



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

Date of decision: 19th DECEMBER, 2023

IN THE MATTER OF:

+ **W.P.(C) 9556/2022 & CM APPL. 28523/2022**

TV TODAY NETWORK LIMITED

..... Petitioner

Through: Mr. Hrishikesh Baruah, Mr. Anurag Mishra, Mr. Kumar Kshitij, Ms. Radhika Gupta, Mr. Saumitra, Advocates

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Apoorv Kurup, CGSC with Ms. Kirti Dadheech, Mr. Akhil Hasija, Mr. Ojaswa Pathak, Advocates for UOI

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. *Vide* the present Writ Petition the Petitioner seeks to challenge the Orders dated 14.06.2022, passed by the Competent Authority, Ministry of Information & Broadcasting directing the Petitioner herein to run an apology scroll in bold legible font at the bottom of the screen four times a day for three consecutive days between 09:00 AM to 09:00 PM within one week from the date of the Orders for broadcasting the following two advertisements by the Petitioner on its News Channels:-

- (i) 100 Pipers Music CDs
- (ii) All Seasons Club Soda

2. The facts, in brief, leading to the present Writ Petition are as under:



- a) The Petitioner herein is a company incorporated under the Companies Act, 1956. India Today and Aaj Tak are the leading news channels operated and owned by the Petitioner herein.
- b) It is stated that on 29.10.2021, Respondent No.1 herein issued two letters stating that certain advertisements promoting brand names associated with alcohol produces were broadcasted in the Petitioner's new channels.
- c) It is stated that in its replies dated 14.12.2021 and 23.12.2021, the Petitioner herein pointed out that the advertisements broadcasted by the Petitioner were in accordance with the Advertisement Code.
- d) It is stated that on 07.02.2022 Respondent No.1 herein issued two notices to the Petitioner herein for hearing the matter before the Inter-Departmental Committee in order to examine the matters relating to violation of the Advertisement Code.
- e) The hearing was conducted on 14.02.2022 and in the hearing it was pointed out by the Petitioner that there is no means to verify the advertisement as well as the certificate issued by the Central Board of Film Certification (hereinafter referred to as 'the CBFC').
- f) It is stated that on 11.04.2022, an advisory was issued by the Respondent No.1 providing a mechanism for verification of the certificates issued by the CBFC by sending an email to a particular email address.
- g) Vide order dated 14.06.2022, the Petitioner herein was directed to run an apology scroll in bold legible font at the bottom of the



screen four times a day for three consecutive days between 09:00 AM to 09:00 PM within one week from the date of the Orders for broadcasting the advertisements of 100 Pipers Music CDs and All Seasons Club Soda by the Petitioner on its News Channels.

h) The Petitioner has approached this Court seeking quashing of the abovementioned order.

3. It is stated by the learned Counsel for the Petitioner that as far as the first broadcast pertaining to “100 Pipers” which is stated to be a liquor brand is concerned, it is stated that the said clip was broadcasted by the petitioner based on the certificate issued by the CBFC which was provided by the advertiser. Learned Counsel for the Petitioner states that as far as the second broadcast is concerned, the brand name “All Seasons” is commonly used by various kinds of products and not merely by a liquor brand. The attention of the Court was drawn to various trade mark registration certificates to establish that the words “All Seasons” is used as a registered mark by various products in the market and is not exclusively associated with liquor. It is, therefore, submitted that the impugned orders must be set aside. It is stated by the learned Counsel for the Petitioner that the channel is not obliged to compare the clips provided by the advertiser with the one which may have been certified by CBFC prior to running it and that it had acted in good faith.

4. It is stated by the learned Counsel for the Union of India that upon verification it was found that the clip pertaining to “100 Pipers” which was run on the channel was different from what was certified by the CBFC. He submits that the screenshot of the advertisement clearly indicates that it



carries the logo of the liquor brand. He contends that the display of the logo of the liquor brand in question is a clear violation of Rule 7(2)(viii) of the Rules. He further submits that as far as the clip pertaining to “All Seasons” is concerned it is evident that what has been shown by the Petitioner in its advertisement is a liquor bottle and the same cannot come within the purview of “surrogate advertisement”. He submits that this clip was also not certified by the CBFC.

5. Heard the Counsels and perused the material on record.

6. Rule 7(1)(2)(viii)(A) of the Cable Television Networks Rules, 1994 read as under:

7. Advertising Code. - (1) *Advertising carried in the cable service shall be so designed as to conform to the laws of the country and should not offend morality, decency and religious susceptibilities of the subscribers.*

(2) *No advertisement shall be permitted which-*

(viii) *promotes directly or indirectly production, sale or consumption of-*

[(A) cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants;]

[Provided that a product that uses a brand name or logo, which is also used for cigarettes, tobacco products, wine, alcohol, liquor, or other intoxicants, may be advertised on cable services subject to the following conditions that-

(i) the story board or visual of the advertisement must depict only the product being advertised and not the prohibited products in any form or manner;



(ii) the advertisement must not make any direct or indirect reference to prohibited products;

(iii) the advertisement must not contain any nuances or phrases promoting prohibited products;

(iv) the advertisement must not use particular colours and layout or presentations associated with prohibited products;

(v) the advertisement must not use situations typical for promotion of prohibited products when advertising the other products:

Provided further that –

(i) the advertiser shall submit an application with a copy of the proposed advertisement along with a certificate by a registered Chartered Accountant that the product carrying the same name as cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants is distributed in reasonable quantity and is available in a substantial number of outlets where other products of the same category are available and the proposed expenditure on such advertising thereon shall not be disproportionate to the actual sales turnover of the product:

(ii) all such advertisements found to be genuine brand extensions by the Ministry of Information and Broadcasting shall be previewed and certified by the Central Board of Film Certification as suitable for unrestricted public exhibition and are in accordance with the provisions contained in sub-clause (i) to (v) of the first proviso, prior to their telecast or transmission or retransmission."



7. Rule 7(2)(viii) of the Rules and more particularly the Proviso thereto, permits the advertisement of a product that may bear a name which is also used for prohibited articles subject to the conditions prescribed therein. The display of the logo of “100 Pipers” would thus appear to be in contravention of that Rule. Since the provisions of Rule 7 has not been complied with, the contention of the learned Counsel for the Petitioner that they had proceeded in good faith on the basis of the CBFC certificate which was submitted by the advertiser cannot be accepted as the Rules do not permit the broadcaster to independently ascertain the veracity of the clip that is provided by the advertiser.

8. Insofar as the advertisement of “All Seasons” is concerned, it was not at all certified by the CBFC. The issue in question has attained finality in view of the Judgment passed by a Co-ordinate Bench of this Court which dealt with the same advertisement in the case of New Delhi Television Limited vs. Union of India and Anr, passed in **W.P.(C) 10982/2022** dated 22.07.2022. The relevant portion of the said Judgment reads as under:

"8. However, insofar as the second advertisement is concerned, the Court finds no merit in the explanation proffered. On a perusal of the clip and the screenshots that were produced, it is clearly evident that what was broadcast would not satisfy the well-recognised attributes of surrogate advertising. This clip admittedly was also not certified by CBFC. A visual examination of that clip would lead one to the irresistible conclusion that what was in fact being directly advertised was a prohibited product. The petitioner has thus clearly failed to act with prudence and care insofar as the broadcast of that particular clip is concerned."



9. In view of the above, this Court is not inclined to interfere with the Orders dated 14.06.2022, passed by the Competent Authority, Ministry of Information & Broadcasting.

10. Accordingly, the Writ Petition is dismissed. Pending applications, if any, also stand dismissed.

SUBRAMONIUM PRASAD, J

DECEMBER 19, 2023

Rahul