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Court : Kerala

Decided On : Jun-25-1996

Reported in : AIR1996Ker333

Judge : K.S. Radhakrishnan, J.

Acts : Constitution of India - Articles 14 and 19(1)

Appeal No. : O.P.N. 9553 of 1996-K

Appellant : C. Gopalakrishnan

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : George C.P. Tharakan, Central Govt. Standing Counsel

Advocate for Pet/Ap. : N. Nandakumara Menon, Adv.

Disposition : Petition allowed

Judgement :

K.S. Radhakrishnan, J.

1. Petitioner is the producer of a sponsored serial titled 'VINODASALA' which was allowed to be telecast by Doordarshan Kendra. The serial which started as a comedy resulted in a tragedy not only to the petitioner but also thousands of viewers of the said serial since the Doordarshan did not allow to telecast two more

episodes. So claims the petitioner.

2. Selection Committee of Doordarshan Kendra, Thiruvananthapuram has approved the petitioner's serial titled 'Vinodasala' after previewing pilot episode. Programme Executive of Doordarshan Kendra, accordingly issued a communication No. 54(2)/95/P (SS)/ DKT, dated 5-12-1995 to the petitioner granting permission for producing the serial in 13 episodes. It was stated that all the rules mentioned in their pilot letter should be strictly followed for producing the remaining episodes of the serial. Tentative telecast date was fixed as 2-2-1996 (Friday) at 19.20 P.M. Doordarshan Kendra, however, commenced telecast only on 23-2-1996 (Friday) at 7,20 P.M. The telecast time allotted for the serial Vindoasala was between 7.20 P.M. and 7.45 P.M. on all Fridays. The 13th episodes of the said serial was telecast on 14-6-1996.

3. According to the petitioner, serial Vinodasala acclaimed the highest viewership and popularity among the Doordarshan viewers. The report of the Research and Evaluation Cell, Doordarshan Kendra, Thiruvananthapuram says that the serial Vinodasala is having the highest 'Doordarshan Rating' (75%) among all other serials that are being telecast by the Doordarshan currently. Petitioner submit that since the serial is having the highest Doordarshan rating and popularity the serial was much sought after by the sponsors, and the Advertisement Agency had to book an additional 400 seconds spot buys on the serial from the Doordarshan. According to the petitioner, thus the Doordarshan gained an additional revenue to the tune of Rs. 4 lakhs from the above serial by commercial spots. This is an all time record.

4. Since the serial Vinodasala is a comedy serial, according to the petitioner, the improvisation of the subject through technical perfection and artistical performance will be possible only if the serial is telecast in 15 episodes. If the serial is cut short into lesser episodes that will affect the continuity, quality and aesthetical and artistical values. Petitioner submits that even from the date on which indemnity bond was executed, he had been repeatedly informing the 2nd respondent that the petitioner will be able to conclude the serial only in 15 episodes. Petitioner submits that the 2nd respondent informed the petitioner to seek for extension after the 8th

or 9th episode.

5. After the 8th episode, petitioner on 21-5-1996 made a request to the 2nd respondent to extend the duration of the serial to 15 episodes. Programme Executive and the Deputy Director of the 2nd respondent had recommended the case of extension of the duration of petitioner's serial since the same being the most popular among the viewers. However, the request of the petitioner was turned down by the 3rd respondent by telegram dated 3-6-1996 without assigning any reason. Petitioner, later made a request on 5-6-1996 for extension of the duration of the serial to 15 episodes. However, the said request was also rejected on 7-6-1996 by the 3rd respondent without assigning any reasons.

6. Petitioner submits that Doordarshan Kendra has not framed any strict or rigid rules or guidelines in the matter of exhibition of serial. In several cases, the duration of exhibition of serial is extended beyond 13 episodes Petitioner points out that in the case of the serials (1) Thunchathacharayan, (2) Kudumbavisheshangal, (3) Ladies Hostel, (4) Salabhanjika, (5) Nalukettu, (6) Thapasya, (7) Ningalude Swantham Chanthu etc. were given extension beyond 13 episodes. It is also his case that in certain cases, extension of duration were given beyond 26 episodes. All these serials were having only less ratings than the petitioner's serial. Since the duration of the above mentioned serials were extended by the 2nd respondent, petitioner was under the legitimate expectation that the duration of his serial would also be extended to 15 episodes since the same being the most popular among the serials currently telecast by the second respondent.

7. Petitioner, then filed a representation dated 13-6-1996 before the 3rd respondent requesting him to accord sanction to telecast the further two episodes. Petitioner submits that the said request was recommended by the Programme Executive and Deputy Director of the 3rd respondent.

8. The 13th episode of the serial was telecast by the 2nd respondent on 14-6-1996. On 15-6-1996 petitioner received a telegram from the 3rd respondent wherein it is stated that the extension of the serial is not granted. Petitioner is aggrieved by the refusal to grant extension. Therefore, petitioner has approached

this Court praying for a direction to the respondents to telecast the 14th and 15th episodes of the serial 'Vinodasala' on 21-6-1996 and 28-6-1996 (Friday) between. 7.20 P.M. to 7.45 P.M. on the Doordarshan, Petitioner also seeks a declaration that the respondents have no right to stop telecasting the serial titled 'Vinodasala' without telecasting the 14th and 15th episodes. It is contended by the petitioner that the action of the respondents in restricting the duration of the serial is unconstitutional and inconsistent under Article 19(1)(a) of the Constitution of India. It is also contended that there is no rigid rule that the serial should be limited to 13 episodes. According to the petitioner, even if there are such terms and conditions are to be imposed by Doordarshan Kendra in accordance with the restriction placed under Article 19(2) of the Constitution.

9. A counter-affidavit has been filed on behalf of respondents 2 and 3. It is stated that the sponsored serial 'Vinodasala' was originally submitted in 13 episodes and was approved in general category in January 1994. Consequently the same was given telecast slot for 13 episodes every Friday at 19.20 hours since 23-2-1996. It is stated that barring a few exigent occasions due to live telecasts and other programme of national importance the serial was being telecast unhindered every Friday. The main complaint raised by respondents 2 and 3 is that the serial is built upon a very loose, common place and rather unrealistic plot of two unemployment youth taking their dwelling an old, unoccupied manor house, which has been looked after by a middle aged and lone house-keeper, whose grave countenance gives way to the pathetic entreaties of the young intruders. It is also stated that the Director spens a couple of episodes in introducing the characters and in delineating the plot. It is pointed out that the remaining few episodes contain low comedy like the milk-boy mixing milk with water, the two young men being served with tea without milk, the youngsters trying to court the friendship of a rich neighbour etc. It is also stated that the story switches from bad to worse when a third incumbent is introduced into the plot. In brief, every silly, dull and insignificant situation the serial presents is an abortive and weak attempt to evoke mirth and laughter amongst the viewers. It is alleged that the serial is marked by its characteristic dearth of mirth. According to respondents 2 and 3 'what it has been bringing to a thousand drawing rooms of Kerala every Friday evening was sarcastic laughter which no sane viewer can help while watching the parade of low

comedy on the mini screen.' According to them the Director who was initially prolonging the initial episodes with events of doubtful substance, has now led the whole story into a new direction in his 13th episode and posed a claim for extension into another two episodes. According to the respondents one is really amazed at the brazenness of this claim considering the fact that the initial eight or nine episodes could have been compressed into three or four, had there been proper planning on the Director's side. It is alleged that the ratings in a publication like the T.V. Star has no sanctity or reliability. It is their case that similar T. V. publications have written against the serial 'Vinodasala'. However, Doordarshan does not rely on these for shaping their policy in these matters. It is also stated that the serial is of no quality which warrants an extension. However, it is stated the telecast slot on Friday at 19.20 hours has already been allotted to a new serial titled 'Sahyadrisanukkalil' from 21-6-1996 since serial 'Vinodasala' has concluded on 14-6-1996.

10. The right of a citizen to exhibit films on the Doordarshan subject to the terms of and conditions to be imposed by the Doordarshan is a part of the fundamental right of freedom of expression guaranteed under Article 19(1)(a) of the Constitution of India which can be curtailed only under circumstances which are set out in clause (2) of Article 19 of the Constitution of India. As held by the Supreme Court in Odyssey Communcations Pvt. Ltd. v. Lokvidayan Sanghatana, AIR 1988 SC 1642, the said right is similar to the right of a citizen to publish his views through any other media such as newspapers, magazines, advertisement hoardings etc. subject to the terms and conditions of the owners of the media.

11. Once it is recognised that a film maker has a fundamental right under Article 19(1)(a) to exhibit his film, the onus lies on the party which claims that it was entitled to refuse enforcement of this right by virtue of law made under Article 19(2) to show that the film did not conform to the requirements of that law; or the guidelines framed by the parties.

12. As held by the Supreme Court in Secretary, Ministry of Information and Broadasting v. Cricket Association of Bengal, (1995) 2 SCC 161 : (AIR 1995 SC 1236), the importance and significance of television in the modern world needs no

emphasis. Most people obtain the bulk of their information on matters of contemporary interest from the broadcasting medium. Televion is unique in the way in which it intrudes into our homes. The combination of picture and voice makes it an irresistibly attractive medium of presentation, It has a tremendous appeal and influence over millions of people. Television is shaping the food habits, cultural values, social mores and what not of the society in a manner no other medium has done so far. It is a powerful instrument, which can be used for greater good as also for doing immense harm to the society. Broadcasting freedom involves and includes the right of the viewers and listeners who retain their interest in free speech. It has been held that freedom of expression includes the right to receive information and ideas as well as freedom to impart them. The free speech interests of viewers and listeners in exposure to a wide variety of material can best be safeguarded by the imposition of programme standards, limiting the freedom of radio and television companies. Right of viewers has also been recognised by the Supreme Court in its decision reported in Cricket Association, of Bengal's case (1995) 2 SCC 161 : (AIR 1995 SC 1236). The fact that serial 'Vinodasala' was rated as a best Malayalam serial by the Research and Evaluation Cell of Doordarshan Kendra, Thiruvananthapuram was not disputed even by respondents 2 and 3. They have not denied that the rating 75% shown in Ext. P3 is incorrect or that the same was not evaluated by the Research and Evaluation Cell of the Doordarshan Kendra, Thiruvananthapuram. This shows its popularity among the viewers. It may not be popular in the eye of respondents 2 and 3, but the ratings given by the viewers cannot be brushed aside.

13. In the instant case it is seen from thecounter-affidavit filed by respondents 2 and 3that the main reason for not allowing the twoepisodes because of the poor quality of theserial. It is opined by respondents 2 and 3 thatthe serial is built upon a very loose, commonplace and rather unrealistic plot of two unemployed youth. It is stated that the Directorspends a couple of episodes in introducing thecharacters and in delineating the plot. According to respondents 2 and 3 the remainingfew episodes contain low comedy, It is alsotheir view that the story switches from bad toworse when a third incumbent is introducedinto the plot. According, to them 'in brief,every silly, dull and insignificant situation theserial presents is an abortive and weak attempt to evoke mirth and laughter amongstthe viewers.' It is also their

opinion that'what it has been bringing to a thousanddrawing rooms of Kerala every Friday evening was sarcasting laughter which no saneviewer can help while watching the parade oflow comedy on the mini screen.'

14. The above mentioned views may be the opinion of the broadcaster. In the instant case, the opinion of the viewers are refieced in Ext. P3 Doordarshan ratings prepared by Research and Evaluation Cell, Doordarshan Kendra, Thiruvananthapuram. It is also relevant to note that the serial 'Vinodasala' was pre-viewed and approved by the Selection Committee. There is no case for respondents 2 and 3 that the Selection Committee has opined that the remaining two episodes contain only low comedy.

15. Respondents 2 and 3 have no case in not exhibiting the remaining two episodes, the only reason they said in the counter affidavit is that the few episodes contain low comedy. It may be the opinion of respondents 2 and 3 and may not be the opinion of the viewers. Petitioner has got a further case that no hard and fast rules have been framed by the Doordarshan in the matter of exhibiting serials. In several cases, the serials were extended beyond 13 episodes, they have given the names of 7 such serials and the fact was not denied by respondents 2 and 3. The statement that by exhibiting the particular episode, Doordarshan has gained an additional revenue to the tune of Rs. 4 lakhs by commercial spots is also not denied in the counter affidavit filed by respondents 2 and 3. In view of the above mentioned circumstances, I do not find any justification on the part of respondents 2 and 3 in not exhibiting the two remaining episodes for completion of the comedy serial 'Vinodasala'. The fact that the serial was ordered to be exhibited on every Fridays at a prime time from 23-2-1996 itself would show the importance that respondents 2 and 3 have given to this comedy serial.

16. It is contended by the learned counsel for the petitioner that the remaining two episodes of the serial 'Vindosala' should be exhibited on 28-6-1996 and 5-7-1996 at the same time. The Doordarshan Kendra had already given the telecast slot on Friday 19.20 hours to their another serial by name 'Sahyadrisanukkalir. Therefore, this court is not justified in directing respondents 2 and 3 to exhibit the serial 'Vinodasala' on the date and time already allotted to the producers of

'Sahyadrisanukkalir.

17. Under the above mentioned circumstances, there will be a direction to respondents 2 and 3 to exhibit the remaining two episodes of the serial 'Vinodasala' on another two convenient dates and time to be notified sufficiently early to the viewers through their media. Two remaining episodes should be exhibited as early as possible, at any rate within a period of three weeks from the date of receipt of a copy of this judgment; lest the serial would lose its continuity.

The Original Petition is allowed to the above extent.

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