoffmann says, has shifted. It seems to me that the balancing exercise to which that guidance is directed is essentially the same exercise, although it is plainly now more carefully focused and more penetrating. As Lord Woolf CJ said in ***A v B plc*** *[2003] QB 195, 202, para 4, new breadth and strength is given to the action for breach of confidence by these articles."*

On the balance to be struck between the freedom of press or the right of the public to be informed, of matters of general importance, and the right of an individual claiming confidentiality of such information, or privacy, the Court of Appeal in its recent judgment reported as *HRH Prince of Wales v. Associated Newspapers Limited* 2007 (2) All. ER 139, states as follows:

"[67] There is an important public interest in the observance of duties of confidence. Those who engage employees, or who enter into other relationships that carry with them a duty of confidence, ought to be able to be confident that they can disclose, without risk of wider publication, information that it is legitimate for them to wish to keep confidential. Before the 1998 Act came into force the circumstances in which the public interest in publication overrode a duty of confidence were very limited. The issue was whether exceptional circumstances justified disregarding the confidentiality that would otherwise

prevail. Today the test is different. It is whether a fetter of the right of freedom of expression is, in the particular circumstances, 'necessary in a democratic society.' It is a test of proportionality. But a significant element to be weighed in the balance is the importance in a democratic society of upholding duties of confidence that are created between individuals. It is not enough to justify publication that the information in question is a matter of public interest. To take an extreme example, the content of a Budget speech is a matter of great public interest. But if a disloyal typist were to seek to sell a copy to a newspaper in advance of the delivery of the speech in Parliament, there can surely be no doubt that the newspaper would be in breach of duty it is purchased and published the speech.

[68] For these reasons, the test to be applied when considering whether it is necessary to restrict freedom of expression in order to prevent disclosure of information received in confidence is not simply whether the information is a matter of public interest but whether, in all the circumstances, it is in the public interest that the duty of confidence should be breached. The court will need to consider whether, having regard to the nature of the information and all the relevant circumstances, it is legitimate for the owner of the information to seek to keep it confidential or whether it is in the public interest that the information should be made public.

[69] In applying the test of proportionality, the nature of the relationship that gives rise to the duty of confidentiality may be important. Different views have been expressed as to whether the fact that there is an express contractual obligation of confidence affects the weight to be attached to the duty of confidentiality."

49. It may be seen from the above discussion, that originally, the law recognized relationships- either through status (marriage) or arising from contract (such as employment, contract for services etc) as imposing duties of confidentiality. The decision in *Coco* (1969) marked a shift, though imperceptibly, to a possibly wider area or zone. *Douglas* noted the paradigm shift in the perception, with the enactment of the Human Rights Act; even before that, in *Attorney General (2)* (also called the *Spycatcher case,* or the *Guardian* case) the Court acknowledged that there could be situations –where a third party (likened to a passerby, coming across sensitive information, wafting from the top of a building, below) being obliged to maintain confidentiality, having regard to the *nature and sensitivity* of the information. Of course, in that case, the claim put forward was national security; that was what the court had in mind, when the formulation of a broader duty to maintain confidentiality was declared. The

stage, was therefore set, where ultimately, in *Campbell,* these developments were noted, and the Court; best summarized the position in the passage (quoted earlier), which is as follows:

> *"The result of these developments has been a shift in the centre of gravity of the action for breach of confidence when it is used as a remedy for the unjustified publication of personal information. It recognizes that the incremental changes to which I have referred do not merely extend the duties arising traditionally from a relationship of trust and confidence to a wider range of people. As Sedley LJ observed in a perceptive passage in his judgment in* ***Douglas v Hello! Ltd*** *[2001] QB 967, 1001, the new approach takes a different view of the underlying value which the law protects."*

50. Even while recognizing the wider nature of duty – in the light of the Human Rights Act, 1998, and Articles 8 and 10 of the European Convention, it was cautioned that the court, in each case, where breach of confidentiality, is complained, and even found- has to engage in a balancing process; the factors to be weighed while doing so, were reflected in ***A v B plc*** [2003] QB 195; the latest judgment in *H.R. H. Prince of Wales* indicates that the court would look at the kind of information, the nature of relationship, etc, and also consider proportionality, while weighing whether relief could be given:

> *"The court will need to consider whether, having regard to the nature of the information and all the relevant circumstances, it is legitimate for the owner of the information to seek to keep it confidential or whether it is in the public interest that the information should be made public.*
>
> *..In applying the test of proportionality, the nature of the relationship that gives rise to the duty of confidentiality may be important."*

51. Though the reported cases, discussed above, all dealt with individual right, to confidentiality of *private* information (*Duchess of Argyll; Frazer; Douglas; Campbell* and *H.R. H. Prince of Wales)* yet, the formulations consciously approved in the *Guardian,* and *Campbell,* embrace a wider zone of confidentiality, that can possibly be asserted. For instance, professional records of doctors regarding treatment of patients, ailments of individuals, particulars, statements of witnesses deposing in investigations into certain types of crimes, particulars of even accused who are facing investigative processes, details victims of heinous assaults and crimes, etc, may, be construed as confidential information, which, if revealed, may have untoward consequences, casting a corresponding duty on the person who gets such information – either through effort, or unwittingly, not to reveal it. Similarly, in the cases of

corporations and businesses, there could be legitimate concerns about its internal processes and trade secrets, marketing strategies which are in their nascent stages, pricing policies and so on, which, if prematurely made public, could result in irreversible, and unknown commercial consequences. However, what should be the approach of the court when the aggrieved party approaches it for relief, would depend on the facts of each case, the nature of the information, the corresponding content of the duty, and the balancing exercise to be carried out. It is held, therefore, that even though the plaintiff cannot rely on privacy, its suit is maintainable, as it can assert confidentiality in its information.

Issue No.3 If the answer to Issue No. 2 is in the affirmative, does the plaintiff prove its entitlement to injunction sought for in this case .

52. As noted earlier, the plaintiff is aggrieved by the publication of three news items on 27.04.2006; one news item on 28.04.2006; one news item on 03.05.2006 and the last item on 05.05.2006. The plaintiff's concern in these is that the offending publications seriously prejudices it and that information would be construed as violating the mandate of SEBI regulations. The plaintiff contends next that the information is speculative as it concerns proposals at the "drawing-board stage" which may or may not mature. The third serious objection is that the plaintiff is engaged in sensitive negotiations with overseas gas suppliers and that the information is bound to seriously prejudice these negotiations, particularly, the confidentiality agreed by it. It is lastly contended that the news item alleging that the plaintiff resisted a PMO directive, depicted it in an unfavorable light even though in reality, the subject matter was at the discussion level.

53. The defendants, on the other hand, contend that none of the information in the news items are sensitive; it is contended that there is no particulars or cost-sensitive information are revealed nor that the disclosure of Exxon Mobil as being in negotiation with plaintiff or the fact that six shipping companies were shortlisted in a pre-qualification exercise, was sensitive and confidential that public interest demands a "gag" order. It is submitted that the news item of 28.04.2006 disclosed what was a fact, namely that the directives of PMO stating that bulk of the LNG imported in Cochin was to be sent to NTPC, was resisted. It was submitted that so far as the news item on the issue of US $ 100 million convertible bonds is concerned, there was

nothing sensitive or confidential about it as later events disclosed and even otherwise, most of the information placed on the website was eventually picked-up in the mainstream media and publication.

54. The defendants argue that granting relief of the kind sought in this case would amount to permanently gagging them thus effectively stifling and extinguishing the Right to Freedom of Press guaranteed under Article 19(1)(a) of the Constitution of India. It was submitted that what even the legislature of a State or Parliament cannot do, i.e. make a law prohibiting publication of information, in a blanket manner is achieved through the device of an injunction order. The defendants argue that the existence of even the interim injunction each day has resulted in serious prejudice to their right to freedom of Press and that the Court should vacate the order. It was argued that the Courts world over have recognized that free flow of information and ideas is vital for the existence of a democratic society and pre-publication injunctions should ordinarily, if ever, be resorted to only in the rarest of circumstances. It was submitted that it is only in matters of security of the State or where the plaintiff would demonstrably be shown to be prejudiced by pre-mature disclosure of information that the Courts can legitimately interfere publication, through an injunction order. It was contended that in the present case, the plaintiff has been unable to demonstrate even *prima facie* how such an irreparable harm or prejudice would be caused.

55. It was contended that the plaintiff is as much a public institution as any other Public Sector Undertaking. It is virtually a monopoly engaged in importation of gas which is later distributed for various purposes. Its share-holding pattern also reflects this domination; 50% stake is owned by the Central Government Public Sector Undertakings. It was argued that intentionally the share holding was not kept at 51% so that the plaintiff could be beyond the pale of judicial review. It was argued that the processes by which the plaintiff engaged in its functions, had a vital impact on the consumers and the prices they would ultimately have to pay for the products imported. Therefore, there was a greater counterveiling public interest in disclosure of the information regarding the plaintiff's business and functions. If injuncted, the publication, which has a legitimate right to scrutinize the plaintiff, (to assess its effectiveness),

and disseminate its views to the public, would be deprived of its valuable rights, to do so. That would be subversive of the media's right to free speech.

56. In the previous section dealing with the right of an individual or a Corporation to maintain a civil action for breach of confidentiality, this Court had discerned the trend of law, particularly, in England. During the course of the discussion, the Court noted that right from *Guardian Newspapers [(2) 1990]* down to *HRH Prince of Wales [2007]*, the Courts had carefully advocated a nuanced approach to balance different interests. Thus, in *A v. B (PLC)* and *Campbell*, the Court recognized the needs of an individual or even a person complaining of prejudice of confidentiality, capable of coming into conflict with the freedom of Press. In *Guardian Newspapers,* the Court explicitly stated that the third limiting principle requires the Court to carry-out a balancing operation weighing the public interest in maintaining confidence with a "countervailing public interest favoring disclosure". In *A v. B (PLC)*, the Court listed 12 points as indicative, though not exhaustive guidelines, which would assist in the carrying-out of that exercise. Both *Campbell* and *HRH Prince of Wales* talked about proportionality – an obvious reference to the response while granting relief -in balancing the competing claims for right to confidentiality and the need for publication of the information, in the given circumstances of individual cases. In *HRH Prince of Wales,* the Court referred as a duty to weigh and see whether the order is "a fetter of the Right of Freedom of Expression is, in the broad circumstances 'necessary' in a democratic society."

57. The above approach, in the opinion of the Court, accords with the long line of previous decisions of the Supreme Court. Of course, in each of them, the Court was called upon to decide whether a particular state action violated the Freedom of Speech guaranteed by the Constitution of India. Thus, in *Rajgopal (supra)*, for instance, the Court recognized the needs of the same kind of balancing exercise referring to *New York Times v. Sullivan* 385 US 374(1967) (where the Court had indicated the test of "clear and present danger" being the only circumstance justifying prior restraint of press freedom); the Court also noted an interesting decision of the House of Lords – *Derbyshire County Council v. Times Newspapers Limited* [1993] AC 534. The House of Lords held in that decision that civil action by a Local or County Council

for defamation, in respect of speech made against it was not maintainable. It would be worthwhile to extract the relevant passage of the House, which stated that media freedom to criticize and air views about public and local bodies is of great importance:

> *"..of the highest public importance that a democratically elected governmental body, or indeed any governmental body, should be open to uninhibited public criticism. The threat of a civil action for defamation must inevitably have an inhibiting effect on freedom of speech…*

And that

> *"quite often the facts which would justify the publication are known to be true, but admissible evidence capable of proving those facts is not available…"*.

Because the result may be damaging self-censorship by the media to the impoverishment of political discourse - libel's so-called `chilling effect' - was deemed contrary to the public interest to continue to allow government to sue in defamation. Nonetheless, defamation is now unavailable to such agencies, though they are free to sue for malicious falsehood. It was also held that given that plaintiffs must prove falsity, malice, and loss, actions in malicious falsehood are perhaps less likely to chill political speech. In *Goldsmith* v *Bhoyrul* [1998] 2 WLR 435, a political party, allegedly libelled while campaigning for office at a general election, was held incapable of suing. In *Reynolds v Times Newspapers Limited* [2001] 2 AC 127 Lord Nicholls of Birkenhead described the legal position as follows:

> *"It is through the mass media that most people today obtain their information on political matters. Without freedom of expression by the media, freedom of expression would be a hollow concept. The interest of a democratic society in ensuring a free press weighs heavily in the balance in deciding whether any curtailment of this freedom bears a reasonable relationship to the purpose of the curtailment."*

In *Stephens* v *West Australian Newspapers Ltd* (1992) 182 CLR 211 at 264 a similar conclusion was reached by the High Court of Australia. McHugh J explained :

> *"the quality of life and freedom of the ordinary individual...are highly dependent on the exercise of functions and powers vested in public representatives and*

officials by a vast legal and bureaucratic apparatus funded by public monies. How, when, why and where those functions and powers are or are not exercised are matters of real and legitimate concern to every member of the community...So is the performance of the public representatives and officials who are invested with them..."

58. In the United States, in one of the earliest cases, dealing with the issue, *Near v. Minnesota*, 283 U.S. 697 (1931), the US Supreme Court held that:

> *"If we cut through mere details of procedure, the operation and effect of the statute in substance is that public authorities may bring the owner or publisher of a newspaper or periodical before a judge upon a charge of conducting a business of publishing scandalous and defamatory matter-in particular that the matter consists of charges against public officers of official dereliction-and, unless the owner or publisher is able and disposed to bring competent evidence to satisfy the judge that the charges are true and are published with good motives and for justifiable ends, his newspaper or periodical is suppressed and further publication is made punishable as a contempt. This is of the essence of censorship."*

and, later that;

> *"The statute in question cannot be justified by reason of the fact that the publisher is permitted to show, before injunction issues, that the matter published is true and is published with good motives and for justifiable ends. … it would be but a step to a complete system of censorship. … The preliminary freedom, by virtue of the very reason for its existence, does not depend, as this court has said, on proof of truth. (Patterson v. Colorado 205 U.S. 454, 462)".*

The Court in *Near* realized the possibility of "prior restraint" injunctions, in exceptional cases, like national security, etc. It held:

> *"…the protection even as to previous restraint is not absolutely unlimited. But the limitation has been recognized only in exceptional cases. 'When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right.' (Schenck v. United States, 249 U.S. 47, 52 , 39 S. Ct. 247, 249). No one would question but that a government might prevent actual obstruction to its*

recruiting service or the publication of the sailing dates of transports or the number and location of troops. On similar grounds, the primary requirements of decency may be enforced against obscene publications. The security of the community life may be protected against incitements to acts of violence and the overthrow by force of orderly government.

59. Nebraska Press Assn. v. Stuart, (427 U.S. 539) (1976) dealt with gag orders by court, preventing press publication of information in respect of court proceedings. It was held that:

> *"Our analysis ends as it began, with a confrontation between prior restraint imposed to protect one vital constitutional guarantee and the explicit command of another that the freedom to speak and publish shall not be abridged. We reaffirm that the guarantees of freedom of expression are not an absolute prohibition under all circumstances, but the barriers to prior restraint remain high and the presumption against its use continues intact."*

United States v. *Playboy Entertainment Group, Inc* 529 US 803 (2000) held that:

> *"In order for the State … to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. [393 US 503, 509 (1969)] … What the Constitution says is that these judgments are for the individual to make, not for the Government to decree, even with the mandate or approval of a majority. Technology expands the capacity to choose; and it denies the potential of this revolution if we assume the Government is best positioned to make these choices for us."*

60. Several of the above decisions were considered in *Rajagopal,* as follows, before the law was summarized, in terms quoted in a previous part of this judgment:

> *"19. The principle of Sullivan (376 US 254 :11 L Ed 2d 686 (1964)) was carried forward - and this is relevant to the second question arising in this case - in Derbyshire County Council v. Times Newspapers Ltd. ((1993) 2 WLR 449 : (1993) 1 All ER 1011, HL), a decision rendered by the House of Lords. The plaintiff, a local authority brought an action for damages for libel against the defendants in respect of two article published in Sunday Times questioning the propriety of investments made for its superannuation fund. The articles were headed "Revealed : Socialist tycoon deals with Labour Chief" and "Bizarre deals of a council leader and the media tycoon". A preliminary issue was raised whether the plaintiff has*

a cause of action against the defendant. The trial Judge held that such an action was maintainable but on appeal the Court of Appeal held to the contrary. When the matter reached the House of Lords, it affirmed the decision of the Court of Appeal but on a different ground. Lord Keith delivered the judgment agreed to by all other learned Law Lords. In his opinion, Lord Keith recalled that in Attorney General v. Guardian Newspapers Ltd. (No. 2) ((1990) 1 AC 109 : (1988) 3 All ER 545 : (1988) 3 WLR 776, HL) popularly known as "Spycatcher case", the House of Lords had opined that "there are rights available to private citizens which institutions of ..... Government are not in a position to exercise unless they can show that it is in the public interest to do so". It was also held therein that not only was there no public interest in allowing governmental institutions to sue for libel, it was "contrary to the public interest because to admit such actions would place an undesirable fetter on freedom of speech" and further that action for defamation or threat of such action "inevitably have an inhibiting effect on freedom of speech". The learned Law Lord referred to the decision of the United States Supreme Court in New York v. Sullivan (376 US 254 : 11 L Ed 2d 686 (1964)) and certain other decisions of American Courts and observed - and this is significant for our purposes -

"while these decisions were related most directly to the provisions of the American Constitution concerned with securing freedom of speech, the public interest considerations which underlaid them are no less valid in this country. What has been described as 'the chilling effect' induced by the threat of civil actions for libel is very important. Quite often the facts which would justify a defamatory publication are known to be true, but admissible evidence capable of proving those facts is not available."

Accordingly, it was held that the action was not maintainable in law.

20. Reference in this connection may also be made to the decision of the Judicial Committee of the Privy Council in Leonard Hector v. Attorney General of Antigua and Barbuda ((1990) 2 AC 312 : (1990) 2 All ER 103 : (1990) 2 WLR 606,PC) which arose under Section 33-B of the Public Order Act, 1972 (Antigua and Barbuda). It provided that any person who printed or distributed any false statement which was "likely to cause fear or alarm in or to the public or to disturb the public peace or to undermine public confidence in the conduct of public affairs" shall be guilty of an offence. The appellant, the editor of a newspaper, was prosecuted under the said provision. He took the plea that the said provision contravened Section 12(1) of the Constitution of Antigua and Barbuda which provided that no person shall be hindered in the enjoyment of freedom of expression. At the same time, sub-section (4) of Section 12 stated that nothing contained in or done under the authority of law was to be held inconsistent with or in contravention of sub-section 12(1) to the extent that the law in question made provisions reasonably required in the interest of public order. [These provisions roughly correspond to Articles 19(1)(a) and 19(2) respectively.] The Privy Council upheld the appellant's plea and declared Section 12(1) ultra vires the Constitution. It held that Section 33-B is wide enough to cover not only false statements which are likely to affect public order but

also those false statements which are not likely to affect public order. On that account, it was declared to be unconstitutional. The criminal proceedings against the appellant was accordingly quashed. In the course of his speech, Lord Bridge of Harwich observed thus :

"In a free democratic society it is almost too obvious to need stating that those who hold office in Government and who are responsible for public administration must always be open to criticism. Any attempt to stifle or fetter criticism amounts to political censorship of the most insidious and objectionable kind. At the same time it is no less obvious that the very purpose of criticism levelled at those who have the conduct of public affairs by their political opponents is to undermine public confidence in their stewardship and to persuade the electorate that the opponents would make a better job of it than those presently holding office. In the light of these considerations their Lordships cannot help viewing a statutory provision which criminalises statements likely to undermine public confidence in the conduct of public affairs with the utmost suspicion."

61. Earlier decisions of the Supreme Court too, had declared the valuable nature of the right to freedom of speech. In *Virendra* v. *State of Punjab* AIR 1957 SC 896 the Court held:

"It is certainly a serious encroachment on the valuable and cherished right to freedom of speech and expression if a newspaper is prevented from publishing its own views or the views of its correspondents relating to or concerning what may be the burning topic of the day.

Our social interest ordinarily demands the free propagation and interchange of views but circumstances may arise when the social interest in public order may require a reasonable subordination of the social interest in free speech and expression to the needs of our social interest in public order. Our Constitution recognises this necessity and has attempted to strike a balance between the two social interests. It permits the imposition of reasonable restrictions on the freedom of speech and expression in the interest of public order and on the freedom of carrying on trade or business in the interest of the general public.

Therefore, the crucial question must always be: Are the restrictions imposed on the exercise of the rights under Articles 19(1)(a) and 19(1)(g) reasonable in view of all the surrounding circumstances? In other words are the restrictions reasonably necessary in the interest of public order under Article 19(2) or in the interest of the general public under Article 19(6)?"

S. Rangarajan v. *P. Jagjivan Ram* 1989 (2) SCC 574, formulated the principle as follows*:*

"[The] commitment to freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous

to the public interest. [In other words, the expression should be inseparably] like the equivalent of a 'spark in a power keg'."

62. *Odyssey Communications Pvt. Ltd. Vs. Lokvidayan Sanghatana*, AIR 1988 SC 1642, was a case where the Supreme Court in an earlier interim order injuncted screening of the film "Honi-Anhoni". The plaintiff had sought and obtained an injunction pleading that the film was likely to spread false or blind belief amongst members of the public which was not in public interest. The Supreme Court vacated the injunction. Recently, in *Govt. of A.P. v. P. Laxmi Devi,*(2008) 4 SCC 720, the Supreme Court reasoned that:

> *"For the substance of decisions to be truly democratic, the process by which they are reached must give as much free play as possible for the transmutation of present minorities into future majorities by the unencumbered operation of freedom of thought, communication, and discussion. From this point of view, reasonably equal access to the political processes and reasonably uninhibited freedom to argue and discuss (limited only by imminently impending danger to the State itself) is in fact an integral part of, although antecedent to, the formal legislative processes of democracy. Hence to uphold the restrictions on freedom of thought and communication and access to the political processes which may be placed in effect by a temporary majority would be actually to reduce the integrity of the processes of transforming that transient majority into a minority—a process essential to the very concept of democracy."*

63. In the light of the above discussion, this Court has to now examine whether the plaintiff's claim for protective injunction of the kind sought in these proceedings can be granted, or whether defendant's claim for right to publish them, in furtherance of their Right to Freedom of Speech and Information has to prevail.

64. Though the plaintiff disputes that it performs any governmental or public function, it does not deny being a company with an equity base of Rs.1200 crores, of which 50% is subscribed by Central Government Public Sector Undertakings. Although such undertakings are not majority equity holders, and narrowly miss that description by one percent, nevertheless, they have a significant shareholding. Equally, the plaintiff does not deny – rather it even asserts that the negotiations conducted for the purpose of gas and allied products, are meant to service the needs of the community and the consumer base in India. Understood in a broad sense, therefore, it is engaged in a vital public function. Its other shareholders are no doubt,

non-state entities. Yet, there is a crucial public interest element in its functioning; 50% of Rs.1200 crores shareholding is controlled by the Public Sector Undertakings which are directly answerable to the Central Government and Parliament. Therefore, the claim for confidentiality has to be necessarily from the view of the plaintiff's accountability to such extent as well as its duties which have a vital bearing on the availability and presence of gas in the country.

65. As far as the complaint that the plaintiff would be violating SEBI regulations is concerned, no specific norm was brought to the notice of the Court which would attract penal action or other sanctions by the SEBI, due to impugned discussion, in the news reports, about its functioning. The various courses mandated by the regulations shown to the Court concern internal processes of company as well as information relating to insider trading, share prices and other product information; the need to maintain "Chinese Wells" for ensuring integrity of information flow within the organization and so on. However, these nowhere inhibit publication of information which is otherwise available to third parties or becomes available to a third party. No sanctions have been indicated nor shown to the Court. Therefore, the plaintiff's complaint of its being possibly held liable for SEBI violations is accordingly overruled.

66. The second complaint about a public interest concern, in the plaintiff's seeking prohibition of disclosure of information relating to negotiations with Exxon Mobil or its related organizations has to be now discussed. It is contended here that the plaintiff had entered into confidential agreements with its potential suppliers which mandated secrecy; and disclosure of even seemingly innocuous information relating to negotiations would, it is argued amount to violation of such confidentiality agreements. It is also argued that disclosure of such sensitive information would spell potential doom because rivals and competitors would come to know about these developments that may completely change the nature of negotiations. It is also contended parallelly, that the potential suppliers, (in advanced stage of negotiations) have taken unkindly to the press publication, and the plaintiff has been embarrassed, in that such suppliers have expressed these disclosures to be in breach of the confidentiality agreement. The defendant's arguments for these is that the disclosure or news reports regarding identity of one or the other suppliers is hardly confidential or in any event not of such sensitive nature as

to entitle the plaintiff to a blanket injunction. It is argued that in such business, there are very few suppliers and buyers – all of them know each other. The defendants also argued that in such circumstances, whatever be the confidentiality conditions which bind negotiating parties, unless the information sought to be published is so sensitive as would inevitably – and not merely potentially – undermine the negotiating process, there can never be a prior restraint on its publication. It was contended here that disclosure of the entities owned by Exxon Mobil or that it was negotiating with the plaintiff for supply of gas, can never be called confidential. It was also argued that similarly, information relating to the plaintiff company's – development of the Kochi Special Economic Zone Area; that it mooted a special purpose company and shortlisted 6 out of 14 companies which had bid, in a pre-qualification document, was not at all commercially sensitive.

67. As far as the negotiations with foreign suppliers is concerned, the news item at para 5(A)(ii) states that the plaintiff and three others, which needed LNG were in active negotiations with Exxon Mobil. The purpose of this negotiation process was for supply of LNG to the Kochi Terminal from Exxon's share of gas, from the $ 7.3 billion Gorgon LNG in Australia. The news item was on 26.04.2006 and recounted what had been discussed, i.e. completion of terminal before date of commencement of supply; obligations of sales and purchase agreement till receiving facilities were completed; and that to mitigate certain obligations in the event of delayed completion, devaluation of cargo could take place to other terminals which in the case of *force majeure* could not be enforced. The news report also stated that Exxon Mobil asked the plaintiff to *"revisit the present agreement proposed in view of the rise in prices of petro-products"*.

68. Aside from indicating broad generality of what was allegedly negotiated by the plaintiff and Exxon Mobil in relation to completion of the terminal at Kochi before commencement of supply, the obligations under sale and purchase agreement ; dealing with cargo till creation of capacity and applicability or otherwise of the guarantee, absolutely no specifics or particulars were published. The reference to the pricing agreement was only in passing and without mention of any details at all. In these circumstances, it is difficult to discern how a discussion in

the proposed terms and, perhaps in the vaguest manner what are general terms of a contract, could be construed as confidential, much less prejudicial. Similarly, description of six ship owning companies for transportation of LNG itself could not have resulted in breach of confidentiality. Even if the plaintiff were "in active negotiation", one fails to see, how a mention of those six companies without any further particulars could have prejudiced either them or the plaintiff or driven competitors to take precipitate action in scuttling the negotiations. Again, bulk transporters such as shipping companies, who engage in movement of special cargo, such as LNG, are known, in the trade, and are few and far between. The reason given that selection of the ship owners is a closely guarded secret and forms "extremely confidential" information, which should not have been published till a decision was taken by the Board of Directors, is just an assertion. The plaintiff's contention that till formal approval of the Board was given, there was possibility of exclusion of some ship owners and inclusion of other ship owners leading to embarrassment, in the opinion of the Court, does not amount to overriding concern, or a compelling necessity, as to bar informing the public, through news. Here, unlike in the previous instance, commercial or price-sensitivity has not been claimed; what is alleged is the potentiality of excluding some ship owners from the negotiations at a later point; that negotiations were fluid, was deemed a sufficient justification for claiming injunction. Beyond asserting this, the plaintiff nowhere shows how such potentiality or possibility could justify injunction.

69. As far as the information relating to the plaintiff's resisting the directives of PMO is concerned, it is claimed that the pros and cons of implementing the directives were under discussion and that certain stake holders expressed divergent views. The plaintiff contends that the information or news was entirely false and misleading. The defendants here argued that as a company with significant public participation, the plaintiff was bound by the PMO directives and that if it was taking a different view, or even contemplating it, the publication of such discussion was not prejudicial. This Court is of the opinion that the news item relating to PMO directive's can hardly be deemed confidential and would facially fall within the prohibited category spoken of in *Sullivan* as endorsed in *Rajgopal* and also in the *Guardian* case. After all, dissemination of news – even unpleasant and unwelcome news or information, particularly, if it

relates to public bodies, is of the essence in a democracy. Wherever the general public or public agencies have a stake, in companies or corporations like the plaintiff, their right to be informed about matters that concern the functioning of such corporations, is vitally important. This could include discussions of the kind which the plaintiff is confronted with – i.e. the question of implementing PMOs directives. The topicality and newsworthiness of such reports is undeniable; some may even argue that the press could sensationalize the facts in presentation of such information, yet the right to disseminate these view is at the core of freedom of speech and expression and any restraint would have a chilling effect on its exercise.

70. So far as the articles of 03.05.2006 and 05.05.2006, concerning issue of US $ 100 million bonds by the ABB, it is argued that it is misleading, intended to causing sensation by reporting plaintiff's confidential internal discussions involving funds and cash flows. The plaintiff asserts that the information could not have been disclosed at all even if it were accurate till it were made known in the public domain. The plaintiff contends that this news and information was also price-sensitive information. The defendants argue that the issuance of foreign currency convertible bonds was covered in three major business newspapers on 04.05.2006 which clearly disclosed that they were singled out and not bigger organizations. It is also asserted by its very nature, i.e. issuance of foreign currency convertible bonds, is a topic worthy of reporting as it is commercial news.

71. In the opinion of the Court, the plaintiff has been unable to substantiate how the news that foreign exchange bonds were under contemplation and that the presentation by the plaintiff to five merchant bankers is price-sensitive. The plaintiff does not anywhere deny that the Kochi Terminal was under contemplation – it was even known. The two news items of 03.05.2006 and 05.05.2006 spoke about a proposal and speculated about the possible terms of the debentures. No attempt has been made at all to say how such news would prejudice the plaintiff in any ongoing negotiation or commercially jeopardize its prospects. In these circumstances, the Court concludes that as far as this item goes plea of confidentiality has not been established.

72. In view of above conclusions, it is held that the plaintiff has been unable to substantiate its claim for confidentiality or that the information in regard to the news items complained against are of such sensitive nature as to warrant prior restraint of their disclosure. On the other hand, the defendants, in the opinion of the Court, have been able to show public interest in news reporting and discussion about the plaintiff's functioning – in the areas sought not to be intedicted by the kind of injunction sought. Clearly, the grant of injunction would destroy the very essence of press freedom and the right of the general public to be informed about the functioning of an entity in which 50% stake is held by the Central Public Sector Undertakings.

73. This Court, while recollecting the judgment of the Supreme Court in *S. Rangarajan, Virendra, Rajgopal* as well as that of the US Supreme Court in *Sullivan,* is of the opinion that the public interest in ensuring dissemination of news and free flow of ideas, is of paramount importance. The news or information disclosure of which may be uncomfortable to an individual or corporate entity but which otherwise fosters a debate and awareness about functioning of such individuals or bodies, particularly, if they are engaged in matters that affect people's lives, serve a vital public purpose. Very often, the subject of information or news – i.e the individual or corporation may disagree with the manner of its presentation. If it contends that such presentation tends to defame or libel, it is open for the entity or individual to sue for damages. In the case of a corporate entity, unless the news presented is of such a sensitive nature that its business or very existence is threatened or would gravely jeopardize a commercial venture, the Courts would be slow in interdicting such publication. The Constitution's democratic framework, depends on a free commerce in ideas, which is its life blood. In the words of Walter Lippmann newspapers are "the bible of democracy". Justice Holmes (*Abrams –vs- US* 250 US 616 (1919)) characterized the discussion of public matters as essential to see that *"the ultimate good desired is better reached by a free trade in ideas".* Even more poignantly, one of the principal architects of the American Constitution, James Madison, (1751-1836) wisely stated that:

> *"Nothing could be more irrational than to give the people power, and to withhold from them information without which power is abused. A people who mean to be*

their own governors must arm themselves with power which knowledge gives. A popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy, or perhaps both."

74. Even though, on occasions, the press may be seen and may even be overstepping its limits, it functions as the eyes and ears for the people, throwing light into the unlit and unseen crabbed corners, of decisions and public policies which greatly want in public gaze, for the vibrancy as well as accountability of public institutions. Freedom of the press is not a privilege granted to the few controlling the press, or press institutions; it is "*a right granted to the people for their protection against the vicissitudes of government and all other sources of power and influence. … The newsman is but the surrogate for the people in a never-ending search to uncover the truth."* (Stanford Smith, *American Newspaper Publishers Association*).

75. In view of the above, it is held that the defendants publications cannot be termed as unprotected speech, qualifying for restraint through injunction; the plaintiff is therefore, not entitled to the injunctions sought for in the present suit.

Issue No. 4 – Relief:

76. For the above reasons, the suit cannot succeed; it is accordingly dismissed. In the circumstances, the plaintiff shall bear the costs quantified at Rs.1,00,000/-, payable to the defendants within four weeks from today.

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No further orders are required to be passed in this application in view of the dismissal of the suit.

The application is dismissed.

April 13, 2009 **(S.RAVINDRA BHAT)**
JUDGE