

GAHC010116682020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C) 3413/2020

1:M/S AM TELEVISION PRIVATED LIMITED AND ANR
A PRIVATE LTD. COMPANY INCORPORATED UNDER THE COMPANIES ACT,
1956, HAVING ITS REGISTERED OFFICE AT. FIFTH FLOOR, SURYA TOWER,
B. BARUAH ROAD, ULUBARI, GUWAHATI ASSAM-781007, REP BY ITS
MANAGING DIRECTOR, SRI SANJIVE NARAIN

2: SANJIVE NARAIN
S/O LT. SURV VIAPAK NARAIN
A R/O HOUSE NO. 14
AJANTA PATH
BY LANE 1
SURVEY BELTOLA
GUWAHATI
ASSAM-78102

VERSUS

1:THE STATE OF ASSAM AND 3 ORS.
REP. BY THE CHIEF SECRETARY, ASSAM, BLOCK C, THIRD FLOOR,
JANATA BHAWAN, DISPUR, GUWAHATI-781006

2:THE COMMISSIONER AND SECRETARY
HOME AND POLITICAL GOVT. OF ASSAM
ASSAM SECRETARIAT
CM BLOCK
SECOND FLOOR
DISPUR
GUWAHATI
ASSAM
PIN-781006

3:DISTRICT LEVEL MONITORING COMMITTEE
REP. BY ITS CHAIRMAN

O/O COMMISSIONER OF POLICE
GUWAHATI
M.G. ROAD
PANBAZAR
GUWAHATI
ASSAM-781001

4:COMMISSIONER OF POLICE CUM AUTHORIZED OFFICER
GUWAHATI
O/O COMMISSIONER OF POLICE
GUWAHATI
M.G. ROAD
PANBAZAR
GUWAHATI
ASSAM-78100

Advocate for the Petitioner : MR. S SARMA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

03.09.2020

Heard Mr. S. Sharma, learned counsel assisted by Mr. T. K. Bhuyan, learned counsel appearing for the writ petitioners. I have also heard Ms. M. Bhattacharjee, learned Government Advocate, Assam, appearing for the respondent Nos.1 to 4 and Mr. P. S. Lahkar, learned Central Govt. Counsel, appearing for the respondent No.5.

Mr. H. K. Das, learned counsel, has appeared on behalf of the complainants, viz., Hindu Jagaran Mancha and Shri Gunajit Adhikari, on the strength of a caveat, although they are not parties in this proceeding.

With the consent of learned counsel for all the parties, this writ petition is being taken up for disposal at the stage of motion hearing.

The writ petitioner No.1 herein is a private limited company which is operating a satellite TV channel in the name and style "Rengoni TV" and the petitioner No.2 is its Managing Director. The petitioner No.1 company is broadcasting a serial viz., "Begum Jaan" in its TV channel 5 days a week from Monday to Friday. The said TV serial, which is being telecast at national level, is an in house production of petitioner No.1 which has been produced after incurring substantial expenditure. However, based on four complaints received by the respondent No.4, by the impugned order dated 24.08.2020, the telecast of the aforesaid TV serial has been suspended for a period of two months with effect from the date of the order while issuing show cause notice to the writ petitioners. Aggrieved thereby, the petitioners have approached this Court by filing the present writ petition.

By referring to the impugned order dated 24.08.2020 Mr. Sharma submits that the said order has been passed on the basis of recommendation of the monitoring committee constituted under the Government guidelines issued on 06.09.2005. However, the aforesaid guidelines issued by the Ministry of Information and Broadcasting, Govt. of India, has since been superseded by the subsequent guidelines issued on 26.04.2017 which mandates the inclusion of a representatives from the field of electronic media which has not been done in the present case. Mr. Sharma submits that the non-inclusion of a representative from the electronic media has rendered the monitoring committee incompetent in the eye of law. As such, the action initiated on the basis of

recommendation of an incompetent monitoring committee is ex-facie illegal and hence, liable to be set aside by this Court.

It is also the submission of Mr. Sharma that as per the relevant guidelines issued by the Ministry of Information and Broadcasting, Government of India, it is the Central Government which alone is authorized to initiate action in the matter and the District Monitoring Committee is only empowered to make suitable recommendation to the Central Govt., that too, after hearing the versions of both parties. However, submits Mr. Sharma, in the present case, not to speak of any opportunity of hearing to the writ petitioners, the authorities did not even forward the copies of the complaints received by it to the petitioners before issuing the impugned order banning the telecast of the serial for a period of two months. Mr. Sharma submits, that the impugned order is, therefore, violatiive of the principles of natural justice and fair play and hence, is liable to be interfered with on such count as well.

Ms. M. Bhattacharjee, learned Govt. Advocate, Assam, has produced the records pertaining to the deliberations that took place in the meeting of the monitoring committee as called for by the order dated 01.09.2020 passed by this Court. The learned Govt. Advocate has, however, fairly submitted that in this case, the monitoring committee was not constituted as per the guidelines dated 26.04.2017 and to that extent, she does not dispute the fact that there was some shortcomings in the constitution of the monitoring committee which has issued the recommendation leading to the impugned order.

Mr. Das has advanced arguments on the merit of the complaints made by his client and contends that even if the monitoring committee was not

constituted in accordance with guidelines, it would not have any ramification in the matter since the respondent No.4 would be independently empowered to take a decision on the complaints lodged before him.

It is not in dispute that the impugned order has been issued by the respondent No.4 in exercise of powers under section 19 of the Cable Television Networks (Regulation) Act, 1995, on the basis of the recommendation dated 22.08.2020 of the District Monitoring Committee. There is no wrangle at the bar that the District Monitoring Committee is required to be constituted as per the guidelines laid down in the Notification dated 26.04.2017 issued by the Government of India, Ministry of Information and Broadcasting. However, as noted above, no representative of electronic media, as required under the guidelines in force, has been inducted in the committee. Therefore, it is apparent on the face of the record that the constitution of the District Monitoring Committee is not in accordance with the Office Memorandum dated 26.04.2017 which is admittedly holding the field.

After examining the records produced by the learned Government Advocate, Assam, I am unable to accept the submission of Mr. Das that the respondent No.4 could have issued the impugned order dehors the recommendation of the Monitoring Committee. The complaints were evidently addressed to the Chairman of the Monitoring Committee and therefore, a duly constituted monitoring committee was required to apply its mind on the merit of the complaints before making any recommendation in the matter which has apparently not been done in this case.

Moreover, records also reveal that no copy of the complaints were

furnished to the writ petitioners nor were they heard in the matter before issuing the impugned order. Not only that, neither the minutes of the meeting of the District Monitoring Committee held on 22.08.2020 recommending action against the writ petitioners nor the impugned order dated 24.08.2020 remotely makes any mention as to which part of the complaint has been found to be sustainable and for what reason. There is also no mention as to which part of the TV serial was found to be objectionable and the reason thereof. This Court is, therefore, of the view that the impugned order dated 24.08.2020 is unsustainable in the eye of law not only on the ground of violating the mandate of Office Memorandum dated 26.04.2017 issued by the Government of India, Ministry of Information and Broadcasting but also for violating the principles of natural justice and for non-application of mind. The respondent No.4 was clearly not justified in suspending the telecast of the serial by an *ex parte* blanket order without giving an opportunity of hearing to the petitioners to explain their stand or recording any cogent reason for doing so.

At this stage, Mr. Das submits that if the impugned order is found to be unsustainable on account of procedural irregularities, the matter can be remanded back for fresh decision on merit after due compliance with the requirement of law. Similar is the stand of the learned Government Advocate, Assam.

Mr. Sharma, learned counsel for the writ petitioners, has also submitted that he would not have any objection if the matter is remanded back to the competent authority for a fresh decision in the matter after complying with the requirements of the Cable Television Networks (Regulation) Act, 1995 and the

Rules framed thereunder as well as the Office Memorandum dated 26.04.2017.

Situated thus, without expressing any opinion on the merits of the claims and counter-claims of the parties as regards the content of the serial and the four complaints, with the consent of all the parties, I dispose of this writ petition at the stage of motion hearing by setting aside the impugned order dated 24.08.2020 and remanding the matter back to the concerned authority for a fresh decision on the complaints in accordance with law. It is, however, made clear that before taking any further action in the matter, the respondents would furnish copies of the complaints to the writ petitioners and give them reasonable opportunity of being heard so as to explain their stand. Similarly, opportunity of personal hearing be also granted to the complainants.

Since the impugned order has been set aside by this Court, the writ petitioners would be at liberty to telecast the Serial, "Begum Jaan", if so advised. However, taking note of the apprehension expressed by Mr. H. K. Das, it is hereby provided that telecast of the serial "Begum Jaan" be made only after the petitioner No.2, as the Managing Director of the satellite TV channel, reaches his personal satisfaction to the effect that any content of the Serial which is deemed to be universally objectionable on the ground of violation of communal harmony or which may contain anything that may harm the religious sentiment of any community, is deleted, before making the telecast. Subject to observation of the above condition, it would be open for the petitioners to telecast the TV serial "Begum Jaan" in accordance with law.

It is made clear that violation of the above condition, in any manner, shall be viewed seriously by this Court.

With the above observation, this writ petition stands disposed of.

Records be returned back.

JUDGE

Comparing Assistant