

(2013) 05 DEL CK 0309

In the Delhi High Court

Case No : Writ Petition (C) No. 3401 of 2013

Creative Channel Advertising and Marketing P. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-05-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 05 DEL CK 0309

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Arvind Nigam with Ms. Manmeet Arora and Ms. Mansi Sharma, for the Appellant; Rajeev Mehra, ASG with Mr. Neeraj Chaudhary, CGSC, Mr. Ravjyot Singh and Mr. Katrikey Mahajan and Mr. Ashish Virmani, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.—The petitioner company which runs a TV Channel called Manoranjan TV was issued a show cause notice dated 18.4.2013, for telecasting a movie titled as "Topless" on 19.11.2011. The reply given by the petitioner to the said show cause notice was considered by the Inter-Ministerial Committee (IMC) in its meeting held on 24.7.2012 and it was recommended by the said Committee that a penalty prohibiting the telecast of the said channel for one day i.e. 13.1.2013 be imposed on the said channel. Based upon the recommendations made by the IMC, the Competent Authority imposed penalty prohibiting telecast of the said channel on 13.1.2013. Before the show cause notice could be issued to the petitioner for telecasting the movie "Topless" on 19.11.2011, yet another movie called "Ek Chatur Naar" was telecast by the channel on 11.2.2012 at 02.07 hours. A separate show cause notice dated 28.5.2012 was issued to the petitioner in respect of the said telecast and the reply given by the petitioner in this regard was considered by the Committee in its meeting held on 19.12.2012. The Committee recommended prohibition of telecast of the channel "Manoranjan TV" for a period of seven days commencing 25.5.2013 and accepting the said

recommendations, the Competent Authority passed the order dated 17.5.2013, in terms of the said recommendations. The grievance of the petitioner is that another channel called "Enter 10" which had telecasted three objectionable movies namely Musafir, Plan and Aashiq on 29.9.2011, 18.10.2011 and 31.01.2012 respectively at 4.48 AM, 8.01 AM and 8.33 AM respectively was issued one notice dated 27.1.2012 for the first two telecasts and second notice dated 24.4.2012 for the said three telecasts after hearing the said channel on 24.7.2012, the penalty imposed was prohibition of telecast for one day. Yet another channel called "Mahua Channel" had telecasted two objectionable movies namely "Aulaad" and "Ek Aur Kurukshetra" on 19.7.2012 and 30.8.2012 at 13.30 hours (day time) and 13.29 hours (day time) respectively, for which another show cause notice dated 20.9.2012 was issued to the said channel and its telecast was prohibited only for one day. Thus, according to the petitioner, it has been meted out a discriminatory treatment in the matter of penalty since other channels have been inflicted penalty of prohibition of telecast for one day each only whereas the petitioner was imposed penalty of prohibition of telecast for one day for the first violation and prohibition for seven days for the second violation. This is also pointed out by the learned counsel for the petitioner that "Enter 10" had committed as many as three violations as against two violations committed by the petitioner and "Mahua Channel" was at par with the petitioner for committing two violations. The petitioner is, therefore, impugned the order dated 17.5.2013 prohibiting the telecast of the channel "Manoranjan TV" for a period of seven days commencing 25.5.2013. This is also the contention of the learned senior counsel for the petitioner that the defence taken by the channels was common i.e. it was inadvertently that the aforesaid movies came to be telecast on their respective channels.

2. The learned Additional Solicitor General, who appears for the respondent/UOI states that the question of quantum of penalty is decided by the Committee and the Competent Authority, taking into consideration a number of factors, including the contents of the objectionable telecast as well as the day and the time on which the telecast is done. He further submits that the movies by "Enter 10" and "Mahua Channel" were telecast on week days, whereas the objectionable telecast by the petitioner were on Saturday night when the viewership, on account of next day being a holiday, is likely to be much larger particularly by the viewers of vulnerable age.

3. The learned ASG has also informed the Court that there are other channels which were visited with penalty harsher than the penalty imposed upon the petitioner. The "SS Music Channel" which telecasted the trailer of a feature film "Friends with Benefits" with adult content on 13.9.2011 was awarded penalty prohibiting it from transmission and re-transmission of the said channel for 15 days on all the forum throughout India, whereas "FTV" Channel which broadcasted a programme called "Midnight Haute & Designers in High Definition" on 11.9.2011, Chantellie Lingerie, Paris" on 12.9.2011 and "Lingerie" on 15.9.2011 in the garb of showing models showcasing designer and fashion attire,

was imposed penalty of prohibiting the transmission or re-transmission of the said channel throughout India for a period of ten days.

4. Clause 8.2, 8.2.1, 8.2.2, 8.2.3 which deal with violation of terms and conditions on which the permission is granted for telecast of TV channels for transmitting/uplinking the TV channels read as under:

8.2 Subject to the provisions contained in para 8.1 of these guidelines, in the event of a permission holder violating any of the terms and conditions of permission, or any other provisions of the guidelines, the Ministry of Information and Broadcasting shall have the right to impose the following penalties.

8.2.1. In the event of first violation, suspension of the permission of the company and prohibition of broadcast/transmission upto a period of 30 days.

8.2.2 In the event of second violation, suspension of the permission of the company and prohibition of broadcast upto a period of 90 days.

8.2.3 In the event of third violation, revocation of the permission of the company and prohibition of broadcast up to the remaining period of permission.

5. It would thus be seen that even in the case of first violation, the broadcast/transmission of the channel violating terms and conditions of permission can be prohibited for a period upto 30 days. Therefore, it cannot be said that the order imposing penalty prohibiting telecast of the channel "Manoranjan TV" for seven days is beyond the powers of the respondent. This is also not the case of the petitioner that the recommendations made by the Committee or the decision taken by the Competent Authority is actuated by malafide. Also, there is no material on the basis of which it could be said that the penalty imposed upon the petitioner was such which no reasonable person acting upon the material available to him could have imposed. Therefore, the decision taken by the Competent Authority on the recommendation of the Committee cannot be said to be perverse in nature.

6. A perusal of the impugned order would show that on viewing the contents of the film telecasted by the petitioner, it was found that the contents were clearly adult in nature. It is also pointed out by learned ASG that even on receiving the recommendations of the Committee, the Competent Authority also had viewed the CD of the films telecasted by the petitioner and only thereafter the recommendations came to be accepted.

7. In my view, so long as the order passed by the respondent is within their jurisdiction, is not actuated by malafide and is not perverse in nature, it would not be open to this Court, to exercise jurisdiction under Article 226 of the Constitution so as to interfere with the said decision. Merely because a lesser penalty was imposed on some other channel cannot be a ground for challenging the quantum of penalty since, the quantum of penalty would depend upon a number of factors including the contents of the movie which is telecasted by the concerned channel as well the day and time of the broadcast and the content in

my view would be quite important while deciding the quantum of penalty. Be that as it may, merely because the respondents have let off some other channel with a milder penalty, cannot be a ground for treating the petitioner with the same penalty which was imposed upon other channels because doing that would amount to interfering with the discretion vested in the Competent Authority and would also amount to imposing a flat penalty upon all the offending channels, which certainly is not the import of the terms and conditions issued by the Government of India for uplinking of channels on 5.12.2011.

8. Mr. Nigam, the learned senior counsel, states that in fact the Competent Authority has treated all the three violations by "Enter 10" and two violations by "Mahua TV" as first violation which is not correct. In my opinion, each offending telecast constitutes an independent violation meaning thereby that the moment the first offending movies was telecasted, it constituted the first violation within the meaning of the guidelines and the second and third telecast would constitute second and third violation respectively. But nothing really turns on this as far as the present petition is concerned since inflicting milder penalty on "Enter 10" and "Mahua TV" channels does not ipso facto entitles the petitioner also to an identical penalty. For the reasons stated hereinabove, I find no merit in the petition and the same is hereby dismissed. There shall be no orders as to costs.