CASE NUMBER: 30/2012

DATE OF HEARING: 14 JUNE 2012

BABOO 1ST COMPLAINANT

vs

MULTICHOICE CII RADIO RESPONDENT

TRIBUNAL: PROF KOBUS VAN ROOYEN SC (CHAIRPERSON)
DR LYNGA GILFILLAN
MR ALAN MELVILLE
MS ZALI MBOMBO

Respondent: Mr Bruce Mkhize, Regulatory Compliance Manager, Regulatory Affairs.

Hate speech – use of term “jaahil”, meaning disbelief in God and religious ignorance – allegedly derogatory and with the potential to incite violence – found to be a bona fide religious broadcast, and not to constitute hate speech. Complaint not upheld. Baboo vs Multichoice CII Radio, Case No: 30/2012 (BCTSA)

SUMMARY

Complaint that a word denoting non-believers and people who are ignorant of the Qu’ran, in particular, is derogatory and constitutes hate speech. The Tribunal held that the term cannot be construed as hate speech as there was no advocacy of hatred based on religion, and no incitement to cause harm, the two requirements for the
finding of a hate speech contravention. Furthermore, this was a bona fide religious broadcast in which a discussion on a matter pertaining to religion occurred, and so there was no contravention of the Code and the complaint was not upheld.

JUDGMENT

[1] The Registrar decided to entertain the complaint referred to below, and the Chairperson referred it to a Tribunal for a hearing and adjudication.

[2] The complaint read as follows:

“Last week Tuesday (28/02/2012) I have lodged a complaint with Radio CII (Johannesburg, namely the station manager, (Shamsheer Khan) (Shamsheer@ciibroadcasting.com)

“Last night on Q and A (27/02/2012) Mufti A. K. Hoosen. made a remark with regards to musallies standing behind the Imaam in salaah. Fair enough that these people should be well versed in Quraan and Fiq. However, it is unacceptable to call people who have made a effort to make salaah with jammah, "Jahills". This is derogatory and an unacceptable comment and it's nature deserves an apology (in writing and verbally). Shukran.”

However to date nothing has been forth coming from the complaint made. I have attached the complaint e-mail and would appreciate it if ACASA could take the matter up with CII radio. It has become increasingly apparent that the presenter Mufti AK Hoosen question and answer sessions every Monday evening has elements of hate speech in it and would strongly suggest for ACASA to request recordings for 2011 from CII of Mufti AK Hoosen programming. It is unacceptable in a functioning democracy in South Africa, that a person like Mufti AK Hoosen would regularly us derogatory language against people of his own faith and use language which propagate religious intolerance against people of other faiths. I thank you for your kind attention.”

[3] The Broadcaster responded as follows:

“Re: Complaints regarding the religious programme on Cii Broadcasting channel

1. INTRODUCTION
1.1 We refer to the complaint from Mr Moegamat Baboo regarding the audio broadcasting on Cii Broadcasting channel, channel 165 on the audio bouquet.

1.2 The complainant objects to the use of the word “Jaahil” by the guest presenter. The complainant objects to the use of the word in that it is derogatory.

1.3 We have been requested by the office of the registrar to respond to complaint taking into account provisions of clauses 10 (hate speech) and 28.2 (Comment).

2. The Channel and the Programme

2.1 Cii broadcasting (Pty) Ltd is a religious based radio broadcaster, which practices Islam in its purest form and without compromising any of its teachings as with modern religion.

2.2 The programme referred to in the complaint is a question and answer programme based on Islamic faith discussion where the listeners are invited to call in and ask questions and Islamic expert who is a guest in the studio responds to the question.

2.3 On the date in question, the expert guest was Mufti AK Hoosen.

3. The Complaint

3.1 The complainant objects to the use of the word “Jaahil” by Mufti AK Hoosen in response to a question posed by a listener.

3.2 The question from the listener to the guest presenter was “which type of people should be given preference before others when praying”.

3.3 In responding to the question the guest presenter stated “People who are well versed in the Quraan and its teaching of Jurisprudence should stand first behind the person leading the prayer and thereafter the layman”.
3.4 The presenter further stated that "Today people who are 'Jaahils' fill up these positions; should the prayer of the leader break due to any unforeseen circumstances then the first category of people i.e. the knowledgeable people who are well versed in Islamic teachings are aware of the correct procedures to follow thereafter to continue with the prayer".

4. **Broadcaster's Response**

4.1 The terminology of the word in question "Jaahil" is of Arabic origin and commonly interpreted as "ignorant of religious knowledge". This term is often attributed to the layman who hasn't the necessary knowledge or who interprets the religious tenets according to his own understanding instead of according to the actual interpretation of the Islamic fiqh and jurisprudence.

4.2 The response and remark made are clear and distinctive to the question posed thereof with no intention of any derogatory remark. The response given is in line with the nature of the program as this program is seen as an academically driven program in a question and answer format, which many listeners observe weekly as a learning experience.

4.3 The presenter's response was derived from the quotations of the Hadith (Sayings of Prophet Muhammad PBUH). On the authority of Abdullah b Masud (RA), Prophet Muhammad (PBUH) said: "Liyali minkum ulul ahlaami wan nuha (Tirmidhi, Hadith no. 228, Edited by Ahmad Muhammad Shakir)". The meaning of the Hadith is the Prophet (PBUH) instructed those who are mature (mentally) and intelligent to stand next to him (in prayer).

4.4 Jahil may be described as reference to "a person who is extremely ignorant and disbelieves in God. Often used to describe the people of the era that preceeded the revelation of the Qur'an, and the ignorant in general." 

4.5 Another description is "Jahiliyyah, ai-Jahiliyyah or jahalia is an Islamic concept of "ignorance of divine guidance" or "the state of ignorance of the guidance from God" or "Days of Ignorance" referring to the condition

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1 www.islamic-dictionary.com/index.php?word=jahil
Arabs found themselves in pre-Islamic Arabia".\(^2\)

4.6 It is clear from the above that the word referred to is not derogatory and does not amount to hate speech but is a fair comment on who is qualified to continue in leading with the prayer should the Leader's prayer break due to unforeseen circumstances."

[4] The Complainant replied as follows:

“Thank you for your e-mail. I am not happy with the response from CII. Mufti AK Hoosen comments are in appropriate and so comments made in previous programming. It is his nature to use Arabic terminology to confuse non-Arabic speaking people. Most of his programming has elements of hate speech in it. In South Africa, hate speech (along with incitement to violence and propaganda for war) is specifically excluded from protection of free speech in the Constitution. The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 contains the following clause:

\[N\]o person may publish, propagate, advocate or communicate words based on one or more of the prohibited grounds, against any person, that could reasonably be construed to demonstrate a clear intention to be hurtful; be harmful or to incite harm; promote or propagate hatred.[35]

The "prohibited grounds" include race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

The crime of crimen injuria ("unlawfully, intentionally and seriously impairing the dignity of another")[36] may also be used to prosecute hate speech.[37]

The day South Africa find itself in conflict based on religion, we will know who are the instigators,CII. I therefore urge BCCSA to look into Mufti AK Hoosen programming and sift out elements of hate speech. I thank you for your kind attention.”

[5] The Broadcaster replied further, as follows:

“For clarity purposes, the mention of “Jahil” a common Islamic Arabic term as used by our guest presenter does not offend an individual’s dignity as this term is commonly used today to refer to the lay person that has lesser knowledge than an academic Islamic scholar.

Furthermore, the term Jahil is clearly mentioned in the Quraan in the same vein in chapter 25, verse 63, script Usmani. Should the complainant view the terminology as
ancient and not suitable for current purposes then this will lead into a separate academic
discussion as this will render the term as mentioned in his religious book, the Quraan,
questionable.

To expand further, it is up to an individual’s understanding of this terminology as to how
he/she would see fit. As per the recording, the presenter (who is a well versed academic
in the teachings of Islam) utilized the term based on the references of an authentic
“Hadith” (explained before) and a remark which was inclusive of the word Jahil, and thus
again did not and could not have directly offended anybody as well as with no intention to
do so.

Lastly, to simplify this even further, the example of the term is as if to describe the
difference between a person well learned in Islamic matters that the people flock to for
advice or to learn and unlearned person who doesn’t have this same Islamic knowledge
who attempts to pass Islamic rulings without the required Islamic knowledge of the
learned person. This situation or term in today’s time to the secular world would constitute
the difference between a student and a teacher or the same ‘academic’ difference
between an educated and uneducated person in any professional field.”


The Complainant urged the BCCSA “to look into Mufti AK Hoosen
programming and siff out elemnts of hate speech (sic).” It is, however, beyond the
jurisdiction of the BCCSA to interfere with a broadcaster’s editorial content by
sifting out or eliminating elements of alleged hate speech. The complaint is,
accordingly, not upheld on that ground. It should also be borne in mind that “The
broadcaster, and not the presenter, is subject to the BCCSA Code and
procedure.”2 The main thrust of the complaint is, however, that the broadcast
contained elements of hate speech, as expressed in the term “jaahil”, and it is this
aspect of the complaint that will be addressed in this judgment.

[7] The Complainant argues that a Mufti used the term “jaahil” in a broadcast that
formed part of a question-and-answer session on a radio station dedicated to

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2 Case number 25/2012
addressing questions regarding the beliefs and practice of Islam, in this case, the hierarchy of persons who lead prayers. During the broadcast, the presenter stated, apparently regretfully, that this task generally falls due to a group of people referred to as “jaahils”. As the Respondent avers, the term “jaahil” indeed refers to “a person who is extremely ignorant and disbelieves in God” and is often used to describe “the ignorant in general”.3

[8] As is the case with all language, which is in a state of continual flux, the word “jaahil” may well have lost something of its primary meaning, i.e. one who “disbelieves in God”, and to have assumed, over time, the meaning of a person who is regarded as ignorant. This ignorance is, of course, relative, as the Mufti’s knowledge of the Qur’an is generally accepted as being far more extensive than that of a mere layperson, and is likely to be accepted as such.

[9] The term “jaahil” is, according to the Complainant, derogatory, an example of hate speech, and likely to result in conflict in our society. While we accept that the term may be perceived as derogatory, it needs to be determined whether the reasonable listener would be likely to perceive it as hate speech. Advocacy of hatred based on religion, as well as incitement to cause harm, are the two requirements for a finding of a hate speech contravention, as set out in Clause 5.2 (b) and (c). As there is clearly an absence of advocacy or incitement to cause harm, the word in itself does not constitute hate speech, however derogatory and therefore offensive it may seem to some listeners. Moreover, mere offensiveness is not sufficient for a finding of hate speech.

[10] It needs to be emphasised that it is the jurisprudence of the BCCSA that “though the discussion of such controversial issues tends to be robust and intolerable to certain persons, such robust debates are the hallmark of a free democratic

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society”

Indeed, the Code of the BCCSA regards the protection of the right to freedom of expression as “paramount”.

[11] A further consideration is the provision in the Code that deals with exemptions. It is a generally accepted principle that the pulpit enjoys a unique freedom in broadcasting, and accordingly, clauses 17 (i) and (ii) state that prohibitions do not apply, inter alia, to bona fide religious broadcasts or to broadcasts that “amount to a discussion, argument or opinion on a matter pertaining to religion, belief or conscience”.

[12] The Tribunal has taken note of religious sensibilities, but after careful deliberation we concluded that the word complained of does not constitute hate speech, and the broadcast does not therefore infringe the Code.

In the result the complaint is not upheld.

JCW VAN ROOYEN SC
CHAIRPERSON

The Chairperson and Commissioners Melville and Mbombo concurred in the above judgment of Commissioner Gilfillan.

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4 Aubrey v 567 Cape Talk, Case No: 2003/04 - [2003] JOL 10751 (BCCSA)