BROADCASTING COMPLAINTS COMMISSION OF SOUTH AFRICA

P.O.Box 412365 • Craighall • Tel (011) 325-5755 • Fax (011) 325-5736 • e-mail: bccsa@nabsa.co.za
No 2 Albury Park • Magalieszicht Ave • Dunkeld West • 2196 • www.bccsa.co.za

CASE NO: 03/2002

Date of Hearing: 10 January 2002

MR M LOONAT AND OTHERS **COMPLAINANTS**

VS

SABC3 **RESPONDENT**

TRIBUNAL: **PROF JCW VAN ROOYEN SC (CHAIRPERSON)**
REV DANIE DU TOIT
MS DOLLY MGOQI
PROF HENNING VILJOEN

FOR THE COMPLAINANTS: **DR M ADAM**

FOR THE SABC: **MR LOUIS RAUBENHEIMER (GENERAL MANAGER, AUDIENCE LIAISON) AND MRS DOROTHY VAN TONDER**

Biased and unbalanced reporting - complaint that a Channel Four (UK) programme: "Unveil the secrets" is biased against the Taliban and offensive to Islam found not to be substantiated by the Complainants. Loonat & Another v SABC3 03/2002.

SUMMARY

In a "Special Assignment" programme on Afghanistan, scenes were broadcast of atrocities allegedly committed by the Taliban rulers of that country. The

Complainants complained that the programme in general was biased against the Taliban, that the reporting contained in the programme was unbalanced and that it was offensive to Islam. After hearing both parties, the Tribunal found that it cannot express an opinion on each and every fact averred by the complainants to be "worthless innuendoes and assumptions". An attack on the Taliban is not tantamount to an attack on Islam. Any possible inaccuracies are offset by the fact that this programme lacks public importance for South Africa in general.

JUDGMENT

On 23 October 2001 at 21:00, SABC3, in its Special Assignment series, broadcast a documentary entitled "Unveil the Secrets". This documentary was produced by Channel Four, a TV channel in the United Kingdom. It was made by Saira Shah, a journalist of Afghan origin. The documentary deals with the situation in Afghanistan before the 11 September attacks on the World Trade Centre and the ousting thereafter of the Taliban as rulers of that country. The title is significant because it can convey various meanings. Instead of calling it "Uncover or Disclose the Secrets" or something similar, the producers preferred to include the word "veil" in the title because of the role which the veil plays in Afghan women's lives. The word "Secrets" in the title is also significant because it is well known and documented that Afghanistan is a very closed society, not particularly friendly towards international journalists. Because of the lack of information emanating from that country, the general impression created in the minds of the public in democratic and open societies, is that in Afghanistan the powers that be have done their utmost to keep what is happening in that country away from the public eye.

In the hour long documentary, Saira Shah records her liaison with women resistance groups in Pakistan, her entry into Afghanistan, her encounters with the Taliban and the Ministry for the Prevention of Vice and the Promotion of Virtue and various incidents of atrocities and violations of human rights, especially those of women and children.

The Complainants, who are adherents of the Islamic religion, have complained to the BCCSA that the documentary is, inter alia, "…biased towards (against?) the Taliban, lacking in common sense and overflowing with worthless innuendoes and assumptions"(complaint by Mr Loonat); also that it is filled with lies and distortion (complaint by Mrs Fazeela Patel) and that it was offensive to the religious convictions or feelings of a section of the population (Ferzana Kahn). Dr Mohamed Adam, the chairman of the Human Rights Foundation (a non-government organisation) ably argued the Complainants' case before the BCCSA. The gist of his argument is that the programme contravened paragraph 3 of the Code of the BCCSA in that it was not a fair and balanced account of all available facts. He claimed that the documentary was biased and amounted to propaganda, therefore lacking in objectivity. He also argued that it was offensive to Islam.

Paragraph 3 of the Code of the BCCSA reads as follows:

3.1 The electronic media shall be entitled to comment upon or criticise any actions or events of public importance provided that such comments or criticisms are fairly and honestly made.

3.2 Comment shall be presented in such manner that it appears clearly that it is comment, and shall be made on facts truly stated or fairly indicated and referred to.

3.3 Comment shall be an honest expression of opinion, without malice or dishonest motives, and shall take fair and balanced account of all available facts which are material to the matter commented upon.

The kind of investigative journalism with which we are dealing here, is almost always controversial. The viewing public is seldom neutral towards such journalism: either they are perturbed by the atrocities which are presented to them as facts, or they are upset by what they consider to be undue criticism. In this programme there are various incidents recorded that are evidence of the violation of human rights. The Tribunal has taken note of the fact that there exists quite a large volume of documentation within respected organisations like Amnesty International, Human Rights Watch and the UN in which the Taliban in Afghanistan is criticised for their failure to uphold the basic rights of their citizens.

Dr Adam submitted a document to the Tribunal entitled "Verbatim extracts from section III 'The rule of law and the administration of justice' in Afghanistan from the 'Final report on the situation of human rights in Afghanistan submitted by Mr Choong-Hyun Paik, Special Rapporteur, in accordance with Commission on Human Rights resolution 1996/75 (of the United Nations)". This document makes for some spine chilling reading. A sentence like: "The Attorney-General informed the Special Rapporter that in view of the prevailing security and peace, the crime rate had decreased to the extent that virtually no crimes were being committed" is evidence of the typical situation under a repressive regime. Another sentence reads: "The governor explained that the domestic interpretation of human rights was not based on individual rights". It appears that the Taliban have their own interpretation of human rights and it would be anyone's guess of what that would be. In paragraph 34 of the report, the Reporter mentions to " a representative of the judicial system" (a judge?) that the representatives of the religious police department appeared to be above the law. This statement was not denied by the official concerned.

From what has been said in the previous paragraph, it appears that Afghanistan under the Taliban was not a normal society, just like South Africa was not a normal society under the apartheid government. At the time of the filming of the documentary, a civil war was raging between the Taliban and the Northern Alliance. To be critical of such type of government is the hallmark of free and democratic journalists. The Complainants have quoted various instances in the documentary which they regard as untrue or biased. It is not possible for the Tribunal to make a finding on the veracity or otherwise of each and every allegation. To expect so much of the Tribunal would be to make our task impossible.

Turning to paragraph 3 of our Code, we interpret the words "…actions or events of public importance …" in subparagraph 1 to refer to action or events of importance to South Africa and its citizens. A documentary on an abnormal society far from our own borders, cannot generally, in our minds be of such importance as to justify a finding of violation of our Code. South Africa is in the process of becoming a democratic, free and open society. Freedom of religion, belief and opinion and freedom of expression are entrenched in our Constitution. We would therefore be reluctant to stifle debate and discussion on any topic by censuring the media, except of course where their presentation of the facts is so unbalanced that no reasonable person could accept the value thereof. From what we have seen and heard through the international media, we are of the opinion that the documentary is, on the whole, not so biased and subjective as to warrant a finding of a transgression of paragraph 3 of the Code.

Dr Adam also averred that the documentary is offensive to Islam. On a question to him whether he considers every criticism of the Taliban as a criticism of Islam, he reacted by denying this and saying that the complainants also criticise the Taliban for not allowing girls over the age of 10 years to receive formal education. The Tribunal accepts that there may be different interpretations of the practical commitment to Islam and in this regard the producers of the documentary may have made some "mistakes". The Tribunal, however, cannot subscribe to Dr Adam's philosophy and argument that truth is absolute. The truth, especially in the case where opinion is expressed, is often very difficult to find and the big question is: "According to whose views and convictions?" The Tribunal accepts that there might be different interpretations of the correctness or not of the Taliban's actions. Saria Shah gave her interpretation and her opinion. Some people may agree with her view, others might disagree as has been demonstrated by the present complainants.

This Tribunal has decided in previous cases on the matter of offensiveness to the religious convictions or feelings of a section of the population, that it should be guided by section 16(2)(c) of the Constitution. The word "offensive" is qualified by requiring that there should be an element of hatred and the material should constitute incitement to cause harm. The Tribunal, after viewing the documentary, could not find such evidence. Accordingly there has also not been a transgression of paragraph 7.1.1 of the Code.

As a result the Tribunal finds that the Code of the BCCSA has not been violated by the broadcasting of the documentary entitled "Unveil the Secrets" in the programme "Special Assignment".

The Complaints are dismissed.

HP VILJOEN
COMMISSIONER
21 January 2001

The other Commissioners on the Tribunal agreed with the above judgment.