

(1996) 04 DEL CK 0022

In the Delhi High Court

Case No : Civil Writ Petition No. 1319 of 1996 and Civil Miscellaneous Appeal No. 2495 of 1996

Prime Channel

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 19-04-1996

Acts Referred:

Citation : (1996) 63 DLT 223 : (1996) 37 DRJ 377

Hon'ble Judges : A.D. Singh, J

Bench : Single Bench

Advocate : F.S. Nariman, Mukul Rohatagi, K.K. Lahiri, Rajiv Nayar, S. Sharma, Pramod Saigal, Samrita Sanghi, Gaurav Kumar, M.C. Sekharan, Savita Sharma, A.H. Desai, Arun Jaitley, Vibha D. Makhija and Suparna Sarna, for the Appellant;

Judgement

Anil Dev Singh, J.

(1) By way of this writ petition, the petitioners challenge the order of the third respondent dated March 26, 1996. By that order, the petitioners were directed to complete the Serial "Chandrakanta" in four episodes and the last episode of the Serial to be telecast on April 21, 1996. The first petitioner claims to be a software production organisation and is owned by the second petitioner. The first respondent is the Union of India in the Ministry of Information & Broadcasting, while the second and the third respondents are the Director General, Doordarshan, and the Controller of Programmes, Office of the Director General, Doordarshan, respectively. On October 21, 1993 the second respondent permitted the first petitioner to telecast the Serial "Chandrakanta" on Sundays at 9.00 A.M. from January 23, 1994. The Serial was approved for 26 episodes to be shown at the aforesaid Prime Time. On April 10, 1994, at the request of the petitioners for rescheduling of the Serial, the Doordarshan approved the telecast of the Serial from March 20, 1994 instead of January 23, 1994. Again at the request of the petitioners, the second respondent by its letter dated February 21, 1994 granted permission to extend the Serial up to 52 episodes, subject,

however, to the right of the Doordarshan to terminate the extension accorded by giving four weeks" notice in case the viewership of the Serial comes down and the Serial does not attract adequate spot-buys. By a letter dated December 1, 1994 the petitioners again asked the Doordarshan for a further extension of the episode. Responding favourably the second respondent on December 22, 1994 extended the telecast of the Serial by another 52 episodes subject to the condition that the petitioners will provide a minimum guarantee of at least Rs.20 lakhs (net) or Rs.23 lakhs (gross) for each episode and adjustments within the remaining episodes. The second respondent also reserved the right to discontinue the Serial by giving four weeks" notice in case the minimum guarantee was not met. On October 16, 1995, the petitioners again applied for sanction of telecast of additional episodes. Thereupon, the third respondent by its letter dated December 1, 1995 extended the telecast of the Serial by 52 more episodes, thus, permitting, telecast of 156 episodes of the Serial "Chandrakanta". The second respondent however, reserved the right to terminate the Serial by giving four weeks" notice in case the viewership of the Serial comes down and/or the Serial fails to attract adequate spot buys. The petitioners were also asked to send synopsis of the future episodes within six weeks of the issue of the letter. The petitioners pursuant to the aforesaid letter of the second respondent submitted the synopsis of additional episodes which were received by the second respondent on February 22, 1996. By a letter dated March 29, 1996, before the petitioner had even completed the telecast of 104 episodes of the Serial, the third respondent directed the petitioners to complete the Serial in the next four episodes and Fixed April 21, 1996 as the date for telecast of its last episode. The said letter records that the commercial spots with the Serial "Chandrakanta" were gradually coming down and the synopsis of the future episodes of the Serial were not received as per the stipulation contained in the letter of the second respondent dated December 1, 1995. It is this letter of the respondent which has been assailed in the writ petition.

(2) Mr. Nariman, learned senior counsel for the petitioners, contended that the impugned action has been taken by the Doordarshan under letter dated December 1, 1995, when it was not open to them to invoke the same as the conditions for termination of the Serial mentioned therein would apply only after the telecast of its 104th episode. Since the telecast of 104th episode has yet to take place the parties are bound by the terms and conditions contained in the letter of December 22, 1994 which governs the telecast of the episode Nos. 53 to 104. It was further canvassed that even if the conditions of termination specified in the letter of December 1, 1995, apply, the impugned action would still fall foul of it as the petitioners were not given four weeks" prior notice in consonance with the said letter. He further submitted that the reasons for terminating the telecast of the Serial did not exist. According to him, the Serial did not fail to attract spot-buys, rather the spot-buys were going up. In so far as the other reason mentioned in the letter of March 29, 1996, for taking the impugned action is concerned, Mr. Nariman pointed out that the synopsis of the future episodes of

the Serial starting from 105th episode to 165th episode were sent to the second respondent who had received the same on February 25, 1996, as per endorsement on the letter of the petitioners dated February 5, 1996. He also argued that the letter dated March 29, 1996, has been issued for extraneous purposes which is evident from the fact that the second respondent had entered into negotiations with the fourth respondent for telecast of the Serial "Shree Krishna" even before the impugned action was taken on March 29, 1996, and on that date itself the second respondent permitted the fourth respondent to start the telecast of the said Serial from April 28, 1996. Learned counsel also emphasised that there was not even a whisper of any complaint against the Serial. Lastly, he submitted that the impugned order was not preceded by a show-cause notice and action has been taken without hearing the petitioners.

(3) On the other hand, learned counsel for the respondents submitted that having entered into the field of contract the petitioner cannot challenge the impugned letter whereby the petitioner has been asked to complete the Serial by April 21, 1996. It was also submitted that the Free Commercial Time consumed per episode had gone down. It was contended that even if the petitioners had not completed the telecast of 104 episodes, the impugned action was justified as the commercial spots with the Serial were gradually coming down. According to the learned counsel this condition not only forms part of the letter dated December 1, 1995 but is also implicit in the letter of the respondent dated December 22, 1994 as this letter is to be read Along with the earlier letter of the respondent dated February 21, 1994 which specifically in corporate the conditions.

(4) I have considered the contentions of the learned counsel for the parties. The undisputed position which emerges from a conjoint reading of the letters of the second respondent dated December 21, 1993; February 21, 1994; December 22, 1994; and December 1, 1995 is that the Serial of the petitioner was approved for telecast of 156 episodes. As per letter dated December 22, 1994, telecast of 104 episodes of the Serial Chandrakanta were approved by the second respondent. It cannot be disputed that when the second respondent by a letter dated December 1, 1995 communicated the approval for telecast of 52 more episodes of the Serial to the first petitioner, it had yet to complete the telecast of 104 episodes. Therefore, up to the telecast of 104 episodes the parties would be governed by letter dated December 22, 1994. At this stage it will be convenient to refer to the said letter which reads as follows:-

"REF.NO.22/3/KAM./85-P5Dated: 22.12.94.

MS.Nirja Guleri,

M/S.Prime Channel,

B-165,Oshiwara Tarapore Gardens,

NEW Link Road,

ANDHERI(West),
Bombay-400058..

Madam,

KINDLY refer to your letter dated 1.12.94 regarding extension of your Serial "Chandra Kanta."

YOUR request for extension of 52 episodes is approved subject to condition that you will provide a minimum guarantee of atleast Rs.20 lakhs (net) or Rs.23 lakhs gross for each episodes, and the other conditions regarding adjustments within the remaining episodes.

YOUR request for extension of 52 weeks is however, subject to Doordarshan reserving the right to discontinue the Serial without a notice of four weeks in case the minimum guarantee is not met.

PLEASE acknowledge and confirm if the above two conditions are acceptable.

Yours faithfully,

SD/-

(SOMIONChoudhury)

CHIEF Producer

FOR Director General "

(5) As is evident from the letter of December 22, 1994, it approved the extension of the Serial by further 52 episodes. It may be mentioned that earlier the Serial was approved for 26 episodes ,then it was extended by another 26 episodes by letter of the Doordarshan dated February 21, 1994, and the letter of December 22, 1994 extended it by another 52 episodes. In the circumstances, Therefore, the letter dated December 22, 1994, is not to be read in isolation but in conjunction with the letter of the second respondent dated February 21, 1994, which reads as follows :-

"REF.NO.22/3/KAM/85-P5-VOL.LLDated 21.02.94

MS.Nirja Guleri,

PRODUCER/DIRECTOR,

, Tarapore Gardens,

NEW Link Road,

ANDHERI(West),

BOMBAY-400058.

DEAR Madam ,

THIS has reference to your letter regarding the telecast of Tv Serial Chandra Kanta/Chandra Kanta Santiti. We have in principle agreed to grant permission to extend your Serial up to 52 episodes. However, Doordarshan would have the right to terminate the extension accorded by giving 4 weeks notice in case :

1.Viewership of the Serial comes down.

2.If the Serial would not attract adequate spot-buys. The Serial currently has been slotted from the 20th March 1994 at 9 a.m. The decision regarding category and the telecast fee has already been communicated to you.

YOU are requested to come on the air from the 20th March 1994 as discussed earlier.

SD/-

(N.G.SRINIVASA)

Controller Of PROGS.

For Director General. "

(6) The two conditions mentioned in the aforesaid letter of February 21, 1994, for exercise of the right to terminate are not superseded by the letter of the second respondent dated December 22, 1994. The condition of providing minimum guarantee of atleast Rs.20 lakhs (net) and Rs.23 lakhs (gross) for each episode is in addition to the conditions mentioned in the letter of February 21, 1994. There is nothing to show that while granting approval to the extension of the Serial by letter dated December 1, 1995, the conditions mentioned in the letter of December 22, 1994, of the Doordarshan were given up. Thus, it is obvious that the second respondent could exercise its right to terminate the telecast of the Serial in the event of the Serial not attracting adequate spot-buys or in case of the viewership of the Serial going down. The aforesaid two conditions are also reiterated in the letter of the second respondent dated December 1, 1995. Whether action is taken under the letter of December 1, 1995, or the letter of December 22, 1994, read with the letter dated February 21, 1994 of the second respondent the telecast of the Serial could be discontinued by the second respondent on the ground of the Serial failing to attract adequate spot-buys. This being the position it cannot be said that the aforesaid reason for terminating the Serial was outside the conditions laid down in the letter dated December 22, 1994.

(7) The other question whether the commercial spots with the Serial Chandrakanta have gradually come down or not is a matter which lies in the domain of the second respondent and the court will not sit in judgment over the assessment made by it (second respondent). The judicial power of review is not concerned with merits of the decision but it is the decision making process which is open to scrutiny. It is not the function of the court to substitute its judgment for that of the administrative authority.

(8) In so far as the contention of the learned counsel for the petitioners that the petitioners were not given an opportunity of hearing before the impugned action was taken against them is concerned, I am of the view that the petitioners having entered into the field of contract cannot be allowed to challenge the action unless they are able to show that the Doordarshan had taken irrational and irrelevant factors into consideration in arriving at its decision, or the same was arbitrary, or the decision was not informed by reason and not guided by public interest.

(9) In *Radhakrishna Agarwal and Others Vs. State of Bihar and Others*, , it was held that after the State or its agents have entered into the field of ordinary contract the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines rights and obligations of the parties inter se. However, in *LIC of India and Another Vs. Consumer Education and Research center and Others*, , the Supreme Court has taken the view that even in the sphere of contractual relations the State, its instrumentality, public authorities or those whose acts bear insignia of public element, are enjoined to act in a manner that is fair, just and equitable, and in a manner that is reasonable, relevant and germane to effectuate the purpose for public good and in general public interest. The Supreme Court has gone only thus far and has not held that in every case of a dispute the court sitting in writ jurisdiction should determine the same whether there has been a breach of a contract or not by the State or its instrumentality. I am also not impressed by the argument advanced on behalf of the petitioners that the impugned decision of the Doordarshan was arbitrary or was based on irrational or irrelevant ground as I do not find the same to be suffering from the said maladies.

(10) In the circumstances, Therefore, the writ petition has no merit and the same is dismissed.

(11) Before parting with the judgment it is necessary to note that Mr. Ashok Desai,. learned senior counsel for the fourth respondent has admitted that the fourth respondent would also be bound by the condition that the telecast of the Serial "Shri Krishna" could be terminated if viewership of the Serial comes down or if the Serial would not attract adequate spot-buys. Dasti.