***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 24th November, 2014.**

\+ **LPA 374/2013, CMs No.8716/2013 (for stay) & 3187/2014 (of respondent for condonation of 132 days delay in filing affidavit)**.

VIACOM 18 MEDIA PRIVATE LTD. & ANR . .... Appellants

Through: Mr. Sidharth Luthra, Sr. Adv. with Mr. Abhishek Malhotra and Mr. Angad Singh Dugal, Advs.

Versus

UNION OF INDIA ..... Respondent

Through: Mr. Sanjay Jain, ASG with Mr. Ruchir Mishra, Ms. Aastha Jain and Mr. Mukesh Kumar Tiwari, Advs.

CORAM :-
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This intra-court appeal impugns the judgment dated 24th May, 2013 of the learned Single Judge of this Court of dismissal of W.P.(C) No.3402/2013 preferred by the appellant.

2. The writ petition from which this appeal arises was filed impugning the order dated 17th May, 2013 of the Ministry of Information & Broadcasting, Government of India, passed in exercise of powers conferred by Section 20(2) and (3) of the Cable Television Networks (Regulation) Act, 1995 read with

paras 8.1 & 8.2 of the guidelines for Up-linking of Television Channels from India, prohibiting the transmission or re-transmission of the television channel 'Comedy Central' of the appellant for ten days on any platform throughout India w.e.f. 00:01 hours on 25th May, 2013 till 00:01 hours on 4th June, 2013. The writ petition came up before the learned Single Judge on 22nd May, 2013 and arguments were heard and judgment reserved on 23rd May, 2013. Vide judgment dated 24th May, 2013 supra the writ petition was dismissed. Resultantly the order dated 17th May, 2013 came into force on 25th May, 2013 and the transmission / re-transmission of the said channel of the appellant stopped.

3. This appeal came up first on 27th May, 2013 when it was ordered to be taken up on 28th May, 2013. On 28th May, 2013, notice of the appeal was issued and vide *ad interim* order, on statement of the Executive Vice President of the appellant that the period of suspension had already been undergone from 25th May, 2013 till then and that the programmes 'Stand Up Club' and 'Popcorn' which had led to the order dated 17th May, 2013 had already been suspended and on his further undertaking that the said programmes will not be telecast in future and that if this appeal is dismissed the appellant would undergo the remaining period of prohibition imposed by the order dated 17th May, 2013, the

operation of the order dated 17th May, 2013 prohibiting transmission and re-transmission of the channel of the appellant was stayed till further orders.

4. The respondent having had no opportunity to file a reply to the writ petition, was permitted to file reply to the appeal and to which rejoinder has been filed. The appellant sought adjournment from time to time. We have heard the counsels for the parties and have also perused the writ file.

5. The Cable Television Networks (Regulation) Act, 1995 hereinafter called 'the Act' was enacted in the light of the haphazard mushrooming of cable television networks all over the country as a result of the availability of signals of foreign television networks via satellites and which was perceived in many quarters as a "cultural invasion" since the programmes available on these satellite channels were predominantly western and totally alien to the Indian culture and way of life. It was also felt that the subscribers of the said cable television networks, the programmers and the cable operators themselves were not aware of their rights, responsibilities and obligations in respect of the quality of service, technical as well as content-wise, use of material protected by copyright, exhibition of uncertified films, protection of subscribers from anti-national broadcasts from sources inimical to our national interest etc. It

was therefore considered necessary to regulate the operation of cable television networks in the country so as to bring about uniformity in their operation.

6. Section 5 of the said Act prohibits the transmission or re-transmission through a cable service of any programme unless such programme is in conformity with the prescribed programme code. Section 19 of the Act provides for prohibition of transmission or re-transmission of any programme or channel, in public interest, if *inter alia* it is not in conformity with the prescribed programme code referred to in Section 5. Section 20 empowers the Central Government to, if it thinks it necessary or expedient so to do in public interest, prohibit the operation of any cable television network in such areas as it may specify, by notification in the Official Gazette. It also empowers the Central Government, if it thinks it necessary or expedient so to do *inter alia* in the interest of public order, decency or morality, to by order, regulate or prohibit the transmission or re-transmission of any channel or programme. Section 20(3) also empowers the Central Government, if it considers that any programme of any channel is not in conformity with the prescribed programme code referred to in Section 5 to by order, regulate or prohibit the transmission or re-transmission of such programme. The programme code referred to in Section 5 is contained in

Rule 6 of the Cable Television Networks Rules, 1994 (the Act was preceded by the Cable Television Networks (Regulation) Ordinance, 1994) and prohibits programmes from being carried in the cable service which *inter alia* offend against good taste or decency, contain anything obscene, denigrate women through the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to women, or is likely to deprave, corrupt or injure the public morality or morals, contravenes the provisions of the Cinematograph Act, 1952 or are not suitable for unrestricted public exhibition.

7. With the advent of technology enabling individual homes and other establishments to, instead of via cable, directly download satellite television channels, the Ministry of Information & Broadcasting, Government of India formulated policy guidelines for downlinking of all satellite television channels downlinked / received / transmitted and re-transmitted in India for public viewing. The same provide that no person / entity shall downlink a channel, which has not been registered by the Ministry under the said guidelines. Accordingly, all persons / entities providing Television Satellite Broadcasting Services (TV Channels) uplinked from other countries to

viewers in India as well as any entity desirous of providing such a Television Satellite Broadcasting Service (TV Channel), receivable in India for public viewership, is required to obtain permission from the Ministry in accordance with the said guidelines known as the Downlinking Guidelines. Clause 5 of the said guidelines prescribing basic conditions / obligations *inter alia* provides that the company permitted to downlink registered channels shall comply *inter alia* with the programme code aforesaid. Clause 6 of the said guidelines prescribing offences and penalties *inter alia* empowers the Ministry of Information & Broadcasting to impose penalty *inter alia* of suspension of the permission / registration granted thereunder and prohibition of broadcast up to a period of 30 days *inter alia* in public interest.

8. The respondent Government on 26th August, 2011 granted permission / approval to the appellant for uplinking / downlinking of an entertainment TV channel subsequently named 'Comedy Central' Channel from India. The said channel is a 24 hours channel dedicated to English language comedy content. As per the base conditions / obligations of such permission / approval, the appellant was bound to follow *inter alia* the programme code prescribed in the Rules aforesaid and on failure to comply with the same,

the permission / approval granted to it was liable to be suspended / cancelled.

9. The respondent Government was of the opinion that the programme 'Stand Up Club' telecast on 26th May, 2012 at 20:52 hours on the channel Comedy Central of the appellant was not suitable for unrestricted public exhibition and children as the same depicted women as a commodity of sex and appeared to deprave, corrupt and injure the public morality and morals. A notice dated 22nd June, 2012 was issued to the appellant to show cause within 15 days from receipt thereof as to why action as per the provisions of 'Downlinking Guidelines', the terms and conditions of the permission granted and the provisions of Section 20 of the Act be not taken against it.

10. Though the appellant submitted a reply to the show cause notice supra *inter alia* to the effect that it will in future comply with the programme code and all the conditions of uplinking / downlinking permission but no representative of the appellant attended the personal hearing granted before the Inter-Ministerial Council (IMC) constituted to look into the cases of violation of programme code; yet another opportunity of hearing was granted in the meeting of the IMC scheduled on 19th December, 2012. The appellant submitted another representation apologizing for the telecast of the

programme aforesaid and describing the episode as unintentional and assured that they had stopped repeat telecast of the programme and will also not air other programmes having similar content and requested the respondent to take a lenient view. It was further stated that most of the contents of the channel are conceived, created and produced out of India and that they had also submitted an apology to the Broadcasting Content Complaint Council (BCCC), a self regulatory body of the television broadcasters.

11. However contrary to the representations aforesaid, the appellant on 4th July, 2012 at 7:57 hours telecast another programme titled 'Popcorn' which also was found by the respondent Government to be vulgar, obscene, offending good taste and not suitable for unrestricted public exhibition and children.

12. Another notice dated 10th October, 2012 to show cause was issued to the appellant and to which also a reply was submitted, not controverting that the same was in violation of programme code but blaming the telecast on a operational mishap and unintentional error and again apologizing and assuring that the creative, content and programming teams had been sensitized to the programme code.

13. During the personal hearing held, the representatives of the appellant again apologized.

14. The IMC however vide order dated 17th May, 2013 supra imposed the punishment aforesaid on the appellant.

15. The challenge by the petitioner in the writ petition from which this appeal arises, before the learned Single Judge was to the competence of the IMC to judge the violation of the programme code without consulting the BCCC which is a broad-based professional body and on the ground that the penalty imposed was disproportionate to the violation committed.

16. The learned Single Judge dismissed the writ petition, finding / observing / holding:-

(i) that consultation with BCCC is not a requirement laid down in the Act; as per Clause 10.2 of the Policy Guidelines for Uplinking of Television Channels from India dated 5th December, 2011, BCCC needs to be consulted only for the purpose of determining whether the contents of any particular telecast constitute a violation of the Policy Guidelines or not and not while deciding the quantum of penalty to be imposed upon the offending channel;

(ii) that even otherwise the failure of the respondent to consult BCCC would not vitiate the decision taken, considering that on a reference by the appellant itself and after giving an opportunity of hearing to it, the BCCC also was of the view that the contents of the programme 'Stand Up Club' telecast on 25th May, 2012 were objectionable; it was not the plea of the appellant also that the contents of the programme were not objectionable; the only plea of the appellant was that a genuine mistake took place in telecasting the unedited version of the programme;

(iii) that this Court in ***Star India Private Limited Vs. Union of India*** 185 (2011) DLT 519 also has held that absence of consultation with BCCC would not by itself render the action illegal;

(iv) that it could also not be said that BCCC had not recommended any action, as its opinion on the said aspect was not sought by anybody;

(v) that in the facts of the present case the appellant itself had admitted that the contents of the programme were in violation of the programme code;

(vi) that where it is a disputed question whether the programme is in violation of the programme code, an independent broad based body as the BCCC should examine the said aspect; 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;

(vii) that the Court 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 such nature; the contents of the two programmes were highly vulgar and objectionable and it was thus difficult to say that the penalty imposed upon the appellant

was wholly disproportionate to the violation or a penalty which no reasonable person could have awarded;

(viii) that though the penalty imposed of prohibition of transmission or re-transmission of channel for each of the two violations was of ten days each but the IMC had further recommended the two to be served concurrently; and,

(ix) that considering that the penalty could be of prohibition of telecast up to 30 days for first violation and up to 90 days for second violation, the penalty imposed upon the petitioner could not be said to be excessive or unreasonable.

17. The senior counsel for the appellant before us has challenged the order of the learned Single Judge only on the aspect of proportionality and has not argued on any of the other aspect. During the hearing, copies of the orders dated 8th January, 2013, 23rd / 25th April, 2013 and 16th January, 2014 of the IMC imposing the penalty of prohibition of transmission or re-transmission of one day only on *Enter10, Mahuaa* Channels and WB TV channels respectively, were handed over and it was argued that the penalty imposed on the appellant of prohibition of transmission / re-transmission of ten days is excessive and too harsh. It was argued that the appellant had

launched / commenced telecast of the said channel only in January, 2012 only and the violations are in the nature of the teething issues and owing to all check systems for ensuring compliance of programme code being till then not in force and hence unintentional. It was thus stated that the penalty imposed on the appellant of ten days be reduced to that of four days already undergone by the appellant. It was yet further contended that the appellant has been treated differently from the others aforesaid on whom penalty only of one day was imposed and it was suggested that in the absence of any guidelines, the penalty imposed for similar contraventions / violations may vary hugely, resulting in discrimination.

18. We however during the hearing enquired from the senior counsel for the appellant whether not, even for similar violations / contraventions the penalty would vary depending upon the time of the telecast of the offending programme and the viewership and popularity of the channel. The senior counsel could not controvert. We then further enquired whether the appellant has placed before this Court the comparative figures to show the viewership / popularity of *Enter10*, *Mahuaa* and WB TV Channels on the basis of penalty imposed on whom, the penalty imposed on the appellant was argued to be disproportionate. Needless to state that the same were not available;

though the senior counsel sought an opportunity to place the same but the same was denied. We may notice that though the senior counsel for the appellant at the close of the hearing also had sought an opportunity to place the viewership figures of the other channels before this Court but inspite of our refusing, the counsel for the appellant on the next day after the judgment had been reserved handed over an affidavit dated 11th November, 2014 in this regard. However the same having been handed over without permission, we refuse to take cognizance of the same. Such pleas of discrimination and / or proportionality cannot be permitted to be taken orally without any foundation being laid therefor in the pleadings and the appellant cannot be permitted to successively improve its case, especially in a matter of this nature.

19. We have ourselves carefully perused the contents of the two programmes to which objection has been taken and having gone through the same, are of the opinion that the matter requires no interference. We in fact hesitate in reproducing the same in this judgment, for the fear of giving further publicity thereto.

20. The licensing regime hitherto in force in the country which required entities desirous of setting up any enterprise to obtain prior permission of

the Government and required the Government to before granting such permission / licence, satisfy itself that all the systems which the said enterprise required to be in place before commencing operation were in place, for the sake of avoiding delays in granting such permissions / licenses, has been replaced by a self regulatory regime where the Government prescribes the systems which an entity proposing to set up an enterprise in a particular field is required to have and though not requiring such entities to obtain prior permission leaves it to them to, if of the view that they have such systems in place, commence the operations. The onus is more on the entrepreneurs, under the new self regulatory regime. Merely because the Government has done away with the system of checks, does not entitle such entrepreneurs to commence an enterprise in a half baked manner. Thus the pleas / contentions as raised before us, of the enterprise of the appellant being at a nascent stage and owing whereto the contraventions / violations occurred, have no place. This is more so in an enterprise of the nature as the present one. The appellant is engaged in a business / enterprise which owing to its mass appeal / base has the potential of influencing the thought, behavior and conduct of the citizens, especially the future citizens of this country. A Division Bench of this Court in ***Court on its own Motion Vs.***

State 146 (2008) DLT 429 held that the duty of the Press as the forth pillar of democracy is immense; it has great power and with it comes the increasing amount of responsibility. An interesting discussion on the said aspect is also to be found in the judgment of a Division Bench of this Court in ***Indraprastha People Vs. Union of India*** MANU/DE/0811/2013. Similarly, in ***Secretary, Ministry of Information and Broadcasting, Govt. of India Vs. Cricket Association of Bengal*** (1995) 2 SCC 161, it was observed that electronic media is a most powerful media, both because of its audio visual impact and its widest reach covering the section of society where print media does not reach and is also more readily accessible to all including children at home. It was further held that there is an inseparable interconnection between freedom of speech and stability of society i.e. stability of a nation-state and that ours is a nascent republic which is yet to achieve the goal of a stable society and we cannot afford to, in the name of freedom of speech allow anything to be beamed in every home without regard to its impact on society.

21. The appellant, in the facts and circumstances aforesaid has clearly not conducted itself responsibly and has abused the faith reposed in it under the self-regulatory regime.

22. The contention of the appellant for reduction in the punishment of being barred from transmission, from that imposed of ten days to that of four days already undergone, is also meritless. The Supreme Court in ***Raj Kapoor Vs. State*** (1980) 1 SCC 43 held that a certificate by a high powered Board of Censors with specialised composition and statutory mandate is not a piece of utter inconsequence; it is relevant material, important in its impact, though not infallible in its verdict; though the Courts are not barred from trying the case because the certificate is not conclusive but the same is to be not brushed aside. It was held that an act of recognition of moral worthiness by a statutory agency is not opinion evidence but an instance or transaction where the fact in issue has been asserted, recognised or affirmed. The principle applies with equal force also to the decision of Inter Ministerial Council imposing the ban of ten days on the appellant.

23. We are in agreement with the reasoning given by the learned Single Judge in this regard and do not find any ground to interfere with the punishment imposed of ban on transmission for ten days. As noticed by the learned Single Judge also the penalty for the first violation under the Policy Guidelines dated 5th December, 2011 supra could be for a period upto 30 days and for the second violation of upto a period of 90 days. It is not in

dispute that the appellant has committed two violations. Though the IMC imposed punishment of ten days for each of the two violations but directed the same to run concurrently. It is not proper for the Courts to interfere with the discretion exercised by a body, entitled to do so, in imposing punishment except when it is arbitrary, irrational, *mala fide* or against any statutory provisions. We do not find so in the present case. The Supreme Court in ***Gopal Singh Vs. State of Uttarakhand*** (2013) 7 SCC 545, though dealing with an offence under Section 324 of the Indian Penal Code, 1860, noticed that there can neither be a straight jacket formula nor a solvable theory in mathematical exactitude. Similarly in ***Rajendra V. Pai Vs. Alex Fernandes*** (2002) 4 SCC 212, though in the context of disciplinary proceedings, it was held that ordinarily the Court does not interfere with the quantum of punishment imposed by a statutory body. The fact, that the appellant while still being proceeded against for the first violation and while still apologizing / seeking pardon for the same, committed a similar second violation is clearly indicative of the appellant having not paid heed to the warning given to it for the first violation, even if unintentional and took the matter of self regulation very lightly. We are of the view that the punishment meted out is proportionate to the violations and justly meets the collective cry of the

society. We may also add that the effect of punishment of prohibition of transmission for ten days has already been diluted by the same being split into four plus six days.

24. We therefore do not find any merit in this appeal and dismiss the same with costs of Rs.20,000/- payable to the respondent within four weeks of today. Though the appellant has already given a statement as recorded in the order dated 28th May, 2013 that in the event of dismissal of the appeal it would undergo the penalty imposed of prohibition for the balance period of six days, we clarify that the said penalty would come into force w.e.f. 00:01 hours of the 26th November, 2014.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

NOVEMBER 24, 2014
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