

(2007) 04 DEL CK 0041

In the Delhi High Court

Case No : Writ Petition (C) 2215 of 2006

Anuj Kumar Bhati

APPELLANT

Vs

Union of India (UOI) and Etc.

RESPONDENT

Date of Decision : 27-04-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Monopolies and Restrictive Trade Practices Act, 1969 — Section 10, 36A

Citation : (2007) 96 DRJ 103

Hon'ble Judges : Vikramajit Sen, J;J.P. Singh, J

Bench : Division Bench

Advocate : A. Guneshwar, Vipin Kumar and Irshad Ahmad, for the Appellant; Yogesh Malhotra, for R-1 and 2, Rajiv Nayyar Vivek Dholakia and Punita Bhargava for R-3 and Pratibha M. Singh, for R-4, for the Respondent

Judgement

J.P. Singh, J.—This Writ Petition under Article 226 of the Constitution of India is directed against the Quiz Show "Kaun Banega Crorepati-2 (KBC)". Learned Counsel for the Petitioner has contended that after filing of the present Petition the Respondent No. 3 i.e., Star India Private Limited had stopped the show midway but then restarted the same as "KBC-3" and had prayed for stay of its telecast. Initially the Writ Petition was filed for claiming refund of the amount incurred by the Petitioner in his attempts to participate in the quiz, but later on he dropped this claim and pressed the Petition on other grounds in public interest.

2. The sum and substance of the allegations is that Respondent No. 3 and 4 have duped the participants of crores of rupees and are indulging in foul play and are selecting desirable persons to finally contest the show and win the cash or kind prizes. It is pleaded that this malpractice had been highlighted in the news channel of India TV on 26.6.2006 which showed that as per the proclaimed rules issued by Respondent No. 3 & 4, their employees and associates were not allowed to participate but violating their own rules, they repeatedly allowed their employees and associates to participate and at the same time had been prompting common citizens to make more and more telephone calls and answer

more and more questions even more than the prescribed 1500 and ultimately the innocent people lose thousands, if not lacs of rupees with hardly any chance of making it to the so-called round of "Fastest Fingers First" or the so-called "Hot Seat" for final session.

3. Doubts and aspersions have been cast even on the automated computerized questions for the participants. It is submitted that the mere fact that the employees and associates of Respondent No. 3 & 4 are not allowed to participate, shows that the programme is open to abuse and manipulation for ulterior motives and there is no check or control if the staff members and associates become participants or join hands with others to participate in the quiz show and thus crores of public money is being siphoned off clandestinely.

4. Emphasis has been laid on allurements and enticement to goad and entice people to make more and more telephone calls and send more and more SMS messages. It is submitted that the advertisements like "Rs. 2 crores are just a telephone call away" are so alluring that the entire families are doing nothing but trying to reach the so-called "Hot Seat".

5. It is pleaded that MTNL and BSNL and even Airtel telephone lines are public property because air waves and landlines are to be regulated by the Union of India but the Respondents are misusing air waves and landlines for wrongful gain to themselves and wrongful loss to the public, with false inducements and the false promises of chances to win crores as prize money. Learned Counsel for the Petitioner has further submitted that the programme is not only unlawful but is at times scandalous, bordering vulgarity and is a scam.

6. It is vehemently argued that the Respondent No. 3 & 4 and sponsoring companies are playing Fraud are indulging in unfair trade practices, misrepresentation and breach of trust and are committing other offences to the detriment of the public at large.

7. Learned Counsel for the Respondent No. 3 & 4 have contended that the Petitioner has no legal right to file the Petition nor the issues being raised are of any public importance. The disputes relate to the facts. It is argued that the Respondent No. 3 & 4 are not discharging any public duties. They are private bodies, Therefore a Writ cannot be issued. More so, alternative remedy (under MRTP Act) is available to the Petitioner. It is denied that any fraud has been played or any manipulation of the programmes has been done to select desirable persons for reaching the "Fastest Finger First" or the "Hot Seat". There is silence as to how much time and money each contestant may be spending and in all how many contestants are participating. There is, however, no denial that telephone calls and SMS messages are received and 1500 questions are to be answered for winning a chance to participate in the "Fastest Finger First" contest to further enable him/her to climb the "Hot Seat". Detailed reference has been made to the rules of the scheme. Only evasive reply has been given to Paras-10 to 13 in which Respondent No. 3 & 4 were exposed by India TV and newspapers

namely Hindustan (Hindi Edition) and Pioneer (English).

8. It is argued that either the Petitioner should have filed a Civil Suit or should have filed a complaint with Monopolies and Restrictive Trade Practices Commission (MRTP Commission).

9. There is no dispute that the allegations leveled against the Respondents will require an elaborate examination of evidence including a deep probe into the working of the KBC scheme and the alleged loopholes therein which investigation cannot be possible in a Petition under Article 226 of the Constitution of India and in fact the Petitioner himself has prayed that Respondent No. 1 (Union of India) and Respondent No. 2 (Monopolies & Restrictive Trade Practice Commission) should undertake a thorough investigation and should ban the scheme and such quiz shows which are based on unfair trade practices to allure and dupe innocent persons.

10. Provisions of Section 36-A of MRTP Act define unfair trade practice. Sub Para-3 (b) inter alias provides as under:

The conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest.

11. In the present case Respondent No. 3 & 4 and few other companies have sponsored and started this scheme. The main purpose is obviously to sell their products and push business interests.

12. There is something mysterious as to how the actor and actresses who come to participate on behalf of some Charities invariably get hefty prize money as compared to common public participants. This gives some credence to the allegations of the Petitioner that the questions can be manipulated and prizes can be given to desired persons.

13. Considering all the facts and circumstances we are of the view that since this Petition has been entertained and treated as Public Interest Litigation and both the parties have been heard at length and keeping in view the contentions of the parties, importance and gravity of the allegations and larger interest of general public, we deem it fit that the matter should be referred to and investigated by MRTP Commission regarding the finances, chances of winning, element of allurements, misrepresentation, fraud and other related allegations.

14. The Petitioner may amend the Petition accordingly and also include the prayer for compensation. The MRTP Commission may also entertain the Petition u/s 10(a)(iv) of the MRTP Act. The Commission may implead computer experts or any other person or party who may have the know-how for finding out fraud, tricks or manipulations, if any, in the game.

C.M. No. 15694/2006 (Stay)

The Respondents ought not have re-commenced the same show under a new

name i.e. KBC-III, during pendency of the Petition. That amounted to over reaching the court, but since KBC-III has already been stopped and since we have referred the matter for enquiry/investigation by the Hon''ble MRTTP Commission, no interim orders are called for. Application is disposed of in these circumstances.

Nothing said herein will, however, tantamount to expression of opinion on the merits of the case.

No other application survives.

The record be sent immediately to the MRTTP Commission. Copies be retained.

The parties are directed to appear before MRTTP Commission on 8th May, 2007.