

IN THE HIGH COURT OF DELHI AT NEW DELHI

W. P. (C) 3823/2010

Reserved on: August 1, 2011
Decision on: August 26, 2011

STAR INDIA PRIVATE LIMITED Petitioner
Through: Mr. S. Ganesh, Senior Advocate with
Mr. Sidharth Chopra, Advocate.

versus

UNION OF INDIA Respondent
Through: Ms. Inderjit Sidhu, Advocate.

CORAM: JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

JUDGEMENT
26.08.2011

1. Star India Private Limited ('SIPL') challenges an order dated 3rd/4th March 2010 issued by the Ministry of Information and Broadcasting ('I&B Ministry'), Government of India administering a warning to Star Plus Channel ('SPC') to strictly adhere to the Programme Code ('PC') prescribed under the Cable Television Networks (Regulation) Act, 1995 ('CTNR Act') and the Rules framed thereunder and directing it to exercise extreme caution and restraint "while referring to any incidence in their tele-programmes which might appear derogatory to a particular community". It was further stated that strict compliance to the direction should be ensured by the SPC and that any further violation might entail stringent action.

2. SIPL is engaged in the business of producing and supplying content to various channels operated under the name 'STAR' including the SPC. It is stated that SPC is India's most watched Hindi language based general entertainment television channel

with more than 50 million viewers every week. SIPL telecasts a fictional program titled “Sapna Babul Ka – Bidaai” (hereinafter ‘the program in question’) on SPC.

3. On 23rd October 2009, the I&B Ministry issued a show cause notice to SIPL stating that it had come to the notice of the I&B Ministry that the telecast/re-telecast of the episode of the program in question on 6th October 2009 “contained objectionable and derogatory remarks against Maharishi Valmiki having the effect of maligning an individual who is part of the social and moral life of large sections of the country”. It was stated in the show cause notice that “the words used in the aforesaid episode also appear to be contemptuous of religious groups and promote communal attitudes. The words used in the aforesaid episode also appear to be defamatory and are likely to encourage violence”. The show cause notice refers to Section 5 of the CTNR Act and Rule 6 (1) (c), (e) and (i) of the Cable Television Networks Rules, 1994 (‘CTN Rules’), as amended from time to time in terms of which no programme can be transmitted/re-transmitted on any cable service which contains an attack on religions or communities or visuals or words contemptuous of religious groups or which promote communal attitudes, and is likely to encourage or incite violence or contains anything against maintenance of law and order or which promote anti-national attitudes or maligns or slanders any individual in person or certain groups, segments of social, public and moral life of the country. SIPL was called upon to show cause within fifteen days 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 CTNR Act should not be taken against SIPL.

4. On 23rd November 2009, SIPL replied to the show cause notice where *inter alia* it was contended that the show cause notice was bereft of any details throwing light on the features/aspects of the program in question which were in violation of the PC. It was further maintained by SIPL that the telecast on 6th October 2009 had only referred to Maharishi Valmiki in a laudatory, inspirational and complimentary manner. The reference to Maharishi Valmiki had to be seen in the context of the serial and could not be taken out of context and analyzed. The programme had to be viewed in totality and then judged whether it abided by the PC or not. It was stated that the reference to

Maharishi Valmiki was purely with a view to exemplify a person who overcame great odds to achieve a place in history. It was stated that the program duly complied with Rule 6 (1) (c), (e) and (i) of the CTN Rules.

5. The Petitioner was granted a personal hearing before the Director (Broadcasting Content) on 10th December 2009. It also filed an additional reply on 17th December 2009 to the show cause notice setting out the additional steps it had taken. It was *inter alia* stated that an article was published in the Punjab Keshri Jalandhar edition on 11th October 2009 by SIPL in which it had issued an ‘apology’ stating that its intention was not to offend the Valmiki samaj by the telecast of the said episode of the program in question and further stated that “we respect Sage Valmiki and derive inspiration from him”. The Petitioner also referred to certain observations of the Supreme Court in ***Rakesh Kaushik v. B. L. Vig, Supdt., Central Jail (1980) Suppl SCC 183***. Thereafter the impugned order came to be passed.

6. In the counter affidavit, a reference is made to certain past incidents where the SIPL had been issued letters of warning including an Advisory dated 2nd July 2007. *Inter alia*, it is mentioned that the Respondent took cognizance of a press report dated 12th October 2009 in which it was stated that the Chief Minister of Punjab had asked the state police chief to investigate the incident of ‘blasphemy’ by the SPC with reference to the derogatory remarks towards Maharishi Valmiki in the program in question. The Respondent then immediately called for the recording which was telecast on 6th October 2009. It is then stated in paras 6-7 of the counter affidavit as under:

“The recording was previewed. It was found that in the episode which was telecast on 06.10.2010, a male character in the serial whose mental state is not good and acts like a 10 year old boy despite being an adult asks his mamaji after reading the story of Bhagwan Balmiki “Mamaji, today I read the story of Balmikiji. Is it true that he turned into a Saint from a thief” Hindi word “Chor”, which is considered derogatory had been used in the programme.”

7. It is further stated in the counter affidavit that:

“The content of the programme appeared to be contemptuous of religious groups and to promote communal attitudes and were likely to encourage violence. The programme contained objectionable and derogatory remarks against Maharishi Valmiki thereby maligning an individual who is part of the social and moral life of large section of the country. Therefore, the show cause notice dated 23.10.2009 was issued to the petitioner for allegedly violating the provisions of Rule-6 (1) (a), (c), (e) and (i) of the Cable Television Networks Rules, 1994.”

8. The Inter-Ministerial Committee (‘IMC’) constituted to look into the specific violations of programme and advertising codes for television observed: “though the character of Maharishi Valmiki is inspirational and the intention of the Channel was to derive inspiration from Maharishi Valmiki, they should have exercised extreme caution and restraint while referring to any incidence in their tele-programme which might appear derogatory to a particular community.” This is explained as forming the basis of the impugned decision.

9. This Court has heard the submissions of Mr. S. Ganesh, learned Senior counsel appearing for the Petitioner and Ms. Inderjit Sidhu, learned counsel appearing for the Respondent. This Court has also viewed the taped version of the episode in question on DVD.

10. Ms. Inderjit Sidhu, learned counsel for the Respondent referred to an order dated 29th April 2010 passed by the High Court of Punjab and Haryana, Chandigarh in Crl. Misc. No. M-30035 of 2009 (*Star India Pvt. Ltd v. State of Punjab*) where the High Court dismissed the petition filed by the SIPL seeking the quashing of FIR No. 322 dated 6th October 2009 registered at P. S. Division No. 4, Jalandhar against SIPL in relation to the telecast of the program in question. The provision mentioned in the said FIR is Section 295-A of the IPC. The High Court in the said order observed that there is a raging debate amongst scholars, both religious and academic, about the authenticity of the story of Maharishi Valmiki being a dacoit. However, without going into the correctness of the story, the High Court held that the FIR ought not to be quashed at the stage of investigation. The High Court left it to the police to examine the script and

form a considered opinion whether any offence was made out. This Court does not consider the said order dated 29th April 2010 as precluding this Court from examining whether the impugned warning that was issued to SPC by the I&B Ministry was in accordance with law.

11. The program in question, as indicated by the Petitioner in its reply dated 23rd November 2009, is: “about an orphan girl ‘Sadhna’ and her life’s constant struggle with her biggest asset; her own beauty which becomes her biggest curse! Sadhna, an extremely fair and beautiful girl is in contrast with her cousin Ragini, who is dark and therefore, considered unattractive. However, the two sisters share great camaraderie and bonding despite the differences in their physical appearances. Brought up by her Uncle and Aunt in the city of Agra, Sadhna, a humble and simple person, is left to the mercy of her relatives after the early death of her mother. Her father works in America with the only hope to someday fulfill his wife’s dream of seeing their daughter’s *Bidaai*.”

12. As far as the episode in question is concerned, there is a conversation between the two actors in which the following dialogue in Hindi is spoken:-

Alekh says:- *kya main aapse kuch pooch sakta hoon mamaji?*

Mama:- *“haan haan bilkul” . . .*

Alekh:- *“ wo main valmiki ki kahani padh raha tha.. mamaji kya sachme wo ek chor se saadhu baba ban gaye.. koi aadmi itna badal sakta hai kya?*

Mama smiles as he explains:- *valmiki ji ke paas himmat thi.. aatmvishvaas tha beta.. jiske man me aastha aur pakka vishvaas ho use koi nahi rok sakta..*

Here Alekh listening to all of this very carefully and registering in his mind as if he also upto something like that
. . .

He nods his head and says:- *“achha!” samajh gaya.. ... (he*

looks at Sadhana and says) theek hai ab main Sadhna ko phone deta hoon.”

13. The rough English translation of the above dialogue in Hindi would be:

“Alek: Uncle, can I ask you something?

Uncle: Yes, sure.

Alek: I was reading the story of Valmiki. Did he really become a saint from being a thief. . . can a person change so much?

Uncle smilingly explains: Valmiki ji had courage... and self-confidence... there is no stopping a person who has faith and complete confidence in oneself...

Here Alek listening to all of this very carefully and registering in his mind as if he also upto something like that
...

He nods his head and says: “Okay, I see!” ... (he looks at Sadhana and says) okay now I will hand over the phone to Sadhna.”

14. The context in which the said dialogue occurs has to be understood with reference to the entire episode, the script of which has been annexed as Annexure B to the writ petition. When the above scene is viewed in the context of the theme of the serial and the entire episode, it is difficult to appreciate the conclusion drawn by the Respondent that it contains any derogatory remarks against Maharishi Valmiki or maligns an individual or the words used are contemptuous of religious groups or promote communal attitudes and “are likely to encourage violence”. What the Respondent appears to have done in the impugned order is to simply reproduce the language of Rule 6 (1) (c), (e) and (i) of the CTN Rules. For ready reference, the said sub-rules read as under:-

“Rule-6. Programme Code. – (1) No programme should be carried in the cable service which:-

(c) contains attack on religions or communities or

visuals or words contemptuous of religious groups
or which promote communal attitudes;

...

- (e) is likely to encourage or incite violence or contains anything against maintenance of law and order or which promote anti-national attitudes;

...

- (i) criticises, maligns or slanders any individual in person or certain groups, segments of social, public and moral life of the country.”

15. The mere repetition of the words of the provisions without actually indicating in what manner, the words spoken in the episode attract the provisions will not satisfy the requirements of law. The exercise undertaken by the Respondent is a form of censorship of the content of a television programme. The power vested in the Respondent to require a programme to conform to the PC in terms of Section 20 of the CTNR Act read with Rule 6 (1) (c), (e) and (i) of the CTN Rules has to be exercised reasonably and for valid reasons. Even in terms of Article 19 (1) (a) of the Constitution read with Article 14 thereof, the power cannot be exercised arbitrarily or without any application of mind to the context in which the words spoken in the episode occur.

16. Rule 6 of the CTN Rules which sets out the PC mirrors what is provided in Section 5-B of the Cinematograph Act (‘CA’) read with the Guidelines for film certification formulated by the central government thereunder. These Guidelines have been interpreted on several occasions by the Supreme Court. The Supreme Court has invariably drawn on the principles enunciated in *Bhagwati Charan Shukla v. Provincial Government AIR 1947 Nag 1* where Vivian Bose, J. as he then was in the Nagpur High Court observed that the effect of words “must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view.” In *K.A. Abbas v. Union of India (1970) 2 SCC 780* the Supreme Court said (SCC, p. 801): “The standards that we set for our censors must make a substantial allowance in favour of freedom thus leaving a vast area for creative art to interpret life and society with some of its foibles along with what is good.” Further in *Union of*

India v. K.M. Shankarappa (2001) 1 SCC 582 it was explained that the mere apprehension of law and order problem was not a valid excuse to restrict the exhibition of a film and it was for the government to ensure that law and order was maintained. This was recently reiterated in ***Prakash Jha Productions v. Union of India*** [decision dated 19th August 2011 of the Supreme Court in W.P. (C) No. 345 of 2011]. In ***S. Rangarajan v. P. Jagjivan Ram (1989) 2 SCC 574***, the Supreme Court reminded that (SCC, p. 599): “The State cannot plead its inability to handle the hostile audience problem. It is its obligatory duty to prevent it and protect the freedom of expression.”

17. In ***Ramesh v. Union of India (1988) 1 SCC 668*** the Supreme Court was considering a challenge to the telecasting of the serial ‘*Tamas*’ which depicted the tensions between the Hindu, Muslim and Sikh communities and the ensuing violence during the partition of the country. One of the objections was to a dialogue between “the Hindu leaders and Muslim leaders” which was “so arranged that Indian National Congress is suggested to be a Hindu organisation” and therefore “likely to create communal disharmony.” Negativising these arguments, and reiterating the principles enunciated in the earlier decisions, the Supreme Court observed (SCC, p. 680):

“It is true that a writer or a preacher should cling to truth and right, if the very heavens fall. This is a universally accepted basis. Yet in practice, all schools alike are forced to admit the necessity of a measure of accommodation in the very interests of truth itself. Fanatic is a name of such ill repute, exactly because one who deserves to be so called injures good causes by refusing timely and harmless concession; by irritating prejudices that a wiser way of urging his own opinion might have turned aside; by making no allowances, respecting no motives, and recognising none of those qualifying principles that are nothing less than necessary to make his own principle true and fitting in a given society. Judged by all standards of a common man's point of view of presenting history with a lesson in this film, these boundaries appear to us could have been kept in mind. This is also the lesson of history that naked truth' in all times will not be beneficial but truth in its proper light indicating the evils and the consequences of those evils is instructive and that message is there in "Tamas" according to the views expressed by the two learned Judges of the High Court. They viewed it from an average, healthy and commonsense point of view. That is the yardstick. There cannot be any apprehension that it is likely to affect public order or it is likely to incite into the commission of any offence. On the other hand, it is more likely

that it will prevent incitement to such offences in future by extremists and fundamentalists.”

18. Turning to the observations of the IMC in the instant case, it requires to be observed that in the absence of any objective standards for determining what might “appear derogatory to a particular community” it would be unsafe to straightway come to the conclusion that the word in question in fact “contains attack on religious or communities” or “criticises, maligns or slanders any individual in person or certain groups”. The language of Rule 6 (1) (c) has to be not merely a likelihood of certain words “appearing derogatory to a particular community”, but higher than that. On the showing of the Respondent the words in question clearly did not attract the violation under Rule 6 (1) (c), (e) or (i) of the CTN Rules.

19. The reason given in the counter affidavit as regards the word “*chor*” being the objectionable word is not the reason mentioned in the impugned order. It is settled law that reasons for an order cannot be supplied subsequently by way of a counter affidavit [*Mohinder Singh Gill v. Chief Election Commissioner (1978) 1 SCC 405*]. In any event, it is not proper to take one word out of context to determine if it is derogatory or defamatory. It has to be viewed in the context and setting of the episode in which the dialogue occurs. The exchange underscores and extols the virtues of the poet sage who is acknowledged as the author of the Ramayana. It could hardly be said to malign or slander an individual or a group much less encourage or incite violence, or contain anything threatening to the maintenance of law and order.

20. For the aforementioned reasons, this Court finds the impugned warning dated 3rd/4th March 2010 issued by the I&B Ministry to the Petitioner to be unsustainable in law. It is hereby set aside. The writ petition is allowed, but in the circumstances, with no order as to costs.

S. MURALIDHAR, J.

AUGUST 26, 2011

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