

Vivian Reddy, Edison Power Gauteng vs. Mail & Guardian

Ruling by the Press Ombudsman

May 17, 2013

This ruling is based on the written submissions of Mr Vivian Reddy and the Mail & Guardian newspaper.

Complaint

Mr Vivian Reddy and the company in which he has an interest, Edison Power Gauteng, complain about a front page story on 18 January 2013 in the Mail & Guardian newspaper headlined *Joburg's R1bn 'gift' to Zuma funder - Evidence suggests smart-meter tender was fixed to benefit Vivian Reddy's firm*. This continued to pages 2 and 3, headlined *Jo'burg's R1b 'present' to Zuma*.

They complain that the:

- story created the impression that they had been corrupt;
- use of the words “gift” and “present” in the headlines was “injurious” to Edison;
- sub-headline was misleading;
- pictures used as well as the caption showed bias and implied nepotism; and
- timing of publication was a deliberate attempt to put it in a bad light.

Analysis

The story, written by Lionell Faul and Sam Sole, was about the award of a R1b tender granted by City Power to Edison Power to install smart electricity meters for the City of Johannesburg. The article focused on the relationship with Reddy, the process related to the award of the tender, allegations about the tender process (score tampering) and pricing anomalies, among others. The story were accompanied by a brief account about Mr Sicelo Xulu who apparently played a role in the process of the award of the tender, and a brief article about smart meters.

Impression of corruption

Although Reddy presented this part of at the end of his complaint, I am entertaining it first as it has a bearing on the rest of the matter.

One of the instances in the story where corruption was implied read: “Evidence suggests that a hotly contested smart electricity meter tender...was manipulated to favour Vivian Reddy, one of President Jacob Zuma’s key benefactors, information obtained by the Mail & Guardian suggests.”

Reddy complains that the story created the impression that he and Edison had been corrupt. He says that it was well-known that in the December 2013 ANC elections the Gauteng region

did not support President Zuma's re-election. Therefore, the story "insinuates that the complainants were awarded the contract solely because of their relationship with the president".

He adds the statement in the story that said "no wrong doing can be attributed to Reddy or Edison" was not a mitigating factor, as the impression of corruption was created and maintained throughout the article. He argues that all references to the "relationship" between himself and Zuma "was done solely to sustain the impression of corruption in the award of the tender".

The M&G says that Reddy did not complain about the decision-making process, "despite the bulk of the article comprising an exposition of the evidence which suggests the tender was fixed".

It adds: "What the article suggests is that, on the available evidence, it is reasonable to raise a suspicion that the explanation for why the tender award process played out this way might be found in the relationship between Mr Reddy and Mr Zuma, or officials' own perceptions of that relationship."

The newspaper also argues that the story did not allege corruption on Reddy's part: "There is no evidence for such a claim, and the story makes the point explicitly." And also: "There may be several explanations for what allegedly took place, including that officials were off their own trying to curry favour with the perceived interests of powerful people without being prompted by anyone to do so. This is precisely the danger exacerbated by the quoted comments attributed to the President." (This statement refers to Zuma's reported assertion the week before that "wise" businessmen who supported the ANC could expect that everything they touch "will multiply".)

After careful study of the story, and of the arguments on both sides, I have to agree with the newspaper. This is why:

- Reddy does not dispute a single fact in the story itself – he merely complains in general that the article implied that he was corrupt;
- While the story certainly stated that the tender was fixed, and that it was manipulated to favour Reddy (providing some possible evidence to this effect), the journalists on no account put the blame on Reddy for that situation – instead, they specifically stated that there was no evidence suggesting foul play on Reddy's or Edison's part; and
- There indeed may have been several other explanations for the awarding of the tender.

'Gift', 'present'

The headline read: *Joburg's R1bn 'gift' to Zuma funder.*

Reddy says that the use of the word "gift" in the headline was "injurious" to the company. He complains that these words created the impression that Edison will be paid R1b for nothing in return. He states: "The word gift is defined as something voluntarily transferred by one person to another without compensation."

The word "present" in the main article and in its headline is also the subject of complaint for a similar reason.

The M&G says that the:

- headlines were not misleading and that they should be understood within context;
- word “gift” was put in inverted commas – it was therefore not stated as fact, but as an allegation;
- this rather suggested that Edison was the beneficiary of a series of questionable decisions taken by City Power and the City of Johannesburg, “despite the merits of several of the other bidders as evidenced and explained in the article”; and
- story did not say or imply that Edison would be paid R1b for nothing in return – instead, the story reported that “the three-year contract [is] to deliver hundreds of thousands of so-called smart meters”.

Reddy replies that:

- if the word “gift” was put in inverted commas to show that it was an allegation, then from whom did this allegation come? He argues that the allegation came from the newspaper itself; and
- Zuma had not awarded the tender. He points out that the newspaper itself admitted to this. Therefore: “If the President was not involved in the award of the tender then the headline clearly does not relate to the article either.”

Here are my considerations:

- Reddy does not take issue with the veracity of the statement that he was a Zuma funder;
- Like the story, the headline did not put the blame for a possible corrupt tender at Reddy’s door (but rather to the institution that awarded the tender);
- The word in question was not meant to convey that Edison will do nothing in return – the story made it clear that Edison would need to provide thousands of smart electricity meters; and
- the same rationale applies to the use of the word “present” in the other headline.

Sub-headline misleading

The sub-headline stated: *Evidence suggests smart-meter tender was fixed to benefit Vivian Reddy’s firm.*

Reddy complains that the sub-heading was included “to direct the public mind to the foregone conclusion” the newspaper had already made. It was done to manipulate the readers “to think in the manner the respondent directed”.

The M&G denies that the sub-headline was misleading and states that it must be understood within context. It argues that the use of the word “suggests” was intended to invite the reader to consider the evidence which the story presented in detail. It signified that the claims presented in the sub-head (and in the headline) were allegations “and that the reader is invited to make an informed judgement, based on the credibility of the information gathered in the story, as to whether or not the reader believes the allegations to be true”.

The same arguments that I have used in the complaint about the headline apply here.

Pictures, caption: bias, nepotism

The main picture on the front page showed Pres Jacob Zuma hugging Reddy's daughter on the occasion of her 30th birthday (in 2009), while Reddy himself stood next to the President. The caption said: "Family friend: President Jacob Zuma hugs Yavini Reddy on her 30th birthday while her father Vivian Reddy looks on."

Reddy says that the front page picture was about a private family event. He complains that it was used to create the impression that Zuma "influenced the award of the contract in favour of the complainants". He adds that the newspaper had a duty to preserve the privacy of his daughter, and argues that the use of the picture as well as the captions in the present context showed bias on the side of the M&G. He says this was a deliberate attempt to incite the readers to conclude that the President awarded the tender merely as a result of his relationship with Reddy.

He adds that the use of the second picture accompanying the main article was "a deliberate attempt to incite the readers to conclude that President Zuma awarded the tender merely as a result of his relationship with the complainants".

That picture portrayed Zuma and Reddy in a jovial mood.

The M&G says that:

- the pictures were in the public sphere and it was therefore entitled to publish as it considered necessary in the circumstances. The picture was taken by a photographer working for another media company, and the pictures were part of a syndication arrangement with the newspaper;
- the relationship between Reddy and Zuma was relevant to the contents of the story itself, as explained in the article. This relationship was more than a family friendship – it was also one of financial dependency by Zuma upon Reddy;
- Reddy was present and had just made a substantial contribution to the ANC, when Zuma publicly said that such benefactors could expect benefits in return. The newspaper says: "These relationships and accompanying attitudes raise serious questions about the tender award"; and
- the story did not claim that Zuma awarded the tender to Edison. Instead, the newspaper presented "the known facts about the tender award, against the backdrop of what is known about the relationships between (and attitudes of) several of the players, a nexus which happens to have – at its centre – the President of the country and the ANC, Mr Zuma."

Reddy replies that he is adamant that Zuma was not involved in the awarding of the contract – which made the pictures of the President irrelevant.

Firstly, the issue of privacy does not arise as the pictures were in the public domain. The use of the pictures showed only the close relationship between Reddy and Zuma – and nothing more.

Secondly, the assertion that the picture was used to suggest that Zuma awarded the tender to Reddy was not based on a reasonable understanding of the story (see my arguments under the first sub-headline above).

Timing of publication

Reddy complains that the newspaper “chose deliberately and manipulatively to only publish the article after the alleged statements on the 11th January 2013 of President Zuma regarding businesses that support the ANC will see their businesses prosper.”

I am ignoring the arguments from both sides on this matter, as the timing of the publication of a story is not governed by the Code.

Finding

The complaint is **dismissed** in its entirety.

Appeal

Our Complaints Procedures lay down that within seven working days of receipt of this decision, either party may apply for leave to appeal to the Chairman of the SA Press Adjudication Panel, Judge Bernard Ngoepe, fully setting out the grounds of appeal. He can be contacted at Khanyim@ombudsman.org.za.

Johan Retief
Press Ombudsman