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CASE NUMBER: 16/2008

DATE OF HEARING: 25 August 2008

B. Singh

COMPLAINANT

vs

SABC 2

RESPONDENT

TRIBUNAL: Prof Kobus van Rooyen (Chairperson)
Prof Jacqueline Heaton
Dr Linda Venter
Adv Robin Sewlal
Ms Zali Mbombo

COMPLAINANT: The complainant was invited but did not attend.

For the respondent: Mr Fakir Hassen: Manager, Broadcast and Compliance, SABC; accompanied by Ms Veronica Barnard, Compliance Officer: Broadcast Compliance Policy and Regulatory Affairs; and

Religious offence - alleged offensive and discriminatory vocabulary; distortion of truth and of Hindu/Buddhist culture; incorrect, defamatory, frivolous, contemptuous, insensitive and disrespectful statements, such as “worshipping of cows” and “singing lullabies to deities” by non-Hindu presenters - the Tribunal finding that broadcasters have no inherent limitation on the subjects that may be discussed by specific presenters as long as they represent a fair and proper presentation of opinion – no distortion of the truth or the Hindu culture since all statements were correct and reasonable viewers would have understood them in the correct context - statements were not condescending or demeaning and would not offend Hindus - phrases did not stand alone, but formed part of running/flowing commentary, no emphasis on the words worship and lullabies and tone of voice of the presenters not contemptuous in any way – broadcaster’s right to freedom of expression could not be limited because the programmes were bona fide documentaries and represented opinions – no

advocacy of hatred or incitement to cause harm or to commit violence against Hindus - contents of programmes did not go beyond the contemporary standard of tolerance in South Africa – complaints not upheld - Singh v SABC 2, case no. 16/2008 (BCTSA).

SUMMARY

Two complaints about use of alleged offensive and discriminatory vocabulary; distortion of truth and of Hindu/Buddhist culture; and incorrect, defamatory, frivolous, contemptuous, insensitive and disrespectful statements, such as *worshipping of cows* and *singing of lullabies to deities* by non-Hindu presenters. The Tribunal held that broadcasters have no inherent limitation on the subjects that may be discussed by specific presenters as long as they represent a fair and proper presentation of opinion. Furthermore, the Hindu belief in the omnipresence of God should be borne in mind when phrases such as *worshipping of cows* are considered. The reasonable viewer (and certainly Hindus) would have understood both phrases in the correct context. Judged within the context in which the phrases were used (Indian lifestyle programme), it was clear that vocabulary was not condescending or demeaning and would not offend Hindus. In both broadcasts the phrases did not stand alone, but formed part of the running/flowing commentary. There was no emphasis on the words *worship* and *lullabies* and the tone of voice of the presenters was not contemptuous in any way. The right to freedom of expression includes the right to offend within reasonable limits. Although freedom of expression must be limited when it sanctions, promotes or glamorises violence based on national or ethnic origin and/or religion, no traces of any of these could be found in the broadcasts. Both programmes are *bona fide* documentaries and therefore exempted from a limitation of the right to freedom of expression. In applying Clause 35.2 of the Code, the Tribunal concluded that it should be clear to audiences that the commentary made by the presenters of *Eastern Mosaic* represented opinions, which as a whole could be considered as having been fair. Regarding the question whether the broadcasts might have been experienced as hate speech based on religion, the Tribunal concluded that there was no advocacy of hatred or incitement to cause harm to Hindus. Clearly none of the broadcasts was intended to injure, nor were they malicious or *mala fide* and thus cannot be seen to be injurious to Hindus. The likely reasonable viewer would not find the contents of the programmes beyond the contemporary standard of tolerance. No contravention of the Code could be found and the complaints were not upheld.

JUDGMENT

DR. H.L. VENTER

- [1] The Registrar of the BCCSA received several complaints from the same complainant about various programmes broadcast by the SABC. Since some of these complaints are not specific in nature, it was decided that only the two complaints relating to the *Eastern Mosaic* programmes of 23 March 2008 and 13 April 2008 would be considered at the Tribunal hearing. Both complaints refer to alleged religious offence.

[2] The first complaint states, inter alia:

*“On Sunday 13 April 2008 South African TV viewers were told, by the public broadcaster, during the programme **Eastern Mosaic** (TV 2), scripted, produced and narrated by non-Hindu trespassers into our space, that Hindus ‘worship cows, bulls and other animals.’ However such a comment is unacceptable even if it had been made by some hillbilly Hindu ignorant of his or her religion. The onus is on the public broadcaster to uphold the South African constitution, the Bill of Rights and its own code of ethics, by ensuring that only bona fide Hindu scholars are allowed to make comments on the religion/cultural practices of the Hindus in South Africa, and not disrespectful Muslim and Christian Indians who masquerade as our keepers, and certainly not foreigners such as Rochelle Rao.*

This time-honoured fabrication about Hindus worshipping cows, bulls and other animals is a deliberate distortion of the truth by adherents of the foreign cultures that invaded, vandalized and occupied India. Their contempt for, and deliberate distortion of the Hindu/Buddhist culture of India is well documented by historians such as Stanley Wolpert, John Keay, Alfred Toynbee etc. Attempts by these foreign invaders to obliterate the culture of these so called ‘kaffirs’ and ‘heathens’ failed because they soon realized ‘that there were too many Hindus to exterminate’, says Wolpert. He also recounts how, in 1583, the first Englishman, Ralf Fitch, to write ‘home’ from India said, ‘They have a very strange order among them – they worship a cow’. Such myths and distortions of the supposedly ‘heathenish Indians’, says Wolpert, ‘were to become clichés of Western characterization during the next three centuries’. Nowadays, the adherents of those colonizing cultures/religions, still perpetuate such myths in all sorts of insidious ways. Jaundiced reporting/broadcasting is one of them. Of course this is done to insinuate their own Judeo-Christian or Islamic superiority.

An anomaly prevailing in South Africa is that anyone can hijack the Hindu platform and make comments about our culture and religion with impunity, repeatedly, with all kinds of ulterior motives. It is bad enough that these non-Hindus masquerade as expert commentators on Hindu culture/religion based on what they glean from the internet, which is a far from satisfactory source. It is worse when they rope in ignorant Hindus who themselves echo received ideas of ignorant, populist notions of poorly translated Hindu terms from their derogators on the internet and elsewhere and continue to disseminate certain incorrect perceptions about our faith. The nuances and subtleties of concepts, symbols and metaphors elude those who report from an alien perspective, especially from the prejudiced perspective of the colonizing, conquering religions and cultures of the world. I challenge the SABC to accurately quote, chapter and verse, the text from which they obtain their information that we ‘worship cows, bulls and other animals.’

We do NOT WORSHIP COWS, but we worship GOD. To say otherwise is defamatory. Mahatma Gandhi said, ‘The cow to me means the entire sub-human world, extending man’s sympathies beyond his own species. Man

through the cow is enjoined to realize his identity with all that lives. She is the second mother to millions of mankind. Protection of the cow means protection of the whole dumb creation of God. The appeal of the lower order of creation is all the more forceful because it is speechless’.

The Bhagavad Gita, the ultimate embodiment of Indian culture, ethics and values, enjoins us to be ‘equally disposed towards every living entity’ (18:54) and says that, ‘He who experiences happiness and suffering in all creatures as in himself is a great yogi’ (6:32). The concept of Ahimsa (10:4,5 and 13:7,11) teaches non-violence or non-injury to ALL living things. To us all life is sacrosanct. This is why the Gita advocates a Satvic (pure, compassionate, vegetarian) diet. We are taught that the same Creator who created us, created the animals and everything else in the universe. In addition, in Hinduism, God imparts a spark of His Divinity, to all His creation, in the same way as an artist imparts something of himself to his artwork. The Gita tells us, ‘He who sees Me everywhere and sees all things in Me, does not lose sight of Me, nor do I of him.’(6:30). People who cannot translate our reverence for the cow into a broader reverence for all life and the whole of creation, cannot see the wood for the trees. It is in the interest of inter-cultural harmony and nation building that the SABC not use those who are not aware of the prejudice and time honoured bias that colour cultural translation to comment about cultures they do not belong to. Hindus do not presume to ‘showcase’ or comment on Muslim culture or Christian culture. They should show us the same respect. So should the SABC.”

[3] The follow-up complaint reads, inter alia:

“... on 23 March 2008 ... we were told that the Sundareswar Meenakshi Temple in Madurai closes only after ‘a lullaby is sung to the Deities.’ This is how the intrusive, condescending Imraam Vagar put it to the nation as the self proclaimed official ‘voice of the Indian community’.

In Hinduism it is no more possible to sing a ‘lullaby’ to a Deity than it is for one to take a superequine trip to heaven. This is because the God of Hindu understanding does not sleep and certainly does not have a nightly ‘lullaby’ sung. In fact there is not even a day when God rests, as in some faiths. The closing prayer in all Hindu rituals is an Arthi. What Imraan Vagar, as a non-Hindu trespasser cannot grasp is that in our faith, in contradiction to his, the Divine is ‘without and within all beings, (Bhagavad-Gita, 13:15), that God is ‘in the heart of all beings’ (Bhagavad-Gita, 18:61). Chapter 10 of the Gita reiterates in many different ways that God is the supreme ‘cause of all causes’ and the support and essence of everything. Consequently, could Vagar or the SABC explain to the Hindu fraternity how the Deity can sleep or need a ‘lullaby’? To me this frivolous take on Hinduism is nothing more than the usual contempt displayed by these intruders who leap into our sacred space. For the record, lullabies are sung only when certain events are re-enacted, such as those relating to the baby Krishna for example.

Understanding connotations of words and expressions are often an integral aspect of the social knowledge of a particular culture – the nuances and

*subtleties of which can elude those who have not experienced them as a vital and inseparable part of their heritage. Indian Muslims and Indian Christians lack this social knowledge of our culture and are mere intruders. If cultural sensitivity is not integral to their value system, they should cultivate the virtue. What is the reason for the SABC to have Muslims and Christians ‘showcasing’ or commenting on Hinduism in a programme such as **Eastern Mosaic**? Does the SABC think that our religion is a circus or a carnival, a fashion show or a Bollywood spectacle to be ‘showcased’ by outsiders? We have our own religio/cultural programme, **Dharma Moments**. Then there are the various interfaith or multi faith programmes. According to our Constitution, all religions are **equal**. But NOT according to the SABC’s **Eastern Mosaic** which believes Hindu holy sites and sanctities must be invaded by Muslims and Christians but Muslim holy sites and sanctities should be ‘inviolable’ and hence visited only by Muslim commentators.”*

- [4] It is apparent that the core of both complaints centre on the fact that the presenter of *Eastern Mosaic* is half-Muslim and that some of the other presenters are non-Hindu. However, it is unheard of that presenters belonging to any particular religious group should not be allowed to report on matters of other religious groups or enter their religious premises. It is clear that the issue pertains to a possible unfair advantage that may accrue to an on-air presenter, in other words, possible abuse of the broadcasting platform. The Tribunal does not consider that absolutely anything can be said at any time by a television presenter, but broadcasters have no inherent limitation on the subjects that may be discussed by specific presenters as long as they represent a fair and proper presentation of opinion.
- [5] The Tribunal took into account that Mr Hassen, for the broadcaster, mentioned that the SABC recognises the South African Hindu Maha Sabha (Sabha) as the national representative body for the Hindu community, and that this body has never lodged any objections of the kind that the complainant regularly does. He assured the Tribunal that through the SABC’s constant interaction with the Sabha, they would have been fully aware of any material that might have been objectionable to the community.
- [6] Regarding the phrase about the worshipping of cows, Mr Hassen elaborated further as to why cows are associated with the quality of goodness. For example, they provide milk and manure and oxen plough the fields from which grains, fruits and vegetables are produced. According to Mr Hassen, the Vedas (Hindu religious scripture) prescribe that humans should **worship** (*gopuja*) and protect the cow. Cows have always been regarded as sacred by the Hindus since they are symbolic of our mothers from whom we derive all sustenance. Taking this into account, clearly there was no distortion of the truth or of the Hindu/Buddhist culture and use of the word *worship* was not incorrect. The Tribunal deems that the Hindu belief in the omnipresence of God should be borne in mind when phrases such as worshipping of cows are considered. The reasonable viewer (and certainly Hindus) would have understood it correctly. Moreover, in both broadcasts the phrases formed part of the running/flowing commentary and did not stand alone. There was also

no emphasis on the words *worship* and *lullabies* and the tone of voice of the presenters was not contemptuous in any way.

- [7] The Tribunal believes that judged within the context of the broadcasts (Indian lifestyle programme), the connotations that might be attached to the relevant phrases, would be positive. It should be kept in mind that in time religious vocabulary (such as the word *worship*) passes into more common usage. An attempt to separate sacred and secular, pure and tainted, into separate and airtight categories, would be indicative of an authoritarian and intolerant society.
- [8] Regarding the second complaint, Mr. Hassen argued that the reasonable Hindu viewer would have understood the use of the phrase *singing lullabies to deities* not as a contemptuous utterance, but rather as respectful reverence. After intense discussion amongst the Commissioners, the members of the Tribunal concurred with this view. Judged within the context in which the phrase was used, it was clear that it was not condescending or demeaning and would not offend Hindus.
- [9] The complainant refers to the broadcasts as *distortion of the truth; distortion of the Hindu/Buddhist culture; incorrect; defamatory; disrespectful; frivolous, contemptuous; and insensitive*. Although the complaints are broadly framed, it is clear that she feels that phrases such as *the worshipping of cows* and *singing lullabies to the deities* are discriminatory and offensive.
- [10] The first question that needs to be addressed is the right to freedom of expression. In several judgments the BCCSA accentuated the role of freedom of speech, especially in the context of this country's history relating to the suppression of this right. Moreover, the Constitutional Court has held that this freedom includes the right to air offensive material within reasonable limits. Even unpopular and controversial views are tolerated today and society needs to be able to hear, form and express opinions and views on a wide range of matters. Whether material is permissible is determined by considering the current contemporary mores of society and more specifically, the mores of the target audience of a particular programme. The legal test in determining whether material is permissible, is not what is offensive to specific individuals or whether members of a community themselves might be offended by being exposed to it, but what the community would not allow other members of the community to be exposed to, because it would be beyond the contemporary South African standard of tolerance to allow this. The test that should be applied should be an objective standard of a reasonable viewer who is broadminded, balanced and not overly sensitive. Whilst the broadcasts may have offended the sensitivities of the complainant and perhaps some other sensitive Hindus, the likely reasonable viewer (adult, sophisticated and modern), would not find the content of the programmes beyond the contemporary standard of tolerance.
- [11] Of course, the right to freedom of expression is not an absolute right and can be limited in certain instances. For example, Clause 16.1 of the BCCSA Code states that: ***Licensees shall not broadcast material which, judged within***

context, sanctions, promotes or glamorizes violence based on race, national or ethnic origin, colour, religion, gender, sexual orientation, age, or mental or physical disability.

The Tribunal is convinced that the relevant broadcasts certainly did not sanction, promote or glamorise violence against Hindus based on national or ethnic origin and/or religion and therefore this clause is not applicable.

[12] Clause 16.3 further states that limitation to the right to freedom of expression shall not apply to –

- (i) *A bona fide scientific, documentary, dramatic, artistic, or religious broadcast, which judged within context, is of such nature;*
- (ii) *Broadcasts which amount to discussion, argument or opinion on a matter pertaining to religion, belief or conscience; or*
- (iii) *Broadcasts which amount to a bona fide discussion, argument or opinion on a matter of public interest.*

The Tribunal believes that the programmes complained about are bona fide documentaries and represents opinions. Thus the above exemptions shall apply to them.

[13] Clause 35.2 of the Broadcasting Code states that: ***Comment shall be an honest expression of opinion and shall be presented in such manner that it appears clearly to be comment, and shall be made on facts truly stated or fairly indicated and referred to.*** In applying this clause to the broadcasts and after careful consideration, the Tribunal believes that it should be quite clear to audiences that the commentary made by the presenters of *Eastern Mosaic* represented opinions, which as a whole could be considered as having been fair.

[14] The last question is whether the broadcasts might have been experienced as hate speech based on religion. There seems to be a general misconception in South Africa about what kind of language should be classified as hate speech. The definition contained in Section 16(1)(c) of the Constitution and Clause 16.3 of the BCCSA Code, provides that the right to freedom of expression does not extend to, inter alia, “(c) ***advocacy of hatred that is based on race, ethnicity, gender, or religion, and that constitutes incitement to cause harm***”. After watching the relevant programmes, the Tribunal concluded that there was nothing that could be described as the advocacy of hatred based on religion in the programmes. Advocacy requires much more than the mere stating of a viewpoint or the use of certain vocabulary. Likewise, no traces of incitement to cause harm could be found. The word *incite* means to urge or to stir up and it could not be found that audiences were encouraged or stirred up towards committing violence against Hindus or to cause them harm in any way. Clearly none of the broadcasts was intended to injure, nor were they malicious or *mala fide* and thus cannot be seen as injurious to Hindus.

Taking the context of both the broadcasts and all the relevant factors into consideration, the Tribunal is convinced that there have been no contraventions of the Code of Conduct

In the result the complaints are not upheld.

**DR. LINDA VENTER
COMMISSIONER**

Chairperson Van Rooyen and Commissioners Heaton, Sewlal and Mbombo concurred in the judgment.

