

## Media Hotline

December 01, 2014

### SC SEES THE HUMOR - GRANTS STAY ON DELHI HC BAN ON 'COMEDY CENTRAL' CHANNEL

- 'Comedy Central' channel violates Programme Code twice. Admits fault but pleads that matter be heard by BCCC and that ban imposed by MIB is disproportionate.
- Prohibition of transmission / re-transmission of the channel on any platform throughout the territory of India. Effective from November 26, 2014.
- Division bench of the Delhi HC deems the ban to be proportionate & does not interfere with the ban imposed by the MIB Inter-Ministerial Committee.
- Supreme Court lifts the ban imposed on the channel and permits it to telecast effective November 28, 2014.
- Constitutionality of various provisions of the Cable Television Networks (Regulation) Act, 1995 challenged before the Supreme Court. Matter to be heard on December 8, 2014.

#### BACKGROUND

A division bench of the Delhi High Court ("**Court**"), in *Viacom18 Media Private Limited & Anr. ("Viacom18") v. Union of India ("Respondent")*<sup>1</sup>, upheld the order of the Single Judge dismissing the writ petition filed by Viacom18 against an order of the Inter-Ministerial Committee ("**IMC**") of the Ministry of Information and Broadcasting ("**MIB**") imposing a penalty on Viacom18. The order of the MIB ("**MIB Order**"), in view of Viacom18's violation of various provisions of the Cable Television Networks (Regulation) Act, 1995 ("**Act**") and the Cable Television Networks Rules, 1994 ("**Rules**"), prohibited transmission / re-transmission of the 'Comedy Central' channel on any platform throughout the territory of India for a period of 10 days.

The ban was made effective from November 26, 2014 for a period of 6 days (with 4 days already having been served by Viacom18). However, the Supreme Court of India ("**Supreme Court**"), on November 28, 2014, admitted a Special Leave Petition filed by Viacom18 and granted a stay on the Court's ban imposed on Viacom18.<sup>2</sup> As a result, the 'Comedy Central' channel went back on air on November 28, 2014.

#### FACTS OF THE CASE

Viacom18 is the parent company of 'Comedy Central', a 24 hour entertainment channel that telecasts comedy content in English. Viacom18 was granted approval for uplinking / downlinking of 'Comedy Central' on August 26, 2011 and was, consequently, bound to adhere to the Programme Code prescribed under the Rules.<sup>3</sup>

#### Show Cause Notice for First Violation

The Respondent was of the view that the programme 'Stand Up Club'<sup>4</sup> telecast on May 26, 2012 on 'Comedy Central' was *not suitable for unrestricted public exhibition and children as the same depicted women as a commodity of sex and appeared to deprave, corrupt and injure the public morality and morals*. Pursuant to this, MIB issued a show cause notice to 'Comedy Central' on June 22, 2012 ("**SCN 1**") stating that the programme 'Stand Up Club' appeared to violate Rule 6(1)(a), Rule 6(1)(d), Rule 6(1)(k), Rule 6(1)(o)<sup>5</sup> and Rule 6(5)<sup>6</sup> of the Rules.

Viacom18 replied to the SCN 1 stating that it will comply with, *inter alia*, the self-regulation guidelines and all conditions of the uplinking / downlinking permissions. Viacom18 further stated that the MIB should have raised concerns with the Broadcasting Content Complaints Council of the Indian Broadcasting Foundation ("**BCCC**") rather than directly with the broadcaster.

No representative of Viacom18 attended the hearing before the IMC (constituted to look into cases of violation of the Programme Code under the Act and Rules). Another opportunity was granted to Viacom18 to attend the hearing. Viacom18 submitted as follows:

- An apology for the telecast of its programme 'Stand Up Club' and that it was due to unintentional genuine errors. A serious note of all concerns raised in the SCN 1 was taken as a preventive step. Repeat telecast of the episode in question was stopped and Viacom18 decided not to air episodes with similar content in the future.
- Most of the contents of 'Comedy Central' are conceived, created and produced out of India. Although due process of content edit was carried out, inadvertently, edits were not carried out in the said episode before its telecast resulting in an operational mishap.
- That they have shared a copy of the SCN 1 with the BCCC.
- Assurance to continue strict compliance of the Programme Code and all applicable regulatory guidelines while airing programmes / shows on 'Comedy Central'.

Viacom18 admitted to violating provisions of the Programme Code, but requested the MIB to take a lenient view in the matter as it was Viacom18's first genuine mistake.

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### Show Cause Notice for Second Violation

Subsequently, Comedy Central telecast another programme 'Popcorn' on July 4, 2012 which was deemed by the MIB as *vulgar, obscene and against good taste; and did not appear suitable for unrestricted public exhibition and children*. MIB issued a show cause notice ("**SCN 2**") on October 10, 2012 to 'Comedy Central' stating that the programme 'Popcorn' appeared to violate Rule 6(1)(a), Rule 6(1)(d), Rule 6(1)(o) and Rule 6(5) of the Rules. Viacom18 provided a similar response as was provided to SCN 1.

### MIB Order

Subsequent to proceedings initiated pursuant to the issue of SCN 1 and SCN 2, the MIB Order was passed imposing a penalty of prohibition of transmission / re-transmission of 'Comedy Central' on any platform throughout the territory of India for a period of 10 days with effect from 12:01 AM on May 25, 2013 to 12:01 AM on June 4, 2013. Though the penalty for each of the two violations was 10 days, the IMC recommended that the two be served concurrently.

It was further specified in the MIB Order that the BCCC found the said programme 'Stand Up Club' to be objectionable and subsequently issued a notice to 'Comedy Central'. In response, 'Comedy Central' apologized for airing the said programme and submitted that it was a genuine mistake. 'Comedy Central' provided an undertaking not to repeat the said episode and assured dropping of the episodes having similar content. BCCC further advised 'Comedy Central' to discontinue the said episode and to be cautious about airing programmes having similar content in the future.

The present case is an intra-court appeal from the order of the Single Judge of the Court dated May 24, 2013.<sup>7</sup> This appeal arises from the writ petition ("**Writ Petition**") filed against the MIB Order. Owing to the fact that the Writ Petition was dismissed by the Single Judge, the MIB Order (dated May 17, 2013) came into force on May 25, 2013. 4 days of the ban had been served by Viacom18 during the appeal process.

### ISSUE BEFORE THE COURT

Viacom18, in the Writ Petition filed before the Single Judge and to which the appeal arises, challenged the competence of the IMC to judge the violation of the Programme Code without consulting the BCCC which is a broad-based professional body and on the ground that the penalty imposed was disproportionate to the violation committed.

### ORDER OF THE SINGLE JUDGE

The Single Judge dismissed the Writ Petition on, *inter-alia*, the following grounds:

- that consultation with the BCCC is not a requirement laid down in the Act; as per para 10.2 of the Policy Guidelines for Uplinking of Television Channels from India dated December 5, 2011, BCCC, an independent broad based body, needs to be consulted only for the purpose of determining whether the contents of any particular telecast constitute a violation of the Policy Guidelines or not and not while deciding the quantum of penalty to be imposed upon the offending channel;
- that even otherwise the failure of the Respondent to consult the BCCC would not vitiate the decision taken, considering that on a reference by Viacom18 itself and after giving an opportunity of hearing granted to it, the BCCC also was of the view that the contents of the programme 'Stand Up Club' telecast on May 25, 2012 were objectionable.
- that the Delhi High Court in *Star India Private Limited v. Union of India*<sup>8</sup> also has held that absence of consultation with the BCCC would not by itself render the action illegal;
- that the Court would not be justified in interfering with the decision taken by the MIB unless it is shown that the penalty imposed is so disproportionate to the violation committed by the channel as would shock the conscience of the Court or is a penalty which no reasonable person would impose for violation of such nature;
- that considering the vulgarity of the contents of the programme and that the penalty of prohibition of telecast goes up to 30 days for the first violation and up to 90 days for a second, the penalty imposed on Viacom18 could not be said to be excessive or unreasonable.

### OBSERVATIONS OF THE DIVISION BENCH

The Court observed that the Act was enacted in light of increased broadcasting of programmes which were predominantly western and alien to Indian culture, perceived by many people as a "cultural invasion." It was felt that there was a need to regulate the operations of cable television networks in India so as to bring uniformity in their operations, as it was also felt that subscribers, programmers and cable operators were unaware of their rights, responsibilities and obligations with respect to quality of service, technical as well as content-wise, use of material protected by copyright, exhibition of uncertified films etc.

The Court was of the opinion that Viacom18, *engaged in a business / enterprise owing to its mass appeal / base, has the potential of influencing thought, behavior and conduct of citizens, especially the future citizens of the country.*

### DECISION OF THE COURT

The Court was in agreement with the decision and reasoning of the Single Judge and did not find any ground to interfere with the ban on transmission of the channel for 10 days imposed by the IMC.

The Court noted that Viacom18, during the pendency of proceedings for the first violation and while seeking pardon for the same, committed a second violation. This is clearly indicative that even if unintentional, Viacom18 took the matter of self-regulation very lightly. The Court was of the view that the punishment meted out is proportionate to the violations. The Court therefore dismissed the appeal and clarified that the balance period of 6 days of the penalty should come into force with effect from 12:01 am on November 26, 2014.

### SUPREME COURT DECISION

The Supreme Court, on November 28, 2014, granted interim relief to Viacom18 and lifted the ban imposed by the Court, and as a result, permitting telecast of the 'Comedy Central' channel. It, however, directed that programmes that were held to be offensive, i.e., 'Stand Up Club' and 'Popcorn', will continue to be prohibited from telecast on the channel.

### ANALYSIS

At the very outset, it is pertinent to note that there was never any dispute between both the parties with respect to violation of various provisions of the Rules. Viacom18 conceded to violating the Programme Code. The primary contention of Viacom18 was that an unintentional operational mishap had been committed and that the punishment

ashed out at them through the MIB Order was disproportionate.

The Indian Broadcasting Foundation ("IBF") was set up in the absence of an independent and autonomous regulatory body by broadcasters as a self-regulatory body independent, autonomous, free from government intervention and free from influence of any one or more organizations<sup>9</sup>. The IBF issued Self-Regulation Guidelines for Non-News & Current Affairs Television Channels<sup>10</sup> ("Guidelines") with the intention of embodying principles, guidelines and ethical practices, which should guide broadcasters in offering their programmes at the same time encouraging creativity in line with the evolving social milieu and acceptable community standards. The principles in these Guidelines is sought to be implemented, at the first instance, through a self-regulatory mechanism by 'forbearance', which should guide the BCCC whilst enforcing adherence with the Guidelines.

Since the BCCC was set up in consultation with the MIB so that the MIB would not have to issue show cause notices regarding content, it raises questions regarding the need and usefulness of the BCCC in totality. Specifically, while the powers of the MIB to prosecute channels for breach of the Programme Code were never in dispute, it was understood that broadcasters would internally resolve complaints and the MIB would not interfere with this process. The intention was always plain and simple - the MIB having minimal interference in respect of content coupled with the industry taking a pro-active and self-regulatory role.

While there is great scope for potentially overstepping one's freedom of speech and expression under the widely worded Programme Code, which was drafted in 1995, a greater pragmatic and proactive approach is encouraged from broadcasters. In examining where the line has been crossed, the MIB should exercise caution in interpreting and enforcing provisions of the Programme Code.

Importantly, this case comes on the back of the MIB moving towards prohibiting the broadcast of other channels for breach of the Programme Code<sup>11</sup> as well as issuing orders towards strengthening of the Electronic Media Monitoring Centre ("EMMC"). The MIB, recently, issued a circular which requires all television channels to provide the Government with a monitoring facility, at the EMMC, for the purpose of monitoring content.<sup>12</sup>

Pursuant to the order of the Court, Viacom18 has approached the Supreme Court challenging the constitutionality of various provisions of the Act, arguing that these provisions amount to content control by the Executive.<sup>13</sup> The matter is due to be heard on December 8, 2014. It will be interesting to observe whether the Supreme Court shares the sentiments of the broadcasters and leans in favor of self-regulation within the industry.

— Aaron Kamath, Kartik Maheshwari & Khushboo Baxi  
You can direct your queries or comments to the authors

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<sup>1</sup> LPA 374/2013; decided on November 24, 2014

<sup>2</sup> SLP (Civil) 32182/2014.

<sup>3</sup> Rule 6 of the Rules prescribe the Programme Code

<sup>4</sup> Viacom18 clarified in the response to SCN 1 that the name of the concerned programme was 'Comedy Central Presents' and not 'Stand Up Comedy'.

<sup>5</sup> Rule 6. Programme Code.—(1) No programme should be carried in the cable service which—

(a) offends against good taste or decency;

(d) contains anything obscene, defamatory, deliberate, false and suggestive innuendos and half-truths;

(k) denigrates women through the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to women, or is likely to deprave, corrupt or injure the public morality or morals;

(o) is not suitable for unrestricted public exhibition.

<sup>6</sup> Rule 6(5). Programmes unsuitable for children must not be carried in the cable service at times when the largest number of children are viewing.

<sup>7</sup> W.P. (C) No. 3402/2013

<sup>8</sup> 185 (2011) DLT 519

<sup>9</sup> Introduction, Statement Of Objects & Reasons & Preamble to the Guidelines

<sup>10</sup> Available at: <http://www.ibfindia.com/sites/default/files/pdf/Self%20Regulatory%20Guidelines%20for%20non-news%20%26%20current%20affairs%20programmes.pdf> Last Accessed: November 28, 2014

<sup>11</sup> DY 365 TV Channel, News Time Assam TV

<sup>12</sup> This obligation has been placed on the channels pursuant to para 5.14 of the Policy Guidelines for Downlinking of Television channels, which requires the broadcaster / channel permission holder to provide monitoring facilities (at its own cost) for monitoring of content by the MIB when required. Our hotline on this may be accessed [here](#).

<sup>13</sup> *SC stays Delhi high court order on Comedy Central ban*. Available at: <http://www.livemint.com/Consumer/FbPhn3NjhXkx9JhoLgESGI/SC-stays-Delhi-high-court-order-on-banning-Comedy-Central.html>. Last accessed: December 1, 2014

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