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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision : 11.09.2020

+ W.P.(C) 6336/2020

SYED MUJTABA ATHAR & ANR. Petitioners

Through: Mr.Shadan Farasat, Mr.Bharat
Gupta & Mr.Shourya Dasgupta,
Advs.

versus

UNION OF INDIA, THROUGH THE SECRETARY,
MINISTRY OF INFORMATION AND BROADCASTING &
ORS. Respondents

Through: Mr.Anurag Ahluwalia, CGSC
for R-1.
Mr.Bijender Singh &
Ms.Vridhhi Arora, Advs. for R-
2 & R-3.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

This petition has been heard through video conferencing.

CM APPL. 22492/2020, 22493/2020 & 22494/2020 (Exemptions)

Allowed, subject to all just exceptions.

W.P.(C) 6336/2020 & CM APPL. 22491/2020

1. Issue notice.
2. Notice is accepted by Mr.Anurag Ahluwalia, CGSC on behalf of the respondent no. 1 and Mr.Bijender Singh, Advocate on behalf of the respondent nos. 2 and 3. They pray for and are granted four weeks

to file counter affidavits. Rejoinder(s), if any, be filed within a period of three weeks thereafter.

3. The petition challenges the order dated 09.09.2020 passed by the respondent no. 1 on the complaint against violation of the Programme Code under the Cable Television Network Rules, 1994 by the respondent no. 2. Paragraphs 8 to 10 of the order dated 09.09.2020 are relevant and are quoted herein-below:-

“8. This is a peculiar situation where while the programme has not yet been telecast, the promo of the programme has been telecast on the channel, which formed the basis of the complaints received in the Ministry; accordingly the Ministry issued the notice to the channel to give its say regarding adherence by the channel to the Programme Code in respect of the proposed programme.

9. The channel has mentioned in the written submission that the proposed programme “BINDASS BOL” is not violative of the law and further that if at all the programme is found to be violative, action as per law may be taken.

10. Having regard to the aforementioned facts and circumstances of the case, Sudarshan TV channel is hereby directed to ensure that the programme proposed to be telecast does not violate any of the programme codes. If any violation of the programme code is found, action as per law will be taken.”

4. The present case has a history inasmuch as the petitioners had earlier, based on a promo of the programme “BINDASS BOL”, filed a petition before this Court being W.P.(C) 5792/2020 titled *Syed*

Mujtaba Athar & Ors. v. The Union of India Through The Secretary, Ministry of Information and Broadcasting & Ors., seeking restraint on the telecast of the said programme. This Court by its order dated 29.08.2020, had disposed of the said petition, directing as under:-

“13. The present application and the petition are therefore, disposed of directing as under:

a) The respondent nos. 3 and 4 shall file their reply to the Notice with the Central Government. The learned counsel for the respondent nos.3 and 4 submits that the reply will be filed by 01.09.2020;

b) The Central Government shall decide on its Notice within 48 hours of the receipt of the reply from the respondent nos.3 and 4, after giving them an opportunity of hearing in this regard;

c) The Central Government shall decide on the Notice remaining uninfluenced by any observations made by this Court in the present order.

d) Either party shall be entitled to challenge the order passed by the Central Government, if aggrieved thereby, in accordance with law.

e) Till such decision by the Central Government, the respondent nos.3 and 4 shall not telecast/transmit the programme 'Bindas Bol' that was scheduled to be transmitted/telecasted on 28.08.2020 at 8.00 p.m.;”

5. The Impugned Order has been passed in purported compliance with the said direction.

6. The learned counsel for the petitioners submits that the respondent no. 1 has passed the said order without calling upon the respondent nos. 2 and 3 to satisfy the respondent no. 1 on the contents of the programme and based the order only on the assertions of the respondent nos. 2 and 3 that the said programme does not violate the Programme Code. Placing reliance on the Judgment of the Supreme Court in *Pravasi Bhalai Sangathan v. Union of India and Others*, (2014) 11 SCC 477, the learned counsel for the petitioners submits that the respondent no. 1 has to ensure that no 'hate speech' is telecasted and the law in this regard is strictly enforced. Further, placing reliance on the Judgment of the Supreme Court in *Sahara India Real Estate Corporation v. SEBI*, (2012) 10 SCC 603, he submits that even prior restraint through pre-censorship in this regard is permissible. He also places reliance on the provisions of the Cable Television Networks (Regulation) Act, 1995, to submit that the power to prohibit the telecast and re-telecast of a programme has been vested with the respondent no. 1 and therefore, would include pre-censorship or prior restraint on the telecast of a programme.

7. I have considered the submissions made by the learned counsel for the petitioners. A reading of the Impugned Order would indicate that the same is premised primarily on the assurance and undertaking given by the respondent nos. 2 and 3 that the proposed programme is not violating the law and especially the Programme Code. The Impugned Order directs the respondent no. 2 to ensure that the proposed programme does not violate any provision of the Programme

Code and further warns the respondent no. 2 that if any such violation is found, action as per law will be taken.

8. At this stage, this Court has no material to determine whether the programme of the respondent nos. 2 and 3 would, in any manner violate the Programme Code. Infact, the telecast of the same programme has been challenged by a certain party before the Supreme Court in W.P. (C) 956/2020 titled ***Firoz Iqbal Khan vs. Union of India & Ors.*** The Supreme Court by its order dated 28.08.2020, while issuing notice on the said petition, has observed as under:-

“5 During the course of the hearing, it has been highlighted that the expression of views derogatory to a particular community has a divisive potential. Prima facie, the petition raises significant issues bearing on the protection of constitutional rights. Consistent with the fundamental right to free speech and expression, the Court will need to foster a considered a debate on the setting up of standards of self-regulation. Together with free speech, there are other constitutional values which need to be balanced and preserved including the fundamental right to equality and fair treatment for every segment of citizens.

6 Having regard to the importance of the issues which arise from the petition under Article 32, we direct that notice be issued to the respondents, returnable on 15 September 2020. On the next date of listing, the court will consider appointing amicus curiae to assist it towards a resolution which advances the protection of constitutional rights.

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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.”*

9. The Supreme Court has observed that the Court has to be circumspect in imposing pre broadcast injunction on publication or airing of views.

10. In view of the order of the Supreme Court having been passed in relation to the programme in question itself, at this stage, I do not deem it proper to restrain the telecast of the programme.

11. List on 18th November, 2020.

NAVIN CHAWLA, J

SEPTEMBER 11, 2020/rv