

(2014) 07 AP CK 0074

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17389 of 2014

Aamoda Broadcasting Company Private Limited

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 25-07-2014

Acts Referred:

Cable Television Networks (Regulation) Act, 1995 — Section 11, 16, 19, 2(a), 20
Constitution of India, 1950 — Article 14, 19(1)(a), 19(2), 38(2)

Citation : (2014) 6 ALD 41 : (2014) 5 ALT 210

Hon'ble Judges : Vilas V. Afzulpurkar, J

Bench : Single Bench

Advocate : Posani Venkateswarlu, Advocate for Y. Koteswara Rao, Counsel, Advocate for the Appellant; S. Anil Kumar, Asst. Solicitor General, G.P. and Srilatha Palakurthi, Counsel, Advocate for the Respondent

Judgement

Vilas V. Afzulpurkar, J.—Petitioner is a broadcasting company, which owns a Free-to-Air 24 x 7 News and Current Affairs Telugu Satellite Television Channel viz. ABN Andhra Jyothi. The said channel has stated to have commenced its commercial operations on 15.10.2009 and is stated to have been commanding huge viewership. The cable television viewers of the States of Andhra Pradesh and Telangana have been receiving signals from the petitioner's channel without any interruption through Multi System Operators (MSO's). It is stated that after the bifurcation of the State into the State of Andhra Pradesh and State of Telangana, the MSO's of Telangana area formed into an association, which is arrayed as respondent No. 14 and represented by its President, arrayed as respondent No. 15. It is alleged that on 15.06.2014, respondent No. 14 stopped the telecast of two Telugu news channels viz. ABN Andhra Jyothi as well as TV 9 in the Telangana State. It is alleged that the stoppage of telecast was allegedly on account of deliberate denigration and mockery of Telangana Legislators in its programme. While the Speaker of the Assembly of the State of Telangana is stated to have been authorized by the Assembly to take appropriate action against the channels, the present writ petition does not concern with that part

and the relief sought for is confined to the action of respondents 14 and 15 in stopping the telecast of the petitioner's news channel along with the said other channel from the date aforesaid.

2. Petitioner alleges that such stoppage of airing petitioner's channel amounts to infringement of petitioner's fundamental right to speech and expression under Article 19(1)(a) of the Constitution of India and the said action of respondent Nos. 14 and 15 is stated to be contrary to the Cable Television Networks (Regulation) Act, 1955 (for short "the Act"). It is also contended that the authorized officer designated under the Act is duty bound to act to ensure that such infringement is prevented. Petitioner states that respondents 3 to 13 are authorized officers and they have a statutory duty coupled with power to implement the Act. It is stated that the petitioner made a representation dated 16.06.2014 but having received the said representation, no action is taken either by respondents 1 and 2 or by respondents 3 to 13. It is contended that on account of inaction by respondents 1 to 13 in exercising their power to punish the persons responsible for violating the provisions of the Act, the petitioner continues to suffer injury and hence, the extraordinary jurisdiction of this Court is invoked seeking a Writ of Mandamus against the inaction of respondents 2 to 13 in taking action against respondent Nos. 14 and 15.

3. On 27.06.2014, when this writ petition was heard initially, while the respective Government Pleaders took notice for official respondents, petitioner was permitted to serve notice on respondent Nos. 14 and 15 and file proof of service. Learned Assistant Solicitor General took notice on behalf of respondent No. 1 and the writ petition was listed for further hearing on 03.07.2014. On the said adjourned date, learned Assistant Solicitor General placed before this Court the instructions as well as the response of the Central Government where the Hon'ble Chief Minister of the State of Telangana as well as the Chief Secretary has been separately requested to look into the grievance of the petitioner. Thereafter, the writ petition was adjourned to enable the counsel for respondent Nos. 14 and 15 to file counter. Later, counter affidavit is filed on their behalf. Petitioner has also filed reply and the writ petition was heard finally on 17.07.2014.

4. Learned counsel for the petitioner submits that respondent Nos. 14 and 15 are license holders under the Act and it is contended that under Sections 11 and 16 of the Act for any contravention of the Act, the authorized officer is empowered to seize the equipment used by such cable operator and such operator shall also be punishable. Section 19 of the Act is also relied upon, which empowers the authorized officer to prohibit any cable operator from transmitting or retransmitting any programme or channel, which is not in conformity with the prescribed programme code and/or advertisement code and under Section 20 of the Act, the Central Government is empowered to prohibit operation of cable television network in such areas as it thinks necessary and expedient.

5. Based on the above provisions, learned counsel for the petitioner would

submit that any MSO registered under the Act is bound to receive transmission services from a broadcaster or its authorized agent and retransmit and arrange for simultaneous reception either to multiple subscribers directly or through one or more local cable operators. Learned counsel, therefore, submits that the obligation to retransmit the programme service of broadcaster is bound to be complied by MSO. Learned counsel, further, contends that when the default committed by respondent Nos. 14 and 15 is brought to the notice of the authorized officer, no action is taken by any of respondents 3 to 13. Learned counsel relies upon definition of authorized officer under Section 2(a) of the Act, which means and includes a District Magistrate or a Sub-Divisional Magistrate or a Commissioner of Police and any other officer notified in the official Gazette by the Central Government or the State Government for such local limits of jurisdiction. Learned counsel, therefore, submits that the duty cast upon the authorized officer is not being discharged by respondents 3 to 13 and hence, petitioner seeks a Mandamus as prayed for.

6. Learned counsel also placed strong reliance upon the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 (for short "the Regulations") framed by the Telecom Regulatory Authority of India (TRAI) published in Gazette of India, Extraordinary, Part III, Section 4 dated 30.04.2012. Reliance is placed upon Regulation 3(8) of the Regulations, which mandates that every multi-system operator shall have the capacity to carry a minimum of five hundred channels and also under Regulation 3(10) every multi system operator shall within sixty days of receipt of request from the broadcaster or its authorized agent provide on nondiscriminatory basis, access to its network or convey the reasons for rejection of request if access is denied to such broadcaster. Reliance is also placed upon Regulation 6, which provides that no broadcaster shall disconnect the signals of TV channels of a multi system operator without giving three weeks notice to such multi system operator Regulation 8 authorizes the authority to protect the interest of consumer and monitor and ensure compliance of all regulations in broadcasting and cable sector.

7. Learned counsel for respondent Nos. 14 and 15 has filed a counter affidavit of respondent No. 15 stating that neither respondents 14 and 15 are State nor its instrumentality and as such, the writ petition is not maintainable, as they are private parties. It is also denied that there is any infringement of petitioner's rights by respondents 14 and 15. It is specifically asserted that respondents 14 and 15 owe no Constitutional or contractual or statutory or customary liability towards the petitioner and there, has not been any carriage contract by the petitioner's channel with either of the respondents 14 and 15. It is specifically contended that except for the compulsory carriage of Doordarshan channels and that of the channel operated on behalf of the Parliament, Section 8 of the Act does not impose any other obligation on an MSO. It is also contended that as per the obligation under advertising code and programme code, any programme, which violates Sections 5 and 6 of the Act, cannot be compelled to be

transmitted by the MSO and according to respondents 14 and 15, the petitioner's channel is not being transmitted as it denigrated the people of Telangana to the lowest ebb. It is also contended that the authorized officer is not empowered to compel any MSO to transmit or retransmit programme of a particular channel and under Section 19 of the Act, the authorized officer is only empowered to prohibit any channel, which offends obligations under the Act. It is also stated that there are more than 700 channels being aired but respondents 14 and 15 cannot transmit more than 100 channels with the support of present technology. The Mandamus, sought for, is, therefore, opposed, as there is no obligation cast on respondents 14 and 15.

8. I had heard the learned counsel for the petitioner as well as respondents 14 and 15 apart from the learned Assistant Solicitor General, who placed before the Court the instructions of the Central Government along with a memo conveyed to the State Government and the Chief Secretary, as mentioned above.

9. Reply affidavit, filed by the petitioner, merely reiterates the stand already recorded, as above, with strong reliance on TRAI regulations, referred to above.

10. Learned counsel for the petitioner while reiterating his submissions, as recorded above, has placed reliance upon a decision of the Supreme Court in Secretary, Ministry of Information and Broadcasting, Govt. of India and others Vs. Cricket Association of Bengal and others, , particularly, paras 122, 152 and 193, which are as under:

"122. We therefore, hold as follows:

(i) The airwaves or frequencies are a public property. Their use has to be controlled and regulated by a public authority in the interests of the public and to prevent the invasion of their rights. Since the electronic media involves the use of the airwaves, this factor creates an inbuilt restriction on its use as in the case of any other public property.

(ii) The right to impart and receive information is a species of the right of freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution. A citizen has a fundamental right to use the best means of imparting and receiving information and as such to have an access to telecasting for the purpose. However, this right to have an access to telecasting has limitations on account of the use of the public property, viz., the airwaves involved in the exercise of the right and can be controlled and regulated by the public authority. This limitation imposed by the nature of the public property involved in the use of the electronic media is in addition to the restrictions imposed on the right to freedom of speech and expression under Article 19(2) of the Constitution.

(iii) The Central Government shall take immediate steps to establish an independent autonomous public authority representative of all sections and interest in the society to control and regulate the use of the airwaves.

(iv) Since the matches have been telecast pursuant to the impugned order of the High Court, it is not necessary to decide the correctness of the said order.

(v) The High Court will not apportion between the CAB and the DD the revenues generated by the advertisement, on T.V. during the telecasting of both the series of the cricket matches, viz., the Hero Cup, and the International Cricket Matches played in India from October to December 1994, after hearing the parties on the subject.

...

...

152. The freedom of speech and expression is a right given to every citizen of this country and not merely to a few. No one can exercise his right of speech in such a manner as to violate another man's right of speech. One man's right to speak ends where the other man's right to speak begins. Indeed it may be the duty of the State to ensure that this right is available to all in equal measure and that it is not hijacked by a few to the detriment of the rest. This obligation flows from the preamble to our Constitution, which seeks to secure to all its citizens liberty of thought, expression, belief and worship. State being a product of the Constitution is as much committed to this goal as any citizen of this country. Indeed, this obligation also flows from the injunction in Article 14 that "the State shall not deny to any person equality before the law" and the direction in Article 38(2) to the effect: "the State, shall, in particular - endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people...." Under our Constitutional scheme, the State is not merely under an obligation to respect the fundamental rights guaranteed by Part-III but under an equal obligation to ensure conditions in which those rights can be meaningfully and effectively enjoyed by one and all.

...

...

193. Now, what does this public good mean and signify in the context of the broadcasting medium? In a democracy, people govern themselves and they cannot govern themselves properly unless they are aware - aware of social, political, economic and other issues confronting them. To enable them to make a proper judgment on those issues, they must have the benefit of a large number of opinions on those issues. Right to receive and impart information is implicit in free speech. This plurality of opinions, views and ideas is indispensable for enabling them to make an informed judgment on those issues to know what is their true interest, to make them responsible citizens, to safeguard their rights as also the interests of society and State. All the Constitutional courts of leading democracies, reference to which has been made here to before, have recognized and reiterated this aspect. This is also the view of the European Court of Human Rights. In *Castells v. Spain*, 14 EHRR 445, quoted in 1994 P.L. 524 - the court

held that free political debate is "at the very core of the concept of a democratic society".

It would be evident from the above that the conclusions recorded by the Supreme Court in the paras above are relied upon out of context by the learned counsel for the petitioner.

11. In my view, the points, which arise for consideration in the present writ petition, are:

1. Whether there is any statutory duty and obligation on the part of respondents 3 to 13, in their capacity as authorized officers, to take action against respondents 14 and 15, as complained of by the petitioner?

2. Whether the petitioner can maintain the writ petition against respondents 14 and 15?

POINT No. 1:

12. Sections 11, 16 and 19 of the Act on which the learned counsel for the petitioner placed strong reliance, in my view, do not spell out a statutory duty on the part of the authorized officer. While Sections 11 and 16 deal with violation/contravention of the provisions of the Act by a cable operator entailing seizure of the equipment of the cable operator as well as punishment, Section 19 of the Act provides that the authorized officer is empowered in public interest to prohibit any cable operator from transmitting or retransmitting any programme or channel, which is not in conformity with the programme code/advertisement code and if such programme is likely to disturb the public tranquility. The Mandamus sought for the by the petitioner against the authorized officers is, therefore, not supported by any of the aforesaid provisions nor any other provisions of the Act or any Regulation is brought to the notice of this Court, which compels the authorized officer to take action against the MSO, who declines to transmit or retransmit a channel of any broadcaster.

13. It is significant to notice that even under the Regulations of TRAI, referred to above, on which reliance is placed by the learned counsel for the petitioner, provide under proviso to Regulation 3(10) as under:

"3. General Provisions relating to interconnection.-

...

...

(10) Every multi system operator shall, within sixty days of receipt of request from the broadcaster or its authorized agent or intermediary, provide on non-discriminatory basis, access to its network or convey the reasons for rejection of request if the access is denied to such broadcaster.

...

Provided further that nothing contained in this sub-regulation shall apply in case of a broadcaster who has failed to pay the carriage fee as per the agreement and continue to be in default."

The proviso aforesaid clearly envisages that there must be carriage agreement between the broadcaster and the MSO and only in such case, it is provided that the MSO shall be bound to provide access to network of the broadcaster.

14. In the present case, respondents 14 and 15 specifically state in the counter affidavit that they have no such carriage agreement with the petitioner and as such, have no contractual obligation to discharge in favour of the petitioner (sic broadcaster). The other regulations relied upon by the learned counsel for the petitioner also do not support the proposition canvassed by the learned counsel for the petitioner, as no regulation is brought to the notice of this Court, which compels the MSO to transmit or retransmit the channel of a broadcaster on a compulsory basis.

15. Section 8 of the Act, which provides for compulsory transmission of certain channels, is as follows:

"8. Compulsory transmission of certain channels.-

The Central Government may, by notification in the Official Gazette, specify the names of Doordarshan channels or the channels operated by or on behalf of Parliament, to be mandatorily carried by the cable operators in their cable service and the manner of reception and retransmission of such channels:

Provided that in areas where digital addressable system has not been introduced in accordance with the provisions of sub-section (1) of Section 4A, the notification as regards the prime band is concerned shall be limited to the carriage of two Doordarshan terrestrial channels and one regional language channel of the State in which the network of the cable operator is located."

16. I am, therefore, of the view that the petitioner has failed to establish his entitlement and the point No. 1, therefore, is required to be answered against the petitioner.

POINT No. 2:

17. The second point on which respondents 14 and 15 raised contentions also needs to be considered. Once it is found in the discussion above that there is no statutory duty cast on the authorized officer, the Mandamus sought for by the petitioner only stands confined to respondents 14 and 15. Apart from there being any statutory or contractual obligation, as already held above, the present writ petition against respondents 14 and 15 cannot be maintained, as neither they are State or its instrumentality nor they discharge any statutory duty under public law domain. On this aspect also, therefore, the petitioner cannot succeed as against respondents 14 and 15.

18. In the result, therefore, I am unable to issue Mandamus, as prayed for.

However, this order will not preclude the petitioner from taking up such other legal proceedings for redressal of its grievance in accordance with law.

In view of the discussion above and the points held against the petitioner, the writ petition is dismissed. As a sequel, miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.