

ITEM NO.20

Court 4 (Video Conferencing)

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 956/2020

FIROZ IQBAL KHAN

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

Date : 15-09-2020 This petition was called on for hearing today.

CORAM : HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MS. JUSTICE INDU MALHOTRA
HON'BLE MR. JUSTICE K.M. JOSEPH

For Petitioner(s) Mr. Anoop George Chaudhari, Sr. Adv.
Mr. V. Elanchezhian, AOR

For Respondent(s) Mr. Tushar Mehta, SG
Mr. Gurmeet Singh Makker, Adv.
Mr. Rajat Nair, Adv.
Mr. Amit Sharma, Adv.

Ms. Nisha Bambhani, Adv.
Mr. Rahul Bhatia, AOR

Mr. Shyam Diwan, Sr. Adv.
Mr. Bijendar Singh, Adv.
Ms. Amita Sachdeva, Adv.
Mr. Chanakya Gupta, Adv.
Ms. Mallika Parmar, Adv.
Mr. Vinay Rajput, Adv.
Mr. Sudipto Sircar, Adv.
Ms. Sugandha Yadav, Adv.
Mr. Vishnu Shankar Jain, AOR

Mr. Anas Tanwir, AOR
Mr. Gautam Bhatia, Adv.

Mr. Shadan Farasat, AOR
Mr. Shourya Dasgupta, Adv.
Mr. Bharat Gupta, Adv.

Ms. Shahrukh Alam, Adv.
Ms. Liz Mathew, AOR
Mr. Shantanu Singh, Adv.
Ms. Ankur Gulyani Panda, Adv.

Mr. Navneet R., Adv.
Ms. Sonali Jain, Adv.

Mr. Anshuman Ashok, Adv.

**UPON hearing the counsel the Court made the following
O R D E R**

Applications for interventions are allowed.

On 28 August 2020, the writ petition under Article 32 of the Constitution was moved for urgent directions since the telecast of a programme titled “Bindaas Bol” was to take place at 8 pm on Sudarshan news, the news channel of the fifth respondent. The petitioner relied on the transcript of a promotional clip of forty-nine seconds. The contention was that the clip contains statements which are derogatory of the entry of Muslims in the civil services. The Court declined to issue a pre-broadcast interlocutory injunction, furnishing the following reasons in paragraph 8 of the order :-

“8. At this stage, we have desisted from imposing a pre-broadcast interlocutory injunction on the basis of an unverified transcript of a forty nine second clip. The Court has to be circumspect in imposing a prior restraint on publication or the airing of views. We note that under statutory provisions, competent authorities are vested with powers to ensure compliance with law, including provisions of the criminal law intended to ensure social harmony and the peaceful coexistence of all communities.”

Several interlocutory applications have been moved before this Court including I.A. Nos.91132, 91134, 91167, 91171, 91135, 91136

and 90940 of 2020.

This Court has heard submissions from Mr. Anoop Chaudhari, senior counsel, Mr. Shadan Farasat, Ms. Shahrukh Alam and Mr Gautam Bhatia broadly adopting the same position, in support of the petition. Mr. Tushar Mehta, the Solicitor General of India has appeared on behalf of the Union of India. Mr. Shyam Divan, senior counsel appeared on behalf of the fifth respondent.

The hearings before this Court are to continue on the next available sitting which is on 17 September 2020.

Since the order of this Court dated 28 August 2020, certain developments have taken place. On the same day as the previous order of this Court, a Single Judge of the Delhi High Court restrained the fifth respondent from broadcasting the proposed programme and directed the Ministry of Information and Broadcasting to consider whether there was a violation of the Programme Code under the provisions of the Cable Television Networks (Regulation) Act, 1995. A communication was addressed on 09 September 2020 by the Union Government to the fifth respondent to ensure that the broadcast of the programme is consistent with the provisions of the Programme Code. Since then, episodes of the programme based on the same theme have been broadcast on 11, 12, 13 and 14

September 2020. The remaining episodes comprising of a total of ten episodes are to be broadcast between 15 to 20 September 2020.

On behalf of the petitioners, it has been submitted that the content of the episodes which have been telecast constitutes hate speech directed against the Muslim community. It has been submitted that the telecasts vilify the community by portraying it to be involved in an act of terror or, as it is labelled, "*jihad*" in infiltrating the civil services of the nation. Hence, it has been submitted that the restraint which was observed by this Court in declining to issue an order of injunction on 28 August 2020 would warrant a change. It has been submitted that the circumstances which weighed this Court in declining to order a pre-broadcast injunction have substantially been altered. For one thing, it has been emphasized that in the course of the telecast, palpably false statements have been made in connection with the Muslim community, including among them the statements that:

- (i) While the upper age limit for Hindus in the civil services examination is 32 years, the age limit for Muslims is 35 years; and
- (ii) While six attempts are made available for Hindus to appear for the civil services examination, Muslims are entitled to nine attempts.

Screenshots of the programmes which have been aired between 11 and 14 September, 2020 have been placed on record together with transcripts. It has been submitted that a carefully orchestrated attempt has been made to target the Muslim Community as being involved in a conspiracy to infiltrate the civil services.

Mr. Chaudhary, senior counsel, Mr. Farasat, Ms. Alam and Mr. Bhatia have joined in urging before the Court that the restraints which apply to a prior publication may not, strictly speaking, be attracted in the case of hate speech. The broadcast in the present case, it has been submitted, falls in the realm of hate speech. Ms. Alam has submitted that based on the programmes which have been aired by Sudarshan News Channel, promotional videos have been placed in the public realm on their Twitter handle in pursuance of which a large number of persons have responded with responses which border on hatred towards the Muslim community. In other words, it has been submitted that the programmes which have been aired have been utilised to become a focal point for the spread of hate speech.

The Solicitor General of India submitted that some of the broader issues which have been raised in the present case would

have to be addressed from the perspective of regulating not merely the electronic media but other forms of media as well, through which information which is purveyed can transgress the line of permissible content which can be shared and aired. The Solicitor General submitted that in pursuance of the order of the Delhi High Court, the Ministry of Information and Broadcasting issued a communication on 9 September 2020 stating that if there is a breach of the Programme Code, the Government would consider whether a case has been made out for recourse to its powers under the law. The Solicitor General also submitted that the Court has been usually circumspect in granting pre-broadcast injunctions.

Mr. Shyam Divan, learned senior counsel has submitted that there is no change in the position as it existed when this Court declined to grant a pre-broadcast injunction on 28 August 2020. He submitted firstly that the fifth respondent has embarked on an investigative exercise, this being a part of the fundamental duty of a journalist to convey information to the public. Secondly, it has been submitted that the programmes raise issues pertaining to national security. Thirdly, it has been submitted that the contents of the programmes indicate the involvement of foreign funding. On these grounds, Mr. Divan has urged this Court to decline the request of the petitioners to grant an interim injunction, particularly having regard

to the earlier order passed by this Court.

The Court is presently seized with the hearing of the writ petition which will continue on the next available date of listing which is 17 September 2020. In the meantime, the issue is whether a pre-broadcast injunction should be issued in respect of the remaining episodes of the programme. At this stage, *prima facie*, it does appear to the Court that the intent, object and purpose of the episodes which have been telecast is to vilify the Muslim community. An insidious attempt has been made to insinuate that the community is involved in a conspiracy to infiltrate the civil services. Several statements in the episodes, which have been drawn to the attention of the Court are not just palpably erroneous but have been made in wanton disregard of the truth. There is no relaxation either in the age limit or in the number of attempts available to the Muslim community in the civil services. The drift, tenor and content of the episodes is to bring the community into public hatred and disrepute. The Court is duty bound to ensure compliance with the salutary principles of the Programme Code. The Programme Code has been formulated under Rule 6 of the Cable and Television Networks (Regulation) Rules and has statutory force and effect. Rule 6(1)(c), *inter alia*, stipulates that no programme should be carried which “contains attack on religions or communities or visuals or words

contemptuous of religious groups or which promote communal attitudes". Under Rule 6(1)(d), the Programme Code should not, *inter alia*, contain anything which is defamatory, false or reflective of "half - truths and suggestive innuendos". A breach of the Programme Code is subject to sanctions under Sections 19 and 20 of the Cable and Television Networks (Regulation) Act, 1995. The edifice of a democratic society committed to the rule of law under a regime of constitutional rights, values and duties is founded on the co-existence of communities. India is a melting pot of civilizations, cultures, religions and languages. Any attempt to vilify a religious community must be viewed with grave disfavour by this Court as the custodian of constitutional values. Its duty to enforce constitutional values demands nothing less.

Conscious, therefore, as we are of the previous order dated 28 August 2020 declining to issue a pre-broadcast injunction, we are of the view that there has been a change of circumstances, at least, *prima facie*, on the basis of the record which has emerged before this Court. On 28 August 2020, the Court was truly in the realm of a pre-broadcast injunction when even the first programme was to be aired. Since then, episodes have been aired between 11 and 14 September 2020 which indicate the content, tenor and object of the telecast in question. The remaining episodes admittedly will be in

the same vein. On the basis of what has been aired, we are of the view that it will be necessary to interdict any further telecast. Consequently, we direct that pending further orders of this Court, the fifth respondent shall stand injuncted from making any further telecast in continuation of or similar to the episodes which were telecast on 11, 12, 13 and 14 September, 2020 either under the same or any other title or caption.

List on 17 September 2020.

Counter affidavits, if any, are permitted to be filed in the meantime.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER