(2009) 12 J&K CK 0028

In the Jammu And Kashmir High Court

Iqra Films APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 07-12-2009

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (2010) 1 JKJ 939

Hon'ble Judges : Jai Pal Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.P. Singh, J.—Prasar Bharti-Directorate General's decision, refusing approval for acquisition, Iqra Films ""Lufz Lufz Mohabat"" Serial,

conveyed vide Directorate General-Doordarshan's Communication F. No. 27/1327/2007-P-IV dated 02.06.2009, has been questioned in this

Writ Petition.

2. Responding to Prasar Bharti's Advertisement of January 24, 2006, inviting proposals, under Acquisition Category, from reputed Television

Producers/Production Houses, for its Urdu Channel, the Iqra Films, the petitioner, submitted its proposal for acquisition of its programme ""Lufz

Lufz Mohabat"" for evaluation, alongwith a copy of its one episode.

3. The Prasar Bharti (Broadcasting Corporation of India), hereinafter to be referred as 'the Corporation', for short, informed the petitioner in

February, 2007, to submit 52 number of episodes/tapes (DVC Pro-50, meeting technical specifications) for preview purpose.

4. It was after the evaluation of the petitioner's proposal, on preview, that the Corporation informed it as follows:

This is regarding your proposal ""Lufz Lufz Mohabat"" submitted under Acquisition in 2006-07. You are requested to do the following corrections:

1. The title Caption both in English and Urdu has spelling mistakes-need to be re-done.

2. Compering (script) and compare to be changed to have a better impact.

However the above corrections are to be carried out on your own risk and cost and it does not convey the approval of the programme. The

corrected version will be previewed by the Review Committee for a final decision, which will be communicated to you. The tapes may be collected

on any working days from Room No. 303, 3rd floor, Doordarshan Bhawan and submit the same within a week.

5. The petitioner, after making requisite necessary corrections in the programme, sent it back, to the Corporation, which later informed it about its

refusal to approve the programme.

6. Accusing Mr. Fayaz Sheheryar, Deputy Director General, Urdu Channel Prasar Bharti (Broadcasting Corporation of India), New Delhi,

respondent No. 5, of having manipulated the rejection of the petitioner's proposal, violating the terms and conditions of the Policy Guidelines,

governing the grant or otherwise of the approvals for acquisition of programmers, the petitioner has questioned the Corporation's Communication

of June 02, 2009, inter-alia on the ground that the Corporation's decision, questioned in the Writ Petition, was bad-in law, arbitrary and against the

'Prasar Bharti's Guidelines for acquisition of programmes'.

7. Learned Counsel appearing for the petitioner submitted that the Corporation had not put up the corrected version of petitioner's programme, for

its consideration, before the Evaluation-cum-Selection Committee, as required under the Guidelines, and the decision taken by the Corporation, on

the basis of the opinion of a Committee, other than the one, required to examine the programmes, under the Guidelines, was illegal, unwarranted

and violative of the provisions of Article 14 of the Constitution of India, being arbitrary.

8. The petitioner's plea that its programme, after its necessary amendments, as desired by the Corporation, had not been put up before the

Evaluation-cum-Se-lection-Committee, is not disputed by the Corporation, as paragraph Nos. 12 and 14 of its response to the petitioner's Writ

Petition, so reveals.

9. According to the respondent-Corporation, a specially designated Committee, had been constituted, on the instructions of the Chief Executive

Officer, to assess the petitioner's software. The committee so constituted, had not found the petitioner's programme upto the mark, as the video

had been found 'Noisy with varying sound levels and wrong caption in the programme'.

10. The Committee, which according to the Corporation possessed high credentials, had found following six flaws in the software:

i) Title caption being wrong.

ii) Anchor not good,

iii) Anchoring (unnecessarily) long,

iv) Singers ordinary.

v) Spelling mistakes in the credit caption,

vi) Over all presentation dull - programme rejected.

11. Disputing the pleas projected by the petitioner in the Writ Petition, the Corporation, seeks rejection of the Writ Petition, inter alia on the

ground that this Court may not have jurisdiction to entertain the Writ Petition, in that, in terms of the Policy Guidelines, the dispute raised by the

petitioner in the Writ Petition, was required to be adjudicated upon, by the Courts at Delhi alone.

12. Both the learned Counsel relied upon the 'Prasar Bharti's Guidelines for acquisition of programmes', to support their respective submissions.

13. I have considered the submissions of learned Counsel for the parties and gone through the 'Prasar Bharti's Guidelines for acquisition of

programmes', besides the pleadings of the parties.

14. Acquisition of programmes by the Prasar Bharti Directorate General, Doordarshan, for its telecast, is governed by the Guidelines called 'Prasar

Bharti's Guidelines for acquisition of programmes'.

15. According to the Guidelines, the proposals received by the Corporation from eligible television Producer/Production Houses, are required to

be processed by a ""Evaluation-cum-Selection Committee"" which in terms of the scheme may consist of the following:

ADG/DDG in-charge of the acquisition-Chairperson.

DDG (Commercial and Sales)

One ADG/DDG of any other Channel.

Director (commercial and Sales)/Director Marketing

Director of Programmes (Acquisition)-Convener

Director Engineering (Headquarters)

3 experts (including one lady) to be nominated out of the panel(s) of 15 experts approved by DG/Member (Finance)/CEO, Prasar Bharti drawn

from the fields of entertainments, films, media extra for a period of 2 years from the date of the approval. The names of experts for particular

meeting will be finalized by DDG (Acquisition) from the approved panel.

18. The duties of the Evaluation Committee, as indicated in the Guidelines, are as follows:

The Committee shall examine in detail all aspects of proposal and decide upon its suitability and feasibility for Doordarshan.

The Committee shall also view the cassettes of the programme to adjudge its production and technical quality.

The Committee shall also take into account inter alia the shelf life of the programme for deciding the acquisition.

The Committee shall recommend the number of episodes to be acquired in case of programmes of different genres.

In case of the programmes already telecast on Doordarshan or/and other Channel, TRP of the programme, if available, will be given due

Weightage.

The Committee shall ensure that programmes to be acquired conform to the Broadcasting Code of Prasar Bharati.

The Committee would record its recommendations for final approval by the Director General, Doordarshan also indicating reasons for

recommending rejection/acceptance of the proposals. In such cases in which it is not possible to hold the formal meeting of the committee due to

shortage of time, the decision shall be taken by circulation of file/preview of cassettes.

The Evaluation Committee, is required to record its recommendations for rejection/acceptance of the proposals, for its final approval by the

Director General, Doordarshan.

19. The Guidelines, therefore, suggest rejection or acceptance of the proposals by the Director General, Doordarshan, on the recommendations

made in this behalf, by the Evaluation Committee.

20. This does not appear to have been done by the Corporation in the present case, in that, rather than placing the amended/corrected proposals

of the petitioner firm, before the Evaluation Committee, for its views, the petitioner's proposals appear to have been evaluated by a specially

designated committee, on the instructions of Chief Executive Officer. The members of the specially designated Committee, were not those as

indicated in the 'Prasar Bharti's Guidelines for acquisition of programmes'.

21. This position on facts has not been disputed by the learned Counsel appearing for the Corporation.

22. The petitioner's programmes, thus, appear to have been rejected by the Director General, Doordarshan, on the recommendations of a

Committee, which was not contemplated by the Policy Guidelines and in this view of the matter, decision taken by the Director General, on the

recommendations of the Committee, with whatever credentials it may have, other than the one, which was required to consider the petitioner's

proposal, under the Policy Guidelines, becomes arbitrary, being violative of the Policy Guidelines, which the Corporation, in law, was bound to

follow.

23. Respondents' counsel's submission that the Corporation's action of getting the petitioner's programme, evaluated by a specially designated

committee, was in exercise of its power under Clause (N) of the Guidelines, is found untenable, in that, the clause referred to by the learned

Counsel refers to Exemptions, permitting the Doordarshan, to accept any proposal under this scheme, in relaxation of any of these Guidelines, but

decision so taken, must have the approval of the Empowered Committee, consisting of CEO Prasar Bharti, Member Finance and the Director

General Doordarshan. Such a decision becomes operative only if the Empowered Committee's decision was ratified by Prasar Bharti Board.

24. The rejection of the petitioner's programme, is not based on the decision of the aforementioned Empowered Committee/as nothing of this

sought has been averred by the Corporation in its reply to the Writ Petition and nor has it indicated about the ratification of the decision by the

Prasar Bharti Board.

25. In any case, the Exemptions Clause in the Guidelines it the Doordarshan, to accept a programme, which may not otherwise satisfy the

requirements of the Policy Guidelines, justifying relaxation of the conditions thereof.

26. In any case, the Exemptions Clause, relief upon by the learned counsel, cannot be pressed into service to justify rejection of a programme by

the Empowered Committee, in violation of the Policy Guidelines.

27. The petitioner's plea that it has been deprived of its right to seek consideration of the Constituted Committee, under the Policy Guidelines, to

earn its recommendations, for acceptance of its programme, for its telecast, to carry on his profession/calling, is thus found sustainable, in that, the

petitioner's right to seek consideration of the Constituted Committee to earn its recommendation, for telecast of its Serial, has been denied to it, by

the respondents, on the basis of the recommendations of a Committee, which had no competence to assess and comment on the petitioner's work,

in terms of the Policy Guidelines.

28. Prasar Bharti-Directorate General's decision conveyed by Directorate General, Doordarshan vide its Communication No. F. No.

27/1327/2007-P-IV dated 2.06.2009 is, thus, illegal, unwarranted and unjustified, which needs to be set aside.

29. Respondents' plea that this Court has no jurisdiction to entertain the petitioner's Writ Petition to annul the action of the respondents in view of

the provision, in the Policy Guidelines providing that the disputes pertaining to the Policy, were cognizable by the Court at Delhi alone, needs to be

noticed only for its rejection, in that, the jurisdiction vested in this Court to issue prerogative Writs and Orders, inter alia, for the protection of, and

prevention of the violation of, Fundamental, Legal and Statutory Rights, under Article 226 of the Constitution of India and Section 103 of the

Constitution of Jammu and Kashmir, cannot be curtailed by the Policy, framed by the Corporation, which may be relevant, only if the dispute

arising out of the Policy, had to be adjudicated upon by the Courts of ordinary jurisdiction. Respondents' plea is, accordingly, rejected.

30. For all what has been said above, this Petition therefore, succeeds and is, accordingly, allowed quashing Prasar Bharti-Directorate General

Doordarshan's Communication No. F. No. 27/1327/2007-P-IV dated 02.06.2009, And a direction is issued to the Corporation, Directorate

General Doordarshan, and its functionaries, to place the petitioner's Serial ""Lufz Lufz Mohabat"" before the appropriate Committee, under the

Prasar Bharti's Guidelines for acquisition of programmes"" for its recommendations, to the Director General Doordarshan, for passing appropriate

orders thereon, within a period of eight weeks.