

(2020) 08 DEL CK 0156

In the Delhi High Court

Case No : Civil Writ Petition No. 5677 Of 2020, Civil Miscellaneous No. 20540 Of 2020

Mehul Choksi

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 28-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 21

Citation : (2020) 08 DEL CK 0156

Hon'ble Judges : Navin Chawla, J

Bench : Single Bench

Advocate : Vijay Aggarwal, Naman Joshi, Tarun Singla, Mudit Jain, Ashul Aggarwal, Barkha Rastogi, Shailesh Pandey, Kunal Srivastava, Chetan Sharma, Ajay Diggpaul, R.V.Prabhat, Mr.Amit??Gupta, Mr. Sahaj, Amit Gupta, Sahaj Garg, K.R.Diggpaul, Neeraj Kishan Kaul, Dayan Krishnan, Saikrishna Rajagopal, Thomas George, Sidharth Chopra, Tanvi Sinha, Savni Endlaw, Manas Gaur, Namisha Chadha, Chanan Parwani, Pritha Suri

Final Decision : Dismissed

Judgement

Navin Chawla, J

1. This hearing has been held by video conferencing.
2. This petition has been filed praying for the following reliefs:

"A. Issue an appropriate writ directing the Respondent No.1 to take steps to regulate the Respondent Nos. 2 and/or 3 insofar as release of content having possibly prejudicial effect on pending investigations and trials is concerned and ensure that no prejudice is caused to accused persons pending investigation and/or trial;

B. Issue an appropriate writ directing the Respondent Nos. 2 and/or 3 to conduct a pre-screening of the Documentary titled "Bad Boy Billionaires - India" for this Hon'ble Court and the counsels for the Petitioner;

C. Issue an appropriate writ directing the Respondent Nos. 2 and/or 3 to not release the episode/portion of the Documentary "Bad Boy Billionaires - India" insofar as it relates to the Petitioner or is prejudicial to the rights of the Petitioner or mentions the Petitioner during the pendency of investigations and/or trials against the Petitioner, assuming there is any such episode/portion;

D. Alternatively, issue an appropriate writ directing the Respondent Nos. 2 and/or 3 to postpone the release of the episode/portion of the Documentary "Bad Boy Billionaires - India" insofar as it relates to the Petitioner or mentions him or is prejudicial to the Petitioner, assuming there is any such episode/portion, to a date when the investigations and trials against the Petitioner have concluded."

3. As far as prayer 'A' in the petition is concerned, the learned senior counsels appearing for the respondent nos. 2 and 3 have brought to my notice the order dated 08.02.2019 passed by the Division Bench of this Court in WP(C) No.11164/2018 titled Justice for Rights Foundation vs. Union of India and the order dated 09.04.2019 passed by the Division Bench of this Court in WP(C) No.7123/2018 titled Nikhil Bhalla vs. Union of India & Ors., to submit that a similar prayer has earlier been refused by the Division Benches of this Court.

4. The learned ASG has also submitted that the respondents maintain their stand that presently there is no regulation of the content on the OTT platforms by the Ministry of Electronics and Information Technology (MEITY).

5. On the other hand, the learned counsel for the petitioner sought to distinguish the above orders by contending that they were passed in public interest litigations and in any case, did not raise specific issue of infringement of rights under Article 21 of the Constitution of India for a fair trial.

6. I have considered the submissions made by the learned counsels. In Justice for Rights Foundation (supra), the Division Bench of this Court held as under:

"5. Accordingly, it is stated that no general power for regulation or material in the internet platform is available. But if the internet platform is misused for carrying information or material which are not permissible under law then the provisions of the Information Technology Act provides for deterrent action to be taken and as and when complaints are received, the statutory competent authority takes action in the matter.

6. Keeping in view the aforesaid, namely, the provisions of the Information and Technology Act and the Rules framed thereunder and, particularly, the provision provided in the Sections as detailed hereinabove, we are of the considered view that in a public interest litigation, this Court cannot issue a mandamus for framing general guidelines or provisions when there are stringent provisions already in place under the Information and Technology Act. In case the petitioner feels that any of the contents exhibited or transmitted by the organizations detailed in the writ petition violates the statutory provisions of the Information and Technology Act or the Rule and contains prohibitory material as is detailed

therein, the petitioner can very well make a complaint under the aforesaid provision to the statutory authority and we are hopeful that the authorities shall look into the matter.

7. In the facts and circumstances of the case, we see no reason to issue any mandamus for bringing into place any guidelines or statutory regulation for the said purpose when the Information and Technology Act itself provide for enough procedural safeguards for taking action in the event of any prohibited act being undertaken by the broadcasters or organizations in the internet/online platform."

7. The above view was followed by another Division Bench of this Court in Nikhil Bhalla (supra) observing as under:

"3. The claim in the proceedings is identical to what was sought in Justice For Rights(supra). In these circumstances, the Court is of the opinion that a different view cannot be taken."

8. In view of the above orders of the Division Benches of this Court and being bound by the same, prayer 'A' as sought in the present petition, cannot be granted.

9. As far as prayers 'B' to 'D' are concerned, the learned counsel for the petitioner has vehemently argued that the documentary as sought to be released by the respondent nos.2 and 3 would prejudicially affect the trial that is pending against the petitioner. This is vehemently opposed by the learned senior counsels appearing for the respondent nos.2 and 3, who submit that the documentary in question is based on matters which are in any case being widely debated in media and would in no manner prejudice the pending trial.

10. Both sides have further argued on pre-censorship and freedom of speech and expression and the balance to be struck between these concepts.

11. I am intentionally not referring to the various judgments and submissions made by the learned counsels for the parties in this regard as in my opinion, a writ for enforcement of a private right in this manner cannot be maintained. Whether the offending documentary proposed to be telecast by the respondent no. 2 and 3 can cause any prejudice to the petitioner in the pending trial or not and whether it is based on information already in public domain, et cetera, are questions that are best to be left to be determined by a civil court. The remedy of the petitioner, if any, would be in form of a civil suit as what is being alleged by the petitioner is an infringement of his private right by a private body.

12. In view of the above, the present petition is dismissed, leaving it open to the petitioner to take appropriate legal remedies, if so advised, in accordance with law.