



2023:DHC:7934-DB



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 01.11. 2023

+ LPA 68/2011, CM APPL. NOS. 16344/2018, 4217/2023 & 4243/2023

PRASAR BHARATI

.....Appellant

Through: Mr. Rajeev Sharma Senior Advocate with Ms. Shruti Sharma & Mr. Saket Chandra, Advocates.

Versus

PRIME CHANNEL SOFTWARE COMMUNICATIONS

(P) LTD.& ANR

..... Respondents

Through: Ms. Shyel Trehan & Mr. Vignesh Raj, Advs. for R1&2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The appellant (hereafter '**Prasar Bharati**') has filed the present intra-court appeal impugning an order dated 28.05.2010 (hereafter '**the impugned order**') passed by the learned Single Judge in W.P.(C) No.7496/2009 captioned *Prime Channel Software Communications (P) Ltd. & Anr. v. Prasar Bharati Corporation (PCI)*. By the impugned order, the learned Single Judge has directed that the benefit of the revised policy announced on 17.11.2005 (hereafter '**the revised policy**') be made available to respondent no.1 (hereafter '**Prime Channel**'). Consequently, the penalty imposed on Prime Channel on



account of the Television Viewership Rating (**TVR**) falling below the threshold of 50% would be restricted to ₹40,000/- per point drop instead of 50% of the production fee (amounting to ₹1,50,000/- per episode) as recovered from Prime Channel. The learned Single Judge accordingly also directed Prime Channel to pay the amount as calculated by applying the revised penalty formula as announced on 17.11.2005 along with simple interest at the rate of 6% per annum from the date of filing the petition (that is 04.03.2009) till the date of payment. In addition, the learned Single Judge also directed that cost of ₹5,000/- be paid to the respondents within a period of four weeks from the date of the impugned order.

2. The writ petition [W.P.(C) No.7496/2009] filed by the respondents was allowed in the aforesaid terms principally on the ground of parity. The learned Single Judge found that other production houses, which were similarly placed as Prime Channel, had been accorded the benefit of the revised policy but Prime Channel was deprived of the same. The same amounted to hostile discrimination.

3. Prime Channel is a private company and is engaged in the production of television software. It claims to be a leading television software production house and has produced several popular television serials.

4. In September, 2002, Prime Channel submitted a proposal to Prasar Bharati for the production of a serial named “*Phir Bhi Dil Hai Hindustani*” under the sponsored category. The said proposal was



approved by the Selection Committee of Doordarshan. Fifty-two episodes of the said serial were scheduled for telecast on a bi-weekly basis for a period of twenty-six weeks. The parties entered into an Agreement dated 08.10.2003.

5. Prime Channel claims that the serial was very popular and its TVR was consistently high, resultantly, Prasar Bharati granted an extension for 302 episodes, which comprised of 196 episodes under the sponsored category and 106 under the Self-Finance Commission Scheme (hereafter '**the SFCS**') of Doordarshan.

6. In June, 2005, the SFCS was amended. It now entailed Prasar Bharati paying the producer a fixed amount per episode as an all-inclusive production fee instead of the producer paying the telecast fee. In consideration for the same, the copyright and the produced software would vest with Prasar Bharati along with all attendant rights. In terms of the revised SFCS, it was agreed that Prime Channel will be paid an all-inclusive production fee of ₹3,00,000/- per episode. Prasar Bharati and Prime Channel entered into a fresh agreement dated 26.08.2005, *inter alia*, setting out the aforesaid terms. The said agreement also provided that in the event the TVR of any episode fell below 6.0, Prasar Bharati would be liable to only 50% of the production fee. Thus, in such eventuality Prasar Bharati would be liable to pay ₹1,50,000/- for the episode instead of ₹3,00,000/-.

7. On 17.11.2005, Prasar Bharati approved a different formula for the calculation of the fee per episode. The relevant extract of the



policy is as under:

“29.If the average TRP of the programme during the month of telecast is more than the Minimum Benchmark TRP, then the incentive payable (I) for that month shall be calculated according to the following formula:

$$P = N \times EP$$

Where N = number of episodes telecast in the month

EP = Episodes Price mentioned in Clause – 28.

30. If the average TRP of the program during the month of telecast falls below the Minimum Benchmark TRP, the price payable for episodes of the month (P) shall be calculated according to the following formula:

$$P = [N \times TEP] - [N \times TRP] \times PF]$$

Where N – number of episodes telecast in the month

EP – Episode price determined in accordance with Clause 28

B = Benchmark TRP

TRP = Actual average TRP of the programme during the month of telecast.

PF = Penalty factor = xx IF

Where IF is the ‘increment factor’ determined in accordance with clause 31.

Provided that this formula for calculation of price shall be applied to a new programme from the 14th episode onwards. For the removal of doubt, it is clarified that during the first 13 episodes, payment shall be made as per episode price determined in accordance with Clause 29.

31. If the programme continues to command good viewership, the Producer shall be entitled to payment of incentive from the fourth month onwards in addition to the Episode Price. The amount of incentive shall be calculated in following manner.

If the average TRP of the programme during the month of telecast is more than the Minimum Benchmark TRP, then



the incentive payable (I) for that month shall be calculated according to the following formula:

$$I = N \times (TRP - B) \times IF$$

When N = number of episodes telecast in the month.

RTP = average TRP of the programme during the month of telecast after disregarding the decimal part (e.g. if the average TRP is 8.23 or 8.79, it will be taken as 8 for purposes of this calculation)

B = Benchmark TRP

IF = Increment Factor in rupees to be determined by DG, DD.

An amount equal to one Episode Price shall be deducted from the first payment to the PRODUCER and retained by PRASAR BHARATI as security. The amount shall be refunded to the PRODUCER after a period of 90 days calculated from the first date of the month following the month in which the last episode of the program is telecast.”

8. The last episode of the serial in question was telecast on 20.06.2006. Admittedly, there was a drop in TVR of the serial in question in the months of April to June, 2006 from 7.5 to 5.5. Accordingly, Prasar Bharati deducted 50% of the production fee per episode telecast during the relevant period.

9. Admittedly, the TVR of several other serials telecast during the months of April to June, 2006 also dropped. It is stated that there were several reasons for the drop in the TVRs including the active cricket sporting season and cross channel competition.

10. Admittedly, the other producers were paid in accordance with the revised policy. A sum of ₹40,000/- per episode was deducted from the amount payable to other producers in cases where the TVR was



between 5 and 6 and, a sum of ₹80,000/- per episode was deducted in cases where the TVR was between 4 and 5.

11. In terms of the revised policy, a sum of ₹40,000/- per episode was liable to be deducted in respect of the seventeen episodes of the serial telecast during the months of April and May, 2006 as the TVR in respect of the said episodes ranged between 5 and 6. The TVRs for the six episodes telecast in June, 2006 fell between 4 and 5 and therefore, amount of ₹80,000/- per episode was required to be deducted from the consideration payable in respect of those episodes.

12. Prime Channel claimed an amount of ₹23,00,000/- from Prasar Bharati. The said amount was calculated as under:

“For April and May 2006 [TVR between 5 and 6] (3 lac – 40,000) x 17 episodes = Rs.44,20,000/-

For June 2006 [TVR between 4 and 5] (3 lac – 80,000) x 6 episodes = Rs.13,20,000/-

Total for 23 episodes in April, May, June Rs. (44,20,000 – 13,20,000) = Rs.57,50,000/-

Differential sum of Rs.23,00,000/- (Rs.57,50,000 – 34,50,000, already paid)”

13. It was contended on behalf of Prasar Bharati that the benefit of the revised policy was available only to those production houses with whom Prasar Bharati had entered into an agreement subsequent to the revised policy. Admittedly, the benefit of the revised policy was also made available to these production houses for the episodes telecast prior to the agreements entered into after 17.11.2005. Prasar Bharati



claimed that the said benefit had been extended by mistake.

14. The learned Single Judge found that Prime Channel was similarly placed as other production houses, which were accorded the benefit of the revised policy, in respect of those episodes that were telecast prior to Prasar Bharti entering into fresh agreements with them after 17.11.2005.

15. Accordingly, the learned Single Judge held that Prime Channel was also entitled to a similar benefit.

REASONS & CONCLUSION

16. Mr. Rajeev Sharma, learned senior counsel appearing for Prasar Bharati assailed the impugned order essentially on two grounds. First, he submitted that the learned Single Judge has erred in not appreciating that the benefit of the revised policy was extended to other production houses by mistake. He submitted that Article 14 of the Constitution of India does not postulate negative equality. He contended that the fact that Prasar Bharati had mistakenly extended the benefit to some producers did not entitle Prime Channel for a similar benefit. He also submitted that Prime Channel's serial had come to an end in June, 2006, however, the serials of other producers had continued thereafter and Prasar Bharati had entered into fresh agreements with those producers for telecast of further episodes.

17. This Court is unable to accept that producers who were granted the benefit of the revised policy formed a special class for the purpose



of being accorded such benefit. Admittedly, the said producers were accorded the benefit of the revised policy in respect of episodes that were telecast prior to entering into fresh agreements with the producers. There is no dispute that the producers would be entitled to the benefit of the revised policy in respect of episodes telecast after agreements embodying the terms of the revised policy were entered into with them. The controversy centres around granting benefit of the revised policy for episodes in terms of the agreements, which did not contain provisions for calculating the penalty in terms of the formula announced on 17.11.2005. We agree with the learned Single Judge that in this regard, no distinction can be drawn between Prime Channel and those producers whose serials continued to be telecast.

18. Prasara Bharati's contention that other producers had been accorded the benefit of the revised policy in respect of episodes telecast prior to fresh agreements entered into with them by mistake also underscores the fact that Prime Channel as well as the said producers were similarly placed. According to Prasara Bharati none of them were entitled to the benefit of the revised policy, which was in variance of the contractual terms.

19. In view of the above, the only question that arises for consideration is whether the learned Single Judge had erred in directing that the benefit of the revised policy be extended to Prime Channel on the ground of parity with other similarly placed producers. The learned Single Judge noted that it was not Prasara Bharati's case that the extension of the benefit of the revised policy to other



producers was illegal and that extension of such benefit to Prime Channel would perpetuate such illegality. Thus, Prime Channel would be entitled to the benefit of the revised policy as well.

20. We concur with the aforesaid view. As noted above, there is no dispute that there was an overall drop in TVR of television serials across the board for various reasons during the period of April to June, 2006. In terms of the individual agreements entered into with various producers, Prasar Bharati was entitled to claim a reduction of 50% in the consideration payable to production houses for the episodes telecast during the said period. Nonetheless, Prasar Bharati decided to relax the said condition and extend the benefit of the revised policy, which entailed a different formula for calculating the penalty. We have no doubt that the said relaxation was granted due to the mitigating circumstances (that is, reduction in TVRs of all serials on account of cricket sporting season and cross channel competition etc.). Clearly, Prasar Bharati could not pick and choose the producers for selectively extending such benefit. It was required to accord an equal treatment to all persons who were similarly situated. Thus, there is merit in Prime Channel's contention that it was also entitled to the benefit of reduced penalty for the drop in TVRs during the aforesaid months.

21. The contention that the benefit of the revised policy was extended to other producers by mistake is clearly an afterthought. The extension of benefit to other producers had financial implications, however, it is conceded that neither any enquiry was conducted nor



any action was taken against any officer for extending the said benefit to the production houses. It is Prasar Bharati's case that other production houses continued to be associated with Prasar Bharati as their serials continued to be telecast beyond June, 2006. However, no steps were taken to recover any amount from the amounts paid to those production houses. It is obvious that if the lower amount had been recovered from the payments due to the production houses by mistake, there is nothing that would preclude Prasar Bharati from recovering the correct amount from further payments due from those producers. However, no such steps were taken. Thus, neither any official of Prasar Bharati was held accountable for charging a reduced penalty nor any steps were taken to recover the balance penalty from various production houses. In these circumstances, we are unable to accept that the benefit of the revised policy was extended to various producers by mistake. It is clear that the benefit was extended on account of an overall reduction in TVRs of television serials in general and there is no plausible reason to exclude Prime Channel from such benefit. It was not only within the power of Prasar Bharati to relax the penalty imposable under the individual contracts but it was apposite for Prasar Bharati to do so given that the drop in TVR was not on account of any drop in the relative popularity of a particular serial but on account of an overall drop in viewership of serials across the board. As noted above, this was on account of intense cricket sporting season and other factors affecting the overall viewership of the serials.

22. Grant of the benefit of the revised policy is not illegal and



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therefore, the learned Single Judge had rightly held that such benefit is also required to be accorded to Prime Channel.

23. We find no ground to fault the impugned order. The appeal is unmerited and is accordingly dismissed.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

NOVEMBER 1, 2023
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