

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION [CIVIL] NO. 956 OF 2020**

IN THE MATTER OF

Firoz Iqbal Khan

...Petitioner

Versus

Union of India & Anrs.

..Respondents

FURTHER LIMITED AFFIDAVIT DATED 19.09.2020

OF THE MINISTRY OF INFORMATION AND BROADCASTING

1. That I am working as Under-Secretary in the Ministry of Information and Broadcasting and am well conversant with the facts and circumstances of the case. I have been duly authorized to swear the present affidavit.

2. I respectfully state and submit that the present affidavit is being filed by the deponent to place on record the steps taken by

the respondent UOI it to comply with the directions passed by this Hon'ble court in the case of *Common Cause v. Union of India*, reported in (2018) 13 SCC 440 and to place other facts on record of this Hon'ble Court.

I. STEPS TAKEN AFTER THE JUDGMENT IN COMMON CAUSE (SUPRA)

3. It is respectfully submitted that this Hon'ble court vide para 11 of the judgment delivered on 12.1.2017 in the case of *Common Cause Vs Union of India* in WP(C) No.387 of 2000 [reported in (2018) 13 SCC 440] directed UOI to formulate Rules under the Cable Television Networks (Regulation) Act, 1995 for a complaint redressed mechanism for TV and also a similar framework for the Radio programmes and also directed to give wide publicity to the same. The operative portion of the said judgment is quoted hereinbelow for ready reference of this Hon'ble court:-

“11. Even though we have concluded in the manner recorded hereinabove, we are of the view, that the Central Government, having framed Rules in the nature of Cable Television Networks Rules, 1994, would be well advised, to frame similar Rules, in exercise of the power vested with it under Section 22 of the Cable Television Networks (Regulation) Act, 1995, to formalise the complaint redressal mechanism, including the period of limitation within which a complaint can be filed, and the statutory authority concerned which shall adjudicate upon the

same, including the appellate and other redressal mechanisms, leading to a final conclusive determination. We, therefore, hereby recommend, that the Central Government, within the framework of Section 22 of the Cable Television Networks (Regulation) Act, 1995, deliberate on the issue, and take a conscious decision thereon, and to finalise a similar statutory framework for radio programmes, as well. Till the above issue is considered and finalised, the existing mechanism of complaint redressal, shall remain in place.

4. It is respectfully submitted that in respectful compliance of the aforesaid directions passed by this Hon'ble Court, the Ministry of Information and Broadcasting vide its communication dated 26.4.2017 laid down detailed Guidelines for the framework of the State/District level Monitoring Committees and the detailed procedure for handling grievances thereof.

5. It is submitted that the aforesaid communication was followed by letter dated 27.04.2017, whereby, the Ministry of Information and Broadcasting communicated to all the State Governments with regard to setting up of State and District level Monitoring Committees for monitoring of the content telecast on private satellite TV channels, as also the content aired in respect of FM channels and Community Radio Stations (CRS) which would be required to follow the AIR Broadcast Code in terms of the Grant of

Permission (GOP) signed by them with Ministry of Information and Broadcasting. Copy of OM dated 26.04.2017 for the framework of the State/District level Monitoring Committees is annexed and marked as **Annexure R-1.** Copy of DO dated 27.04.2017 is annexed and marked as **Annexure-R-2.**

6. Furthermore, it is pertinent to mention here that with regard to formalization of rules under Section 22 of the Cable Television Networks (Regulation) Act, 1995, the matter was examined in the Information & Broadcasting Ministry and it was considered that it is necessary in the first instance to have specific provisions under the Act itself for penal action for breach of the Programme Code enumerated under the Rule 6 of the Cable Television Networks Rules, 1994. The Ministry accordingly took up the exercise of proposing certain amendments to the Cable Television Networks (Regulation) Act, 1995. A proposal in this regard was prepared and placed on public domain on 15.01.2020 for inviting objections and suggestions from the various stakeholders. Copy of amendments to the Cable Television Networks (Regulation) Act 1995 is annexed and marked as **Annexure-R-3.**

II. EXISTING STRUCTURE FOR SELF REGULATION

7. It is humbly submitted that India has about 385 regular news channels which are registered / licensed by the Central Government under the Uplinking and Downlinking Policy Guidelines. A copy of the said Uplinking and Downlinking Policy Guidelines is annexed hereto and marked as **Annexure- R-4**.

8. It is submitted that these news channels would also include channels showing news, as well as, other non-entertainment programmes like Talk Shows etc. Respondent No. 5 i.e. Sudarshan T.V. falls in this category.

9. It is respectfully stated that as against the aforesaid 385 registered / licensed news channels, there are 530 non news channels like entertainment channels, sports channels, devotional channels etc. which are also registered and licensed by the Central Government under the Uplinking and Downlinking Policy Guidelines.

10. It is also very relevant to note that News Broadcasters Association [NBA] is not the sole Association having all

broadcasters as its members. NBA is a non-statutory voluntary body and, therefore, its' membership is also voluntary.

11. Simultaneously, there is yet another similar association called News Broadcasters Federation [NBF] which is also a voluntary organisation having several broadcasters including regional channels as its members.

12. The aforesaid two associations namely NBA and NBF broadly represent only regular news channels and not the other category of broadcasters / channels referred hereinabove. Both these two associations have their own self-regulatory mechanism which is not only robust but can inspire confidence as both such self-regulatory mechanism are headed by a former Hon'ble Judge of this Hon'ble Court.

The NBA is already headed by Hon'ble Mr. Justice A.K. Sikri, former Hon'ble Judge of this Hon'ble Court. While the NBF, which is a recently formed organisation and which has put in place its mechanism, has already intimated the Central Government that it is in the process of and will soon appoint a former Hon'ble judge to

head this mechanism of self-regulation. A copy of the letter received from the NBF is annexed herewith and marked as **Annexure R-5.**

13. It would not be correct to say that either NBA or NBF covers all the broadcasters in the first category. Both NBA and NBF covers their respective members and the membership being purely voluntary, cannot be insisted upon by anyone including the Central Government. Though forgetting the numerical strength of the members, the two federations cover substantial portion of viewers in the country. However, numerically 237 news broadcasters are not members in either of the above referred two associations.

14. I state and submit that so far as the second category viz. general entertainment channels namely having 530 members are concerned, there is one major organisation called Indian Broadcasting Foundation [IBF] having around 300 members. The said IBF has set up a Broadcasting Content Complaints Council [BCCC] as a self-regulatory mechanism to examine the complaints relating to content being telecast in this category of broadcasters.

Justice Vikramjit Sen, former Hon'ble Judge of this Hon'ble Court is Chairman of Broadcasting Content Complaints Council [BCCC].

15. Similarly, there is Advertising Standard of India which also has a self-regulatory mechanism in the form of Consumer Complaint Council [CCC] to consider the complaints in respect of violation of advertisement code.

16. It is respectfully submitted that the self-regulatory mechanism for redressal of complaints in case of all the aforesaid organisations are, by and large, effective and ensures impartiality. The membership of either of them, not being compulsory, does not require examination as no broadcaster can be compelled to become a member of any of the voluntary organisations compulsorily. This question is under examination of the Central Government as regards the manner and procedure to ensure one statutory umbrella mechanism redressal of grievances while completely ensuring journalistic freedom, honouring and respecting the freedom of speech and expression and ensuring a mechanism which would ensure impartiality. This being an issue still under

active consideration, it is advisable not to dwell much on this issue.

III. THE EXISTING STRUCTURE OF THE RESPONDENT FOR REDRESSING THE GRIEVANCE AGAINST THE BROADCASTERS:-

17. It is respectfully submitted that as and when complaints are received in the Ministry with regard to violation of Programme and Advertising Codes, the same are sent to the self-regulating bodies for addressing the grievances. However, in respect of TV channels which are not members of the self-regulating bodies, the matter is taken up directly by the Ministry.

18. The Ministry also has institutional mechanism of an Inter-Ministerial Committee (IMC) which looks at complaints either suo-motto or when brought before it. This IMC gives its recommendation to the Ministry for taking action in case found to have violated the Programme Code and Advertisement Code. A detailed chart of the procedure with respect to the grievance redressal mechanism for Programme Code is annexed hereto and marked as **Annexure R-6.**

19. It is respectfully submitted that as already pointed out in the Affidavit in reply filed earlier, the regulation of electronic and print media is substantially occupied by either legislative field or judicial pronouncements. By and large the dividing line - what is freedom of expression and what is not - is also capable of being culled out through various judicial pronouncements. The term "hate speech" by its very nature is incapable of being precisely defined except by considering each case depending upon the facts arising therefrom. It is, therefore, respectfully submitted and reiterated that this Hon'ble Court may not widen the scope of present petition by laying down any wider guidelines of general application and may leave the same to the competent legislature to provide the same. It is only because of several statutory and other self-regulatory mechanism in place that such instances rarely occur in our country.

This reiterated submission is more particularly so because the petition itself is confined to the following prayers-

- "a. To issue suitable writ or any other writ/order of direction to the Respondent No.1 & 2 to issue necessary instructions/guidelines to restrain the Media channels both print and electronic as well as social media networks as well as Respondent No.5 from broadcasting or reporting any news relating to*

religion or which has any angle communal disharmony or the contents of the video as in ANNEXURE P1 013 or the scheduled programmed Bindas Bol to be aired on 28th August 2020 at 8.00 pm on Sudarshan News Channel.

- b. To restrain the Respondent No. 5 from broadcasting any show or airing any news which is offensive/defamatory under the Indian Penal 1860 or the Information Technology Act 2000 relating to any community, religion or any class of society which disturbs the peace and the law and order including public order;*
- c. To set up an enquiry in the matter of the programme referred to in the ANNEXURE P1 as the Hon'ble Court deems fit against the Respondent No. 5 for its hatred towards communities especially Muslims of the Country by a committee in this behalf.*
- d. Pass any such order(s) as this Hon'ble Court deems fit in the interest of justice."*

20. In view of the limited scope of the above referred petition, the Central Government is not filing a detailed affidavit on wider issues. If this Hon'ble Court still considers it necessary to undertake the exercise of laying down anything further over and above the judicial pronouncements already occupying the field, it may need a detailed affidavit on the part of the Central Government and possibly a wider representation of the stake holders.

IV. NEED FOR REGULATION OF WEB BASED DIGITAL MEDIA AS AGAINST ELECTRONIC OR PRINT MEDIA WHICH IS ALREADY REGULATED BY THE ACTS OF COMPETENT LEGISLATURE AND JUDICIAL PRONOUNCEMENTS:-

21. It may be pointed out that either for being a broadcaster or for starting a newspaper in the print media, there are several eligibility, criteria and qualifying standards to be fulfilled. For operating or starting a news broadcast channel or the second category of channel the company has to undergo a rigorous registration process which includes deposit of performance guarantee and also possession of minimum net worth of about 20 cr for the first channel and 3 cr for each new channel. For a non-news channel the minimum net worth required is of 5 Cr for the first channel and 2.5 Cr for each new channel. Apart from the same being a broadcaster or a publisher also requires registration or licensing from the statutory authorities and they are also governed by statutory provisions. As pointed out hereinabove, by and large, there is a self-regulatory mechanism in place which may require a little fine tuning to remove the lacunae.

22. As against this, there is a parallel media which is going on with wider reach and impact. The way electronic media uses “airwaves” [which is a public property], the web based digital media also uses “spectrum” and “internet” which is also a public property.

Web based digital media include digital web portals, web magazines and channels run on video hosting platforms such as you tube etc, which are in lakhs and crores in numbers.

Furthermore, for starting “web magazine”, “web based portals”, “web based newspaper” or a “web based channels”, there are no eligibility criterias or qualifications so far statutorily stipulated. No registration is necessary as of now nor any statutory provisions govern their functioning as of now except some provisions of Information and Technology Act.

23. By the very nature of its composition, the print and electronic media would rarely cross the line which may need intervention of this Hon'ble Courts frequently.

As against that, by its very nature the web based digital media, by and large, remains unregulated.

The print media has a limitation – only those who can read a particular language can have access to a particular newspaper or a magazine. The electronic media also has a limitation, as, by and large, one would be able to access a “broadcast” or a channel only when he has an access to a TV set and subscription through either Direct to Home operator [DTH] or a cable operator.

As against this, any individual can start his own web based channel by way of a ‘you tube channel’ and the only thing he needs is a desire to start and a smart phone which can be accessed by anyone irrespective of either literacy or having a TV set or DTH / cable operator services. In case of these viewers also, only thing required is will to watch and a mobile instrument. Similarly irrespective of complete lack of any eligibility or qualifying criterias, anyone can start a “web magazine” or “web newspaper”. Here also, the only thing required is a will to start and a laptop [if possible – otherwise even a mobile phone is good enough].

24. It is also relevant to note that in case of a electronic and print media, the security of the nation is also taken care of at the time of the registration and / or grant of license to the company or the

organization intending to publish or broadcast either newspaper or a news-channel. The registration also follows only after clearance from Ministry of Home from the national security point of view [in case of TV channels] and other statutory authorities [in case of print media].

25. As against the limitation in case of print media [viz. one has to be literate] and the mainstream electronic media [viz. one has to have a television set up], nothing is required for accessing digital media except a smart phone. This shows its potential spread and its potential to harm the very fabric of any nation. The electronic media would normally have a geographical barrier and would rarely have a global presence. The digital media, on the other hand, has global presence both in terms of content coming from out of India and the content going out from within the country.

26. As against this, there is absolutely no check on the web based digital media. Apart from spreading venomous hatred, deliberate and intended instigation to not only cause violence but even terrorism it is also capable of indulging in tarnishing the image of individuals and institutions. The said practice is, in fact, rampant.

Of course, this is also a subject matter which should be examined and dealt with by the competent legislature. However, if this Hon'ble Court considers it necessary to lay down guidelines for the mainstream electronic and print media [which is not required as pointed out hereinabove], it is the need of the hour that this Hon'ble Court starts the said exercise first with “web based digital media” which includes “web magazines” and “web-based news channels” and “web-based news-papers” as the same not only has a very wide reach but is completely uncontrolled.

27. It is, therefore, in the interest of justice and appropriate that either this Hon'ble Court may leave wider issues to be considered and decided by the Central Government and the competent legislature or starts with the exercise with an examination of the very same issues in the context of digital media.

28. It is respectfully submitted that in case this Hon'ble Court desires to travel into the wider issues than the issue in question [including particular series or a particular TV channel], it is absolutely inevitable to start with digital media. Any further

regulation of electronic and print media by this Hon'ble Court either by way of guidelines or providing for any redressal mechanism would incentivise broadcasters [who may otherwise be desirous of publishing / telecasting undesirable content] to use electronic media less and telecast / publish the same thing on digital platforms which would remain unregulated despite having wider reach without any corresponding responsibility or obligation.

(VIJAY KAUSHIK)
अवर सचिव/Under Secretary
सूचना एवं प्रसारण मन्त्रालय
Min. of Information & Broadcasting
भारत सरकार, नई दिल्ली
Govt. of India, New Delhi

DEPONENT

Verification

I, the deponent above named, do hereby verify that the contents of paras 1 to...of the affidavit are true to my knowledge, no part of it is false and nothing material has been concealed therefrom.

Verified at New Delhi on 21st day of September, 2020

DEPONENT

(विजय कौशिक)
(VIJAY KAUSHIK)
अवर सचिव/Under Secretary
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