

Court No. - 74

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 1407 of 2023

Petitioner :- Sudhir Kumar

Respondent :- Union Of India And 4 Others

Counsel for Petitioner :- Krishna Mohan Tripathi

Counsel for Respondent :- A.S.G.I.,C.S.C.

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Ashutosh Srivastava,J.

1. Heard Shri P.K. Singh and Shri Krishna Mohan Tripathi, learned counsel for the petitioner, Shri Gaurav Kumar Chand appearing for respondent nos. 1 to 3 and Shri P. K. Giri, learned Additional Advocate General assisted by Shri Manoj Kumar Singh, learned Chief Standing Counsel for the State of Uttar Pradesh.

2. Petitioner claims to be a public spirited person and a social activist. He has approached this Court essentially with the prayer to restrain respondent no. 5 i.e. Al Jazeera Media Network Private Ltd., a News Channel based in Doha (Qatar) having presence in India through its Director/CEO from Telecasting/Broadcasting/Releasing in India the Film/Documentary titled as **"India... Who lit the Fuse?"** (hereinafter referred to as the 'Film'). Prayers are also made to command the respondents 1 to 3 i.e. Union of India, Ministry of Information and Broadcasting and Central Board of Film Certification to review and certify the Film in question before its broadcast by the fifth respondent. A prayer is also made to conduct an enquiry into the credentials of the Film in question and the fifth respondent as it has potential to cause disharmony amongst the citizens and threaten the integrity of Nation. Lastly, it is prayed that appropriate action be taken to ban the fifth respondent.

3. Necessary declarations are made in terms of the Rules of the Court for the writ petition to be entertained, in public interest, in terms of the judgment of the Supreme Court in State of Uttarakhand Vs. Balwant Singh Chauhal and others, reported in (2010) 3 SCC 402.

4. The writ petition proceeds on the premise that the film, if released/broadcast is likely to create hatred amongst different religious denominations and thereby destroy the secular fabric of the Indian State. The Film also has the potential to create social unrest and disturb public order, decency and morality. It is then stated that fifth respondent is well aware that India is a democratic nation built on the guiding principles of secularism, fraternity and dignity for all individuals and in case the Film is allowed to be broadcast/telecast, it is likely to endanger the fraternity that exists in the country between India's religious communities. Averments are also made in the writ petition to the effect that though fifth respondent is only a news organization but it has exceeded its ambit so as to broadcast films, position as investigations on its news channel with the singular intention of creating distress and endangering public order in the country.

5. As per the petitioner, he has reliably learnt from print and social media reports that the Film portrays Muslim minority of living with a sense of fear and presents a disruptive narrative creating a sense of public hatred, which is far from reality. The petitioner asserts that the Film negatively portrays the political functionaries of Indian State and project them as acting detrimental to the interest of minorities. The petitioner states that the Film purposefully seeks to create a rift between India's largest religious communities through its disruptive narrative and create a sense of public hatred. It is also averred that the

film proposes to publicize distorted version of facts with intent to create disharmony amongst the citizens of the Country who belong to different religions denominations.

6. Pleadings are also contained in the writ petition questioning the credentials of fifth respondent. In para 27 of the writ petition instances are enumerated to show that Al Jazeera acted in a partisan manner in the past and has been banned by several nations. It was banned for five days in 2015 in India for publishing vexatious and misleading information about the political map of India, showing integral parts of India to be parts of China and Pakistan. The fifth respondent has also been penalized with imposition of costs of ten lacs by Delhi High Court on 13.2.2023 for divulging the identity of a rape victim.

7. A supplementary affidavit has also been filed today annexing various Twitter posts commenting upon the Film on the pre-release (preview) of the film in some other countries. Some of the comments brought on record suggests campaigns in several Indian States to demolish the houses and companies of minority at the instance of majority community. There are series of Twitter posts which are on similar lines and are enclosed as Annexure 2 to the supplementary affidavit.

8. Learned counsel for the petitioner submits that though the Constitution of India guarantees fundamental right of freedom of speech and expression under Article 19 (1) (a) of the Constitution of India but the same is subject to reasonable restrictions specified in Article 19 (2) of the Constitution of India. Article 19 (2) provides that the freedom of Speech and expression shall remain subject to the operation of any existing law, and not prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interest of

sovereignty and integrity of India, 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.

9. Submission is that the Union Parliament has enacted laws to enforce reasonable restrictions contemplated under Article 19 (2) of the Constitution of India so as to protect the fundamental right of speech and expression. Reference is made to enactments such as The Cinematograph Act 1952 (hereinafter referred to as the 'Act of 1952'), The Cable Television Networks (Regulation) Act, 1995 (hereinafter referred to as the 'Act of 1995'), Information Technology Act, 2000 (hereinafter referred to as the 'Act of 2000') as well as various other statutory interdicts issued from time to time including the guidelines for up linking and down linking of Satellite Television Channels in India, 2022. Attention of the Court has also been invited to Section 69A of the Act of 2000 as well as Section 19A of the Act of 1995 which vests jurisdiction with the Central Government to prohibit broadcast of any content which has the potential of overreaching the reasonable restrictions specified under Article 19 (2) of the Constitution of India. It is emphatically submitted that no certificate has yet been obtained by the fifth respondent for broadcast of the film in question from the competent authority under the applicable enactments.

10. According to the petitioner the statutory authorities created under the aforesaid enactments have the responsibility to screen any such content before it is broadcast so that the mischief referred to under Article 19 (2) of the Constitution of India is adequately curtailed. With reference to various averments made in the writ petition it is, therefore, urged that

that the broadcast of the aforesaid film has the potential of creating grave damage to the public order and social order and unless this Court interferes in the writ petition and directs the authorities to examine the contents of the film before its release/ broadcast, in any form, it may cause irreparable damage to the society at large and the Indian State.

11. Sri Gaurav Kumar Chand appearing for the Union of India and its authorities does not dispute the legal submissions advanced on behalf of the petitioner. He does not refute the factual assertion made in the writ that necessary certification has not been obtained by the fifth respondent from the competent authority. Sri P.K. Giri, learned Additional Advocate General also does not dispute the legal position in this regard.

12. We have heard learned counsel for the parties and have examined the records of the present case. The petitioner has made serious allegations in the writ petition about the Film in question to be based on distorted facts with a view to disrupt the social and communal harmony in world's largest democracy, which is founded on the principle of just social order. The petitioner also alleges that the fifth respondent is about to release/broadcast/telecast the Film in question without obtaining required certificate from the competent statutory authority with an intent to overreach the constitutional safeguards for placing reasonable restrictions on the right of speech and expression. The apprehension expressed by the petitioner is that the telecast of film in question without adhering to the constitutional and statutory safeguards may result in injuring the public order and thereby the sovereignty and integrity of India.

13. From the perusal of the averments contained in the writ petition as well as the perusal of constitutional and statutory

scheme the apprehensions expressed in writ cannot be termed to be baseless or ill-founded. Although the Constitution of India guarantees fundamental right of freedom of speech and expression but the same is subject to the reasonable restrictions specified in Article 19(2) of the Constitution of India. The Constitution and the legislative enactments relied upon contain elaborate safeguards to ensure that reasonable restrictions are applied while exercising the fundamental right of speech and expression. We have examined the provisions contained in the Act of 1952, the Act of 1995 as also the Act of 2000 as well as Rules, Regulations and Statutory Guidelines issued thereunder which would go to show that the telecast/broadcast of the film would contravene the statutory scheme contained in the above enactments in the event assertions made in the writ petition are found correct. Undisputedly, no certificate has been issued by the third respondent for unrestricted public exhibition under the Act of 1952. Considering the seriousness of allegations made in the writ, which are likely to have far reaching consequences the petition does require consideration. We are conscious of the fact that the freedom of speech and expression as also the right of broadcast is a fundamental right but it remains subject to the reasonable restrictions imposed by Article 19(2) of the Constitution of India. Considering the evil consequences that are likely to occur on the telecast/broadcast of film in question its telecast/broadcast we are of the view that the broadcast/telecast of the film in question be deferred pending consideration of the cause in the present petition. No irreparable injury would otherwise be caused to the fifth respondent if the telecast/broadcast of the film is allowed after required scrutiny of the issues raised in the present petition.

14. Since the fifth respondent is not represented and the film is not available for our perusal, we direct the petitioner to take steps within 48 hours to serve the fifth respondent by registered/speed post as well as by dasti, fixing 6th of July, 2023 as the date for admission/hearing of the writ petition. Respondents 1 to 4, who are already represented, may file their reply to the writ petition by the next date fixed. Fifth respondent may also file its response by then.

15. In view of the deliberations and discussions held above, we restrain the fifth respondent from telecasting/broadcasting/releasing the Film "**India....Who lit the Fuse?**" till the issues raised in the present petition are adjudicated after notice to the fifth respondent. We also direct the Central Government and the authorities constituted under it, particularly respondent no. 2 to take appropriate measures warranted in law to ensure that the film is not allowed to be telecast/broadcast unless its contents are examined by the authorities, duly constituted in law for the purpose, and necessary certification/authorisation is obtained from the competent authority.

16. The authorities of Union and State Government are directed to act in aid of above directions and thereby secure social harmony and protect the security and interest of the Indian State.

17. List this case on 6th July, 2023, as fresh, before the appropriate Court.

Order Date :- 14.6.2023

Deepak/Ranjeet Sahu