BROADCASTING COMPLAINTS COMMISSION OF SOUTH AFRICA

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Case No: 08/1996

Date of Meeting: 19 July 1996

Imam Ahmed Raza Academy **Complainant**

vs

SABC **Respondent**

RE FILM: POWER OF DREAMS

Commissioners: **Prof Kobus van Rooyen S.C. (Chair)**
Ms Lauren Jacobson (Alt Chair)
Ms Anne Letsebe
Mr Carel van der Merwe

SUMMARY

Complaint that documentary on dreams is offensive to the religious convictions of the Muslim section of the Community.

Held: (1) that a painting in a mural shown in the programme depicts the covered face of the Prophet;

(2) that the programme represents an expression of opinion on the meaning of dreams and that its main aim is, in fact, to show that dreams are often spiritual revelations. As an expression of opinion - even if incorrect according to Muslim

convictions - the bounds of the Code have not been transgressed. The SA constitution guarantees the right to express an opinion and in this case, the opinion is regarded as deserving of Constitutional protection in view of its carefully, academically stated and researched nature.

JUDGMENT

The Imam Ahmed Raza Academy, a Muslim institution, filed a complaint on the 25th April (complaint received 9 May) with this Commission as a result of a programme, "**The Power of Dreams",** broadcast by the Respondent on the 14th April 1996. The Registrar requested a response to the complaint from the Respondent which we received on 23 May. Early in June the Commission considered the complaint but decided to adjourn the meeting so as to take more time in considering the complaint which raised difficult questions of law and fact.

The letter of complaint as well as the Respondent's answer are attached to this judgment.

The programme, a documentary, deals with the spiritual meaning of dreams. The programme deals first with Jacob's dream at Bet -El and then some time is spent discussing the role of dreams in the life of the Prophet Mohammed. The role of dreams in the lives of Aboriginals, African tribes and American Natives is then discussed. Jung's views about the archetypal Africans are also discussed.

In view of the nature of the complaint it is necessary to deal in some detail with that was broadcast in connection with the role of dreams in the life of the Prophet Mohammed.

Firstly, a father tells the story of Jacob who, in a dream, saw angels moving up and down a ladder from heaven at Bet-El. There is also a reference to the prophetic dream warnings which saved the Christ Child. Later, the documentary stated that in early times, dreams were associated with witchcraft and Satanism. The Voice - over says the following in this regards: "This stands in direct contrast to the role of dreams in Islamic traditions around the same time, the Middle Ages, where dream interpreters were considered great religious leaders and authorities. Dreams were profoundly important in the life of Mohammed, the Founder of Islam. And one night in a cave the Angel Gabriel came to him in a dream vision and Gabriel began instructing him on the Verses

and Chapters which became the Koran. Another religious scholar whose research includes the dreams of the Muslim faith, is Rev Jeremy Taylor. It is clear (he says) from the Koran and from the historical records of the life of Mohammed that he told his dreams and listened to the dreams of his followers on a daily – basis".

The programme then recounts that the Prophet in fact learnt about the daily prayers of Muslims from a dream and the he relayed this to his followers.

During the recounting of the meeting in the cave, a mural is shown of Mohammed and the Angel meeting each other and then, later on in the mural sequence, one sees the Angel conversing with Mohammed. In the first scene the face and body of Mohammed can be seen, but in the second the Prophet=s face is covered with what looks like a white mask.

Rule 7.1. of the Code of this Commission provides that the electronic media shall not broadcast material that is offensive to the religious convictions by referring directly or indirectly to those convictions or feelings.

Once again, this condition is met. The word "offensive", however, has a limited meaning in law. In *Publications Control Board v Gallo (Africa) Ltd* 1975(3) SA 665 671H Rumpff CJ held that Aoffensive@ does not relate to matter which is merely displeasing or annoying, but to material which is repugnant, mortifying or painful. The statement of the law must now also be read with section 14 of the Constitution(also see section 15 of the Constitution accepted by the Constitutional Assembly and which is presently being considered by the Constitutional Court) which guarantees freedom of religion , thought belief and opinion. Of course, section 33 of the Constitution (present section 36) limits these rights by requiring that the limitation must be reasonable in an open democracy based on freedom and equality and that the limitations must also be necessary. The new section 36 does not repeat the necessity requirement, but I believe that the present requirements would, in the case of religion and opinion, lead to the same outcome.

In *Human and Rousseau Uitgewers v Snyman N.O.* 1978(3) 836(T) the Transvaal Supreme Court held that the likely viewership or readership of a film or publication is irrelevant when the

religious or feelings of a section have to be ascertained.

The Court, however, also held that as far as the interpretation and the degree of encroachment are concerned, the likely reader's (viewer's) point of view may be taken into consideration as a factor. In *Buren Uitgewers v Raad van Beheer oor Publikasies* 1975(1) SA 379 (C) the Cape Supreme Court also held that the likely readership of a book is relevant when a similar provision under the now repealed Publications and Entertainment Act of 1963 was to be applied.

When judging a complaint in regard to a part of a programme, a contextual approach must be applied - see *Publications Control Board v Republican Publications* 1972 (1) SA 288 (A). Furthermore, it has been held by our courts in defamation cases that a microscopic approach should not be applied in gauging in reaction of a reader of an allegedly defamatory article. An adjudicator is out of necessity inclined to focus upon the problematic areas. Although it is an adjudicator's duty to study allegedly offensive material closely, it should be borne in mind that the ordinary viewer would generally not do that.

The Respondent has argued that the complainant only represents one institution and that in November 1995 the Supreme Court held that the Islamic Council of SA, the United Ulema Council of SA plus two individuals had failed to prove that a large enough section representative of the Muslim Community's religious feelings would be offended by the film, *Jihad in America.* Accordingly the Respondent argued, since the Complainant is only one institution, it does not represent a sufficient segment of the Muslim community. Although we agree with the rest of the Respondent's argument, it must be pointed out: (1) that it is irrelevant in our inquiry whether one or a thousand complaints are lodged - the question remains what the relevant convictions or feelings are; (2) that representivity is irrelevant in such an inquiry; and (3) that there is not an onus of proof on a complainant in a quasi-judicial inquiry such as the present one. The ultimate issue is whether the Commission is convinced that the alleged conviction or feeling exists, whether it was encroached upon and whether such encroachment amounted to an offensive encroachment, having regard to the meaning of "offensive" and factors and method of examination referred to above.

We accept in favour of the Complainant that the convictions referred to by it truly reflects Islamic

convictions. In fact we have no reason to doubt that the documentation filed reflects that position correctly.

In so far as the portrayal of the Prophet on the mural is concerned, we have come to the conclusion that the main focus in the broadcast was on the painting portraying the scene where the Angel Gabriel conveys the revelations to the Prophet. In this scene the Angel's face is shown but the face of the Prophet is covered. Whether this was originally so seems questionable since the cover seems rather crude, possibly added by later curators or believers. In the first sequence, the face of the Prophet is not covered. This scene, which shows the meeting of the prophet with the Angel, does not , for some reason or other, have a cover over the face of the Prophet. The film does not exploit this aspect (the shot is not even at close range) and we cannot deduce the intention was to denigrate the Prophet. Although we realise that according to Islam no portrayal of the Prophet is allowed, we have come to the conclusion that the documentary nature of the scenes as well as the absence of focus on the figure of the Prophet, remove this scene from the legally offensive.

In so far as the dream of the Prophet is concerned, it is clear that the programme amounts to an expression of opinion. What is more, dreams are elevated to spiritual revelations by the programme as a whole. In fact, the general theme is that dreams are not what they seem to be, but that they reflect an invisible spiritual world which surrounds people on earth. The reference to the Tibetan monks (living in exile in Northern India) confirms this approach. They are said to believe that the real world is but a spiritual dream. Accordingly even if, strictly speaking, the opinion expressed in the programme is not in accord with Muslim convictions, we believe that the opinion (even if accepted to be incorrect) expressed is a bona fide one which was not intended to amount to an attack on Muslim convictions in this respect. Once again the nature of the programme and the manner in which the opinions are expressed, remove the material from the realm of the "offensive".

In so far as the view of the Reverend Taylor is concerned, it emerges clearly that he is expressing an opinion. Once again, the reference to dreams must be understood within the broad scope of what dreams are said to mean in the programme as a whole. The opinion may be wrong - and is definitely wrong according to the Complainant - but the nature of the programme and the

Reverend's right to express an opinion within the scope of this programme, amount to an exercise of his fundamental right to express an opinion. His opinion is legally not so outrageous that it fails to meet the standards set by section 34 of the Constitution of the Republic or, in future, section 36 of the Constitution which remains to be certified by the Constitutional Court.

The complaints are dismissed.

JCW VAN ROOYEN S.C.
CHAIRPERSON