
(2013) 05 DEL CK 0033

In the Delhi High Court

Case No : Writ Petition (C) 3402 of 2013

Viacom 18 Media Private Ltd. and Another

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 24-05-2013

Acts Referred:

Cable Television Networks (Regulation) Act, 1995 — Section 20, 20(2)
Constitution of India, 1950 — Article 19(1)(a)

Citation : (2013) 6 AD 372 : (2013) 201 DLT 45

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

Bench : Single Bench

Advocate : A.M. Singhvi and Mr. Neeraj Kishan Kaul, s with Mr. Ameet Naik, Mr. Harshvardhan Jha, Mr. Abhishek Kale and Ms. Anushree, for the Appellant; A.S. Chandhiok, ASG with Mr. Ruchir Mishra, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.—The programme "Stand Up Club" was telecast by the channel of the petitioner company on 26.5.2012 at 20-52 hours. Alleging that the said programme carried obscene dialogues and vulgar words besides being derogatory to women, a show cause notice was issued to the petitioner on 22.6.2012 requiring it to show cause why action as per the provisions of Down-Linking Guidelines, the terms and conditions of the permission granted and the provisions of Section 20 of the Cable Act should not be taken against it.

On 4.7.2012, another programme called "Popcorn" was broadcast by the said channel on 4.7.2012 at 07.57 hours. Alleging that the said programme appeared to be vulgar, obscene and offending to good taste and did not appear to be suitable for any restricted public exhibition, another show cause notice dated 10.10.2012 was issued to the petitioner. The first show cause notice was replied by the petitioner on 10.7.2012, whereas the second show cause notice was replied on 26.10.2012.

The BCCC is a 13-members body headed by a former Chief Justice of this Court

and includes four eminent persons, four members from any national level statutory commission and four broadcast members. The petitioner addressed a letter to Broadcasting Contents Complaints Council (BCCC) with reference to the first show cause notice received from the respondent. The matter was considered by BCCC in its meeting held on 13.9.2012. The BCCC noticing that the channel had apologized for airing the episode, had submitted that it was a genuine operational mess up and had given an undertaking not to repeat the said episode besides assuring to drop the episode with similar contents, advised the said channel to discontinue the said episode and be cautious about airing the programme having similar contents in future. Vide its letter dated 26.9.2012, BCCC informed the respondent that it had found the contents of the said episode to be objectionable and had advised the petitioner to discontinue the said episode and be cautious about airing the programme with similar contents in future.

2. Vide order dated 17.5.2013, issued with the approval of the Competent Authority, the respondent prohibited transmission or retransmission of the said channel for 10 days on any platform throughout India with effect from 00-01 hours on 25.5.2013 till 00.01 hours on 4.6.2013. Being aggrieved from the said order, the petitioner is before this Court by way of this writ petition.

3. The following three contentions have been raised by the learned senior counsel for the petitioner (i) the respondent did not consult BCCC before imposing penalty, though such consultation was mandatory. (ii) no action was recommended by the BCCC, which is a broad-based professional body against the petitioner and (iii) the penalty imposed upon the petitioner is disproportionate to the violation alleged to have been committed by the channel.

Per contra, the learned Additional Solicitor General submitted that (i) it was not obligatory for the respondent to consult BCCC (ii) the alleged failure to consult BCCC would be of no consequence since the BCCC also came to the conclusion that the contents of the programme telecast by the petitioners were objectionable and (iii) the Court, in exercise of writ jurisdiction, cannot interfere with the penalty imposed by the Competent Authority unless it is shown that the order passed is without jurisdiction, actuated by mala fide or perverse and (iv) the penalty imposed upon the petitioner cannot be said to be disproportionate or excessive.

4. Section 20 of The Cable Television Networks (Regulations) Act, 1995, inter alia, provides that where the Central Government thinks it necessary or expedient so to do in the interest of public order, decency or morality, it may, by order, regulate or prohibit the transmission or retransmission of any channel or programme, and according to the learned ASG, the consultation with BCCC not being a statutory requirement, the failure to acknowledge any such consultation would not vitiate the order passed by the Central Government u/s 20 of the Act. On the other hand, the learned senior counsel for the petitioner drew my attention to a decision of this Court in *Indraprastha People & Anr. vs. UOI* in W.P.

Civil 1200/2011,. In that case, this Court took on record the stand of Union of India that as a stopgap mechanism the self-regulatory body formed by the Indian Broadcasting Foundation named "Broadcasting Consumers Complaint Committee" was recognized by the Union of India as a body competent to take cognizance of and decide complaints pertaining to violation of law by broadcasters, but since the decisions by the said committee would lack the legal foundation to take action, its decisions shall be treated by the Union of India as the foundation to take appropriate action and pass necessary directions as also orders against the offender. He also drew my attention to Clause 10.2 of the Policy Guidelines For Up-linking of Television Channels From India, which, inter alia, provides that while considering renewal of transmission granted for setting up of up-linking of television channels, which is to be granted only if the channel is not found guilty of violating the terms and conditions of the permission including violation of programme and advertisement code on five occasions or more, the question as to what would constitute violation is to be determined in consultation with the established self-regulatory mechanism and BCCC, being the only self-regulating mechanism available to the Government in this regard, it was obligatory to hold a meaningful consultation with BCCC before imposing any penalty upon the channel. With respect to this provision of the guidelines, the learned ASG submitted that the aforesaid consultation would be necessary only while considering the telecast for renewal of the permission and not while considering action u/s 20(2) of the Cable Network Act.

It was also contended by the learned senior counsel for the petitioner that the respondents have referred more than 100 complaints alleging violation of Policy Guidelines for up-linking of BCCC thereby acknowledging the requirement of consultation with it and, therefore, the failure of the respondent to consult BCCC in their case would be clearly discriminatory.

5. It would be seen from a perusal of the provisions of the Cable Television Networks (Regulations) Act, 1995 that consultation with BCCC is not a requirement laid down in the said Act. The constitutionality of Section 20 of the said Act has not been challenged by the petitioner in this writ petition. Therefore, there is no occasion for the Court to go into the question as to whether, in the absence of consultation with an independent body, the said section would be violative of Article 19(1)(a) of the Constitution.

6. It would be seen from a perusal of Clause 10.2 of the Policy Guidelines that the self-regulatory body needs to be consulted only for the purpose of determining whether the contents of any particular telecast constitute a violation of the said Policy Guidelines or not. No such consultation is prescribed while deciding the quantum of penalty to be imposed upon the offending channel. No such requirement is found either in the Policy Guidelines or in the submissions made before this Court in the case of *Indraprastha People & Anr.* (supra). Further, in the case before this Court, the failure of the respondent to consult BCCC would not vitiate the decision taken by the respondent, considering that on

a reference from the petitioner itself and after giving an opportunity of hearing to it, the BCCC itself was of the view that the contents of the programme "Stand Up Club" telecast on 25.5.2012 were objectionable. In fact, this was not the stand of the petitioner before the said Council that the contents of the aforesaid programme were not objectionable at all, the stand taken by it being that a genuine mistake took place in telecasting unedited version of the programme.

7. Even in the case of *Star India versus UOI* in W.P(C) No. 879/2010, despite recording the stand of Union of India to consult a self-regulatory body before holding a channel guilty of any violation and the fact that the Government did not agree to take the views of BCCC and then take a final decision, the Court, took it upon itself to undertake such an exercise and considering the contents of the programme in question, and finding the same to be violative of Rule 6(1) (a) and (d) and (i) of The Cable Television Networks Rules, upheld the warning given to the channel, holding it to be a valid exercise of the statutory power, thereby taking a view that the absence of consultation with BCCC would not, by itself render the action illegal.

8. As regards the contention that no action against the channel was recommended by BCCC, that, in my view, would be of no consequence considering that no one asked the said Council as to what action should be taken by the Government against the channel for telecast of the offending programme. It needs to be kept in mind that the respondent did not ask BCCC as to what action should be taken and therefore there was no occasion for the said Council to make any recommendation in this regard. In any case, as noticed earlier, no consultation with BCCC is necessary as far as quantum of penalty is concerned, that being a discretion vested in the Central Government u/s 20(2) of the Act.

9. In the case before this Court, considering the contents of the telecast in question, neither it can be said that there was no violation of sub section (2) of Section 20, nor can penalty be said to be disproportionate to the violations. Vide its letter dated 16.8.2012, the petitioner apologized for inadvertently airing the aforesaid episode on their channel. As regards, the second telecast, the stand taken by the petitioner was that while approving the contents of the programme, the contents editing team had suggested certain edits and the programme was edited accordingly, but the edits were not seems to be carried out before it was telecasted. There may be cases, where the alleged objectionable contents may be such that more than one views may be possible with respect to their nature. In case penalty is imposed for telecasting contents of this nature, there may be merit in the contention that an independent broad-based body should examine such contents before any penalty is imposed instead of leaving the matter to the judgment of an all-bureaucratic committee such as IMC. But, where the contents are *ex facie* vulgar and obscene, failure to resort to such a consultation would not vitiate the penalty, and in appropriate cases, the Court may itself examine the contents while considering challenge to the penalty.

10. As regards proportionality of the penalty, the Court, in my view, would not be

justified in interfering with the decision taken by the Competent Authority unless it is shown that the penalty imposed is so disproportionate to the violation committed by the channel as would shock the conscience of the Court or is a penalty which no reasonable person would impose for violation of this nature. A perusal of the impugned order would show that CD recording of the offending programmes were previewed by Inter-Ministerial Council(IMC) which found the programme to be very offensive, crossing all limitations of good taste and decency. The following part of the programme "Popcorn" was found objectionable by IMC and the Competent Authority:

..., some members of the programme crew are playing pranks in public. They perform some strange and absurd acts that surprise the common people/passersby, who are completely unaware of the hidden camera capturing the whole scene. During the programme, the channel has shown one of its crew pranksters standing in a shop (looks like a shoe-store). The prankster has held a pair of dummy legs in his hands. Precisely, he is standing opposite to a wall, between the pair of dummy legs, holding its thighs with his hands and making suggestive movements as if having sex. A lady can also be seen in the frame. She is looking at the prankster with complete amazement. Few second later, the prankster changes his location and moves closer to the camera, holding the dummy legs and still making suggestive movements.

...In the next shot, the prankster is seen walking through the parking lot towards the glass wall of a shop, again the dummy legs can be seen in his hands. He stands opposite to the glass wall and repeats his act. A lady, from the other side of the wall, looks at him and gives a surprised and amused look. Then the prankster moves towards the parking lot, stands before the front door of a car and repeats his act again. A man sitting inside the car stares at him in disbelief.

The following were the objectionable contents of the/programme "Stand Up Club":

... the programme shows a man performing an act of stand-up comedy and mouthing vulgar words accompanied by obscene and suggestive gestures and gyration. During his performance, the man is shown uttering the following dialogue in a singsong way:-

Women are stupid and I don't respect them. That's right. I just have sex with them. Show me your genitals, your genitals. Show me your genitals, your genitals.

...while uttering the word "genital" the man is shown gyrating his pelvis in a suggestive and vulgar fashion. The rest of the words and expressions shown to have been rendered by him are:

You are talking about stuff. Why? I would rather see your tittys. I can't have sex with your personality. And I can't put my**** in your college degree. And I can't shave my**** in your childhood dreams. So, why you sharing all this

information with me? It's not sexiest because I am saying it in a song. That's right, now take off your thongs. And show me your genitals, your genitals.

Knock, knock, who is there? It's me, wondering why you are not naked. Knock, knock, who is there? Me again, still wondering why you are not naked. I want to see your bum. I don't care what you say. No, I don't have feelings. Feelings are gay. Something, something in the month of May.***love my penis. Coz it's really big. Girl's brains are much stupider than men's are. So they should always listen to us. "Cause we are smart, Women are only good for three things - cooking, cleaning and vaginas. Show me your genitals, your genitals".

I can have good sex to you. Cause I am really good at sex, I can give good sex to you. "Cause my sex is the best. I have really good sex moves. That I learnt in China. I am a sexual tiger. And I feed on vagina. Grow ! Vagina, Vagina I want to have sex with your vagina, vagina. Vagina. What time is it. It's Vagina.

This is not the case of the petitioner that the programme did not contain the above quoted contents. Considering the highly vulgar and objectionable nature of the contents, it would be difficult to say that the penalty imposed upon the petitioner was wholly disproportionate to the violation or that no reasonable person could have awarded such a penalty for the violation of this nature.

A perusal of the impugned order dated 17.5.2013 would show that IMC had recommended prohibition of transmission or re-transmission of the channel for ten days against each of the violations pointed out by the show cause notice. It had further recommended that two awards could be served concurrently and the channel be taken off for a period of ten days serving both the awards concurrently. Thus two separate penalties imposed by the Government prohibiting transmission for ten days each for both the violations and it was not a composite penalty for both the violations. Considering that the penalty could be prohibition of telecast up to 30 days for first violation as provided in Clause 8.2.1 and upto 90 days in case of a second violation as provided in Clause 8.2.2 of the Policy Guidelines dated 5.12.2011, the penalty imposed upon the petitioner channel cannot be said to be excessive or unreasonable. In fact, even if one were to exclude the second violation i.e. telecast of the programme "Popcorn" from consideration, the penalty, prohibiting the telecast for ten days in respect of the first violation alone cannot be termed to be excessive, harsh or unreasonable.

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.