

## 6 RMLNLUJ (2014) 98

### Case Comment

#### **Indian Railway Catering and Tourism Corporation Limited, New Delhi (IRCTC) v. TV Today Network Limited (i.e. Aaj Tak Channel). National Broadcasting Standards Authority (NBSA) of India, Order no. 22 (2014), on January 6, 2014.**


by  
—*Debasis Poddar*

#### **I. INTRODUCTION**

Before initiating this effort, it seems imperative to set this case comment in context. In general, albeit in traditional sense of the term, the given matter may not be a case in the way the same is so often than not understood as deliberation by adjudicator(s) in course of regular judicial process before law court as statutory institution of state. Nowadays, however, a set of hybrid non-state institutions with judicious robe emerge to supplement these hitherto mainstream (read state sponsored) institutions of justice. With the passage of time, thus, such otherwise informal institutions of governance possess high potential to emerge as *sui generis* sector-specific institutions of justice toward disciplining errant players, offer remedy to victims of foul play by them and thereby assist liberal democratic state maintain rule of law in its nitty-gritty which is otherwise the sole responsibility of state as sovereign.

News Broadcasting Standards Authority (hereafter NBSA) is such an institution, a self-imposed forum for adjudication of related disputes between relevant player(s) and outsider(s) or even between players *inter se*. In lieu of state, this is but creation of News Broadcasters Association, New Delhi for the purpose of self-governance.<sup>1</sup> With nine members

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representing eminent persons, *Justice (Retired) R.V. Raveendran* as its present Chairperson, NBSA is vibrant with the creamy layer of judicious-if not judicial in technical sense of the term-mind in India.<sup>2</sup> Despite lack of the sanctity as regular court or tribunal, therefore, NBSA has had status of its own to deal with matters related to standards in broadcasting. While disposing of matters before it, the Authority is guided by settled set of rules of its own which are in public domain. Thus, a(ny) matter in its jurisdiction may well be held as case in similar way since NBSA plays such coveted role with covert sanction of state.


#### **II. FACT & ISSUE(S)**

In the absence of updated web airing decisions arrived at on the part of NBSA<sup>3</sup>, the author depends on text of the decision so arrived at by NBSA as an original copy being aired by IRCTC on its own out of *bona fide* interest in concerned decision.<sup>4</sup> A minute study facilitates the readership decipher underlying fact and issues behind it. First, there are allegations against railways for corrupt practice vis-à-vis reservation, etc. through internet. Second, a news channel - *Aaj Tak* - conducted sting operation titled "Dalal Junction" to unearth corruption and expose errant practice of railways in public domain. Third, while the news channel project was broadcast, this channel conducted media trial to condemn IRCTC for unproved complaint of irregularity while voice of IRCTC was not accommodated anyway. Fourth, an aggrieved party, IRCTC lodged

complaint before NBSA with its contention that the news was served one sided with no scope for IRCTC to defend its position which is in contravention with all journalistic ethics. Fifth, IRCTC also contended that the impugned title (Dalal Junction) was not at all in tandem with contents of the news so aired with *mala fide* intention for agitation in common mind. Last but not least, as petitioner, IRCTC expressed its grievance that such news ruined its reputation for no fault identified by the news channel as defendant. Accordingly, this matter was submitted to the jurisdiction of NBSA.

In the light of fact mentioned above, the following issues were dealt with by NBSA. First, whether broadcast of allegation for corrupt practice

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without evidence or witness is agreeable under journalistic ethics. Second, how far principles of natural justice-for instance, right to be heard-ought to be observed in course of broadcast of news; in particular, if it contains statement against reputation of individual or institution. Third, in cases of violation of journalistic ethics covered under its regulatory regime, what is characteristic of remedy-legal or extralegal; if legal, then civil or criminal; if extralegal, then social, economic, political, or something else even beyond, like cultural remedy and the like. This case set strong precedent in a sense that, perhaps for the first time, NBSA was clear enough of what journalistic ethic stands for and how to legitimize the same sans the cloak of state-made law.


Here, journalistic ethics include those provisions accommodated into Code of Ethics and Broadcasting Standards in relation to broadcasters and television journalists as framed by News Broadcasters Association for self regulation of its stakeholders.<sup>5</sup> Also, there are News Broadcasting Standards Regulations-a self imposed normative order to this end.<sup>6</sup> Together these two instruments are relied upon by NBSA while the same is course of adjudication on a(ny) matter before it.

### **III. DECISION**

Judicial process ran fast with time. The impugned broadcast was aired on 24.03.2013 followed by repeat broadcast on 25.03.2013. A complaint from IRCTC was received by NBSA on 20.06.2013. Proceeding for hearing to both complainant and defendant was conducted on 18.09.2013. Then, order was issued by NBSA under the signature of its Chairman, *Justice (retired) Raveendran*, on 06.01.2014 with points of decision followed by reasoning:

1. The impugned broadcast was aired without ascertaining distinction between 'counter booking' and 'e-ticket booking' and thereby erroneous. While the former is run by Indian Railways booking clerk, the latter is operated by IRCTC from same server under supervision of Indian Railways. Still IRCTC initiated several additional safeguards on its own and the same was submitted to NBSA along with Aaj Tak channel.
2. The broadcaster had run the tagline "IRCTC ki website per gadbad jhala" several times during the programme though it had no basis for the same and thereby tarnished the image of IRCTC.
3. Therefore such a tagline lacks justification.

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4. The impugned broadcast was aired without giving opportunity to IRCTC to give their version as a right to be heard.
5. Thus, decision was arrived at by NBSA that (i) the broadcast was without due diligence; (ii) there was no verification of facts; and (iii) guidelines relating to "accuracy, impartiality and neutrality" had been ignored while reporting on the subject.<sup>2</sup>
6. Consequently, NBSA held *Aaj Tak channel* in breach of NBA (News Broadcasters Association) Code of Ethics and Guidelines for broadcasting unverified allegation which is, as NBSA observed, not true. In particular, NBSA identified lack of due diligence as a turning point of its decision.
7. Accordingly, after arriving at conclusion, NBSA directed the defendant to visit with the following consequences:
  - (a) to tender an apology for five consecutive days from 13.01.2014 to 17.01.2014 respectively at 06.00 p.m. daily by running the following text (static) on full screen in large font size with voice over (in slow speed) expressing regret for the said telecast on their channel Aaj Tak by stipulated statement in Hindi.<sup>8</sup>
  - (b) to remove the video of the said programme, if hosted, on the website of Aaj Tak or other links.
  - (c) To submit proof of compliance of telecast of the apology to NBA on compact disc within seven days of the telecasts.
8. Besides, NBSA further directs the NBA:
  - i) to send a copy of this order to the complainant and the news channel
  - ii) to circulate this order to all Members and Editors of NBA
  - iii) to also host a summary of this order on its website and to include such summary in its next Annual Report
  - iv) to release the order of NBSA to the media.

From crux of the order, thrust on due diligence and natural justice of right to be heard seems apparent enough as part of procedural fairness even

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in course of media trial under the (dis)guise of sting operation introduced nowadays. Also, sensationalization of news sans authenticity constitutes another point of concern. There was heavy thrust on proof as well before broadcast of news with prejudice. On the contrary, it seems evident that news being true offers valid defence to diligent broadcaster.

#### **IV. CRITIQUE**

In spite of errant broadcaster receiving brickbat with the order, recent trend for NBSA jurisprudence vis-à-vis journalistic ethics as set through a series of orders attract public attention on several counts. Even in a clear case for gross violation of NBSA regulatory regime, there is neither punishment nor penalty for either the broadcaster or the journalists. Except ignominy, along with apology in public, broadcaster went with little embarrassment and journalist(s) with nothing in practice. Consequently, erratic broadcast may receive encouragement since mindless foul play against IRCTC attracts neither punishment nor penalty even after gross violation of NBSA guidelines by *Aaj Tak* channel get well established and the same was decided by NBSA as well. Cynic bystander may also raise question on (f)utility of proceeding.

Indeed NBSA has had jurisprudence of its own to its credit. Condemnation seems

valid as a mode to push errant party to back foot. The mode of condemnation is armed with more severe cutting edge here since NBSA resorted to an open condemnation. If taken in good faith, this is a latest trend under international judicial process-the way institutions under Office of the High Commissioner for Human Rights (OHCHR) introduced the same through respective committee proceedings. A similar mode was introduced by International Labour Organization as well even before OHCHR.<sup>2</sup> All these institution take heavy resort to open condemnation as most severe remedy against violation of normative rules under their respective regimes. The problem, if at all, lies elsewhere. Whether or how far condemnation will control entrepreneurship is a moot point. Provided that condemnation works the way it does for errant states, nothing may be better to such dignified remedy. There is but widespread apprehension that business house differs from state in terms of its behaviour and, in most cases, the gospel NBSA preaches is likely to fall on deaf ears.

On other side of the coin, recent trend in judicial policymaking on the part of NBSA seems inclined to broadcaster though insignia of such trend is

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too subtle to decipher with cursory reading of its orders. For instance, in its order issued two years back<sup>10</sup>, due to want of clear case, the victim (albeit incidental) received no remedy anyway from NBSA. Unless and until violation becomes *prima facie* clear from contention, the way order may reasonably be read, no recourse is available to victims however severe damage may be. In case journalist receives relief out of benefit of doubt, broadcaster may be imposed a proportionate liability, as may be reasonable, to compensate at least individual, if not institutional, loss. Thus, NBSA will succeed to come out of its hitherto image as pro-media institution and thereby emerge as judicious institution that strikes balance.

A note of caution may not appear awkward at this junction. In its anxiety to acquire credibility in public life, NBSA must not rush like pendulum toward another side. If at all, an agendum of this effort is to facilitate NBSA rise as a better judicious forum than regular judicial institutions and thereby attain the confidence of diverse quarters to stand relevant to one and all. And here lies a major potential of new generation institutions like NBSA to supplement the hitherto administration of justice through its *sui generis* judicious service offered on the basis of consensus and thereby develop contemporary media jurisprudence of its own.

## **V. CONCLUSION**

Irrespective of popular perception, Instead of being an in-house quasi-judicial organ of NBA, fact is that NBSA has emerged as a judicious institution sans judicial robe. This fact may be corroborated by statistics that number of cases within half a decade since its inception is on its rise. Rather than negative construction-that grievance is on its rise-positive one seems no less vital that people possess good faith in NBSA. A message ought to be sent to the people, albeit without compromise with the interest of concerned industry, that the forum is no subject of remote control of the industry but vigilant watchdog of self-discipline to be followed on the part of its stakeholders. The case thereby set an inspiration for other sectors to follow the legacy.

The case dealt with herein, followed by the bold order against a channel like *Aaj Tak* - being a member of NBA-for gross violation of NBSA regime rules offer a silver line to those who suffer from unfair treatment by NBSA

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member media. At the threshold of globalized India, rather than cliché like freedom of the press, media governance becomes concern for the State to ascertain rule of law for stakeholders of mass media as well. After all, like others, mass media cannot stand apart or above accountability and NBSA strives to address the tension between independence and indiscipline under the (dis)guise of independence with larger interest of the industry in its mind.

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<sup>1</sup> The News Broadcasters Association (NBA) represents the private television news and current affairs broadcasters. It is the collective voice of the news and current affairs broadcasters in India. It is an organization funded entirely by its members.

The NBA has presently 26 leading news and current affairs broadcasters (comprising 53 news and current affairs channels) as its members. The NBA presents a unified and credible voice before the Government, on matters that affect the growing industry.

Available at: <<http://www.nbanewdelhi.com/>> retrieved on January 26, 2014.

<sup>2</sup> For inventory of NBSA membership, refer to relevant NBA web page. Available at: <<http://www.nbanewdelhi.com/authority-members.asp>> retrieved on January 26, 2014.

<sup>3</sup> Last decision aired is that of 20.12.2012 while this is one arrived at on 06.01.2014. Available at: <<http://www.nbanewdelhi.com/decisions.asp>> retrieved on January 26, 2014.

<sup>4</sup> For full text, refer to copy of original document. Available at: <[https://www.ircct.co.in/betaDoc/2\\_ORDER%20NO%2022%20DT.%206.1.14\\_CTC.pdf](https://www.ircct.co.in/betaDoc/2_ORDER%20NO%2022%20DT.%206.1.14_CTC.pdf)> retrieved on January 26, 2014.

<sup>5</sup> Available at: <[http://www.nbanewdelhi.com/pdf/final/NBA\\_code-of-ethics\\_english.pdf](http://www.nbanewdelhi.com/pdf/final/NBA_code-of-ethics_english.pdf)> retrieved on January 27, 2014.

<sup>6</sup> Available at: <<http://www.nbanewdelhi.com/pdf/final/regulations-english.pdf>> retrieved on January 27, 2014.

<sup>7</sup> For balanced reportage, broadcasters should remain neutral and ensure that diverse views are covered in their reporting, especially on a controversial subject, without giving undue prominence to any particular view.

News Broadcasters Association: Specific Guidelines Covering Reportage, paragraph 2.1 (on Impartiality, Neutrality and fairness). Available at: <[http://www.nbanewdelhi.com/pdf/guidelines\\_10-02-09.pdf](http://www.nbanewdelhi.com/pdf/guidelines_10-02-09.pdf)> retrieved on January 27, 2014.

<sup>8</sup> For details of statement, refer to complete text of the NBSA decision.

*Supra*, n. 4, p. 3.

<sup>9</sup> *Vide* institutional monitoring mechanism under the auspices of international human rights treaty bodies in OHCHR regimes. Available at: <<http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>> retrieved on July 21, 2014. Also, refer to institutional supervisory system within ILO regime. Available at: <<http://www.ilo.org/indigenous/Conventions/Supervision/lang--en/index.htm>> retrieved on July 21, 2014.

<sup>10</sup> Order no. 19 of 2012-in the matter of complaint dated 18th April, 2012 filed by Sunair Hotels Ltd., against IBN18 Broadcast Ltd., in respect of broadcasts titled "PC in conflict of interest", "Phir vivid mein Chidambaram" carried on CNN-IBN and IBN7 channels from 14th December, 2011 to 18th December, 2011.

The complete text of the NBSA order mentioned above is available online at: <[http://www.nbanewdelhi.com/pdf/21\\_ORDER%20NO%2019%20%20DT-20-12-12.pdf](http://www.nbanewdelhi.com/pdf/21_ORDER%20NO%2019%20%20DT-20-12-12.pdf)> retrieved on January 27, 2014.

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