

**News Broadcasting Standards Authority**

**Complaint No. 2 of 2009**

**In Re: Complaint by Eye Bank Co-ordination & Research Centre, Mumbai and Arpan Eye Bank, Mumbai against NDTV India**

**O R D E R**

1. On 16<sup>th</sup> December 2008 at 10:30 pm M/s New Delhi Television Ltd. (“**NDTV**”) telecast a programme titled “*Eye Bank Mein Gorakh Dhanda*” (“**said Telecast**”) in their program “*Mumbai Central*” on their channel “**NDTV India**” (“**said Channel**”). The same telecast was repeated on 17<sup>th</sup> December 2008 sometime in the morning. In the said telecast the said Channel reported that various malpractices were going-on at the Eye Bank Co-ordination & Research Centre, Parel, Mumbai (“**EBCRC**”) and at the Arpan Eye Bank, Ghatkopar, Mumbai (“**Arpan**”). The said Channel also conducted a “sting operation” on Arpan, the footage of which was also broadcast as part of the said telecast.
2. In substance, the main malpractices that were cited in the said telecast were : (i) that at the EBCRC corneas/eye balls were being enucleated by persons not qualified to do so, since under The Transplantation of Human Organs Act, 1994 (“**HOTA**”) only Registered Medical Practitioners were authorized to enucleate corneas/eye balls while at the EBCRC this procedure was being conducted even by practitioners of Homeopathy, Ayurveda and Dentistry ; (ii) that Arpan had misappropriated around Rs. 27 lacs received by it as grant from the Government of India ; (iii) that EBCRC was exporting corneas/eye balls out of Maharashtra, which was banned under notification issued by the Maharashtra Government ; .
3. Aggrieved by the said telecast, EBCRC and Arpan preferred a Complaint dated 17<sup>th</sup> February 2009 (“**said Complaint**”) under the News Broadcasting Standards (Disputes Redressal) Regulations, citing (i) breach of the principle of impartiality and objectivity in reporting and (ii) of not ensuring neutrality in reporting, as contained *inter-alia* in the News Broadcasters Association’s Code of Ethics & Broadcasting Standards. It was stated in the said complaint that Arpan is part of the network of eye banks established by EBCRC.

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4. Show Cause Notice dated 02<sup>nd</sup> March 2009 was issued on the said complaint. NDTV was called upon to file a written reply. NDTV filed Reply dated 13<sup>th</sup> March 2009 (“**said Reply**”).
5. In the circumstances of the case, the matter was posted for hearing of parties on 10<sup>th</sup> June 2009. Parties appeared. The complainant was represented by Mr. Jashwant B Mehta, Managing Trustee of EBCRC and Dr. Prakash Katakia, Chairman of Arpan Eye Bank. NDTV was represented by Mr. Rajiv Mathur, Head Legal & Company Secretary, Ms. Atima Mankotia, Associate Vice President, Corporate Affairs, Mr. Abhishek Sharma, News Editor, NDTV India and Mr. Amit Grover, Deputy Manager, Legal.
6. Upon a careful perusal of the said complaint, the said Reply and all accompanying documents filed by parties ; and upon oral hearing given to the parties, the following position emerges:
  - 6.1 The law clearly is, that under Sections 3(4) and 2(n) of the HOTA, read with Section 2(h) of the Medical Council Act, 1956 and Section 3(3) read with Section 2(c) of The Bombay Corneal Grafting Act 1957, Section 2(h) of the Indian Medicine Central Council Act 1970, Section 2(f) of the Dentists Act 1948 and Section 2(g) of the Homeopathy Central Council Act 1973 any “registered medical practitioner” may enucleate corneas/eye balls after training from an ophthalmologist; and practitioners of homeopathy, ayurveda and dentistry are also registered medical practitioners within the meaning of the law. It is important to note that Section 8 of HOTA expressly says that nothing contained in HOTA shall render unlawful any dealing with any part of the body of a deceased person if such dealing would have been lawful if HOTA had not been enacted. Accordingly, the provisions of The Bombay Corneal Grafting Act, 1957 continue to be valid and applicable to the complainants ;
  - 6.2 Although, NDTV did enquire as to who is authorized to enucleate corneas/eyeballs from Dr. Basant Bagdi, Joint Director, National Programme for Control of Blindness (NPCB), and from Dr A K Grover, Chairman, Eye Department, at the Sir Gangaram Hospital, New Delhi who stated incorrectly in their interviews that only registered medical practitioners qualified under the Indian Medical Council Act are qualified to enucleate corneas/eyeballs,

but NDTV did not seek the views of EBCRC or Arpan on this point, which NDTV ought to have done since EBCRC/Arpan would have clarified the position. While NDTV submitted during the course of hearing that they had attempted to seek EBCRC's version, but upon being asked if they had any evidence to show that they attempted to contact EBCRC, NDTV conceded that they had nothing to prove that assertion ;

- 6.3 It also transpires that the "tip-off" for the sting operation conducted on Arpan and basic "information" on which the said telecast was made came from a former trustee, and according to EBCRC a disgruntled trustee, of EBCRC - Dr Vasant L. Dave. We think that in these circumstances it was all the more necessary for NDTV to have cross-checked, corroborated and verified facts from the persons/entities that were being written about, namely the EBCRC and Arpan. NDTV failed to discharge this obligation. In fact documents filed by the EBCRC show that upon queries made by him under the Right to Information Act 2005, the said Dr Vasant Dave had received a response dated 21<sup>st</sup> February 2008 from the Assistant Director (HOTA) of the Directorate of Health Services, Maharashtra Government which clarified *inter-alia* that there was nothing illegal in what the EBCRC was doing. This was also confirmed by response dated 24<sup>th</sup> July 2008 received from the Central Public Information Officer of the Directorate General of Health Services, Ministry of Health & Family Welfare, Government of India (which response was signed by one Dr V Rajshekhar who appears to be a qualified ophthalmologist). Clearly NDTV was being fed incorrect information, which they accepted readily without due-diligence, at the cost of accuracy and fairness. When their primary source of information was tainted, and was *ex facie* motivated by animosity towards the complainants, the level of pre-broadcast verification expected of NDTV was much higher in the circumstances of the case;
- 6.4 Even when EBCRC wrote to NDTV letters dated 12<sup>th</sup> January 2009 and dated 04<sup>th</sup> February 2009 remonstrating the said telecast, and asking that NDTV should run a clarification but NDTV showed no contrition ;
- 6.5 No amends were made by NDTV even after the complaint under consideration was filed before this Authority and from the said Reply it is evident that NDTV has attempted to justify the said telecast;

- 6.6. In so far as the allegation of misappropriation of Rs. 27 lacs by Arpan is concerned, that was completely without any basis ; and NDTV now admits in the said Reply that they “wrongly reported” that Arpan had received such grant since what was received was merely an exemption / deduction under tax laws to receive such grant / donation. Such cavalier approach to reporting cannot be countenanced. Even a cursory perusal of the Ministry of Finance Notification dated 15<sup>th</sup> February 2007 issued to Arpan would have shown the correct position. Even this was not done. Again, NDTV did not bother to verify facts with Arpan, else this point would have been easily clarified by Arpan ;
- 6.7. Lastly, in relation to the allegation in the said telecast of EBCRC illegally exporting corneas/eyeballs out of Maharashtra, EBCRC has placed on record documents which show that Circular dated 02<sup>nd</sup> August 1989 issued by the Directorate of Health Services, Government of Maharashtra banning export of eye balls was withdrawn *vide* Circular dated 16<sup>th</sup> November 1989 ; and the ban was re-imposed only *vide* Circular dated 25<sup>th</sup> July 2008. . EBCRC has said that they have never exported corneas/eyeballs outside Maharashtra once the ban was re-imposed. Even during the period when permitted, what was exported out of Maharashtra were corneas/eye balls that were not fit for transplantation (non-viable corneas) and these were meant only for research and were not sent-outfor monetary gain. NDTV has nothing to show that what they stated in the said Telecast in this regard had any basis ;
7. It is not within the domain of this Authority to either require detailed proof of facts or to delve into the nitty-gritty of the law. The Authority considers matters from the perspective of breach of the NBA's Code of Ethics & Broadcasting Standards and other Guidelines laid down by NBA from time-to-time. The Authority proceeded on the basis of facts admitted and/or proved and the inferences that flow from them.
8. Clearly, in this case NDTV is found wanting on point of diligence that is expected of any news organization, especially when reporting on sensitive matters and on aspects that affect the name and reputation of people and institutions. It requires no serious jurisprudential analysis to conclude that callous reporting by NDTV on organizations such as the complainants causes serious harm to such organization. Such reporting is

clearly in violation of the principles of self-regulation adopted by NDTV, a Member of the NBA.

9. In these circumstances, we hold that NDTV has violated the Code of Ethics & Broadcasting Standards, including the basic principles of being impartial, neutral, objective, accurate and of verifying facts.
10. We wish to record that as a general principle to be followed by all news channels, it is mandatory for a news channel to verify and cross-check whatever is presented as “facts” from the party that is being reported upon, and not from third party sources alone ; and even if the channel does not agree with the version of the party reported upon, it must nevertheless include the version of such party reserving the channel’s liberty to say that such version does not appear to be correct. If the version of the party reported upon is not carried for lack of response from such party, the channel must be able to demonstrate that it did try to get such party’s version but was unable to do so by reason of default on the part of such party.
11. The Authority therefore holds that NDTV has violated the Code of Ethics & Broadcasting Standards and Guidelines issued by the NBA. NDTV is therefore hereby directed to do the following within 10 (ten) days of receipt of this Order :
  - 11.1 To run an announcement, expressing regret for the said telecast prominently on their channel *NDTV India* prior to the commencement of the telecast of the program *Mumbai Central* stating the following (**text to be translated in Hindi**):

*“NDTV India apologizes for the story run on Eye Bank Co-ordination & Research Centre, Parel, Mumbai and Arpan Eye Bank, Ghatkopar, Mumbai on 16<sup>th</sup> December 2008 at 10:30 pm and 17<sup>th</sup> December 2008 (morning) titled “Eye Bank Mein Gorakh Dhanda” in their program “Mumbai Central”, since the same was a misrepresentation of facts, although not intentional. Any harm caused to Eye Bank Co-ordination & Research Centre and Arpan Eye Bank is regretted.”*
  - 11.2 To also run the above text on *NDTV India* on following 3 (three) consecutive days, an apology/regret as a scroll in legible font and at normal speed between 20:00 hrs. and 21:00 hrs., five times with a space of 12 minutes each.
  - 11.3 To grant to EBCRC and Arpan an opportunity to express their version on the subject matter of the said telecast, by broadcasting EBCRC’s and Arpan’s unedited version on the subject matter of the said telecast of a duration not

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exceeding an aggregate of 5 (five) minutes on the channel *NDTV India* in the program *Mumbai Central*. EBCRC and Arpan are directed to cooperate with NDTV to record such version, which will be restricted only to the clarification they wish to offer and nothing offensive shall be included against NDTV or against the said Channel in such clarification.

11.4 Proof of compliance of this Order by NDTV by submitting a Compact Disc containing the telecast/apology/regret with particulars of the time and date of the telecast be submitted to the News Broadcasters Association within 15 (fifteen) days of receipt of this Order.

12. The Authority further directs:

- (a) The NBA to host the summary of these proceedings on its website and to include such summary in its next Annual Report.
- (b) To send to the complainant a copy of this Order.
- (c) A copy of this Order be sent to the broadcaster M/s New Delhi Television Ltd. (NDTV) and to NBA for necessary compliance.

Sd/-  
Justice J S Verma (Retd.)  
Chairperson

Place : New Delhi  
Dated : 16 July, 2009