

(2000) 09 CAL CK 0074

In the Calcutta High Court

Case No : Tender No. 1285 of 2000 and W.P. No. 2493 of 2000

Bimalendu De and etc.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-09-2000

Acts Referred:

Cable Television Networks (Regulation) Act, 1995 — Section 5
Constitution of India, 1950 — Article 226
West Bengal Gambling and Prize Competitions Act, 1957 — Section 12, 2

Citation : AIR 2001 Cal 30

Hon'ble Judges : Ashok Kumar Mathur, C.J.; Barin Ghosh, J

Bench : Division Bench

Advocate : Dipankar Gupta, S. Pal, S. Banerjee, R.N. Karanjwala, P. Bose, Abhijit Deb and Avantika Keshwani, for the Appellant; Gautam Chakraborty, P.N. Banerjee and Debduitta Sen for Respondent 4, Aninda Mitra, Joydeep Kar and Mousami Bhattacharyya for Respondent 1 and Dinesh Ch. Roy and Asim Kumar Ganguly, for the Respondent

Judgement

Ashok Kumar Mathur, C.J.—This public interest litigation being T. No. 1285 of 2000 as well as the appeal being MAT No. 2731 of 2000 arising out of interim order passed in A.S.T. No. 2879 of 2000 as well as the writ petition being Tender No. 1285 of 2000 involve common question of law, therefore they are being disposed of by the common order. In the public interest litigation filed by Bimalendu De it has been prayed that a writ of Mandamus be issued against the respondent No. 1 from prohibiting transmission of two programmes namely "Kaun Banega Cropati" by Star T.V. and "Jackpot Jeeto" by Zee T.V. In the writ petitions filed by the petitioners almost identical prayers have been made but in addition "Fashion Show" has also been prayed to be prohibited.

2. After filing this public interest litigation a notice was issued and the matter was pending before this Division Bench, this writ petition (AST No. 2879 of 2000) was filed before the Learned Single Judge by Devasmita Sridhar in which it was prayed that a declaration be given that the telecasting of the three television

programmes namely, "fashion Show", "Kaun Banega Crorepati" and "Jackpot Jeeto" is in violation of the provisions of the various statutes, therefore, they are illegal, unconstitutional and it was prayed that a writ of Mandamus be issued against the respondent Nos. 1 and 2, being the Union of India and the State of West Bengal to forthwith pass necessary orders prohibiting telecast of the aforesaid three programmes. This petition was entertained by the learned Single Judge and the learned Single Judge passed the interim order on 14th August, 2000 directing the respondent Nos. 1 and 2 to prohibit telecast of the aforesaid programmes. Aggrieved against this order passed on 14th August, 2000 this appeal was preferred before this Court came to be registered as MAT No. 2731 of 2000. On 17th August, 2000 this Court passed an interim order staying the operation of the order passed by the Learned Single Judge on 14th August, 2000. Hence both the matters are clubbed together and the writ petition which was filed before the learned Single Judge was called from the learned Single Judge and tagged with these matters with the consent of the parties. Hence the writ petition, the appeal arising out of the interim order passed by the learned Single Judge in the writ petition and the public interest litigation are all clubbed together and they are being disposed of by the common order.

3. The main challenge in this public interest litigation and the writ petition was to the telecast of "Kaun Banega Crorepati" programme sponsored by Star T.V. In the public interest litigation filed by the petitioner Star T.V. is not a party and in the writ petition being AST No. 2879 of 2000 also Star T.V. is not a party. However, News Television (India) Limited and Zee Telefilms are parties in both the writ petitions. What shall be effect of non-joinder of parties, we are not entering into this aspect of the controversy. However, the main arguments were raised with regard to transmission of "Kaun Banega Crorepati" programme on Star Plus Channel and all the arguments centred around this programme only. Mr. Dipankar Gupta, Senior Advocate appearing for the appellant. News Television (India) Limited in MAT No. 2731 of 2000 submitted that in effect this public interest litigation and the writ petition being AST No. 2879 of 2000 is nothing but a sponsored writ petition on behalf of the rival/competitor Zee T.V. and therefore this public interest litigation and the other writ petition should not be entertained at the behest of persons for settling their commercial rivalry in this proceeding. An objection to territorial jurisdiction was also raised. Subject to these objections raised by Mr. Gupta we propose to dispose of these matters on merit because both the parties have addressed their arguments on merit.

4. In the public interest litigation filed by Bimalendu De it was alleged that on Star Plus channel there is programme popularly known as "Kaun Banega Crorepati". It is alleged that on or about 3rd July, 2000 Star Plus channel launched this programme which is shown during the prime time between 9.00 p.m. to 10.00 p.m. from Monday to Thursday every week. The said programme was started on and from 3rd July, 2000 and being compared by India's well known Matinee Idole, Sri Amitabh Bachhan. It is alleged that this is nothing but to encourage the instinct of greed in human being and to arouse the desire of

gambling by highlighting the prospect of earning a sum of Rs. 1 crore which is a very amount according to Indian standard. It is alleged that this programme is being advertised in the T.V. as well as in the Press and it depicts that Sri Amitabh Bachhan holds a bunch of currency notes under the headlines "Who wants to be rich?". It is alleged that this concept has been borrowed from a foreign channel known as ABC Network. "Kaun Banega Crorepati" for short is described as KBC (hereinafter referred to as KBC). It is alleged that KBC programme is played on Star Plus and being transmitted by RPG Cable Network and the people all over Calcutta view this programme. It is alleged that the petitioner watched this programme on 18th July, 2000 and he found that an audience of more than 200 persons who were present in the hall where the programme was being held as shown in the television. Thereafter, 10 contestants were shown sitting on the dias in the hall. Mr. Amitabh Bachhan was acting as host of the programme. It is pleaded that the petitioner does not know how the 10 contestants are selected and how the members of the large audience are selected. It is alleged that the programme starts with introduction by Mr. Bachhan and the rules of the game, in that at the first instance fastest finger first round starts. According to this computer screen will give a question with four answers and the contestants have to give answer in correct order or sequence, one who gives fastest and correct reply will be picked up for the hot chair for playing the programme of KBC. After selecting one person out of the ten persons for hot chair, the programme starts with question by Amitabh Bachhan. Every question has four options out of which the contestant sitting on the hot chair has to pick the correct one, if that answer happens to be correct then the incumbent gets a sum of Rs. 1000/-. Likewise the money tree goes from Rs. 1000/- to Rs. 2000/-, Rs. 3000/-, Rs. 4000/- Rs. 5000/- and up to Rs. 10,000/-. In the next round of questions the prize goes from Rs. 20,000/- to Rs. 40,000/-, Rs. 80,000/-, Rs. 1,60,000/- to Rs. 3,20,000/-. In the next round the prizes goes from Rs. 6,40,000/- to 12,50,000/-, 25,00,000/-, Rs. 50,00,000/-and 1,00,00,000/-. There are in all 15 questions. For every question as mentioned above there are four options out of which three are wrong answers and one is mentioned above there are four options out of which three are wrong answers and one is correct. The person who qualifies the first 5 questions gets Rs. 10,000/-, he gets Rs. 3,20,000/- if he qualifies up to the 10th question. If a person crosses the above two limits, he will win at least either Rs. 10,000/- or Rs. 3,20,000/-respectively. Likewise, the process goes on up to Rs. 1,00,00,000/-. The participant is also assisted by three life lines. One is known as 50:50 that is on the request of the participant two wrong answers can be deleted leaving a choice between two answers. He is also given a choice to ask a friend or relative on phone for the correct answer within 30 seconds, then there is also provision for asking for a possible answer to the question by public opinion, that is the audience sitting in the house. The petitioner has illustrated the questions which have been asked to a participant but we need not to go further with regard to questions asked. The basic question which has been agitated by the learned counsel for the petitioner is that such programme encourages the flame of greed and encouraging the gambling

instinct in a human being. Mr, Mitra, learned counsel for the petitioner in the public interest litigation has argued before us that such programmes are polluting the Indian culture and heritage, therefore, Government should stop such kind of programmes. In this connection, learned counsel have also invited our attention to various statutes like Prize Competitions Act, 1955; West Bengal Gambling and Prize Competition Act, 1957; and Public Gambling Act, 1867. Mr. Sarkar, learned counsel for the writ petitioner also supported the arguments put forward by Mr. Mitra and submitted that this programme is nothing but gambling and he invited our attention to the various provisions of statutes referred to above. Learned counsel further submitted that this is in violation of provisions of MRTTP Act and in this connection made reference to Section 36-A as well as Section 36-A(3B) and Section 50 of the Act.

5. The greed is an innate human instinct in the human being, but with knowledge and religion/dharma man controls such basal instinct so as to live in a civilized society. But the fact remains that the tendency to become rich is not new in the present state of affair but it is there right from the beginning, that is at the advent of civilization. Instances can be quoted from mythology or from ancient history or Indian history that this has been an instinct right from the beginning of the civilization with human being to become rich by favour or foul means. In earlier days people used to resort to the valour but in the modern days people resort to skill. The difference is only of the mode but the instinct is the same. This is being exploited by this channel by paying the participants rewards for giving right answer and affording chance to become rich overnight. This is by no stretch of imagination can be said to be gambling. The primary question is whether this programme involve gambling or not. If it is a gambling then whether any of the provisions of the Acts and Rules are applicable or not. As far as general argument that by encouraging the people to become a "Crorepati" overnight may arouse a feeling of greed, but is it prohibited under any law or not. All human being strive to have better living but some resort to a riotous path and some resort to unfair means. But can we say that it is unfair. The question is whether the present programme amounts to gambling or not. Whether the present programme which has been mentioned above attracts any of the provisions which prohibit it or not. If the programme does not amount to gambling then just because that it encourages the feeling of becoming rich overnight cannot be a ground to stop its telecast. Greediness cannot be frown upon by the courts to be held illegal and to prohibit from being displayed in the television.

6. The detail of the programme which had been given above that the candidate is asked question and he is given four options out of which he has to pick the correct answer and if he keeps on answering questions correctly then he keeps on receiving awards from one step to the other as mentioned above and if the participant answers the 15th question by giving right answers to all previous questions he earns a sum of Rs. 1,00,00,000/-Mr. Mitra, learned counsel for the petitioner submitted that it is true that no stake is involved but the moment he

answers one question and earns Rs. 1000/- he stakes that for the second question and likewise, this amounts to gambling. The submission of the learned counsels for the petitioner that because the participant answers one question correctly and earns that amount and he stakes that amount for answering the second question amounts to gambling, the submission is totally devoid of merit. Picking the correct answers from four options given is a plain and simple question of skill and not gambling. Gambling has been defined in the West Bengal Gambling and Prize Competitions Act, 1957. Section 2(b) defines gaming or gambling which reads as under :

"2(b) "gaming or gambling" includes wagering or betting except wagering or betting upon a horse-race, when such wagering or betting takes place-

(i) in accordance with the terms and conditions of a licence granted by the State Government under this Act,

(ii) on the day on which the race is to be run,

(iii) in an enclosure which the licensee of the race course, on which the race is to be run, has set apart for the purpose under the terms of license granted u/s 2C, in respect of such race course, or in any other place approved by the State Government in this behalf,

(iv) with a licensed book-maker or by means of a totalisator as defined in Section 14 of Bengal Amusements Tax Act, 1922, but does not include a lottery or games of cards like Bridge, Poker, Rummey or Nap."

7. A perusal of the definition of gambling would clearly show that there should be an element of wagering or betting to be called it a gambling, that is totally missing in the present case. People across the country are picked up and ultimately chosen to sit on the hot chair, he has to answer the question out of four options provided for each question, this is a plain and simple case of skill and not chance. Out of four options given one answer is correct and that has to be picked up by the participant. There it depends upon the knowledge and skill of the participant to pick the correct answer. If his answer is wrong he is eased out from the competition with whatever money he has earned by answering correct questions. Such kind of game cannot be said to amount to gambling as defined in the aforesaid Act. In this connection reference may be made to Section 12 which exempts the game of skill, which provides as under :

"12. Exemption of game of skill. Nothing in this chapter shall apply to any game of mere skill where played :

Provided that when such game is played in a public market, fair, carnival or street or in any place where the public may have access, a permit from the Commissioner of Police, in Calcutta or the Delhi Magistrate or the Subdivisional Magistrate elsewhere, shall be obtained first, by the organiser thereof, on payment of such fee as may be prescribed.

Any person contravening the provisions of this section shall be punishable, on conviction with fine not exceeding one hundred rupees or with imprisonment for a term not exceeding one month or with both."

8. Therefore, the Act itself has made a distinction between a game of skill and a game of chance. Wherever, it is a game of skill then the provisions of this Act are not applicable. This squarely answers the contention of Mr. Mitra and Mr. Sarkar. Chapter III of the Act deals with prize competition also. In this connection our attention was invited to Section 19(d) of the Act which reads as under :

"19. Definitions.

(d) "prize competition" means any competition (whether called a cross world price competition, a missing-word prize competition, a pictuae prize competition or any other name whatsoever, whether of a similar nature or not) in which prizes are offered for the solution of any puzzle based upon the building up, arrangement, combination or permutation of letters words or figure."

9. A perusal of Section 19(d) clearly shows that prize competition includes the puzzle based upon the building up, arrangement, combination or permutation of letters, words or figure, that is not here in this game. Here question is put with four options, out of which one is correct answer which has to be picked up by the participant, therefore this cannot be said to be a prize competition. Gambling as such has not been defined in Public Gambling Act, 1867. However, only common gambling house has been defined which reads :

"Common gambling house means any house, walled enclosure, room or place in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person owing, occupying, using or keeping such horse, enclosure, room or place, whether by way of charge for the use of the instruments of gaming or of the house, enclosure, room or place, or otherwise howsoever."

10. Here we are concerned with gaming or gambling which is defined in West Bengal Gambling and Prize Competitions Act, 1957 as reproduced above. The Prize Competitions Act, 1955 only defines the prize distribution which is analogous to Section 19(d) of West Bengal Gambling & Prize Competitions Act, 1957. As already mentioned above that the present programme does not fall in this definition therefore no useful purpose will be served by referring to the provisions of Prize Competitions Act, 1955.

11. Gambling has been defined in Black's Law Dictionary, 6th Edition (Page 679) defines gambling as :

"Gambling. Making a bet. Such occurs when there is a chance for profit if a player is skilful and luckyA play for value against an uncertain event in hope of gaining something of value.....It involves not only chance, but a hope of gaining something beyond the amount played. Gambling consists of a consideration, an element of chance, and a rewardThe element of gambling

are payment of a price for a chance to win a prize.

Game of chance. A game in which chance rather than skill determines the outcome.

Gaming. The practice or act of gambling. An agreement between two or more persons to play together at a game of chance for a stake or wager which is to become the property of the winner, and to which all contribute. The element of gaming are the presence of price or consideration, chance, and prize or reward."

12. As per the dictionary meaning of gambling it is more than apparent that the essential element is wagering or betting. Both these elements wagering and betting is totally missing in the present game. Nothing is at stake of the participant. Once he is picked up for the hot chair he has to answer the questions out of four options given, he does not have to pay or put any stake in the hope of any prize or reward. It is only his skill is put to test and if he is successful in answering, the payment is incidental to that. Essentially it is a game of skill like one organised in the schools. Such programmes are not so lucrative like this programme. During this programme many of the advertisements are being shown is short break and that commercially promotes the goods advertised for. Therefore, it is more of a sales promotion programme rather than a case of gambling. Now a days we are in the cyber space age and electronic media is one of the great source of advertisement apart from the print Media. Therefore, the television channels bring out various programmes for increasing their viewership and at the same time apart from giving them the prize in cash, prize is also given in different forms. Therefore, these are the modern methods of advertisement and such methods cannot be said to involve any gambling by any stretch of imagination. In this connection it may be relevant to mention here the decision of the Apex Court in *Dr. K. R. Lakshmanan Vs. State of Tamil Nadu* and another, , in which the question of horse racing was debated whether it amounts to gambling or not. Their Lordships after examining all the Acts on the subject held that horse racing does not amount to gambling. It is a game of skill. Their Lordships after examining various provisions of Madras Race Club (Acquisition and Transfer of Undertaking) Act, 1986 and Madras City Police Act, 1988 and Tamil Nadu Gambling Act, 1930 answered the question in negative. After dealing various aspects of the matter and by making a reference to the earlier Apex Court decision of *The State of Bombay Vs. R.M.D. Chamarbaugwala*, their Lordships held in paragraph 18 that :

"(i) the competitions where success depends on substantial degree of skill and not "gambling" and (ii) despite there being an element of chance if a game is preponderantly a game of skill it would nevertheless be a game of "mere skill". We, therefore, hold that the expression "mere skill" would mean substantial degree of preponderance of skill."

13. This observation of the Apex Court concludes the whole controversy. As already mentioned above wherever there is a game of skill then it does not

amount to gambling and after authoritative pronouncement of the Apex Court the whole controversy is clinched. Mr. Sarkar, learned counsel for the petitioner made a reference of the provisions of MRTTP Act, for that the simple answer is that he should have approached the appropriate authority under the MRTTP Act instead of approaching this Court. We are not going into the provisions of MRTTP Act as this is beyond the scope of this Court to examine the provisions of MRTTP Act and an authority under the MRTTP Act has been created which is alone competent to decide whether there is a breach of the provisions of MRTTP Act or not nor are there any pleading to this effect in the writ petition.

14. In this connection, Mr. Gupta, learned counsel for the appellant, New Television (India) Limited invited our attention to the Act known as Cable Television network (Regulation) Act, 1995. The Parliament realising that the world is going cyberspace therefore the whole process of cyberspace is to be properly regulated and for that purpose Cable Television Network Regulation Act, 1995 was enacted. This Act has relevant bearing on the subject because this regulate the whole cable transmission. Section 2 deals with the definition and Chapter II deals with the regulation of Cable Television Network. Section 5 empowers the Government to lay down the Programme Code which is relevant for our purposes reads as under :

"5. Programme Code - No person shall transmit or re-transmit through a cable service any programme unless such programme is in conformity with the prescribed programme code."

15. Chapter III deals with seizure and confiscation of certain equipments. Section 4 of Chapter IV deals with offences and penalties. Section 19 under Chapter V under the heading "Miscellaneous" lays down the power to prohibit transmission of certain programmes in public interest. Section 20 lays down the power to prohibit operation of cable television network in public interest. Sections 19 and 20 which has relevant bearing on the subject is quoted as under :

"19. Power to prohibit transmission of certain programmes in public interest :-- Where an officer, not below the rank of a Group "A" officer of the Central Government authorised by the State Government in this behalf, thinks it necessary or expedient so to do in the public interest he may, by order, prohibit any cable operator from transmitting or re-transmitting any particular programme if it is likely to promote, on grounds of religion, race, language, caste or community or any other ground whatsoever, disharmony or feeling of enmity, hatred or ill-will between different religious, racial, linguistic or regional groups or castes or communities or which is likely to disturb the public tranquillity.

20. Power to prohibit operation of cable television network in public interest :-- Where the Central Government think it necessary or expedient so to do in public interest, it may prohibit the operation of any cable television network in such areas as it may, by notification in the Official Gazette, specify in this behalf."

16. Section 22 deals with the power to make Rules.

17. In pursuance of Section 22 Rules have been framed by the Central Government known as Cable Television Network Rules, 1994 under Cable Television Network (Regulation) Ordinance, 1994, this Ordinance of 1994 became the Act of 1995 and therefore these rules are deemed to be under rules of 1995. Rule 6 defines programme code as under :

"6. Programme Code - (1) No programme should be carried in the cable service which;

- (a) Offends against good taste or decency;
 - (b) Contains criticism of friendly countries;
 - (c) Contains attack on religious or communities or visuals or words contemptuous of religious groups or which promote commercial attitude;
 - (d) Contains anything obscene, defamatory, deliberate, false and suggestive innuendos and half truths;
 - (e) Is likely to encourage or incite violence or contains anything against maintenance of law and order which promote anti-national attitudes;
 - (f) Contains anything amounting to contempt of court;
 - (g) Contains aspirations against the integrity of the President and Judiciary;
 - (h) Contains anything affecting the integrity of the Nation;
 - (i) Criticizes, maligns or slanders any individuals in person or certain groups, segments of social, public and moral life of the country;
 - (j) Encourages superstition or blind belief;
 - (k) Denigrates women through the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to women, or is likely to deprave, corrupt or injure the public morality or morals;
 - (l) Denigrates children;
 - (m) Contains visuals or words which reflect a slandering, ironical and snobbish attitude in the portrayal of certain ethnic, linguistic and regional groups;
 - (n) Contravenes the provisions of the Cinematograph Act, 1942.
- (2) The cable operator should strive to carry programmes in his cable service which project women in a positive, leadership role of sobriety, moral and character building qualities.
- (3) Programmes meant for adults should normally be carried in cable service after 11 p.m. and before 6 a.m.
- (4) Care should be taken to ensure that programmes meant for children do not

contain any bad language or explicit scenes of violence.

(5) Programmes unsuitable for children must not be carried in the cable service at times when the largest number of children are viewing."

18. Therefore, in order to regulate such programme the Parliament has already framed Acts and Rules thereunder which lays down a Programme Code and if the Programme Code is not being followed then penal action can be initiated against the delinquent under the provisions of the Act. Therefore, nothing is left to the guessing as the Parliament in their wisdom has laid down Rules regulating the programmes Programme Code. If the programme being exhibited in the television is in violation of that Code then the Government of India can certainly initiate proper action against the organisers. A perusal of the Programme Code A to N show that the present programme does not fall under any such prohibition laid down in that Code. By no stretch of imagination it can be said that the programme is against good taste or decency; or contains criticism of friendly countries; or contains attack on religious or communities or visuals or words contemptuous of religious groups or which promote commercial attitude or contains anything obscene, defamatory, deliberate, false and suggestive innuendous and half truths; or is likely to encourage or incite violence or contains anything against maintenance of law and order which promote anti-national attitudes; or contains anything amounting to contempt of Court; or contains aspirations against the integrity of the President and Judiciary; or contains anything affecting the integrity of the Nation; or criticizes, maligns or slanders any individuals in person or certain groups, segments of social, public and moral life of the country; or encourages superstition or blind belief; or denigrates women through the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to women, or is likely to deprave, corrupt or injure the public morality or morals; or denigrates children; or contains visuals or words which reflect a slandering, ironical and snobbish attitude in the portrayal of certain ethnic, linguistic and regional groups; or contravenes -the provision of the Cinematograph Act, 1942.

19. Therefore the present programme does not violate any of the codes of conduct laid down by the Government. Thus in our humble opinion the present programme does not involve any gambling. It is a case of mere skill which is not prohibited under any of the aforesaid provisions. Likewise, it is not against any of the provisions of the Act of 1995 or Rules of 1994 laying down the programme Code.

20. For the same reasoning the another programme known as "Jackpot Jeeto" of Zee T.V. cannot be said to amount gambling.

21. Though in the writ petition filed by the Devasmita Sridhar a reference has been made about fashion show but no argument was raised on that account therefore we are not going to examine this question in these proceeding more so

organiser of this show is not party before us.

22. Since we have examined the whole case on merit, therefore, we are not entering into the question whether the writ petition entertained by the learned single Judge was correct or not as it was known to the petitioner that a public interest litigation on the same subject has been filed before this Division Bench. It does not involve any violation of any independent right of the petitioner. Be that as it may we did not want to make any further inquiry into this question. Likewise, we need not go into the question whether this public interest litigation should have been entertained at all or not as it is not a bona fide as urged by Mr. Gupta, learned counsel for the appellant, News Television (India) Limited who tried to show that this is nothing but a sponsored petition by its rival competitor, Zee Network. We need not go into the question since we have found no merit in the public interest litigation or in the writ petition filed by Devasmita Sridhar.

23. Hence as a result of the above discussion we are of the opinion that there is no merit in this public interest litigation or the writ petition filed by Devasmita Sirdhar, therefore they are dismissed. The appeal filed by News Television (India) Limited against the interim order passed by the Learned Single Judge on 14th August, 2000 in AST No. 2879 of 2000 is allowed and the order passed by the Learned Single Judge is set aside. There will be no order as to costs.

Barin Ghosh, J.

24. I agree.