

Odyssey Communications Pvt. Ltd

Vs

Lokvidayan Sanghatana and Others

Civil Appeal No. 1523 of 1988

(E. S. Venkataramiah, N. D. Ozha JJ)

19.07.1988

JUDGMENT

VENKATARAMIAH, J. –

1. This appeal by special leave is filed against an interim order of injunction issued by the High Court of Bombay, Aurangabad Bench on April 13 1988 directing the three respondents; (1) Union of India, (2) Ministry of Information and Broadcasting, Parliament House, New Delhi and (3) State of Maharashtra, not to telecast and show episodes 12 and 13 of a serial entitled 'Honi-Anhoni' pending disposal of Writ Petition No. 479 of 1988 filed by respondent 1, Lokvidayan Sanghatana, a registered social organisation of Pune having its branch at Aurangabad and respondent 2 Mahila Sangharsha Samiti, Aurangabad represented by one of its members Smt. Anagna Patil. The writ petition was in the nature of public interest litigation. The prayer in the writ petition was that the respondents should be directed not to telecast the serial as such telecasting was not in the public interest.

2. The serial 'Honi-Anhoni' was being telecast by the Doordarshan, which is run by the Union of India, on every Thursday between 9 p.m. and 9.30 p.m. The 12th episode of the said serial was to be telecast on April 14, 1988 and the 13th episode was to be telecast on April 21, 1988. By virtue of the interim order passed on April 13, 1988 episode No. 12 could not be telecast on April 14, 1988. Aggrieved by the interim order passed by the High Court the appellant, Odyssey Communication Pvt. Ltd., which was the producer of the serial 'Honi-Anhoni' filed the special leave petition before this Court under Article 136 of the Constitution of India out of which this appeal arises. The said petition came up before this Court for consideration on April 21, 1988. After hearing the learned counsel for the appellant this Court granted special leave to prefer an appeal against the order passed by the High Court and also stayed the operation of the interim order dated April 13, 1988 passed by the High Court until further orders and permitted the Doordarshan to telecast the serial in question. In view of the above order the 12th episode of the serial was telecast on April 21, 1988. The appeal was heard on April 28, 1988 and this Court reserved judgment on the appeal. At the end of the hearing of the appeal on April 28, 1988 the court expressed that it would set aside the order passed by the High Court against which the appeal had been filed and would give reasons in the course of its judgment. Since the order of stay passed by the Court was allowed to remain in force the 13th episode, which was the last episode of the serial was telecast on April 28, 1988.

3. The grounds mentioned in the writ petition in support of the prayer made in it were that in each and every episode telecast in the serial an obscure and mysterious atmosphere was being created due to the way of the presentation of the episodes and that it had created fear in the minds of the common viewers and especially of children as the serial had the effect of confirming blind faiths,

superstitious beliefs in stories of ghosts, rebirth, precognition etc. and of spreading the unscientific way of thinking and blind beliefs. It was further contended that it was the duty of the State not to encourage blind beliefs amongst the public by telecasting such episodes. It was on the basis of these grounds the High Court was requested to grant the interim order of injunction. The appellant was the producer of the said serial, yet the appellant was not made a party to the writ petition. But on its application the appellant was impleaded as a party on April 12, 1988. On April 13, 1988 the High Court passed the impugned order of temporary injunction. The appellant rushed to this Court immediately thereafter with the abovesaid special leave petition. The appellant has stated before us that the said serial and in particular episodes 12 and 13 did not emphasise superstitious beliefs but on the contrary criticised and condemned superstition and blind faith as was ex facie apparent from the scripts of episodes 12 and 13 produced before this Court. It is stated that at the end of both the episodes a doctor and a professor gave a scientific explanation for the unusual occurrences portrayed therein and considered by people as supernatural phenomena. It is alleged that in the 13th episode after a scientific explanation of what had taken place the viewers were told as follows :

All those who without thinking spread blind faith ought to feel ashamed of themselves. We request all you that whenever any unusual occurrence takes place or a seemingly improbable event occurs, before believing in it, to reflect as to whether there is a scientific reason for it or is it or is purely psychological by nature. If all of us exercise such cation we believe that the malady of blind faith will soon be eradicated by our society.

4. The appellant further pleaded that the High Court was in error in issuing the order of injunction without giving a reasonable opportunity to it (the producer), which was likely to be affected by the order, to explain that the writ petitioners had no right to move the court in the circumstances of the case.

5. In can no longer be disputed that the right of a citizen to exhibit films on the Doordarshan subject to the terms 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 9 of the Constitution of India. The right is similar to the right of a citizen 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. We hasten to add that what we have observed here does not mean that a citizen has a fundamental right to establish a private broadcasting station, or television centre. On this question we reserve our opinion. It has to be decided in an appropriate case. The relevant part of Article 19 of the Constitution reads thus :

19. Protection of certain rights regarding freedom of speech etc. - (1) All citizens shall have the right -

(a) to freedom of speech and expression;

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(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State,

friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

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Freedom of expression is a preferred right which is always very zealously guarded by this Court.

6. It is not the case of the petitioners in the writ petition that the exhibition of serial 'Honi-Anhoni' was in contravention of any specific law or direction issued by the government. They had not alleged that the Doordarshan had shown any undue favour to the appellant and the sponsoring institutions resulting in any financial loss to the public exchequer. The objection to the exhibition of the film had, however, been raised by them on the basis that it was likely to spread false or blind beliefs amongst the members of the public. They had not asserted any right conferred on them by any statute or acquired by them under a contract which entitled them to secure an order of temporary injunction against which this appeal is filed. The appellant had denied that the exhibition of the serial was likely to affect prejudicial the well being of the people. The Union of India and the Doordarshan have pleaded that the serial was being telecast after following the prescribed procedure and taking necessary precautions. In such a situation, the High Court should not have immediately proceeded to pass the interim order of injunction. It was no doubt true that the 12th episode was to be telecast on April 14, 1988 and the 13th episode was to be telecast on April 21, 1988. If the petitioners in the writ petition had felt, as they had alleged in the course of the petition, that all the episodes in the serial were offensive they could have approached the High Court as early as possible within the first two or three weeks after the commencement of the exhibition of the serial. But they waited till the exhibition of the 11th episode of the serial was over and filed the petition only in the second week of April 1988. They had not produced any material apart from their own statements to show that the exhibition of the serial was prima facie prejudicial to the community. The High Court overlooked that the issue of an order of interim injunction in this case would infringe a fundamental right of the producer of the serial. In the absence of any prima facie evidence of grave prejudice that was likely to be caused to the public generally by the exhibition of the serial it was not just and proper to issue an order of temporary injunction. We are not satisfied that the exhibition of the serial in question was likely to endanger public morality. In the circumstances of the case the balance of convenience lay in favour of the rejection of the prayer for interim injunction. What we have stated here is sufficient to dispose of this appeal. The other questions of law which may arise in a case of this nature will have to be dealt with in an appropriate case. We express no opinion on those questions in this case. We are, however, of the opinion that the High Court was in error in the present case in issuing the interim order of injunction against which this appeal is filed. We, therefore, allow this appeal and set aside the interim order of injunction passed by the High Court on April 13, 1988. There is, however, no order as to costs.

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