

News Broadcasting & Digital Standards Authority
Order No. 126 (2022)

Order of NBDSA (formerly known as NBSA) on complaint dated 29.11.2021 from Mr. Indrajeet Ghorpade against Sakshi TV for airing a programme on 28.11.2021

Since the complainant was not satisfied with the response of the broadcaster, the complaint was escalated to the second level i.e., NBDSA.

Complainant dated 10.12.2021 to NBDSA

The complainant stated that he had filed a grievance with Sakshi TV via their website form against a news report 29.11. 2021 for violating the privacy of private individuals by outing their sexual orientation on national TV and for sharing inaccurate information that members of the Hijra community were present at the party and drugs were found at the party. However, he stated that since the channel has failed to respond to his grievance, he requested the Authority to consider the complaint. Further, he stated that the video of the impugned news report was still available online and was a source of great trauma to the individuals whose privacy Sakshi TV had violated.

Complaint 11.12.2021 to broadcaster

Sakshi TV ran a report about a party that was raided by the Hyderabad Police and regarding the FIR filed against the organisers for organising the party without permission. The complainant stated that it is relevant to note that no other FIR has been filed against the attendees, that no drugs were found at the party and no Hijras were present at the party nor has there been an FIR filed against any Hijras. However, the broadcaster incorrectly reported that ganja was found at the party and that Hijras were present at the party and were arrested.

The broadcaster also violated the privacy of several private individuals by broadcasting their video footage without their consent and by outing private information regarding their sexual orientation on national TV.

The complainant stated that as per Supreme Court's *Justice KS Puttaswamy (Retd) v. Union of India and Ors WP (C) 494/2012* verdict, sexual orientation is an essential attribute to privacy and must be protected. Further, the *Navej Singh Johar & Ors. v. Union of India thr. Secretary Ministry of Law and Justice 2018* verdict of the Supreme Court too states that sexual orientation of a person is protected under Right to Privacy.

He stated that as a result of the broadcast, people whose privacy has been violated have not only suffered great deal of trauma but the impugned broadcast has also affected some of their family relationships and their employment.

The complainant stated that since the broadcaster had violated the law and NBDSA's Code of Ethics, it should air a public apology and share the accurate information about the incident.

Reply dated 7.1.2022 from channel:

The broadcaster stated that the impugned news was regarding o a crime under the Kukatpally police station limits. The station house officer of Kukatpally PS and his team raided certain locations in Kukatpally colony. After the raids, the Kukatpally police released some video content and the details of the crime. According to the report of Kukatpally police, all the leading news channels ran a news story and aired the visuals.

The broadcaster stated that the said news was telecast by it as per the police statement and the visuals provided by the Police only. Therefore, the said news is neutral, unbiased, fair and non-arbitrary news and conforms to the norms framed by NBSA and also the law as it stands. Even though, the matter is purely legal and under the purview of the Kukatpally police, it has deleted the said videos from YouTube on humanitarian grounds.

Email dated 7.1.2022 from complainant

The complainant stated that channel has responded to his complaint by stating that it had reported the news as per the visuals and the information provided by the Police. In doing so, the channel has violated the privacy of private individuals by showing their faces on TV and making claims about their sexual orientation which is protected under Right to Privacy. Moreover, there is no FIR against any transgender person nor is there any FIR pertaining to consumption of banned substances and the channel's claim is therefore false.

Decision of NBDSA at its meeting held on 8.1.2022

NBDSA considered the complaint and the response from the broadcaster. NBDSA decided that the broadcaster and the complainant be called for a hearing.

On being served with notices, the following persons were present at the hearing on 10.2.2022:

Complainant:

Mr. Indrajeet Ghorpade

Broadcaster:

Indira Television Ltd. [Channel: Sakshi TV]

Mr. G. Srinath, Senior Output Editor

Mr. C.P.N. Karthik, Compliance Officer, NBDSA

Submissions of the Complainant:

The complainant submitted that his grievance was regarding the coverage of a police raid in Hyderabad. The complainant stated that there was a house party that was being held in Hyderabad, which was attended by a few men (approximately 40 men as per reports), and a police raid was conducted because some people in the locality had filed a noise complaint. Subsequently, the Police filed an FIR against the house party organizers because they did not have permission to organise the party.

The responding channel has claimed in their response that the Police provided them with a video that was recorded by them at the party in which faces of all most all the participants who were present at the party could be seen. The complainant submitted that this video was then broadcast by the channel without blurring the faces of the individuals in the video. Further, while broadcasting the video, claims were also made by the channel about the sexual orientation of the people seen in the video.

Sakshi TV, while airing the impugned news report, stated that homosexuals were arrested as they were partying. They also said that hijras were present at the party and were dancing obscenely. The channel also inaccurately claimed that ganja was found at the party. In this regard, the complainant stated that the channels claim was false, as the FIR does not mention anything about ganja or other banned narcotic substances being recovered from the house party, and there was no case under the narcotics act against any of the attendees or the party organizers. Further, the channel's claim that members of the Hijra community were present at the party, were dancing obscenely and were arrested were also false as no members of the Hijra community were present at the party, nor has an FIR been filed against any Hijra person.

The complainant asserted that by airing the impugned news reports, the broadcaster had violated the judgment of the Hon'ble Supreme Court in *Justice KS Puttaswamy (RETD) v. Union of India and Ors WP (C) 494/2012* wherein it was held that the right to privacy is protected as an intrinsic element of the right to life and personal liberty under Article 21 and as a constitutional value which is embodied in the fundamental freedoms embedded in Part III of the Constitution. That "*Dignity cannot exist without privacy. Both reside within the inalienable values of life, liberty and freedom which the Constitution has recognised. Privacy is the ultimate expression of the sanctity of the individual. It is a constitutional value which straddles across the spectrum of fundamental rights and protects for the individual a zone of choice and self-determination*". Further, Justice Chandrachud had in the same judgment observed that that sexual orientation is an essential attribute of privacy and must be protected and the right to privacy and the protection of sexual orientation lie at the core of the fundamental rights guaranteed by Articles 14, 15 and 21 of the Constitution. Furthermore, in the *Navej Singh Johar & Ors. v. Union of India thr. Secretary Ministry of Law and Justice* which read down Section 377, the Hon'ble

Supreme Court held that the sexual orientation of a person is protected under the right to privacy.

Therefore, the complainant submitted that by broadcasting the videos which exposed the faces of private individuals and then by making claims about their sexual orientation, the broadcasters had violated the right to privacy guaranteed by the Constitution and had there also violated the Code of Ethics & Broadcasting Standards.

The complainant stated that in the year 2011, the then Chairperson of NBSA, Justice Verma (former Chief Justice of India) had also dealt with a similar case again from Hyderabad regarding a report that TV 9 Telugu had aired about gay culture in Hyderabad, which ended up violating the privacy of several gay men. While dealing with that complaint, NBSA had imposed a fine of Rs.1.00 lakh, on the channel and had also ordered them to air an apology twice a day for three consecutive days in slow pace.

In view of the above strong precedent of NBSA, the complainant requested that since once again the channels had violated the right to privacy, strict action should be imposed against the channels to dissuade them from violating the privacy of private individuals. That merely taking down the videos from the internet is not sufficient as the damage has already been done and the only way to deter the channels from committing such violations in future is to go by the precedent and make sure that very strong action is taken.

The complainant submitted that he would like to bring to the attention of the NBDSA the repercussions of airing such news reports. He stated that members must be aware of how the society perceives the Hijra community who face discrimination not just from the society but from their own family members as well. When the impugned news reports were aired, the entire Hijra community was immediately triggered because they have been facing a serious housing problem, especially in Hyderabad during the Covid-19 lockdown. Most areas in Hyderabad are extremely transphobic, and even people with jobs are not able to get accommodation despite them having the capacity to pay for such accommodation and all the legal documents required to get housing on rent. So when such programmes about the party where hijras were dancing obscenely, drugs and condoms were found was reported, it stigmatised and marginalised the community further and created problems for them, beginning with the housing problems. There have been several cases during the lockdown where people have been kicked out by their landlords in the middle of the night from their housing and the Police had to intervene. The NGO with which the complainant was associated with had to create a separate cell for the protection of trans people in the Hyderabad HITEC city area.

The complainant submitted that when claims such as one made in the impugned news reports are made by the channel, it tarnishes the entire community. That his

grievance is not only about the misinformation shared by the channel but also on its impact, how it furthers the transphobia that already exists in Hyderabad.

The complainant submitted that he had personally attempted to do crisis calls and arrange counselling and shelter home for two men who were present at this party whose faces were shown in the video. The complainant stated that these men had to face physical violence from their family and friends merely because they were present at the party and the channels had taken the liberty to show their faces and claim that homosexuals were present at this party.

The complainant submitted that the defence of the channel that the video was provided by the Police and was therefore aired was not acceptable. That since sexual orientation is protected under the right to privacy, the broadcast of the video showed how careless, insensitive and unknowledgeable the channels are about the rights of the citizens of this country. That while the Police can provide all kinds of evidence including the footage, it is the responsibility of the channel to determine what is aired. He stated in the present case, even the Police had been cautious and had not mentioned the word homosexual anywhere in the FIR.

He submitted that since the broadcasts were appalling and extremely hurtful not just for the people whose identities had been exposed but also for the larger community in Hyderabad, therefore merely directing the channel to take down videos of the impugned broadcasts was not enough. Keeping in mind the precedent already set by the Authority in its earlier decision on a similar subject, the complainant requested to take similar action against the erring broadcaster.

Submissions of Sakshi TV

The broadcaster submitted that the impugned news report was a clear case of crime that happened in an apartment in Vivek Nagar area, Kukatpally, Hyderabad where nearly 100 residents lived including 20-30 minors who lived in the locality and the bigger story was the impact on juveniles.

That the neighbours of the next-door apartment had complained to the Police that public nuisance was happening in the apartment, as around 30 to 40 people were coming to the apartment. According to the Police, banned substances and hookah were found in the apartment. Further, the broadcaster submitted that it had also obtained the video from the Police Authorities. The broadcaster submitted that according to the local resident's such events were regularly happening in the apartment, causing public nuisance.

The broadcaster submitted that it was the complainant who informed them that there were no hijras present at the party and requested the broadcaster to remove the video of the impugned report and tender an apology. The broadcaster stated that it had broadcast only information received from police authorities and had, without going into the merits of the complaint in good faith, removed the video of the

impugned report from YouTube. Further, it stated that the general allegation of the complainant that hijras face problems in the society should not be mixed with the facts of the present case, wherein 30-40 people were partying and using hookah and some banned substance in the party, which was also recorded in the FIR. The broadcaster submitted that in the impugned broadcast, it had not revealed names, identity or private issues.

The broadcaster submitted that the impugned news report which was for a duration of 1 minute 43 seconds was aired only twice. That since the impugned programme was based on the footage and information provided by the local authorities/Police, it had only disclosed the names of the organizers who were charged by the Police and has not revealed the sexual orientation of any individuals or targeted any community or claimed that ganja was found in the party. Further, in the video, eighty per cent of faces of the individuals who attended the party were covered by a mask, and it was a glance for a few seconds to show that these people were arrested. Individuals who were voluntarily present at the party cannot be considered victims and therefore, NBDSA Guidelines were not applicable in the present case.

The broadcaster reiterated that the information that the attendees were causing public nuisance was based on a complaint made by the neighbours. The broadcaster had confirmed the said information with Police Authorities and aired the broadcast only in the public interest. Furthermore, the said news item was also covered and reported widely by various local and national news broadcasters and newspapers and there was no violation of privacy in the impugned broadcast. Since all individuals in the society have a right to sleep peacefully, the activities of the party attendees resulted in public nuisance and were therefore covered in the public interest. In view of the above submissions, the broadcaster stated that there was no violation of "Code of Ethics & Broadcasting Standards" in the broadcast as alleged, rather it was a fair and accurate reporting based on information provided by the Police.

In response to the submissions made by the broadcaster ETV Telangana, the complainant clarified that the sections mentioned in FIR were only against the organizers of the party and not against the persons who attended the house party. That the submission of Sakshi TV that the video was broadcast only for two seconds was false. That while the channel has in their submissions stated that it had not used the term hijra or homosexual, however, from the transcript available on record, it is clear that the broadcaster has reported that "*homosexuals were found drinking alcohol, hookah and dancing*" and "*two Hijras were taken custody along with 44 homosexuals*".

Decision

NBDSA looked into the complaint, response from the broadcaster, and also gave due consideration to the arguments of the complainant and the broadcaster and the script of the broadcast.

NBDSA noted that the media has the freedom to report on issues which are of public interest including subjects pertaining to instances causing public nuisance and on crimes irrespective of the sexual orientation of the accused.

In the present case, the broadcaster had stated that its news report was based on information provided by the Police Authorities and pertained to public nuisance being caused by a party held in the neighborhood. It was stated that the said broadcast was aired in public interest. It may be noted that the broadcaster had removed the videos of the programmes on receipt of the complaint.

On viewing the footage of the broadcast by Sakshi TV, NBDSA noted that the following comments were made in the broadcast *“They danced obscenely along with the Hijras. At the time of Police raids, Homosexuals were found drinking alcohol, hookah and dancing. Two Hijras were taken custody along with 44 homosexuals.”*

The comments/statements in the aforementioned broadcast were not factual and gave the perception that most of the individuals at the party were from the LGTBQIA+ and/or hijra community and members from this community were arrested during the raid conducted by the Police. Since this was not accurate reporting, the broadcast violated the Principle of Accuracy as enshrined in the Code of Ethics and Broadcasting Standards and under the Specific Guidelines Covering Reportage.

NBDSA observed that caution should have been exercised by the broadcaster while broadcasting the comments of the Police mentioning the sexual orientation of the persons involved, particularly as subsequently it has come to light that the FIR did not mention the community and the broadcaster should have been sensitive to the fact that the aforementioned community does face discrimination and facts related to them should be broadcast in a sensitive manner. In view of Clause 5.2 of the Specific Guideline Covering Reportage which states *“Persons should not be featured in content in a manner that denigrates or discriminates against sections of the community on account of race, age, disability, sex, sexual orientation, occupation, religion, cultural or political beliefs”*, there would not have been any problem if the thrust of the programmes was on nuisance per se. However, NBDSA found that the incident is twisted by unnecessarily involving LGTBQIA+ and/or hijra community without proper verification, which turned out to be factually incorrect. It is clarified that in a given case if a person belonging to such community is found to be a violator of law, mentioning so may not be wrong. However, accusations against persons of this community have serious social repercussions, making mindless allegations needs to be deprecated.

In view of the above, NBDSA expressed strong disapproval about the manner in which the programmes were aired ignoring the sensitivity towards the LGTBQIA+ and/or hijra community and repeat of similar broadcasts in future will be viewed seriously.

NBDSA decided to close the complaint and inform the complainant and the broadcasters accordingly.

NBDSA directs NBDA to send:

- (a) A copy of this Order to the complainant and the broadcaster;
- (b) Circulate this Order to all Members, Editors & Legal Heads of NBDA;
- (c) Host this Order on its website and include it in its next Annual Report and
- (d) Release the Order to media.

It is clarified that any statement made by the parties in the proceedings before NBDSA while responding to the complaint and putting forth their view points, and any finding or observation by NBDSA in regard to the broadcasts, in its proceedings or in this Order, are only in the context of an examination as to whether there are any violations of any broadcasting standards and guidelines. They are not intended to be 'admissions' by the broadcaster, nor intended to be 'findings' by NBDSA in regard to any civil/criminal liability.

Sd/-

Justice A.K Sikri (Retd.)
Chairperson

Place: New Delhi

Date : 31.03.2022