

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **LPA No. 260/2009 & CM Nos. 7894-95/2009**

NEWSLINE & ORS. Appellants
Through: Mr. Aseem Mehrotra, Advocate.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Dalip Mehra and Mr. Rajiv
Ranjan Mishra, Advocates for
Respondent No. 1.
Mr. Rajeev Sharma, Advocate for
Respondent No. 2.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE NEERAJ KISHAN KAUL

O R D E R

% **26.05.2009**

1. Present appeal arises out of the judgment of the learned single Judge dated 2nd April, 2009.

2. The appellants (original petitioners in the writ petition) were successful in getting empanelled as producers for commissioning of programmes to be telecast on DD-Kashir Channel. The process of empanelment was affected by way of selection on the basis of certain guidelines formulated by Prasar Bharati in consultation with the Ministry of Information and Broadcasting. However, before the contract in question could get executed, certain discrepancies were alleged in the process of empanelment thereby leading to its cancellation. Aggrieved by this cancellation, the appellants filed the petition under Article 226 of the Constitution of India, seeking quashing of the order cancelling the empanelment of the appellants.

The appellants also sought a writ of mandamus seeking specific performance of the contract which was to be executed between the parties.

3. Since the complaints regarding the various irregularities were received by the respondents (the original respondents in the writ petition), a preliminary enquiry was also registered by the CBI. Also the respondent constituted a Fact Finding Committee through Mr. Rajat Bhargava, Additional Director General (Finance), All India Radio. The Fact Finding Authority found various irregularities in selection, and in view thereof, the Prasar Bharati was advised by the Ministry of Information and Broadcasting to quash the empanelment and frame new guidelines for selection. The respondents vide order dated 22nd May, 2007 came to the conclusion that the possibility of bias could not be ruled out, and therefore, scrapped the earlier selection process and directed for inviting fresh proposals in terms of the new policy. It is also relevant to mention here that the panel of the appellants expired on 7th April, 2008. The learned single Judge took note of the fact that there had been significant change of events pursuant to the filing of the petition. Firstly, the guidelines on the basis whereof the empanelment had been done were replaced by new guidelines and secondly, the duration for which the panel was constituted had expired. There had been a change of policy. Since the process of empanelment was found to be extensively rigged with procedural irregularities and the irregularities were further found to be attributable to the flawed guidelines, the same were replaced by

new guidelines. The learned single Judge thus held that the decision to scrap the empanelment was more in the nature of a policy decision which was effected by Prasar Bharati in order to give way to the new guidelines. The learned single Judge took note of the fact that scrapping of the guidelines was largely actuated and sufficiently backed by the findings of the Fact Finding Authority. It would not be incorrect to state that the supersession of the guidelines with the new guidelines had ex post facto vindicated the cancellation of the empanelment. The learned single Judge also observed that there was nothing to suggest any *mala fides* or arbitrariness in the formulation of the new policy. The learned single Judge correctly came to a finding that there was nothing put forth by the appellants to suggest that the cancellation of empanelment was done in utter disregard of the principles of natural justice and the lone plea taken by the appellants was that no individual hearing was afforded to the appellants during the inquiry. The learned single Judge rightly held that there could be no straight jacket formula as far as principles of natural justice were concerned and there had been substantive compliance with the principles of natural justice, given the nature and purpose for which the Fact Finding Enquiry was initiated. There was allegation of unfair means being adopted on an extensive scale and after a proper inquiry, the authorities had acted promptly in cancelling the selection and conducting and initiating the selection afresh.

4. The learned single Judge also rightly concluded that there was no valid and subsisting contract between the parties and mere selection of the appellants in the panel did not vest in the appellants any substantive right to seek enforcement of the contract. The empanelment had not been scrapped by the Prasar Bharati without due compliance with the principles of natural justice. The fact finding report was clearly worded and was a reasoned order reflecting a plausible view. As per the report, three reasons that actuated cancellation were, namely, (a) a uniform procedure was not followed by the Evaluation Committee, (b) bias in the selection procedure, (c) the guidelines were inept and fraught with shortcomings. The learned single Judge rightly held that the scope of judicial review is restricted and in such matters, the courts would essentially look at the decision making process and not at the decision itself. Prasar Bharati in its wisdom and for reasons, for which no ground of bias has been raised, made a fresh policy decision of framing new guidelines to overcome procedural irregularities and such other *lacunae* identified by the Fact Finding Authority. Further, as per the learned single Judge, since panel of which the appellants were a part stood expired and the old guidelines had been replaced by the new guidelines, the writ petition filed by the appellants had practically become infructuous. Further, the learned single Judge took note of the fact that the order dated 22nd May, 2007 clearly stated that while inviting fresh proposals, the earlier applicants/selectees would not be burdened with fresh processing fee and their proposals would be considered on the basis of the processing fee already paid by them.

Further such persons would also have the option of either relying upon their earlier proposals or submitting a fresh proposal. This would ensure that no undue hardship or prejudice is caused to the appellants.

5. The appellants have no vested legal right to claim that the panel could not have been scrapped and a policy decision could not have been taken to frame fresh guidelines and undertake the process of selection afresh. The decision to scrap the panel and frame new guidelines was a policy decision and it is not for the court in exercise of its power of judicial review to substitute its view with that of the competent body dealing with the matter. If after looking into all facts and circumstances, the competent body comes to the conclusion that panel needs to be scrapped and fresh guidelines need to be issued in order to initiate the selection process afresh, it is very well within its right to do so. Moreover, in the present case, there was a justifiable reason for the respondents to undertake this exercise.

6. It is relevant to refer to a decision of the Supreme Court in the Case of ***Government of Orissa vs. Haraprasd Das, (1998) 1 SCC 487***, where the Supreme Court observed that mere empanelment or inclusion of one's name in the selection list does not give him a right to be appointed. So also if the Government decides not to make further appointments for a valid reason, it cannot be said that it has acted arbitrarily by not appointing those whose names are included in the selection list. The Supreme Court further held in the said decision that to fill up or not to fill up a post is a policy decision and

unless it is shown to be arbitrary, it is not open to the Administrative Tribunal to interfere with such decision of the Government and direct it to make further appointments. Though the said judgment relates to appointment to posts in the Government, the principle as laid down by the Supreme Court underlying the said decision is that mere empanelment does not give a right to be appointed.

7. In ***Jai Singh Dalal vs. State of Haryana, 1993 Supp (2) SCC 600***, while dealing with the appointment to posts in the Government, the Supreme Court observed that even candidates selected for appointment have no right to appointment and it is open to the State Government at a subsequent date not to fill up the posts or to resort to fresh selection according to revised criteria.

8. Recently, the Supreme Court in the case of ***United India Insurance Co. Ltd. vs. Manubhai Dharmasinhbhai Gajera, (2008) 10 SCC 404***, observed that the writ court would ordinarily not grant specific performance of a contract even if it is found that there exists a renewal clause or there has been a breach of contract on the part of the party. A writ of mandamus shall ordinarily not be issued in case of a breach of contract.

9. In ***M.P. Mathur vs. DTC, (2006) 13 SCC 706***, the Supreme Court observed that if there is a supervening public equity, the Government would be allowed to change its stand and has the power to withdraw from representation made by it which induced persons to take certain steps which may have gone adverse to the interest of

such persons on account of such withdrawal. Public interest is accepted as the superior equity which can override individual equity.

10. In the present case, since the Prasar Bharti discovered a number of infirmities in the empanelment, fresh guidelines were framed and selection process initiated. It was open to the Government to do the same in the facts and circumstances of the case. Moreover, the impugned order clearly states that earlier applicants/selectees would have the option of either relying upon their earlier proposals/pilots or submitting a fresh proposal. This in any case would ensure that no undue hardship or prejudice is caused to persons similarly placed as the appellants.

11. It is also pertinent to mention here that even vide letter dated 7th April, 2006 (page 212 of the paper book) written by Prasar Bharti to the appellant, it was clearly stated that even after the contract was signed, DD would periodically undertake review of the programme after commencement of its telecast and DD would be at liberty to terminate the programme at four weeks notice if the programme was found to be wanting in its production quality and overall impact. Thus the contention of the appellants that they are entitled to be awarded 260 episodes is rather misplaced and unfounded. The said contention is without any merit or basis whatsoever.

12. In the present case, though the appellants were empanelled, however, there was no concluded, valid and subsisting contract between the parties and there was no substantive right vested in the

appellants to seek enforcement of a contract. Further if for valid reasons, a panel is scrapped and new guidelines are framed for initiating the selection process afresh it is not for the Court to sit in judgment over the same as an Appellate Body while exercising its extraordinary jurisdiction under Article 226 of the Constitution of India. In the present case, it was well within the power of the respondents to resort to fresh selection process according to revised criteria. There were justifiable grounds for the same and the appellants have no vested legal right to oppose the said process.

11. For the reasons stated hereinabove, we find no merit in the appeal to warrant any interference with the findings of the learned single Judge. The appeal is accordingly dismissed. All pending applications stand disposed of as well.

CHIEF JUSTICE

NEERAJ KISHAN KAUL, J.

MAY 26, 2009
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