

**News Broadcasting Standards Authority**  
**Order No. 43 (2017)**

**Order of NBSA on Complaint dated 15.04.2014 filed by Mr. Naveen Jindal (former Member of Parliament, Lok Sabha) (“Complainant”) against M/s Zee Media Corporation Ltd (Respondent)**

1. A complaint dated 15.4.2014 was filed by Mr. Naveen Jindal (Complainant) to the Election Commission of India alleging the illegal/ unlawful/unfair acts/ conduct on the part of M/s Zee Media Corporation Ltd (Zee/Respondent) and its management including its Chairman, Mr Subhash Chandra in collusion with Mr R. K. Saini, in blatant violation of various provisions of the Representation of the People Act ( RP Act), Indian Penal Code & the Model Code of Conduct during the 16th Lok Sabha elections held in 2014 .The complainant states that the various channels of Zee Media till 10.4.2014 aired various programmes against him, thereby creating a negative and hostile atmosphere against the complainant with the object to ensure his defeat in the said elections by unfair and illegal means. ECI forwarded the said complaint to NBSA to take action in so far as the contents of the complaint related to violation of NBSA Regulations/Guidelines.

2. The complainant alleged that the reason why Zee Media and its Chairman was airing such false, misleading and manipulated news was because of his refusal to succumb to their unlawful and illegal demands for extortion of Rs 100 crores for which he had filed criminal cases and FIR’s were lodged against Zee Media, its Chairman, its key Office Bearers, Editors and Business Heads of Zee, which are pending investigation.

3. The complainant highlighted the following programmes carried on the TV channels owned by the respondent on various dates as indicated below (“Impugned Broadcasts”):

(a) News programmes where Mr. Subhash Chandra, Chairman of Zee, had actively campaigned for Mr. Balbir Saini, candidate for Indian National Lok Dal (INLD) from the parliamentary constituency of Kurukshetra till 1.4.2014.

(b) News programmes on or about 3.4.2014 where Mr. Subhash Chandra was actively campaigning for Mr. Rajkumar Saini, candidate for BJP from Kurukshetra. As a part of his campaign, Mr. Subhash Chandra was also seen addressing public rallies organized by BJP where he was openly soliciting votes for BJP and levelling serious allegations against the complainant and Congress party. A news channel whose Chairman is soliciting votes for one political party cannot be objective and fair in reporting matters pertaining to other

parties and their candidates.

(c) News programmes where Mr. Subhash Chandra was also found soliciting votes for the BJP in different constituencies in the State of Haryana and addressing public rallies. The campaigning carried out by Mr. Subhash Chandra was fully covered by the news channels run by Zee and telecasts were repeatedly and extensively made, starting from 3.4.2014 onwards. Further, Mr. Subhash Chandra issued a press release appealing to the voters to exercise their vote in favour of BJP. The complainant alleges that it was “paid campaign and paid news”

(d) Programmes aired by Zee relating to Ms. Kanta Adalia’s (candidate from BSP) where Ms Adalia made allegations about the complainant in addition to broadcast of false, misleading, and non verified information against the complainant with the intent to prejudice his electoral prospects.

(e) Programmes aired by Zee relating to 8.4.2014 regarding alleged incidents in the Mathana village which comprised of false, misleading and non-verified information against the complainant with an intent to prejudice his electoral prospects.

(f) Programmes aired by Zee relating to 9.4.2014 regarding alleged incidents in the Chuhar Majra of Kaithal village which comprised of false, misleading and non-verified information against the complainant with an intent to prejudice his electoral prospects.

(g) News programmes titled “Election Breaking”, aired by Zee on various channels on 9.4.2014 during the course of which the complainant’s photograph was displayed while false, misleading and non-verified information against the complainant was televised with intent to prejudice his electoral prospects. He was repeatedly referred to as “corrupt and tainted politician” and “tainted candidate of Congress party”

(h) Programmes titled “Election Breaking”, aired by Zee on various channels on 10.4.2014 regarding alleged incidents during the voting period. The programmes comprised of false, misleading and non-verified information against the complainant with intent to prejudice his electoral prospects.

4. The complainant alleges that the reporting by Zee to show these programmes extensively and repeatedly against him without his comments / views were in violation of the Order/Direction dated 1.4.2014 of the Hon’ble High Court of Delhi in the pending Civil Suit bearing No 881/2014 titled Naveen Jindal & Ors Vs

Zee Media Corporation Ltd & others and also as mandated in NBSA guidelines.

5. The above complaint was considered by the NBSA at its meeting held on 2.6.2014. NBSA considered the complaint dated 15.4.2014 and viewed the CD. NBSA noted that paras 1 to 4 of the complaint was regarding election related issue which fell within the sphere of Election Commission of India as they related to alleged violations of the Representation of People Act and Election Commission Guidelines. NBSA decided that the said election related issues raised in paras 1 to 4 of the complaint can be dealt with only by ECI and therefore ECI may be advised/requested to deal with those issues. This position was intimated to the ECI vide letter dated 13.6.2014.

6. NBSA decided to deal with the complaint dated 15.4.2014 in paras 5 to 12 wherein the complainant (Mr. Naveen Jindal) alleged that the broadcast of various programmes on Zee Media Channels, against him, violated the NBA/NBSA Regulations and Guidelines.

7. At the hearing held on 30.9.2014 Ms. Madhavi Diwan, Advocate for the complainant, stated that the complaint was not covered or affected by any pending legal proceedings. She pointed out that the pending suit was filed on 25.3.2014 and the objected programmes were broadcast on 1.4.2014 and therefore, there can be no objection for examining and deciding the complaint of the complainant against the broadcaster. She submitted that the complainant's grievance before the NBSA is restricted to the violation of the Regulations and Guidelines of NBA/NBSA and the complainant does not seek any adjudication of matters falling outside NBSA Regulations and Guidelines or matters pending in the court. She stated that complainant was in a manner handicapped, as the complaint dated 15.4.2014 being considered by NBSA is not a complaint addressed to NBSA, but is a complaint addressed by the complainant to ECI (which was forwarded to the NBSA to take action in so far as the contents of the complaint related to violation of its Regulations/Guidelines); and as the complaint was given to ECI, there was no occasion to refer to specific violations of NBA/NBSA Regulations/ Guidelines. She also stated that the complaint should be considered in entirety and the enquiry should not be restricted to paras 5 to 12 of the complaint. According to her, even paras 1 to 4 of the complaint contain materials which should be taken cognizance of by NBSA.

8. Ms. Prathibha M. Singh, Senior Advocate, Counsel for the broadcaster objected to expanding the scope of the complaint by including the paras of the complaint which had been referred back to ECI and requested the NBSA to consider the complaint as already decided.

After considering the rival contentions, it was decided to grant an opportunity to the complainant to file an appropriate application before the NBSA within two weeks. The broadcaster was permitted to file its objections thereto. NBSA decided to consider the matter at its next meeting.

9. In pursuance of it, Mr. Naveen Jindal filed an application dated 16.10.2014 and the broadcaster filed its reply dated 7.11.2014. The prayers in the application were as under:

- “(1) Issue notice as regards paragraphs 1-4 of the complaint, so that it may be considered in entirety;
- (2) Return a finding that Zee Media Corporation Ltd. has breached the standards/guidelines and norms laid down by this Hon'ble Authority and Hon'ble NBA;
- (3) Impose a duty of disclosure upon Zee Media Corporation Ltd. and all its news channels, when it broadcasts news programmes pertaining to the complainant and/or his companies;
- (4) Warn, admonish, censure and disapprove of the conduct of Zee Media Corporation Ltd. in violation of the standards/guidelines and norms laid down by this Hon'ble Authority and the Hon'ble NBA.
- (5) Recommend the said matter to an appropriate authority for suspension/revocation of Zee's licences;
- (6) Impose a fine of Rs. 1,00,000/- for its unlawful and illegal conduct;
- (7) Refer the matter to the Election Commission to take cognizance of the electoral offence(s) committed by the defendants and initiate appropriate action under Section 126 of the Representation of the People Act, 1951 and for violation of the Model Code of Conduct;
- (8) Pass any other relief, which it may deem fit and necessary.”

10. NBSA at its meeting held on 26.11.2014 considered the said application. It noted that the application filed by Mr. Jindal was self-contained and decided to hear prayers (b) to (h). In so far as prayer (a) in the application, it was noted that paras 1 to 3 of the complaint dated 15.4.2014 contains only the background of the previous enmity between the parties and para 4 refers to certain broadcasts allegedly highlighting the profiles of Mr. Balbir Saini, INLD candidate, Mr. Rajkumar Saini, BJP candidate and Ms. Kanta Adalia, BSP candidate; that they were not grievances of the complainant against Zee Media; and that in these circumstances NBSA at its meeting on 2.6.2014 had decided to consider only paras 5 to 12 of the complaint dated 15.4.2014 and no ground has been made out to review the said order. Accordingly, prayer (a) in the application for issuing notice regarding paras (1) to (4) of the complaint was rejected. Both sides were informed that they will be heard on the application in one of the forthcoming meetings of NBSA.

11. The essence of the allegations in the complaint is that the broadcaster has broadcast extensive election coverage featuring its own Chairperson without disclosing that the person whose views in election rallies are being aired in fact owns the TV channels, by which reason the coverage of such views is inherently tainted with the vice of being non-objective and non-neutral; and further that at least some of the views expressed and aired on the respondent's TV channels were factually incorrect and maliciously aimed to ruin the electoral prospects of the complainant.

12. In response to the allegations made by the complainant, the broadcaster stated as follows:

12.1 That the allegations made in the complaint dated 15.4.2014 could only be addressed and decided by the Election Commission and not by the NBSA.

12.2 That the complaint dated 15.4.2014 is a continuation of an earlier complaint dated 18.3.2014 made by the same complainant, which earlier complaint was disposed of by the NBSA declining to entertain it ; and therefore a second complaint on the same allegations was not maintainable. [Note: In the complaint dated 18.3.2014 there were similar allegations to the effect that the respondent was airing various programs in order to damage the electoral prospects of the complainant Mr. Naveen Jindal who was contesting the Lok Sabha Elections as a candidate of the Congress Party from the Kurukshetra constituency]. Complaint dated 18.3.2104 had been forwarded to the NBSA by the Election Commission of India (to whom that complaint had initially been made) and that earlier complaint had been disposed of by the NBSA vide its Order dated 15.5.2014 with the following observations:

“On comparing the averments in the complaint given by Mr. Jindal to the Election Commission and the averments in the suit and the interlocutory application filed by Mr. Jindal before the Delhi High Court, NBSA finds that both the complaint and the suit are based on the same facts and grievances and the relief's sought are also the same.”

12.3 That the averments made in the present complaint were identical to the averments made in Suit No. CS (OS) 881/2014 pending before the Delhi High Court and in view of the bar contained in NBSA Regulation 7.2, the proceedings in the present matter ought to be stayed and/or annulled. It was also the Respondent's submission that the allegations and averments in the present complaint and in the suit pending before the Delhi High Court being identical, the same were already being considered by the Delhi High Court.

12.4 That the allegations made by the Complainant are intended only to harass the respondent because of the various telecasts made on the channels have revealed irregularities in the coal block allocations made to the companies managed and controlled by the complainant and his relatives.

12.5 That there were several defamatory news telecasts about Mr. Subhash Chandra (the respondent's Chairperson) broadcast on Focus TV, a channel, controlled by the complainant as part-owner.

12.6 That Focus TV was broadcasting news/paid news which was favourable to the complainant during this period of elections in the Kurukshetra constituency.

13. The NBSA heard the parties through their counsels on several dates.

### **Complainant's Arguments**

14. Ms. Madhavi Divan, Advocate appearing on behalf of the Complainant argued :

14.1 That the prayers made in the complaint fell within the jurisdiction of NBSA and could only be decided by NBSA; and the said prayers could not be granted by a Court, as they related to violations of NBSA Regulations/Guidelines and Code of Ethics.

14.2 That the history of hostility between the parties had been long and bitter. Several litigations were pending between the complainant and the respondent including litigation in the Supreme Court of India, Delhi High Court and in the High Court of Mumbai. However, the complainant submitted that present complaint dated 15.4.2014 had only dealt with the telecasts after 1.4.2014 and therefore the same could be adjudicated upon by this Hon'ble Authority. The complainant submitted that the maze of legal proceedings as listed in Enclosure B at pages 55 to 57 (Volume 1) of the written submissions of the complainant did not form a part of the subject matter of this complaint.

14.3 That the cause of action and reliefs sought by the complainant were different from that in the previous complaint (which was disposed of by Order dated 15.5.2014) and therefore the present complaint could be adjudicated upon by NBSA. In support of this contention, reliance was placed upon the decision reported in 1970 (1) SCC 761 (Vallabh Das Vs. Dr. Madan Lal) where the Supreme Court held that the expression 'subject matter' means the 'cause

of action' and the 'relief claimed' and unless both these elements are the same, it cannot be said that the subject matter of two legal proceedings is the same.

14.4 That the impugned broadcasts relating to the period 1.4.2015 to 9.4.2015 clearly violated NBSA Regulations pertaining to objectivity, neutrality and impartiality as laid down in Regulations 1 and 2 of the said Regulations.

14.5 That a television channel, using public resources in the form of airwaves, cannot use its channel for settling personal vendetta. The complainant cited the Supreme Court decision in "Secretary, Ministry of Information & Broadcasting vs. Cricket Association of Bengal" 1995 2 SCC 161 to contend that airwaves are public resources and are to be used for the benefit of the viewers; and also that the interest of the viewers is paramount. The complainant's submission was that the respondent was using public resources to settle his personal vendetta against the complainant.

14.6 That there was a "duty of disclosure" upon the broadcaster, whereby the channel was required to disclose to the viewers while airing the impugned broadcasts that there were disputes pending between the complainant and respondent, who were in litigation before the Courts.

14.7 That there was also a "duty of disclosure" upon the respondent to disclose that Mr. Subhash Chandra was in effect the owner of the TV channel and that Mr. Subhash Chandra was also hoping to get an election ticket from the BJP.

14.8 That the vilification of the complainant on the respondent's channel was intentional, deliberate and disproportionate due to hostility between the parties.

14.9 That the respondent had used its TV channels to carry out a campaign for BJP/its party candidate, in which process the respondent had maliciously and deliberately vilified the complainant ; and that the respondent was guilty of carrying out a "Paid Campaign" or had indulged in Paid News, in as much as the broadcaster had campaigned for a rival political party against the complainant ; and it televised the impugned broadcasts in favour of the BJP in lieu of its Chairperson hoping to receive a BJP ticket amounting to a "payment in kind" ;

14.10 That disproportionate air time was given by the respondent only to vilify the complainant. The complainant also filed a chart showing the time devoted by the respondent's channels to the complainant and the coal block allocation scam.

14.11 That there is an Advisory dated 8.5.2012 of the News Broadcasting Standards Authority, which forbids the use of adjectives such as “tainted” in broadcasts, which adjective however the respondent’s channel freely used in reference to the complainant in the impugned broadcasts.

14.12 The history of animosity between the parties has been set-out by the complainant in the copious written submissions filed by it, which disclose the serious hostility that the parties have had with each other, including allegations that culminated in registration of FIRs, arrests and resulting prosecution, which it is however not necessary to detail in this order.

### **Respondent’s Arguments**

15. Ms. Pratibha M. Singh, Senior Advocate and subsequently Mr. Krishnan Venugopal, Senior Advocate appearing on behalf of the Respondent M/s Zee Media Corporation Ltd, made the following submissions:

15.1 That the complaint was not maintainable in view of the bar contained in Regulation 7.2 of the NBSA Regulations (which bars consideration of a complaint before the NBSA if any proceedings are pending before any Court or other authority), since two suits were already pending between the parties, one in the Delhi High Court and the other in the Mumbai High Court ; and further that there was also a matter pending in the Supreme Court between the parties where the Respondent had filed for quashing of an FIR, and the Supreme Court had issued notice on the petition. The respondent accordingly contended that any directions / observations made by the NBSA in the complaint would have a direct bearing on the matters pending before the Courts and therefore the complaint should not be entertained by the Authority.

15.2 That the averments made by the complainant in the complaints dated 18.3.2014 and 15.4.2014 to the Election Commission and those made in the present complaint are also exactly the same and therefore the complaint should be dismissed under Regulation 7.2.

15.3 That the complainant was indulging in ‘forum shopping’, and therefore NBSA should not entertain the complaint.

15.4 That the complainant had admitted that the present complaint was in continuation of its earlier complaint of 18.3.2014, which was disposed of by NBSA holding that since the subject matter of the complaint was already sub-judice the complaint could not be entertained by the Authority; and in view of the NBSA having so held, the present complaint was also not maintainable.

15.5 That in compliance of the Order dated 1.4.2014 of the Delhi High Court in CS (OS) 881/2014, the respondent had carried the version of the complainant each time the impugned broadcasts were telecast; and that as the respondent was following the Delhi High Court's Order scrupulously, the complainant did not make any grievance before the Hon'ble Court that the respondent was disobeying the Order(s) of the Court or was not telecasting the complainant's version (when the matter came up in May, July, September 2014 and subsequently).

15.6 The respondent had not violated any Regulations or Guidelines of NBSA regarding neutrality, impartiality and objectivity.

15.7 That even otherwise, the complainant ought not to raise any grievance on the principle laid down in the case of Charanjit Singh Vs Aroon Purie (1983 Rajdhani Law Reporter 48) where the Delhi High Court held that a public servant (which Mr. Naveen Jindal is, being a Member of Parliament) could not complain of allegations which may allegedly be defamatory and in his view may cause him annoyance. The respondent also cited Kartar Singh Vs State (AIR 1956 SC 541), where the Supreme Court observed that those who fill public positions must not be too 'thin' skinned (sic) in reference to the comments made upon them.

15.8 That apart from the fact that the complainant's version was always carried on the impugned broadcasts, the respondent had been neutral and impartial which was also borne out from the fact that the impugned broadcasts also concerned other persons, including several BJP members and content of such broadcasts did not pertain to the complainant alone. The telecasts also dealt with various scams relating to corruption and persons accused of instigating communal violence.

15.9 That the Judgment in "The Secretary, Ministry of Information and Broadcasting vs. Cricket Association of Bengal" (1995) 2 SCC 161, was not applicable to the present facts, since that case dealt with the question of Doordarshan having a monopoly over airwaves. The facts in the case were different as the signals/telecasts were being downloaded from other parts of the world under the Uplinking /Downlinking guidelines of the Government (para 47 of the said judgement may be read). The airwaves were not downlinked under the Telegraph Act but under Uplinking /Downlinking Guidelines of the Government.

15.10 That as interpreted, Article 19(1)(a) of the Constitution required the

broadcasters to verify facts and to seek the version of the person about whom a telecast was to be made. No other restrictions were placed on the media. The complainant was a “public figure” and it was a fact that two FIRs had been lodged against the Complainant in the coal scam, of which one culminated in the filing of a charge sheet, which fact had been reported upon by the respondent’s channel. Apart from the permissible restrictions under Article 19(2) of the Constitution no other restrictions could be imposed on the freedom of speech and expression.

15.11 That any obligation or duty to disclose matters relating to the ownership/shareholding of a broadcasting company being placed upon a broadcaster every time it telecast any news about a person would have a “chilling effect” on the media, apart from the fact that nowhere in the world is such a duty imposed on the press. Introducing the concept of “duty of disclosure” upon the media would mean introducing a new standard by which the media would have to abide and this is not envisaged under Article 19 of the Constitution. The respondent was abiding by the directions given by the Hon’ble Court in carrying the version of the complainant and was thereby fulfilling all the requirement/restrictions under the law. In any case, the respondent submitted, that if the “duty of disclosure” was to be introduced, it could not be done with retrospective effect. The respondent stated that there was no duty to disclose that Mr. Subhash Chandra owned the respondent Company since the respondent was a public listed Company and Mr. Subhash Chandra was a Non-executive Chairman. Furthermore, if there was such duty to disclose, then Focus TV, which was a channel in which the complainant owned shares, had also failed to disclose its hostility with the respondent at the time it telecast denigrating content against Mr. Subhash Chandra. The respondent submitted that in fact ‘Positive TV’ itself is de facto controlled by Mr. Naveen Jindal and there has been no such disclosure. There had also been disproportionate coverage by Focus TV of Mr. Naveen Jindal and Smt. Savitri Jindal’s election campaigns ; and that Positive TV and Focus TV channels are in breach of NBSA Guidelines including guidelines relating to Paid News.

15.12 That the complainant was a “public figure” and truth, fair comment are all defences available to him in cases of defamation in a Court. Other media, print and electronic, had also reported on the coal scam concerning Mr. Naveen Jindal and the respondent’s channel was not the only one to cover the news.

15.13 That the Editor/editorial team of the broadcaster had the right to choose what news to cover.

15.14 That in so far as the issue of the telecast having been made within 48

hours of the impending elections, the respondent submitted that was an issue to be dealt with by the Election Commission alone and not by the Authority. The respondent also stated in its written submissions that there had been no violation of Section 126 and 130 of the Representation of the People Act, 1951 nor of any provision of the Indian Penal Code, 1860 nor of any of the guidelines/regulations of the Election Commission/NBSA aforementioned.

Accordingly, it was the Respondent's contention that the complaint filed was not maintainable under the regulations/guidelines of the NBSA; and in any case, even on merits, it deserved to be dismissed.

16. It is not often that a complaint on issues of self-regulation is brought in relation to a dispute that has been subject matter of multiple, intensely contested legal actions in Court. It is also not often that a major plank of defence taken is that the complainant is also guilty of what is alleged against the respondent. Be that as it may.

17. The position that clearly emerges from the rival contentions of the parties and supporting material is that the genesis of the impugned broadcasts lies in the inter-se animosity between the complainant and the principal promoter and Chairperson of the respondent news channel.

18. NBSA however finds that there is considerable force in the threshold bar pleaded by the respondent. The second proviso to Regulation 7.2 provides that "nothing in these Regulations shall be deemed to empower the Authority to hold an enquiry into any matter in respect of which any proceeding is pending in a Court of law ...". It is true that matters exclusively relating to violation of Regulations/Guidelines of NBSA can be examined by NBSA, even if some related matter is the subject matter of a proceedings in Court. It is true that the reliefs sought in these proceedings are different and distinct from the reliefs sought in the pending civil proceedings or the offences alleged in the criminal proceedings. But the facts on which the reliefs sought before NBSA are also the facts on the basis of which civil/criminal proceedings were initiated and any enquiry into facts alleged in these proceedings with reference to the reliefs sought will necessarily result in a finding on facts/issues pending before the Courts. Therefore it is not permissible or appropriate for the NBSA to hold an enquiry into the complaint as the facts constituting the cause of action for the complaint, are also the facts of the complaint pending enquiry in a court of law. Any enquiry by NBSA into any issue or factual question resulting in a finding of NBSA may lead to a situation of conflict / divergence with any future findings by a Court/other Authority in the pending proceedings. NBSA waited for a considerable time in pronouncing upon the matter, as disposal of court matters would have enabled consideration of the subject matter

of the complaint before it. But the parties have not reported about any decision/disposal of the pending court matters. Therefore no purpose would be served by keeping this matter pending any further. NBSA therefore decided that it will not consider and decide the complaint and treated the matter as closed for the present, reserving liberty to the complainant to revive the complaint, if necessary, on conclusion of the Court proceedings.

It is clarified that any statement by the broadcaster in the proceedings before NBSA, being by way of response to the notice from NBSA, will not be treated as an admission of any fact or position by the broadcaster.

The complaint stands disposed off accordingly.

NBSA directs the NBA:

- a) To send a copy of this order to ECI, complainant and the broadcaster;
- b) To circulate this order to all Members, Editors & Legal Heads of NBA.
- c) NBA to also host this order on its website and to include it in its next Annual Report.
- d) Release the Order to media.

Sd/-  
**Justice R. V. Raveendran (Retd.)**  
**Chairperson**

**Place : New Delhi**  
**Dated : 20.7.2017**