Privy Council Appeal No. 9 of 1965

The Honourable Dr. Paul Borg Olivier and another — *Appellants*

v.

The Honourable Dr. Anton Buttigieg — — — — *Respondent*

FROM

THE COURT OF APPEAL OF MALTA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 19TH APRIL 1966.

Present at the Hearing:
LORD MORRIS OF BORTH-Y-GEST
LORD PEARCE
LORD PEARSON
(*Delivered by* LORD MORRIS OF BORTH-Y-GEST)

This is an appeal (by leave of the Court of Appeal of Malta dated the 20th November 1964) from a judgment of that Court (Mamo, C.J., Gouder and Camilleri, JJ.) dated the 10th January 1964 dismissing with costs the appellants' appeal against the judgment and order of the First Hall, Civil Court, Malta (Xuereb, J.) dated the 11th March 1963 whereby the respondent was granted a declaration that a circular issued on behalf of the appellants had contravened his constitutional rights. By the judgment and order of the 11th March 1963 it was ordered that the declaration be brought, by means of a new circular, to the cognizance of the people to whom the preceding circular was directed and also that the respondent's costs be borne by the appellants.

The case raises important questions as to whether there were contraventions of the provisions of the Malta (Constitution) Order in Coucil 1961 and in particular whether the respondent's rights under section 13 or under section 14 or under both those sections were infringed.

Section 16 provided for the enforcement of the provisions which gave certain fundamental rights and freedoms to individuals. Section 16(1) (2) and (3) were in the following terms:—

> " (1) Any person who alleges that any of the provisions of this Part of this Order has been, is being, or is likely to be, contravened in relation to him, or such other person as the Civil Court, First Hall, in Malta may appoint at the instance of any person who so alleges, may, without prejudice to any other action with respect to the same matter that is lawfully available, apply to the Civil Court, First Hall, for redress.
>
> (2) The Civil Court, First Hall, shall have original jurisdiction to hear and determine any application made in pursuance of the preceding subsection, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any rights to which any person concerned may be entitled under this Part of this Order.
>
> Provided that the Court may, if it considers it desirable so to do, decline to exercise its powers under this subsection in any case where it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.
>
> (3) Where any question as to the interpretation of any of the provisions of this Part of this Order arises in any proceedings in any court other than the Civil Court, First Hall, or the Court of Appeal in Malta, the person

presiding in that court shall refer the question to the Civil Court, First Hall, unless, in his opinion, the raising of the question is merely frivolous or vexatious; and that Court shall give its decision on any question referred to it under this subsection and, subject to the next following subsection, the court in which the question arose shall dispose of the question in accordance with that decision."

It is to be observed that an application may be made by a person who alleges that any of the provisions referred to " has been, is being, or is likely to be contravened in relation to him ". The respondent so alleged. He alleged that the provisions of sections 13 and 14 had been and were being contravened and that they were so contravened " in relation to him ". He therefore invoked the enforcement procedure laid down in section 16. In the Civil Court and in the Court of Appeal the appellants raised the issue whether the Circular in question was cognizable by the Courts of Malta. It was contended that the issue of the Circular was " a pure administrative act " and as such was not cognizable in the Courts. The Courts held that it was cognizable. No contention to the contrary was advanced in the submissions before their Lordships' Board.

For the appreciation of the questions which arise it is necessary to refer to certain sections of the 1961 Constitution and to recount the main facts.

Part II of the Constitution is headed " Protection of Fundamental Rights and Freedoms of the Individual ". Section 5 is as follows:—

" 5. Whereas every person in Malta is entitled to the fundamental rights and freedoms of the individual, that is to say, has the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following namely—

(*a*) life, liberty, security of the person and the protection of the law;

(*b*) freedom of conscience, of expression and of assembly and association; and

(*c*) protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Part of this Order shall have effect for the purpose of affording protection to the said rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest."

It is to be noted that the section begins with the word " Whereas ". Though the section must be given such declaratory force as it independently possesses, it would appear in the main to be of the nature of a preamble. It is an introduction to and in a sense a prefatory or explanatory note in regard to the sections which are to follow. It is a declaration of entitlement—coupled however with a declaration that though " every person in Malta " is entitled to the " fundamental rights and freedoms of the individual " as specified, yet such entitlement is " subject to respect for the rights and freedoms of others and for the public interest ". The section appears to proceed by way of explanation of the scheme of the succeeding sections. The provisions of Part II are to have effect for the purpose of protecting the fundamental rights and freedoms but the section proceeds to explain that since even those rights and freedoms must be subject to the rights and freedoms of others and to the public interest it will be found that in the particular succeeding sections which give protection for the fundamental rights and freedoms there will be " such limitations of that protection as are contained in those provisions." Further words, which again are explanatory, are added. It is explained what the nature of the limitations will be found to be. They will be limitations " designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest."

The succeeding sections show that the promised scheme was followed. The respective succeeding sections proceed in the first place to give protection

for one of the fundamental rights and freedoms (e.g. the right to life, the right to personal liberty) and then proceed in the second place to set out certain limitations—i.e. the limitations designed to ensure that neither the rights and freedoms of others nor the public interest are prejudiced. A perusal of sections 6, 7, 8, 9, 10, 11 and 12 (which sections need not for present purposes be set out) illustrates how the scheme and the scope of Part II were unfolded.

Sections 13 and 14 which are of prime importance must be set out. They are as follows:—

" 13. (1) All persons in Malta shall have full liberty of conscience and enjoy the free exercise of their respective modes of religious worship.

(2) No person shall be subject to any disability or be excluded from holding any office by reason of his religious profession.

14. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) that is reasonably required—

(i) in the interests of defence, public safety, public order, public morality or public health; or

(ii) for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telephony, telegraphy, posts, wireless broadcasting, television, public exhibitions or public entertainments; or

(*b*) that imposes restrictions upon public officers,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society."

The main facts giving rise to the case have not been in dispute. At all relevant times the respondent was the Editor of a newspaper called the " Voice of Malta ". It is a newspaper of and it is published by the Malta Labour Party. It is duly registered according to law. It is a weekly paper and is published late on Saturday evenings. It is put on sale by newsagents and newsboys willing to take part in its distribution. It is also put on sale in Labour Party clubs. Being a weekly publication it can be bought throughout the week and particularly on Sundays which are public holidays. The respondent was President of the Malta Labour Party. He was also a member of the Legislative Assembly of Malta. His party was in opposition.

The first appellant was Minister of Health. The second appellant was Chief Government Medical Officer. As such he was the Chief Adviser to the Government on medical and health matters. Various hospital establishments and services in Malta and in Gozo formed part of the Medical and Health Department.

Some years before the events which more particularly gave rise to the present proceedings a circular had been sent from the office of the Prime Minister which referred to Political Discussions by Government employees during working hours. That was in 1955. The Circular was in these terms:—

" OPM Circular No. 34/55.

Office of the Prime Minister,
Valletta, August 22, 1955.

To Ministers.

Political Discussions during working hours.

Reports are continually being received to the effect that Government employees of various categories, particularly manual workers, indulge in

political discussions during working hours. Such behaviour betrays a serious lack of discipline among the employees concerned and reflects no credit either on them or on the supervisory staff.

2. I am informed that this may account in part for the poor output still being given by certain employees.

3. Please therefore instruct all Heads of Departments in your Ministry to warn all employees that these discussions at work are strictly prohibited. Stern disciplinary measures, involving if necessary immediate discharge, will be taken against irresponsible individuals transgressing these instructions.

DOM. MINTOFF,

" Prime Minister."

No criticism of that Circular was made. The propriety of its contents was not questioned. It was not suggested that it was other than appropriate to enforce reasonable discipline among Government employees during working hours.

On the 26th May 1961 His Grace The Archbishop in a Circular (No. 229) issued over the signature of His Lordship Bishop Galea, Vicar General and Monsignor Canon Mifsud, Chancellor of the Achiepiscopal Curia and addressed to the Very Reverend Archpriests, Chaplains, Vicar-Curates, Rectors of Churches and Superiors of Religious Orders condemned the respondent's newspaper—" The Voice of Malta ". The main parts of the Circular were as follows:—

" His Grace the Acrhbishop cannot but feel pain at the conflict which has arisen in Malta as regards religious sentiments. He desires that unity which is desired by Our Lord, Jesus Christ. And since the Church cannot come to an agreement with those who refuse to be guided by the teachings of God, as authoritatively expounded by the Church, the Archbishop has felt it his duty to show what should be at least avoided by those who wish to remain in unity with the Church.

His Grace the Archbishop therefore notifies that, in present day circumstances, the following are most strongly to be condemned:

(*a*) the grave insults by word, in writing or by deed against the Archbishop or against the clergy;

(*b*) the support for the leaders of the Malta Labour Party so long as they remain at war with the Church and maintain contacts with Socialists, Communists and the A.A.P.S.O.

Besides the above, this very day there appeared in " Il-Helsien " " An Invitation to the Bishops " issued by the Executive of the Malta Labour Party. This invitation is the most grievous insult that could be levelled at the Ecclesiastical Authority. And this insult, following the admonition which the Ecclesiastical Authority had already given to " Il-Helsien " and to the " Voice of Malta " is also a challenge. Therefore His Grace the Archbishop condemns the " Voice of Malta ", " Il-Helsien " and " The Whip " as dependents of the Executive, author of this invitation.

This means that no one, without committing a mortal sin, can print, write, sell, buy, distribute or read these newspapers.

His Grace the Archbishop reminds parents of the heavy responsibility they assume before God when they allow their children to frequent the M.L.P. Brigade where they learn disrespect towards the Authority of the Church and towards the Church's heavy penalties, besides other things contrary to the teachings of the Church.

Since it appears that there are persons who frequently receive Communion, and do confess sins such as these, Confessors, as in duty bound, must, abiding by the rules of prudence, put the necessary questions to their penitents.

It is to be remembered that in the Church, all power resides in her Leaders, chosen by God and not by the people, and that therefore when the Church, within her province issues any directives, no son of hers has the right to criticise, still less, as has been said on occasions, to condemn her."

The M.L.P. Brigade is the Malta Labour Party Brigade: the A.A.P.S.O. is the Afro Asian Peoples Solidarity Organisation.

The circular which gives rise to present proceedings was a Medical and Health Department circular issued by the second appellant on the 25th April 1962. It was in the following terms:—

" MH. Circular No. 42/62.

Medical and Health Department,
15, Merchants Street,
Valletta.
25th April, 1962.

Chairman,
St. Luke's Hospital,
Management Committee,
Medical Superintendents,
Heads of Branches.

Political Discussions during working hours.

The attention of all employees is again drawn to the instructions contained in OPM Circular No. 34 of 22nd August, 1955, which is again being subjoined herewith for ease of reference.

The entry in the various Hospitals and Branches of the Department of newspapers, which are condemned by the Church Authorities, and the wearing of badges of political parties are strictly forbidden.

You are requested to ensure that the directions contained in the abovementioned OPM Circular and in paragraph 2 above are strictly observed by all the employees of the Department.

C. COLEIRO,
Chief Government Medical Officer."

No criticism was made of the first paragraph of the letter. In regard to the second paragraph inasmuch as " The Voice of Malta " was condemned by the Church Authorities, there was a definite prohibition of its entry into the various hospitals and branches of the department. It is to be observed that employees were not prohibited from taking newspapers as such into hospitals and branches of the department. Nor were they prohibited from taking political newspapers. They were prohibited from taking the " Voice of Malta " and two other newspapers.

Certain matters of fact here call for mention concerning (*a*) the way in which the Circular came to be issued and (*b*) the numbers to whom it was directed. Regarding (*a*) it was common ground that it was the appellants who issued the Circular. Information was received by the first appellant (Dr. P. Borg Olivier) that some party political activity was being carried on at St. Luke's Hospital. It was thereupon decided to issue a Circular calling attention to the earlier Circular relating to political activities during working hours. The way in which the second paragraph of the Circular (the part to which exception is taken) came to be inserted was explained by the first appellant. He gave evidence at his own request. That paragraph, he said, " crossed my mind as an afterthought and this because it came to my knowledge that another circular contemplating the same subject had already been issued by another department, namely, the Education Department ". He said also that his feelings about the matter were " on account of the prohibition imposed by the church ". He made it clear that the prohibition that he imposed was not of political newspapers as such. Newspapers which were not condemned by the Church Authorities could be freely taken by employees both into hospitals and departmental buildings. Such newspapers could there be read during leisure times though not during working hours. Newspapers that were condemned by the Church Authorities could not be taken at all

into hospitals or departmental buildings: it followed that such newspapers could not be read even during leisure hours anywhere within such premises. To the extent to which the ban was imposed it was absolute.

Regarding (*b*) it was declared at the trial on behalf of the appellants that when the Circular in question was issued it was intended to apply only to the employees of and not to patients in or doctors in the Medical and Health Department. At the trial it had been contended on behalf of the respondent that the prohibition imposed by the Circular was intended to apply to patients and doctors in hospitals as well as to all the employees of the department. That contention was not accepted and their Lordships need not further refer to it. The hearing in the Court of Appeal proceeded on the assumption that the Circular was only intended to govern the activities of the employees of the State of Malta in the Medical and Health Department. The employees in the various offices, stores and branches of the department numbered 1046: the number of employees in the hospitals of the department was 1614. The prohibition imposed by the Circular was therefore directly imposed upon 2660 persons.

On these facts it may be convenient to consider in the first place whether the provisions of section 14 of the Constitution were contravened in relation to the respondent. Was he hindered in the enjoyment of his freedom of expression? If he was there was no suggestion that the hindrance was with his consent. Section 14(1) states that "freedom of expression" covers freedom to hold opinions and to receive and impart ideas and information without interference. Was the respondent hindered in the enjoyment of his freedom to impart ideas and information without interference? The steps taken by an editor of a newspaper to impart ideas and information include the expression of ideas and information in words followed by the printing of such words in the paper followed by publishing the paper and followed by circulating it.

A measure of interference with the free handling of the newspaper and its free circulation was involved in the prohibition which the Circular imposed. It was said in an Indian case (re *Ramesh Thappar* v. *State of Madras* [1950] S.C.R. 594, 597)—"There can be no doubt that freedom of speech and expression includes freedom of propagation of ideas and that freedom is secured by freedom of circulation. ' Liberty of circulation is as essential to that freedom as the liberty of publication. Indeed without circulation the publication would be of little value '." Similar thoughts were expressed by Mr. Justice Black in his judgment in *Martin* v. *City of Struthers* 319 U.S.141 when he said (at p. 146)—"Freedom to distribute information to every citizen whenever he desires to receive it is so clearly vital to the preservation of a free society that putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved." Though the "Voice of Malta" had been in disfavour with the Church Authorities there was no suggestion that its publication offended against the provisions of any law. Its publication was permissible and legitimate. The public were free to buy it. Yet the employees of the Medical and Health Department were strictly enjoined that they must not have a copy of it in their possession while on Government premises. They could bring any newspapers other than the condemned ones. In their leisure time while on Government premises they could read such other newspapers but not the condemned ones. If it seems surprising that a Government Minister should direct state employees that they must not have an opposition newspaper in their possession while on Government premises it is fair to remember that the reason which inspired the prohibition was not that the prohibited newspapers supported the opposition party but rather that they had been condemned by the Church Authorities. That condemnation however as the church Circular showed was in part attributed to the political complexion of the newspapers.

In Their Lordships view the strict prohibition imposed by the Circular now being considered amounted to a hindrance of the respondent in the enjoyment of his freedom to impart ideas and information without interference. Indeed it seems difficult to avoid the conclusion that the very purpose and intention of the prohibition was to hinder such imparting. The prohibition

was imposed in order to aid the condemnation of the Church Authorities. In submissions to Their Lordships it was contended that the prohibition did not prevent Government employees from buying and possessing and reading the " Voice of Malta " at all such times as would not involve their having a copy in their possession while on Government premises. Nor did it. But that is merely to say that the most that the Minister thought that he could do was not effective to prevent Government employees from reading the " Voice of Malta " if any of them were determined to do so. In this connection it is to be observed that section 14(1) does not refer to the *prevention* of freedom of expression: it enacts that no person is to be " hindered " in the enjoyment of his freedom of expression. His freedom of expression includes a freedom to impart ideas and information " without interference ". Though the respondent was not prevented from imparting ideas and information the inevitable consequence of what was done was that he was " hindered " and that there was " interference " with his freedom.

It was submitted that the measure of any resulting hindrance was slight and that it could in the contemplation of the law be ignored as being *de minimis*. This submission found favour in the First Hall of Her Majesty's Civil Court but not in the Court of Appeal. Nor does it find favour with their Lordships. The plea that what was done was not very far reaching comes ill from those who reached as far as they could. The submission fails for two reasons. In the first place the hindrance cannot, on the facts of the case, be classed as minimal. The Court of Appeal in accepting that the Circular must be considered as limiting the prohibition therein contained to employees held that considering the size of the population and of the country, it affected " a relatively considerable number of people and a number of institutions and places spread all over the two islands ". Their Lordships agree. It is undeniable that the prohibition was imposed upon 2660 civil servants. In this connection it was contended that there was no evidence that the circulation of the newspaper the " Voice of Malta " had declined by reason of the prohibition. While that was so and while it is therefore unknown whether the circulation was or was not adversely affected it is to be remembered that the right given by section 14 is a right not to be " hindered " in freedom to impart ideas and information without interference. It is of course not known how many of the 2660 civil servants were interested in or were readers of the " Voice of Malta ". If it had been thought that the numbers were negligible it would have been pointless to impose so specific a prohibition in a Ministerial Circular. The conclusion appears to their Lordships to be irresistible that there was hindrance in the enjoyment by the respondent of his freedom to impart ideas and information without interference. Such hindrance and interference formed the very purpose which inspired and motivated the discriminatory prohibition which was imposed.

In the second place their Lordships consider that where " fundamental rights and freedoms of the individual " are being considered a Court should be cautious before accepting the view that some particular disregard of them is of minimal account. This is not to say that a Court is required to spend its time upon matters which may be " merely frivolous or vexatious " (compare section 16(3)). The present is no such case but rather one where an important question of principle is involved. Their Lordships note that the Court of Appeal, while not taking the matter into consideration for the purposes of this case agreed with the submission that " if it were to be held that the present appellants had the right to issue the Circular in question naturally the same right would appertain to each and every other Minister and head of department in respect of the department under his charge, in such a way that the interference with the circulation and reading of his newspaper would be vastly widened and extended with impunity ". Here was a reflection of the words of Portia—" Twill be recorded for a precedent, and many an error by the same example Will rush into the state ".

In this connection Their Lordships were referred to an American case i.e. *Thomas* v. *Collins* 323 U.S. 516: in one of the judgments it was said (at page 543):—

" The restraint is not small when it is considered what was restrained. The right is a national right, federally guaranteed. There is some modicum of freedom of thought, speech and assembly which all citizens of the Republic may exercise throughout its length and breadth, which no State, nor all together, not the Nation itself, can prohibit, restrain or impede. If the restraint were smaller than it is, it is from petty tyrannies that large ones take root and grow. This fact can be no more plain than when they are imposed on the most basic rights of all. Seedlings planted in that soil grow great and, growing, break down the foundations of liberty."

It is next necessary to consider whether the appellants are in any way protected by an application of the provisions contained either in ss (2)(*a*) or in ss (2)(*b*). As regards (*a*) it was not suggested that the " condemned " newspapers were being published in disregard of any provision of any law. Public safety as provided for by any law was not in question: nor was public order: nor was public morality. The publication of the newspapers in question did not contravene any law of the State making provision in respect of any of the matters referred to in (*a*). Indeed publication did not contravene any law. As regards (*b*) it was not shown that the prohibition imposed by the Circular was warranted by any law that imposed " restrictions upon public officers ". In agreement with the Court of Appeal their Lordships consider that the " law " which is referred to in section 14(2) is a law which itself makes provision that (as in *b*) " imposes restrictions upon public officers ". Reliance was placed upon the provisions of section 42 of the 1961 Constitution which reads:—

" (1) Subject to the provisions of this Order, where responsibility for the administration of a department of government has been assigned to any Minister he shall exercise general direction and control over that department; and, subject as aforesaid and to such direction and control, the department shall be under the supervision of a Permanent Secretary appointed in accordance with the provisions of section 85 of this Order.

(2) A Permanent Secretary may be responsible for the supervision of more than one department of government.

(3) The Prime Minister shall be responsible for assigning departments of government to Permanent Secretaries.

(4) The references to Permanent Secretaries in this section shall be construed as if they included references to the Attorney General."

That provision which in general terms gives power to a Minister to exercise direction and control over a department and gives power to a Permanent Secretary to exercise supervision is not such a law as is contemplated in section 14(2)(*b*). It would naturally be expected that Ministers and Public Officers would have zealous regard for the provisions of the Constitution and any law by the terms of which restrictions could be imposed upon Public Officers i.e. the holders of offices of emolument in the public service would need to be specific.

Reference was also made to the Medical and Health Department (Constitution) Ordinance and in particular to section 17 which gives power to the Governor to make regulations in respect of (*inter alia*) the management and administration of any of the establishments or services forming part of the department and the maintenance of good order in the establishments and services. It was not shown that any such regulations had been made.

If it could have been shown that the Circular was issued under the authority of a law imposing restrictions upon public officers the final words of section 14 would have called for consideration. The respondent could still have succeeded if the issue of the Circular was shown " not to be reasonably justifiable in a democratic society ". Both Courts in Malta were prepared to hold that the issue of the Circular could not be considered to be reasonably justifiable in a democratic society. Their Lordships see no reason to disagree with that view.

Mention must be made of another submission which was advanced on behalf of the appellants. It was said that the provisions of the Constitution must neither be enforced too literally nor be enforced in disregard of the reasonable rights of others. In this connection reference was made to section 11(1) which provides that " Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises ". So it was urged that the respondent had no right of entry for his newspaper to departmental premises: and further that an employer should not be denied his right to control what goes on in his own premises. In regard to these contentions it is to be observed that the respondent claimed no right of entry into any premises. His case was that the natural consequence of prohibiting those who, for their part, might wish to have his newspaper in their possession, from so having it, was that his freedom of expression was being hindered. His case involves no challenge to the reasonable rights of control of an employer or to the reasonable rights of control of an occupier of premises.

The reality of the circumstances surrounding the issue of the Circular must not be clouded. The appellants were undoubtedly entitled to issue reasonable orders to regulate the conduct of Government employees during their working hours. The prohibition that they imposed went far beyond the scope of any such reasonable orders. It was discriminatory. It imposed a partial ban upon the possession of certain newspapers only. Furthermore the departmental premises of the Medical and Health Department were not to be regarded as the private premises of some private employer and it was specially incumbent upon the appellants, having regard to their public positions and responsibilities, to honour the spirit of the Constitution. If section 5 of the Constitution be regarded as possibly giving a blessing to such interpretations of the later sections in Part II as will not allow literalism to run riot but will give common sense its due, their Lordships consider that on the basis of such interpretations and on a rational and restrained view the provisions of section 14 were contravened in relation to the respondent.

As they take this view of the matter their Lordships could be absolved from considering section 13 but as the judgment of Her Majesty's Civil Court First Hall was mainly based on the view that the provisions of that section had been contravened and as the Court of Appeal also considered that section 13 had been contravened their Lordships deem it desirable to express certain conclusions. In regard to section 13(1) their Lordships do not consider that the respondent was deprived of his " full liberty of conscience ". It was submitted that the phrase " liberty of conscience " comprised more than liberty of thought or liberty to hold a faith or belief: it was said that the phrase extended to cover liberty to express beliefs and other similar liberties to make manifest such thoughts, faiths and beliefs as might be held. While there may well be some measure of overlap between the sections in Part II with the result that two sections might be contravened by one and the same act it is to be remembered that section 14 is a section that is specially related to freedom of expression. It is also to be remembered that in section 14 there is a sub-section (ss 2) which contains certain limitations whereas there are no words of limitation in section 13.

In their Lordships' view the respondent was not deprived of his liberty of conscience. Nor do their Lordships consider that he was denied a free exercise of any mode of religious worship. The words " religious worship " are words that are readily understood. Such interference as there was with the respondents freedom did not extend to affect his freedom concerning any mode of religious worship.

In regard to ss (2) of section 13 it was not contended that the respondent was or had been " excluded from holding any office " but it was contended that the issue of the Circular subjected him to a " disability " and that he was so subjected " by reason of his religious profession ". The words " religious profession " are again words that are readily understood. The facts of the case do not in their Lordships' view support the contention that the Circular was issued by reason of any " religious profession " of the respondent. It is true that the newspaper came in for the condemnation of

the Church Authorities and that the Circular issued by the appellants followed upon such condemnation. The respondent was affected by reason of the disfavour of the Church Authorities who condemned the buying or the distributing or the reading of his newspaper as being a mortal sin. When the appellants issued the Circular they were sponsoring the Church Authorities' condemnation and in one rather limited sense they were therefore introducing a religious element or a religious reason. It can perhaps be said that the Circular had an origin of a religious nature. The enquiry must however concern itself first with the question whether the respondent was subjected to any " disability " and if he was then secondly with the question whether that was " by reason of his religious profession ". In the context of the Constitution a person's " religious profession " must be regarded as something apart from and different from a persons political views and faith. The evidence was meagre in regard to the respondents' " religious profession ". Their Lordships do not find it necessary to seek to define the word " disability " in ss 2. They incline to the view that it denotes deprivations of kinds other than a deprivation of freedom of expression. Even if however it could be said that by issuing their Circular the appellants had subjected the respondent to a " disability " their Lordships are not persuaded that within the meaning of the words in section 13(2) he was so subjected " by reason of his religious profession ".

For the reasons earlier stated in this judgment their Lordships are of the opinion that the respondent was entitled to the relief which he claimed and which was granted. Their Lordships will therefore humbly advise Her Majesty that the appeal be dismissed. The appellants must pay the respondent's costs.

In the Privy Council

THE HONOURABLE DR. PAUL BORG OLIVIER AND ANOTHER

v.

THE HONOURABLE DR. ANTON BUTTIGIEG

DELIVERED BY

LORD MORRIS OF BORTH-Y-GEST

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