

December 5, 2022
Item No. 33
Court No.1
PA(RB)

WPA (P) 457 of 2022

Nazia Elahi Khan

vs.

The State of West Bengal and Others

Mr. Ronojoy Chatterjee, Sr. Advocate
Ms. Piyeta Bhattacharjee,
Mr. Debottam Das, Advocates

... for the petitioner

Mr. Samrat Sen, Id. AAAG
Mr. Anirban Ray, Id. GP
Mr. Nilotpal Chatterjee,
Mr. Varun Kothari, Advocates

...for the State

Mr. Sakya Sen,
Mr. Rajarshi Dutta,
Mr. Ranjit Kumar Basu,
Mr. Parag Khandar,
Ms. Shebatee Datta,
Ms. Chandrima Mitra, Advocates

... for the respondent nos. 5, 6, 8 & 9

Mr. Ranjan Bachawat, Sr. Advocate
Mr. Deepan Kumar Sarkar,
Mr. Arunabha Deb,
Mr. Ayush Jain,
Ms. Deepti Priya, Advocates

... for the respondent no. 7

In this public interest petition, the petitioner has raised certain objection in relation with the talk show by the name "Koffee with Karan" which is stated to be hosted and presented by respondent no. 5, produced by the respondent no. 6, which is the subsidiary of production house by the name of Dharma Production and the respondent no. 9, directed by the respondent no. 8 for Seasons 6 and 7 and is streamed in respondent no. 7. The allegation is that in the talk show, sexual and racist comments have been made and vulgar language is used. It is further alleged that earlier, it was

shown in the television network but later, it is shifted to over-the-top platform because over-the-top platform are not being censored or regulated by the Government of India.

Learned counsel appearing for the respondent no. 7 as also other respondents have raised a preliminary objection about maintainability of the petition.

Having heard the learned counsel for the parties and on perusal of the record, it is noticed that the petitioner has not stated anywhere in the writ petition that she had watched the talk show in question. The petition is based upon some newspaper reports. It is also noticed that the petitioner has referred to the talk show between 2004 to 2019 whereas, the writ petition has been filed on 6th of September, 2022. In the writ petition, though, several instances have been mentioned but it has not been disclosed as to in which episode or on what date such comments were made. The allegations are not supported by cogent materials and from the pleadings in the writ petition, it is also not reflected that any such comment was made in any episode in recent past.

Learned counsel for the respondents has pointed out that the Grievance Redressal Mechanism has been provided under the Information Technology (Intermediaries Guidelines and Digital Media Ethics Code) Rules, 2021. Learned counsel for the petitioner has not disputed it but referring to the newspaper report

(Annexure – “P/3”), he has submitted that the Rules have been stayed by Hon’ble Supreme Court. On perusal of the said newspaper report, we find that the report is relating to stay of further proceedings by the Hon’ble Supreme Court pending before the High Court involving challenge to IT Rules or Cable TV Rules. From the said newspaper report it cannot be ascertained that the operation of the Rules of 2021 have been stayed. Admittedly, the petitioner has not availed the grievance redressal remedy provided under the Rules.

It is undisputed that the show has been rated as U/A.

Learned counsel for the respondents have also pointed out that the petitioner had earlier filed WPA (P) 397 of 2022 questioning the exhibition of film “Laal Singh Chaddha” in the theatres and across the State of West Bengal and the said petition was dismissed by order dated 30th of August, 2022, taking note of the judgment of the Hon’ble Supreme Court in the matter of **Indibily Creative Private Limited and Others vs. Government of West Bengal and Others** reported in **(2020) 12 SCC 436**. Hon’ble Supreme Court in this judgment has held that:

“**44.** The statutory authority to certify a film for public exhibition is vested in the CBFC under the provisions of the Cinematograph Act, 1952. Sections 4, 5, 5-A and 5-B provided a statutory code for the examination and certification of films for public exhibition. Sub-section (1) of Section 5-B provides for the grounds on which a film may not be certified for

public exhibition. An order refusing to grant certification is subject to the remedies stipulated in the Act. The State Act [Section 6 of the West Bengal Cinemas (Regulation) Act, 1954] and the Central Act [Section 13 of the Cinematograph Act, 1952] provide the conditions in which the State Government, or as the case may be, the Central Government (or a local authority) may suspend the exhibition of a film, where it is likely to cause a breach of the peace. Any order which is issued under the terms of these statutory provisions is subject to statutory control as well as to the supervisory jurisdiction of the High Courts under Article 226 or, as the case may be, the original jurisdiction of this Court under Article 32. These statutes are to be interpreted in the rule of law framework. An excess or abuse of statutory power is amenable to constitutional guarantees which protect the citizen against arbitrary State action.

45. The danger which this case exemplifies is the peril of subjecting the freedom of speech and expression of the citizen to actions which are not contemplated by the statute and lie beyond the lawful exercise of public power. All exercises of authority in pursuance of enabling statutory provisions are amenable to statutory remedies and are subject to judicial oversight under a regime of constitutional remedies. The exercise of statutory authority is not uncontrolled in a regime based on the rule of law. But what do citizens who have a legitimate right to exhibit a film confront when they are told that a film which is duly certified and slated for release is unceremoniously pulled off the exhibiting theatres without the authority of law? Such attempts are insidious and pose a grave danger to personal liberty and to free speech and expression. They are insidious because they are not backed by the authority of law. They pose grave dangers to free speech because the citizen is left in the lurch without being informed of the causes or the basis of the action. This has the immediate effect of silencing speech and the expression of opinion.

46. Contemporary events reveal that there is a growing intolerance: intolerance which is unaccepting of the rights of others in society to freely espouse their views and to portray them in print, in the theatre or in the celluloid media. Organised

groups and interests pose a serious danger to the existence of the right to free speech and expression. If the right of the playwright, artist, musician or actor were to be subjected to popular notions of what is or is not acceptable, the right itself and its guarantee under the Constitution would be rendered illusory. The true purpose of art, as manifest in its myriad forms, is to question and provoke. Art in an elemental sense reflects a human urge to question the assumptions on which societal values may be founded. In questioning prevailing social values and popular cultures, every art form seeks to espouse a vision. Underlying the vision of the artist is a desire to find a new meaning for existence. The artist, in an effort to do so, is entitled to the fullest liberty and freedom to critique and criticise. Satire and irony are willing allies of the quest to entertain while at the same time to lead to self-reflection. We find in the foibles of others an image of our own lives. Our experiences provide meaning to our existence. Art is as much for the mainstream as it is for the margins. The Constitution protects the ability of every individual citizen to believe as much as to communicate, to conceptualise as much as to share.”

Hon’ble Supreme Court in the matter of **State of Uttaranchal vs. Balwant Singh Chaufal and Others** reported in **(2010) 3 SCC 402** has also held that the Court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL but in the present case, there is nothing on record to ascertain the correctness of the contents specially when the petitioner himself had not watched the show.

Hon’ble Supreme Court in the matter of **Gurpal Singh vs. State of Punjab and Others** reported in

(2005) 5 SCC 136 giving a word of caution while entertaining the public interest petition has held that:

“**10.** Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity-oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or member of the public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and try to bargain for a good deal as well as to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.”

Having regard to the nature of controversy involved in the matter, we find that the object of filing the present public interest petition is to gain the publicity. Hence, in the aforesaid circumstances of the case, we find that no case is made out to entertain this public interest petition which is accordingly dismissed.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]