

MANU/KE/1574/2017

Equivalent Citation: 2017 (4) KHC 728, 2017(4)KLJ275, 2017(4)KLT333

IN THE HIGH COURT OF KERALA

W.P.(C) No. 21095 of 2017

Decided On: 08.08.2017

Appellants: **Sajan Varghese**
Vs.

Respondent: **Union of India and Ors.**

Hon'ble Judges/Coram:

P.B. Suresh Kumar, J.

Counsel:

For Appellant/Petitioner/Plaintiff: G. Shrikumar, Senior Advocate and Georgekutty Mathew, Advocates

For Respondents/Defendant: N. Nagares, Assistant Solicitor General and K.V. Sohan, State Attorney

JUDGMENT

P.B. Suresh Kumar, J.

1. Petitioner is the Director of a company running a news and current affairs channel. On 26/03/2017, in the course of a live discussion, an audio clip of the conversation of a lady with one of the State Ministers was telecast in the channel. The conversation contained in the audio clip which was telecast was a conversation having sexual connotations and the Minister had to resign consequent on that telecast. The police registered two cases against the Chief Executive Officer of the channel alleging offences punishable under Section 120B of the Indian Penal Code and Section 67A of the Information Technology Act, 2000 in connection with the telecast and the investigation in the said cases is going on. The lady with whom the Minister had the conversation, filed a private complaint against the Minister before the Magistrate Court concerned alleging commission of offences punishable under Sections 354D of the Indian Penal Code and Section 66 of the Information Technology Act and the said case is pending. While so, as per Ext. P6 notification, the State Government has appointed a Commission of Inquiry under the Commissions of Inquiry Act, 1952 ('the Act') for inquiring into the following matters:

- “(i) 26/03/2017-ൽ മംഗളം ടി.വി. ചാനലിൽ സംസ്ഥാന മന്ത്രിയുടേത് എന്ന് പറഞ്ഞ് സംഭാഷണം ചെയ്ത സംഭാഷണമടക്കമുള്ള വാർത്തയുടെ നിജസ്ഥിതി എന്താണെന്ന് അന്വേഷിക്കുക.
- (ii) പ്രസ്തുത സംഭാഷണം ഏത് സാഹചര്യത്തിൽ ഉണ്ടായതാണ് എന്നന്വേഷിക്കുക.
- (iii) റെക്കോർഡ് ചെയ്ത പ്രസ്തുത സംഭാഷണം പിന്നീട് ദുരുദ്ദേശപരമായി എഡിറ്റ് ചെയ്യപ്പെടുകയോ, കൃത്രിമം കാണിക്കുകയോ ഉണ്ടായിട്ടുണ്ടോ എന്നും അന്വേഷിക്കുക.
- (iv) സംഭാഷണം സംഭാഷണം ചെയ്തതിൽ നിയമലംഘനമോ നിയമവിരുദ്ധമായ കൃത്യങ്ങളോ ഗുണഭോജനമോ ഉണ്ടായിട്ടുണ്ടോ എന്നും അങ്ങനെ ഉണ്ടായിട്ടുണ്ടെങ്കിൽ ഇത് സംബന്ധിച്ച് സ്വീകരിക്കേണ്ട നിയമ നടപടികൾ എന്തെല്ലാം എന്നും അന്വേഷിക്കുക.
- (v) ഈ കേസുമായി ബന്ധപ്പെട്ടതെന്ന് കമ്മീഷൻ കാണുന്ന മറ്റ് കാര്യങ്ങൾ.”

The case of the petitioner is that the appropriate Government under the Act for

ordering an inquiry into a matter which was telecast is the Central Government and therefore, Ext. P6 notification is one issued without jurisdiction. It is also the case of the petitioner that an inquiry can be ordered under the Act only into a definite matter of public importance and the matters in respect of which the inquiry is ordered in terms of Ext. P6 notification are not matters of public importance. Ext. P6 notification is under challenge in the writ petition on the aforesaid grounds. Heard the learned Senior Counsel for the petitioner and the learned State Attorney.

2. Sub-section (1) of Section 3 of the Act dealing with the power of the appropriate Government to order an inquiry under the Act reads thus:

3 . Appointment of Commission.--(1) Save as otherwise provided in the Lokpal and Lokayukt as Act, 2013, the appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by each House of Parliament or, as the case may be, the Legislature of the State, by notification in the Official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notification, and the Commission so appointed shall make the inquiry and perform the functions accordingly:

Provided that where any such Commission has been appointed to inquire into any matter--

(a) by the Central Government, no State Government shall, except with the approval of the Central Government, appoint another Commission to inquire into the same matter for so long as the Commission appointed by the Central Government is functioning;

(b) by a State Government, the Central Government shall not appoint another Commission to inquire into the same matter for so long as the Commission appointed by the State Government is functioning, unless the Central Government is of opinion that the scope of the inquiry should be extended to two or more States.

Clause (a) of Section 2 of the Act dealing with the definition of "appropriate Government" excluding its proviso reads thus:

2. Definitions.-- In this Act, unless the context otherwise requires,--

(a) "appropriate Government" means--

(i) the Central Government, in relation to a Commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List I or List II or List III in the Seventh Schedule to the Constitution; and

(ii) the State Government, in relation to a Commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List II or List III in the Seventh Schedule to the Constitution:

There is absolutely no difficulty in the light of the aforesaid provisions to hold that an inquiry under the Act can be ordered only into a definite matter of public importance and that the State Government can order an inquiry under the Act only in respect of matters relatable to any of the entries enumerated in List II or List III of the Seventh Schedule to the Constitution.

3. The learned Senior Counsel for the petitioner contended that the inquiry into a matter which was telecast is relatable only to Entry 31 of List I of the Seventh Schedule dealing with "Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication" and therefore, the Central Government alone is competent under the Act to order such an inquiry. It was also contended by the learned Senior Counsel that the conversation contained in the audio clip which was telecast has nothing to do with the discharge of the official functions of the Minister and if that be so, it cannot be said that the matter in respect of which the inquiry is ordered is a matter of public importance.

4. Per contra, the learned State Attorney contended that the matters in respect of which the inquiry is ordered are certainly matters of public importance relatable to Entry 1 of List II and Entries 1, 8 and 11A of List III of the 7th Schedule.

5. The first issue to be resolved is whether the matters in respect of which inquiry is ordered in terms of Ext. P6 notification are matters relatable to entries contained in Lists II and III of the 7th Schedule. Since the issue pertains to the power of the State Government to order an inquiry with reference to the entries enumerated in the Lists contained in the 7th Schedule, the rule of pith and substance, which is applied to resolve identical issues pertaining to the legislative power of the State Government can be legitimately applied to resolve the issue. As it is well known, the rule of pith and substance is that if a Statute is found in substance relating to a topic within the competence of a Legislature, it should be held to be intra vires, even though it might incidentally encroach on matters beyond the competence of the Legislature. To resolve the issue applying the said rule, the substance of the matters in respect of which the inquiry is ordered in terms of Ext. P6 notification has to be understood. A close reading of the terms of reference contained in Ext. P6 notification indicates that the Government would like to know whether the conversation which was telecast is genuine, the circumstances which led to the conversation, if the same is genuine, whether the recorded conversation has been edited with ulterior motives for telecasting and if so, the persons responsible for the same and also whether the telecast of an audio clip of this nature involves breach of any legal provision and if so, steps to be taken to prevent such telecast in future. The substance of the inquiry, according to me, is as to the contents of the audio clip, the manner in which the same was obtained, the way in which it was telecast and the right, if any, of the channel to telecast such audio clips. It is beyond dispute that news channels are viewed by the society without any inhibitions and reservations. As noted above, there is no dispute to the fact that the conversation which was telecast in the news channel is a conversation involving sexual connotations and the substance of the conversation was such that the Minister had to resign on account of the telecast of the said audio clip. The liberty which is enjoyed by the media is part of the freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution. There cannot be any doubt that the freedom of speech and expression guaranteed under the said Article is not an absolute right and the same does not include the right to tell the people what they do not want to hear. If the contents of the audio clip which was telecast are something which would disturb or affect the tempo of the life of the community or the tranquility of the society, it is a matter concerning public order.

Such a view has been taken by the Apex Court in Kanu Biswas v. State of W.B. MANU/SC/0149/1972 : 1972 KHC 644 : (1972) 3 SCC 831 :1973 SCC (Cri) 16 : AIR 1972 SC 1656 : 1973 (1) SCR 546 : 1972 Cri.L.J. 1006. Paragraph 7 of the said judgment reads thus:

"7. The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order, according to the dictum laid down in the above case, is a question of degree and the extent of the reach of the act upon the society. Public order is what the French call "order publique" and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order, as laid down in the above case, is: Does it lead to disturbance of the current of life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed?"

Identical is the view taken by the Apex Court in Subramanian v. State of T.N. MANU/SC/0128/2012 : 2012 KHC 4122 : (2012) 4 SCC 699 also. Paragraph 15 of the said judgment reads thus:

15. The next contention on behalf of the detenu, assailing the detention order on the plea that there is a difference between "law and order" and "public order" cannot also be sustained since this Court in a series of decisions recognised that public order is the even tempo of life of the community taking the country as a whole or even a specified locality. [Vide Pushpadevi M. Jatia v. M.L. Wadhawan, SCC paras 11 & 14; Ram Manohar Lohia v. State of Bihar; Union of India v. Arvind Shergill, SCC paras 4 & 6; Sunil Fulchand Shah v. Union of India, SCC para 28 (Constitution Bench); Commr. of Police v. C. Anita, SCC paras 5, 7 & 13.]

Public order is a matter which comes under Entry I of List 11 of the 7th Schedule. As noted above, Entry 31 of List I of the 7th Schedule deals with "Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication". The said entries essentially deal with the licensing of telecasting and other rights. None of the matters sought to be inquired into in terms of Ext. P6 notification falls, therefore, under Entry 31 of List I. The issue is, therefore, answered against the petitioner.

The next issue is whether the matters included in Ext. P6 notification are matters of public importance. I have already held that the inquiry is into a matter relating to public order. A matter relating to public order is certainly a matter of public importance. This issue is also, in the said circumstances, answered against the petitioner.

The writ petition, in the said circumstances, is without merits and the same is, accordingly, dismissed.

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