

Bombay High Court

Prabhakar Shankar Deodhar vs Union Of India (Uoi) Through Its ... on 5 November, 2001

Equivalent citations: 2002 (2) BomCR 106

Author: D Chandrachud

Bench: B Singh, D Chandrachud

JUDGMENT D.Y. Chandrachud, J.

1. In these proceedings which are instituted in the public interest under Article 226 of the Constitution, the petitioner seeks the issuance of a writ of mandamus to the Union of India in the Ministry of Information and Broadcasting, to the Prasar Bharati Broadcasting Corporation of India, and to the Indian Statistical Institute, or to any one of them, to constitute an autonomous body for releasing, "Television Rating Points (TRPs) in relation to Television Channels and programmes so as to have a "common currency for the rating of Television channels and programmes duly acceptable to the advertisers and marketing companies, Government and general public with adequate checks and balance to ensure reliability thereof". The petitioner has stated that he is a professional Engineer-Scientist with over 45 years of experience in the field of Electronics, Communications and Information Technology. The petitioner was the Chairman of the Electronics Commission of India during 1984 and 1990 and during 1992-93 he was requested by the Union of India to be the Chairman of a committee for setting up the framework for the privatising of the Broadcast Media.

2. In order to consider whether relief of the kind which has been prayed for in these proceedings can or should be granted by this Court in its jurisdiction under Article 226 of the Constitution, a brief reference would be necessary to the frame of the writ petition. The petition recites that Rs. 4,600/- crores is the annual expenditure which is incurred in connection with advertisements on Television. The advertising industry is governed by what to the trade are known as "Television Rating Points" (TRPs) which indicate the viewership of a Television Channel or programme. Advertisement rates are determined by private broadcasters on the basis of these TRPs. The greater the popularity-in terms of viewership of a Television programme, as evidenced by a relatively higher TRP, the greater would be the rate which the programme would command for the placement of advertisements. The petition makes a reference to the fact that while advertisements of a duration of 10 seconds on a private channel command a rate between Rs. 1 lakh to Rs. 4 lakhs, advertisements of a similar duration on Doordarshan would not generate a revenue in excess of Rs. 20,000/-. According to the petition, most of the revenue generated in advertisements on Television is mopped up by the private channels and barely 20% thereof is received by Prasar Bharathi. According to the petition, "this is completely improbable" if regard be had to the fact that Doordarshan reaches out to 86 million homes unlike cable channels where individual homes or residences have a choice of over 60 channels to view, including Doordarshan. TRPs are generated by the fourth and fifth respondents. These two companies are privately managed, audience measuring agencies on whose rating advertisers depend while choosing the media for placing advertisements. The grievance of the petitioner is that these agencies are not under any Governmental supervision and there are no recognised or approved guidelines to be followed by these agencies. According to the petitioner, the methodology adopted by the fourth and fifth respondents in determining the extent viewership is flawed; the size of the sample is inadequate, the sampling suffers from an urban bias and is primarily focused on cable homes. TRP Rating agencies install "People Meters" in certain homes of

the sample population for the purposes of determining viewership. According to the petitioner, there is a reason to believe that the identity of the homes which form part of the sample is not confidential, as it should be and some Media Production Units "seem to have found ways to influence the TRP Rating". The petitioner has adverted to the provisions of the Communication Convergence Bill, 2001 which is stated to have been approved by the Cabinet and to be now pending before the Standing Committee. The petition highlights the fact that under Clause 18(1) of the Bill, it shall be the duty of the Commission to facilitate and regulate all matters relating to carriage and content of communications, and under sub-clause (2)(xii) "to carry out any study and publish findings on matters of importance to the consumers, service providers and the communications industry". The petitioner relies upon certain reports in the press and in the electronic media which have questioned the authenticity of the methodology adopted by the fourth and fifth respondents for the determination of TRPs. It is stated that in 1998 Doordarshan and the private satellite channels had decided to jointly set up a common television viewership rating system, but that did not take place. In these circumstances, the petitioner seeks to invoke the extra-ordinary jurisdiction of this Court so as to ensure that the media trade is properly controlled and checked and "independent correct and acceptable TRPs are issued by an independent body under the control of law and Government and undue influence of the advertising and marketing agencies are remedied".

3. We have heard learned Counsel for the parties.

4. The admitted position, as it emerges, from the submission of the learned Counsel before us, is that the fourth and fifth respondents are privately controlled and managed corporate entities which are in the business of determining Television Rating Points. The fourth and fifth respondents provide their services to those subscribers who avail of those services. The TRPs reflect the viewership which is an index of the popularity of Television programmes or channels. There is no compulsion to subscribe. There is no obligation on any advertiser or marketing agency to accept or rely upon the data which is generated by the fourth and fifth respondents. The fourth and fifth respondents seek to provide information to those advertisers and marketing agencies who seek to subscribe to the service which is rendered by the fourth and fifth respondents. There is no compulsion upon any private or public advertiser to accept what is put forth by the fourth and fifth respondents.

5. Parliament has not prohibited or, at the present stage, statutorily regulated the activities of entities such as the fourth and fifth respondents. The learned Counsel appearing on behalf of the petitioner has adverted to the fact that the proposed Communication Commission which would come into existence, should the Convergence Bill, 2001 be enacted into law by Parliament, would have power to regulate the issuance of TRPs, as incidental to the statutory power of the commission to carry out studies and publish findings on matters of importance to consumers, service providers and the communications industry. The Convergence Bill is yet, however, not been enacted into law.

6. Having given our anxious consideration to the submissions which have been urged on behalf of the petitioner, we are of the view that the question as to whether the activities of business entities such as the fourth and fifth respondents should be regulated, and if so, the manner in which that statutory regulation should take shape are matters of legislative and administrative policy. These are

matters on which, it would not be appropriate for this Court to grant the relief sought, given the parameters of the jurisdiction of the Court under Article 226 of the Constitution.

7. The need to emphasise the limitations on the exercise of the jurisdiction under Article 226 in a case such as the present is more than evident if one has regard to the nature of the issues which arise in the manner. The petition itself is prefaced by an underlying assumption that it appears improbable to the petitioner that Doordarshan, which has the largest coverage in terms of family homes in the country should command the lowest generation of revenue in terms of air time rates. That is the common thread which runs through the petition. The learned Counsel appearing on behalf of the petitioner has, however, fairly accepted that apart from entertainment, Doordarshan subserves important social and cultural objectives and unlike private channels, the purveying of entertainment and maximization of revenue earned from advertising cannot be the sole guiding criterion for Doordarshan. It is trite experience that the entertainment value of a programme on television determines its ability to attract advertisements and hence its revenue generating potential. Popular tastes being what they are, entertainment sells. However, the objectives of a publicly owned channel such as Doordarshan are more fundamental than merely conveying images that appeal to popular taste. The private advertiser seeks to air his advertisement on programmes which command the widest audience. That there may be no redeeming social value in a particular entertainment programme is to the advertiser not of significance. Allocation of resources on advertising follows those areas where the advertiser believes there is the prospect of mass appeal. Ultimately, whether or not he relies on TRPs, for the advertiser, the revenue yielded from his outlay on advertising provides an index as to whether his outlay on advertisements is justified. The petitioner questions the methodology which is adopted by the fourth and fifth respondents for carrying out sampling for the purposes of determining the TRPs, but here again this is an area of dispute in which it would be inappropriate for the Court to enter. The petitioner seeks to question the size of the sample and the manner in which the sampling is carried out by the fourth and fifth respondents. The fourth and fifth respondents on the other hand contend that there is no compulsion on any advertiser to subscribe to their services or to accept the authenticity of the data which is furnished by them. The acceptability of their services to subscribers in the open market depends on the reliability of the information which they provide. Unless the service is reliable, the market will not subscribe. Mr. Chagla, the learned Senior Counsel submitted that the alleged leakage of the names of persons in whose homes People Meters were installed was deliberately engineered to discredit the fourth and fifth respondents. We decline to enter into these factual issues. There is a serious dispute on this issue, one of facts which cannot be resolved in these proceedings. In our view, whether the business of issuing TRPs should continue to be in private hands or whether the Government should itself provide an agency under its own authority to do so are again matters of legislative an administrative policy. We have highlighted these considerations in order to emphasize that these are evidently matters which it is for the Government to have due regard to. The Court ought not to interfere.

8. The learned Counsel appearing for the petitioner sought to submit that the work which has been performed by the fourth and fifth respondents is in the public domain and that the said respondents discharges a public function or a public duty. The fourth and fifth respondents carry on business activities which are neither prohibited, nor prescribed by statute or regulations. The fact that

advertisers spend a considerable amount of money on placing advertisements on television and for certain television programmes is no reason why this Court should exercise its jurisdiction under Article 226 of the Constitution to issue a writ of mandamus particularly having regard to the fact that in such a matter, it should be for the Government and the competent statutory authority to determine whether, and if so to what extent a regulation of services akin to those rendered by the fourth and fifth respondents should take place. In these circumstances, we leave it to the petitioner to highlight the grievances which have been placed before this Court in the present writ petition before the appropriate authority of the Union Government and for the Government to arrive at such decisions as it considers appropriate. Interesting though it is, the factual canvas of this case does not warrant the exercise of the jurisdiction under Article 226.

9. The writ petition is rejected.