

Deepak Maini Vs. Star Plus and ors.

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Court : Delhi

Decided On : Jul-29-2009

Reported in : 162(2009)DLT352

Judge : Ajit Prakash Shah, C.J. and; Manmohan, J.

Acts : Cable Television Networks (Regulation) Act, 1995 - Sections 5 and 20; Cable Television Networks Rules, 1994 - Rule 6; [Constitution of India](#) - Articles 19(1) and 226; Programme and Advertising Code

Appeal No. : W.P. (C) 10383 and 10396/2009

Appellant : Deepak Maini;prabhat Kumar Pushp

Respondent : Star Plus and ors.;star Plus and anr.

Advocate for Def. : Mukul Rohatgi and ; Rajiv Nayar, Sr. Advs., ; Ramji Sriniva

Advocate for Pet/Ap. : N.S. Dalal, Adv. in W.P.(C) 10383/2009,; Vikas Singh, Sr. Adv.,;

Disposition : Petition dismissed

Judgement :

ORDER

1. Present batch of two writ petitions have been filed under Article 226 of [Constitution of India](#) seeking a ban on telecast of Sach Ka Samna. shows. It has

further been prayed that this Court should issue appropriate writ, order or direction to respondents to take appropriate steps for regulating TV broadcasting and for setting up a regulatory body like Central Board of Film Certification.

2. Mr. N.S. Dalal, learned Counsel for petitioner in W.P.(C) 10383/2009 contended that telecast of Sach Ka Samna. shows have not only led to erosion of social values but also pose a grave threat to our Country.s culture. He submitted that there was neither any rule, regulation nor any regulatory mechanism to regulate telecast of any television show. Mr. Dalal referred to some of the questions put to participants on Sach Ka Samna. show to contend that they were not only vulgar but also obscene.

3. Mr. Vikas Singh, learned Senior Counsel appearing for petitioner in W.P.(C) 10396/2009 submitted that airwaves are public property and despite the Supreme Court.s mandatory direction in Secretary, Ministry of Information and Broadcasting, Government of India and Ors. v. Cricket Association of Bengal and Ors. reported in : 1995 (2) SCC 161 no regulatory authority had been created to regulate the content of television programmes. He drew our attention to Cable Television Networks (Regulation) Act, 1995 (hereinafter referred to as Act, 1995) as well as Rules framed thereunder to contend that though under the said Act, the Central Government had the power to regulate/prohibit transmission of programmes on cable T.V. which were indecent or immoral, but the Government as of today had no power to regulate the new Direct To Home (in short DTH) television technology. Section 5 and 20 of the Act, 1995 as well as relevant portions of Rule 6 of Cable Television Networks Rules, 1994 (hereinafter referred to as Rules, 1994) are reproduced hereinbelow for ready reference:

ACT, 1995

5. Programme code. No person shall transmit or re- transmit through a cable service any programme unless such programme is in conformity with the prescribed programme code.

xxxxx xxxxx xxxxx20. Power to prohibit operation of cable television network in public interest.

xxxxx xxxxx xxxxx(2) Where the Central Government thinks it necessary or expedient so to do in the interest of the

(i) sovereignty or integrity of India; or

(ii) security of India; or

(iii) friendly relations of India with any foreign State; or

(iv) public order, decency or morality, it may, by order, regulate or prohibit the transmission on re-transmission of any channel or programme.

RULE, 1994

6. Programme Code.(1) No programme should be carried in the cable service which

(a) offends against good taste or decency;

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

xxxxxx xxxxx xxxxx

[(o) is not suitable for unrestricted public exhibition.]

4. Consequently, Mr. Vikas Singh submitted that there was a vacuum/hiatus inasmuch as there was no statutory mechanism or rules governing the telecast of programmes by TV channels. Therefore, according to him, this Court should fill the void by issuing appropriate guidelines/directions.

5. On the other hand, Mr. Mukul Rohatagi, learned Senior Counsel appearing for respondent-TV Channel stated that Sach Ka Samna. show was based on an American TV programme called The Moment of Truth. He further stated that the said programme promotes truth and it had been telecast in over twenty countries all over the world. Mr. Rohatagi further pointed out that respondent-TV Channel had already received a show cause notice dated 22nd July, 2009 issued by Ministry of Information and Broadcasting under Section 5 of Act, 1995 read with

Rule 6 of Rules, 1994 stating as to why action under Section 20 of Act, 1995 should not be taken.

6. Freedom of speech and expression have been guaranteed as a Fundamental Right by Article 19(1)(a) of [Constitution of India](#). The Right of Free Speech has been hailed as, .most important., .charter of liberty. as well as .crux of fundamental rights.. Undoubtedly, freedom of speech and expression can be restricted on the ground of decency. or morality.

7. But obscenity., indecency. and immorality. are relevant concepts. In fact, standards of morality and decency in the same society vary from time to time and from person to person. In the case of Madhu Mukul Tripathi and Anr. v. Union of India and Ors. in W.P. (C) 1194-95/2006 decided on 10th September, 2008, wherein the petitioners had prayed for framing of guidelines to regulate the print and electronic media pending enactment of statutory provisions, this Court had observed that the said prayer cannot be granted as the issues involved were of a complex nature and several competing interests had to be balanced. Consequently, in our opinion, it is not for Courts to frame guidelines to regulate the content on TV as this exercise is best left to the Government itself.

8. In any event, we are of the opinion that there is no vacuum/hiatus inasmuch as the Programme and Advertisement Code framed under Act, 1995 is applicable to downlinking of television channels like the respondent-TV Channel. In this connection, we may refer to the policy guidelines for downlinking of television channels dated 11th November, 2005:

F. No. 13/2/2002-BP&L;/BC-IV

Government of India

Ministry of Information and Broadcasting

Broadcasting Wing

New Delhi.

Dated : 11th November, 2005

POLICY GUIDELINES FOR DOWNLINKING OF

TELEVISION CHENNELS

Ministry of Information and Broadcasting, Government of India, has formulated policy guidelines for downlinking all satellite television channels downlinked/received/transmitted and re-transmitted in India for public viewing. Consequently, no person/entity shall downlink a channel, which has not been registered by the Ministry of Information and Broadcasting under these guidelines. Henceforth, 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, shall be required to obtain permission from Ministry of Information and Broadcasting, in accordance with the terms and conditions prescribed under these guidelines. The guidelines are as given below:

xxxxxx xxxxxx xxxxxx5. BASIC CONDITIONS/OBLIGATIONS

5.1 The Company permitted to downlink registered channels shall comply with the Programme and Advertising Code prescribed under the Cable Television Networks (Regulation) Act, 1995.

9. Accordingly, we are of the opinion that it is open to Government to take action under Act, 1995. Consequently, we are of the opinion that as our interference is not called for, the present petitions are dismissed, but with no order as to costs.