

(2011) 09 DEL CK 0385

In the Delhi High Court

Case No : Writ Petition (C) 879 of 2010

Star India Private Limited

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 30-09-2011

Acts Referred:

Cable Television Networks (Regulation) Act, 1995 — Section 20, 5
Cable Television Networks Rules, 1994 — Rule 6, 6(1)

Citation : (2011) 9 AD 708 : (2011) 185 DLT 519

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

**Advocate : S. Ganesh, Sidharth Chopra and Nitin Sharma, for the Appellant;
Inderjit Sidhu, for the Respondent**

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—Star India Private Limited ("SIPL") challenges an order dated 27th November 2009, issued by the Ministry of Information and Broadcasting ("I&B Ministry"), Government of India, administering a warning to Star Plus Channel ("SPC") in exercise of powers u/s 20 of the Cable Television Networks (Regulation) Act, 1995 ("CTNR Act") to strictly adhere to the Programme Code ("PC") in terms of Sections 5 CTNR Act read with Rule 6 of the Cable Television Networks Rules, 1994 ("CTN Rules"). The warning was with reference to the telecast/re-telecast by the SPC of a program titled "Sach Ka Saamna" ("SKS") on 17th and 21st July 2009.

Background facts

2. SIPL states that it is engaged in the business of producing and supplying content to various channels operated under the name "STAR" including SPC. SPC is stated to have a wide viewership. The television programme SKS is stated to have been adapted from a widely watched international show titled "The Moment of Truth" ("TMOT"), which is watched in India and over twenty other countries. It is stated that TMOT has been broadcast in India since 2008, through a sister

channel of SPC, STAR World, at the 9 pm slot. It is stated that there were repeat telecasts of the programme from January to March 2009. According to SIPL SKS is a medium to encourage people to speak and confess solemn truths relating to their lives "even if it means facing some embarrassing situations for which they themselves are responsible". It is stated to be an attempt to help the willing contestants "to shed their masks and inhibitions, and bring forth their integrity and strength of character." It is claimed that the programme seeks to reward honesty and truthfulness, and provide a public platform from which "contestants may openly reflect on those aspects of their lives which they are not particularly proud of so that they may start life afresh with a clean conscience". It is stated that prior to the filming of the programme, the contestant expressly consents to being asked personal and confidential questions pertaining to his/her life and agrees to give true answers in respect of the same. As a result, the answers of the contestants are then filmed and telecast "under the belief and understanding that the contestant will speak the truth". The contestant is given the option of leaving the programme at any time including even after the polygraph test is conducted. Care is taken through the entire process to ensure that the contestant always has the option to quit if he/she does not wish to go further in the programme.

3. SKS was telecast by SPC from 15th July 2009 to 18th September 2009, involving a total of forty-eight episodes. On 22nd July 2009, a show cause notice was issued to SIPL by the I&B Ministry in regard to the content of the two episodes of SKS telecast on 17th and 21st July 2009. The show cause notice ("SCN") stated that the content of the said episodes was "vulgar, indecent and against good taste and decency". In the first paragraph of the SCN it was stated:

the anchor of the above programme seeks replies to questions regarding infidelity, incest and other taboo subjects that are not suitable for unrestricted public exhibition especially keeping in view the Indian ethos and culture. These questions and their replies are followed by a polygraph test, the results of which are at times contrary to the replies given resulting in great embarrassment not only to the participants and their families but also to the viewers watching the programme along with their families. These, therefore, appear offending against good taste, decency; apparently contain obscene words, appear to malign and slander segments of social, public and moral life of the country and are not suitable for unrestricted public exhibition.

4. The SCN referred to Section 5 CTNR Act and Rules 6(1)(a), (d), (i) and (o), CTN Rules.

5. On 27th July 2009, the SIPL replied to the SCN asking the I&B Ministry to share with it the source and the details of the complaints. Its detailed reply adverted inter alia to the background of SKS, the process prior to the taping of the programme, the process while shooting the episode, and the objective of the programme. SIPL maintained that it had not violated any of the rules, and that it did not defame its contestants or their family members nor did it propagate false

and suggestive innuendos or half truths about them. It was asserted that the concept of the program or its portrayal "is not offensive to Indian ethos and cultural sensibilities and does not slander, criticize or malign the moral fabric of the country".

The impugned order

6. Thereafter, on 27th November 2009, the impugned order came to be issued by the I&B Ministry whereby the warning was issued. It was mentioned in the impugned order that the matter had been placed before the Inter-Ministerial Committee ("IMC") which previewed the recording of SKS and also considered the reply submitted by SIPL. The IMC opined that the questions asked during the show were vulgar, indecent and against good taste and decency, and related to subjects that were not suitable for unrestricted public exhibition and that the channel had violated Rule 6(1)(a), (d), (i) and (o) CTN Rules. Further, the IMC opined that the channel should be advised that "while formatting a programme based on International format, the channel should keep in view the Indian ethos and culture as well".

7. SIPL states that it had "without prejudice to its rights and contentions" unilaterally shifted the timing of its programme from 10.30 pm to 11 pm and had informed the Respondent of the change. Further, it "ran, at frequent intervals, scrolls and tickers during the programme stating that the programme was not for unrestricted viewing, and advising parental guidance and viewers" discretion while watching the programme." It informed the I&B Ministry of the above steps at the personal hearing on 8th September 2009 and in a letter dated 9th September 2009.

The pleadings

8. In the writ petition SIPL has challenged the impugned order as being arbitrary, non-speaking and "without any cogent reasons." It attacked the impugned order as being violative of the principles of natural justice since the impugned order does not provide the reasons for the conclusions drawn therein and without such reasons SIPL was handicapped in challenging the order. It is submitted that the impugned order mechanically reproduces the text of the PC in Rule 6 CTN Rules without specifying how those rules are attracted. It is submitted that the expressions "morality", "decency", "good taste", "vulgar" and "Indian ethos and culture" are subjective. The programme should not be viewed from the perspective of a hyper-sensitive individual. It is submitted that the adoption of a narrow and strict view of decency and morality would not only impinge on the freedom of speech and expression but also impede, if not render impossible, the carrying of a larger social message through the medium of television. It is pointed out that this Court had, on 29th July 2009, dismissed two public interest litigation ("PIL") petitions (Deepak Maini v. Star Plus and Prabhat Kumar Pushp v. Star Plus) seeking a ban on the telecast of SKS. SIPL also refers to the order dated 11th August 2009 of the Madhya Pradesh High Court dismissing another

PIL seeking a similar relief (Saurabh Gupta v. Union of India).

9. In the counter affidavit filed on 22nd March 2010 by the I&B Ministry it is stated that at the time of being granted permission to downlink SPC, SIPL gave a written undertaking that it would abide by the PC under the CTNR Act and CTN Rules. Referring to SIPL's past conduct the I&B Ministry states that SIPL was issued a warning on 19th April 2007 for violating the advertisement code, a warning on 16th October 2006 in relation to a programme and an advisory on 2nd July 2007 for breaching the PC in the course of telecasting another programme. As regards SKS it is stated in para 15 of the counter affidavit that there were protests voiced by Members of Parliament ("MPs") in the Council of States (Rajya Sabha) on 22nd July 2009 that it was indecent and against Indian culture. The MPs had asked the government to take immediate action against SPC. Pursuant to the said protest "and other complaints" the impugned warning letter had been issued to SIPL. The counter affidavit states that in SKS embarrassing questions were put to the participants as a result of which their family members had to walk out. When an elderly contestant was asked in the presence of his young daughter whether he had ever had sex with a girl younger to his daughter the camera was focused repeatedly on the daughter who became very embarrassed when he answered in the affirmative. It is submitted that SKS intruded into the privacy of individuals and that the content of SKS was against good taste and decency. It is submitted that honesty or truthfulness could not be tested by a polygraph since it was not 100% accurate and considering the contemporary community standards, Indian culture and ethos the questions asked, SKS was not suitable for unrestricted public viewing.

The additional affidavit of the I&B Ministry

10. During the course of arguments it was submitted on behalf of SIPL that the copies of the complaints referred to in para 15 of the counter affidavit were not furnished to SIPL. Further, a question was raised about the composition of the IMC and its impartiality in assessing whether SKS was in breach of the PC. The Court on 2nd August 2011, after hearing the submissions of Ms. Inderjit Sidhu, Learned Counsel for the I&B Ministry, passed the following order:

1. The records of the Respondent have been produced. Mr. Amar Nath, Under Secretary, Ministry of Information & Broadcasting is present in Court.

2. Learned Counsel for the Respondent seeks to hand over certain documents emanating from the records across the bar. These documents do not form part of the pleadings. In the circumstances, it is considered appropriate to direct that Mr. Amar Nath will file an affidavit before the next date explaining the statements made in para 15 of the counter affidavit and enclosing the relevant documents forming part of the record, including a translated copy of the question raised by an MP in the Rajya Sabha, a copy of the notification constituting the Inter Ministerial Committee ("IMC") and the proceedings, if any, of the IMC. An advance copy of the said affidavit be served on the Learned Counsel for the

Petitioner before the next date.

3. List on 11th August 2011.

4. The records of the case be kept ready for perusal by this Court on the next date of hearing.

11. Pursuant to the above order, an additional affidavit dated 8th August 2011 was filed by the I&B Ministry where, inter alia, it was mentioned that while dismissing the PIL petitions in Deepak Maini v. Star Plus, this Court left it to the Government of India ("GoI") to take appropriate action. The High Court of Madhya Pradesh too had observed likewise in its order in Saurabh Gupta v. Union of India. It was further stated that during the zero hour, i.e., from 12 pm to 1 pm in the Rajya Sabha on 22nd July 2009, Mr. Kamal Akhtar, MP, raised the issue of obscenity and vulgarity in reality shows on television channels. Mr. Akhtar made a special mention of SKS and requested the government to stop reality shows which were spreading obscenity and polluting Indian culture. Mr. Akhtar was joined in his demand by seven other MPs. The extract of the verbatim proceedings in the Rajya Sabha were annexed to the additional affidavit. The I&B Ministry took note of the issues raised by the MPs and the episodes of SKS telecast on 17th and 21st July 2009 were previewed in the chamber of the then Joint Secretary, I&B Ministry following which the SCN dated 22nd July 2009 was issued to SIPL. The additional affidavit further stated that a structured discussion on the topic of "the increasing obscenity and vulgarity in television programmes being shown on different channels against the cultural ethos of the country" took place on 23rd July 2009 in the Rajya Sabha. On 24th July 2009, through a Special Mention, one other MP, Mr. Ram Gopal Yadav, again raised a point regarding SKS. In the discussion held on 27th July 2009 in the Rajya Sabha, a specific reference was made of SKS by many of the MPs. The additional affidavit also enclosed copies of grievance petitions dated 27th July 2009 from Ms. Madhu Agarwal, 19th August 2009 from an organisation named "RIGHTS" and 23rd November 2009 from Mr. Subhash Chandra Aggarwal asking for prohibition of telecast of SKS.

12. The additional affidavit of the I&B Ministry pointed out that the representatives of SPC attended a meeting on 23rd July 2009 for a discussion with the I&B Minister. SIPL wrote a letter on 30th July 2009 informing the I&B Ministry about the steps it had taken by placing advisory, scrolls and tickers. In the said letter the Petitioner stated:

the views expressed by the Hon''ble Members of Rajya Sabha, the views expressed by the Hon''ble Minister on the Floor of the House, the sensitivities of the general public at large and the recent observations of the Hon''ble Delhi High Court while dismissing the Public Interest Litigations in respect of the program, we STAR India Pvt. Ltd., as a responsible corporate and a channel of repute, are keen to proactively extend its support to the Ministry by proposing the following set of suggestions to the already existing advisories in keeping with our mandate

of socially responsible & relevant broadcasting.

13. Another meeting was held with SIPL on 3rd August 2009 wherein the concerns of the I&B Ministry were conveyed to SIPL. Pursuant thereto, SIPL wrote to the Secretary, I&B Ministry on 7th August 2009, conveying its decision to shift the programme from the time slot of 10.30 pm to 11 pm. At a personal hearing on 8th September 2009 before the Joint Secretary (Broadcasting), SIPL was once again apprised of the issue and the individual complaints against the programme. Pursuant thereto, on 9th September 2009, SIPL wrote a letter to the I&B Ministry outlining the further steps taken by it.

Submissions of counsel

14. The submissions of Mr. S. Ganesh, learned Senior counsel for the Petitioner were as under:

(i) The impugned order failed to specify how SKS is contrary or offensive to acceptable standards of Indian ethos and culture. The Respondent in the impugned order had mechanically reproduced the sub-Rules 6(1)(a), (d), (i) and (o) of the CTN Rules without providing any substantiation, or indicating which part of the programme or which questions, aspects or features were found to be objectionable and in violation of the PC. Reliance was placed on the decisions of the Supreme Court in *Canara Bank and Others Vs. Shri Debasis Das and Others*, , *Chief Engineer MSEB v. Suresh Raghunath Bhokare* 2005 SCC (L&S) 765 , *Commissioner of Central Excise, Belgaum Vs. Mysore Kirloskar Ltd.*, Karnataka, and *Municipal Corporation, Ludhiana Vs. Inderjit Singh and Another*, .

(ii) The Respondent had not given any reasons for the conclusions drawn about SKS in the impugned order. Also, no reasons were given for rejecting the various contentions raised by the Petitioner in its reply to the SCN. Relying on the decision in *The Barium Chemicals Ltd. and Another Vs. Sh. A.J. Rana and Others*, , it was submitted that the elements of application of mind, and due care and attention to the materials, were absent in the impugned order. It was violative of the principles of natural justice. Reliance was also placed on the decisions in *Travancore Rayon Ltd. Vs. Union of India (UOI)*, and *M.J. Sivani and Others Vs. State of Karnataka and Others*, . It was submitted that the reasons for arriving at the conclusions should be discernible from the order itself. These cannot be supplied by way of an affidavit subsequently filed by the government. Reliance was placed on the decision in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, .

(iii) The legality of the constitution of the IMC itself was doubtful since it comprised entirely of bureaucrats and had no representative from either the industry or of artists. Considering that it was meant to assess whether television programmes were in conformity with the PC on an application of objective standards, the composition of the IMC had to be much more broad-based with experts from different fields.

(iv) The counter affidavit showed that the competent authority had not itself viewed the allegedly offending episodes of SKS, but had merely reiterated the findings of the IMC. The report of the IMC on the basis of which the competent authority issued the warning was not made available to the Petitioner. Reference was made to the decision in *The Government of Andhra Pradesh and Others Vs. A. Venkata Rayudu*, . Further, the decision of the I&B Ministry appeared to have been influenced by the views of certain MPs.

(v) The warning amounted to unsubstantiated and unwarranted censorship arising from non-application of mind by the competent authority. What amounted to indecency or obscenity had to be judged by the standards of a reasonable and not a hyper-sensitive person. Reference was made to the decisions in *Samaresh Bose and Another Vs. Amal Mitra and Another*, and *K.A. Abbas Vs. The Union of India (UOI) and Another*, . If TMOT could be watched by a large audience in India, then its Indian version SKS could not be said to be objectionable.

(vi) The impugned warning should be set aside and the I & B Ministry should be directed to notify the Petitioner of the precise portions of the episodes of SKS which were objectionable and in violation of the PC. Thereafter the entire matter should be placed once again before the IMC for a fresh decision.

15. Ms. Inderjit Sidhu, Learned Counsel for the I&B Ministry referred to the counter affidavit as well as the additional affidavit and submitted that there was no violation of the principles of natural justice. Apart from the SCN and the opportunity to SIPL to reply thereto, it was also heard and the concerns of the I&B Ministry as well as those expressed by the MPs were conveyed to SIPL. In fact, in response thereto SIPL had itself agreed to shift the time slot to a later hour at night. That the programme was not suitable for unrestricted public viewing was acknowledged by SIPL itself as it had run tickers and scrolls warning viewers of the adult content of the programme. This came only after the SCN was issued to it. Going by its past conduct the warning issued was justified. It is submitted that the I&B Ministry had a statutory obligation to ensure that the PC was not violated and to take corrective action in case of breach of the PC.

Is the impugned order bad for vagueness?

16. There are several limbs to the broad submission that the impugned order is violative of the principles of natural justice. One submission is that both the impugned SCN as well as the impugned order administering the warning were vague as they did not specify what portions of the episodes of SKS violated the PC. This Court notices that the SCN refers to two specific episodes telecast on 17th and 21st July 2009. The SCN refers to the anchor seeking replies to questions regarding infidelity, incest and "other taboo subjects that are not suitable for unrestricted public exhibition especially keeping in view the Indian ethos and culture." It further states that the replies to the questions and the fact that the result of the polygraph test was at times contrary to the replies given resulted "in great embarrassment not only to the participants and their families

but also to the viewers watching the programme along with their families." This cannot be said to be a mechanical reproduction of the statutory provisions. It gives sufficient indication as to the portion of the two episodes telecast on 17th and 21st July 2009 that were objectionable. It refers to the adult nature of the content and its unsuitability for unrestricted public viewing. Therefore, neither the impugned SCN nor the impugned order can be said to be bad on the ground of vagueness.

The decision-making process

17. The facts emerging from the writ petition and the additional affidavit of the I&B Ministry show that SIPL had a meeting with the I&B Ministry on more than one occasion. The letter dated 30th July 2009 of SIPL refers to the views expressed by the IMC as well as the observation of this Court while disposing of the two PILs. The impugned order was passed after meetings and discussions were held between the I&B Ministry and SIPL. It cannot be said that the I&B Ministry acted in undue haste. Sufficient time was given to SIPL to respond to the criticism and objections voiced by the MPs.

18. However the principal objection of SIPL is to the procedure adopted in arriving at the decision to administer the warning to SIPL. The matter was placed before the IMC which previewed the recordings of the episodes, considered the reply submitted by SIPL and then concluded that it was "not suitable for unrestricted public exhibition especially keeping in view the Indian ethos and culture". Further, the IMC observed that the questions addressed to the participants and the replies followed by polygraph test, "resulted in great embarrassment not only to the participants and their family but also to the viewers watching the programme along with their families".

19. The submission of the Petitioner is that the IMC was comprised entirely of bureaucrats of the government and therefore such an IMC could not be expected to form an objective opinion as regards the alleged violation of the PC. The Order dated 25th April 2005 issued by the I&B Ministry constituting the IMC indicates that it is Chaired by an Additional Secretary in the I&B Ministry and has as its members eight Joint Secretaries of several Ministries including Home Affairs, Law and Justice, Women and Child Development and one representative from the Advertising Council of India. In other words, barring one member, the ten-member IMC is comprised entirely of bureaucrats. They are not expected to possess any specialized knowledge or expertise in determining if a television programme against which there is a complaint, violates the PC. Significantly, in the IMC there is no representation of the media, the producers of television programmes, artists and civil society. The task of the IMC is a sensitive one. For instance, in the present case the IMC had to determine if the two episodes of SKS violated Rules 6(1)(a), (d), (i) and (o) of the CTN Rules. It is doubtful if an IMC comprising entirely of bureaucrats would be able to discharge that responsibility with the degree of objectivity it requires. Therefore, it is important for the IMC to have a broad-based membership reflective of the competing

interests involved in protecting the freedom of speech and expression guaranteed by the Constitution.

20. There has recently been a conscious move by the media, as part of a self-regulatory exercise, to address this problem. The Indian Broadcasting Federation ("IBF") has set up a Broadcasting Content Complaints Council ("BCCC") which is a thirteen-member body at present chaired by a retired Chief Justice of a High Court. It has twelve other members of which four are eminent persons, four are members of national level statutory commissions and four Broadcast members. The complaint against a television programme telecast by a broadcast service provider ("BSP"), who is a member of the IBF, is referred first to the BCCC which hears the parties before ordering measures wherever warranted. The BCCC examines if the programme complained against violates the "Self Regulatory Content Guidelines for non-news and current affairs television channels" ("SRGC"). The directive issued by the BCCC is binding on the members of the IBF. In exceptional cases, where a BSP does not carry out the BCCC's directives, the BCCC may recommend the case to the I&B Ministry for appropriate action against the BSP, as per law. It is not in dispute that the impugned warning was issued to the SPC prior to the constitution of the BCCC. However, subsequent to the constitution of the BCCC, the I&B Ministry has itself been referring the complaints made to it to the BCCC. This is a tacit acknowledgement by the I&B Ministry that the complaints received by it about objectionable content of television programmes require to be examined by a broad-based expert body.

21. In the present case, after arguments were finally heard on 11th August 2011, the case was again listed on 12th September 2011 to ascertain if the I&B Ministry would be agreeable to have the matter referred to the BCCC and thereafter take a final decision after considering the views of the BCCC. Ms. Sidhu Learned Counsel for the Respondents informed the Court at the hearing on 19th September 2011 that since a decision had already been taken by them, the I & B Ministry was not willing to have the BCCC examine the matter. Orders were then reserved by this Court.

22. Resultantly, this Court does not have the benefit of the views of an expert broad-based body on whether the two episodes of SKS which were telecast on 17th and 21st July 2009 were violative of any of the provisions of the PC. The determination to that effect in the impugned order is based entirely on the views of the IMC, which has no such broad-based representation of competing interests. Before examining if the impugned warning was justified, it is necessary to examine the provisions of the PC invoked in the present case.

Regulating the content of television programmes

23. The crux of the matter is the statutory Regulation of the content of television reality shows. By its very nature, television viewership of a reality show cannot be restricted. An objectionable content can if at all be "taken off" the air meaning

thereby that the regulatory step can at best be "corrective" and not "preventive". Programme producers are expected to be aware of the objective standards sought to be put in place by the PC and correctly gauge what is suitable for prime time unrestricted viewership. While certainly there have to be objective standards to evaluate content, from the standpoint of a reasonable and not a hypersensitive viewer, the PC does give a fairly clear indication of what the broad contours of those standards are. For determining if a programme violates standards of good taste and decency [Rule 6(1)(a) CTN Rules], contains anything obscene or defamatory [Rule 6(1)(d)], maligns or slanders any individual in person or certain groups, segments of social, public or moral life of the country [Rule 6(1)(i)], or contains anything that is unsuitable for unrestricted public exhibition [Rule 6(1)(o)], the programme will have to be examined with reference to specific scenes, dialogues, visuals, their manner of presentation and "subject matter treatment". There would inevitably be an element of subjectivity in the exercise of determining whether a particular programme, or any portion of it, violates the PC. This in turn would determine the suitability of the show for being slotted at an hour where there is likely to be maximum public viewership.

24. The suitability of the content concerns two broad areas: suitability of what should be seen and suitability as to who should see it. The answer to those questions will in turn determine the appropriate time at which the programme should be telecast. While Rule 6(1)(a), (d) and (i) CTN Rules which have been invoked by the I&B Ministry in the present case deal with the aspect of the suitability of the actual content of the two episodes, Rule 6(1)(o) CTN Rules deals with the time slotting of a programme having regard to the overall nature of its content. Television as a medium has a wide reach and a range of audience and it is not possible to "restrict" viewership. On the other hand, cinema films are subject to censorship through a fairly elaborate process under the Cinematograph Act, 1952 and are certified as U, U/A, A and S depending on the perceived suitability of the film for being viewed universally or by a restricted audience.

25. For television programmes, for the first time in India, the IBF has come up with the SRGC which talks of two broad categories of television programmes "according to theme, subject matter treatment and audio visual depiction" as "Generally Accessible" (G) and "Restricted Access" (R). Category G programmes "are suitable for unrestricted viewing by all viewers and/or under Parental Guidance". Category R is for "restricted programmes that are not meant for children and young viewers." Category G programmes can be broadcast "at all times" whereas Category R programmes can be scheduled for being telecast only between 11 pm and 5 am. The SRGC is eponymously self regulatory and the BSP is expected to follow the norms concerning categorization of a programme as "G" or "R. Thus the BSP is expected to be sensitive to what is acceptable from the point of view of Indian ethos and culture. As at present, in terms of the SRGC, a complaint concerning the content of a programme can be made to the BCCC. The BCCC then reviews the particular programme complained against and

determines, inter alia, in light of the SRGC, if it is sustainable and if so whether any corrective is called for. Further, in applying an objective standard, the BCCC or any such expert body could seek guidance from the large body of judicial decisions, some of which have been referred to by learned senior counsel for the Petitioner. The BCCC's decision is binding on the BSP, but where the BSP does not comply with its directive, the BCCC can write to the I&B Ministry for corrective action.

The distinction between two sets of violations of the Programme Code

26. As earlier observed, the determination by the Respondent that the two episodes of SKS violate Rules 6(1)(a), (d) (i) and (o) of the CTN Rules is based on the opinion of the IMC and not a broad-based body like the BCCC. Yet, for reasons set out hereafter, for the purposes of the present case, it may not be necessary for this Court to determine whether the two episodes of SKS violate Rules 6(1)(a), (d) and (i) CTN Rules if, independent of those provisions, the overall theme of SKS is found to be such that it requires to be categorized as "unsuitable for unrestricted public exhibition" in terms of Rule 6(1)(o). In such event, the conscious act of the SIPL to slot the programme for telecast at a prime time would call for corrective action. In other words, for the purposes of the present case, it is possible to draw a distinction between the alleged violation of Rules 6(1)(a), (d) and (i) on the one hand and the violation of Rule 6(1)(o) on the other.

27. To explain further, a significant aspect both under the PC and the self-regulatory regime of the SRGC is that if a BSP is in violation of either, the remedy is only a post-telecast corrective. Consistent with the extant policy of the government, there is no pre-censorship of television programmes. Most programmes, including "reality" shows, are not necessarily broadcast "live". They are usually recorded in advance and carefully edited. Therefore, an informed decision can be taken by a BSP on whether the programme is under the G or the R category and this in turn would dictate the time when it should be telecast. In fact the SRGC envisages a process of "self-certification" by the BSP. Even where a BSP may be unclear whether a particular scene or dialogue or visual offends Rules 6(1)(a), (d) or (i), it may not be difficult for the BSP to decide whether, given the overall theme and nature of its content, a programme is suitable for unrestricted public exhibition with reference to Rule 6(1)(o) CTN Rules.

28. A second aspect is that it is not practically and technologically feasible to "restrict" viewership of television programmes. Much of the responsibility of ensuring that an R category programme is not watched by a young person is on the viewer. Aware of this limitation, a BSP usually runs tickers and warnings even while the telecast is in progress, stating that the programme is for restricted viewership. But even this may not be enough to ensure that young persons do not watch it. A third aspect, which is widely acknowledged, is that commercial considerations drive the decision of a BSP to slot a programme at "prime time". A BSP that wants to maximize commercial gains by slotting an adult programme in

prime time, knowing well that it is not suitable for unrestricted public exhibition, attracts only an absorbable risk of a post-telecast corrective being applied. That corrective too is usually in the form of re-slotting the programme at a time when it should appropriately be telecast. In the circumstances, a deliberate erroneous time slotting of a programme for telecast by a BSP, resulting in violation of Rule 6(1)(o) of the CTN Rules, ought not to be viewed lightly.

The impugned warning

29. In the present case, while there is a dispute between SIPL and the I&B Ministry on whether the two episodes of SKS violated Rules 6 (1) (a), (d) and (i), there appears to be no dispute that the overall content was of an adult nature and therefore not fit for unrestricted public viewing. That SIPL was conscious of the nature and content of the programme is evident from the fact that it thought it fit to place an advisory and run scrolls and tickers during the telecast of the programme. In its letter dated 9th September 2009, SIPL stated that it had inserted a summarised version of "voice over", both in Hindi and English, in addition to the existing visual advisory shown in text "in order to ensure that the message is not lost and to make it more comprehensible to the viewer". After the interactions with the I&B Ministry, the Petitioner also decided to seek the guidance of an advisory panel of eminent Indian personalities in order to ensure that the "content broadcast on our channel is in consonance and compliance with the Content Code". The other steps, including shifting the time slot to 11 pm, and the communications sent to the Chief Editors of news channels to desist from using the footage of the programme as part of news were also mentioned.

30. Interestingly, SIPL has also tacitly acknowledged the imminent risk of 24 hour news channels sensationalising the embarrassing revelations concerning the private lives of the contestants, thus whetting the voyeuristic instincts of the viewers that television as a medium increasingly seems to encourage. In its letter dated 9th September 2009 to the I&B Ministry SIPL stated as under:

Thereafter, we had also been monitoring the use of the footages by the news channels for any copyright violations. It was found that certain news channels were running half hour or longer special stories on our program solely with the intention to increase their TRPs by sensationalisation of the issues relating our program.

We promptly addressed notices to these channels calling upon them to cease and desist from resorting to infringement of our channel's copyrights. Additionally, we also requested the News Broadcasters Association (NBA) to issue an advisory to its members in this regard. Please find enclosed herewith copies of some of the notices sent by us and responses received there to.

Unlike in other international jurisdictions, there are no clear guidelines on the issue of use of copyrighted content for news reporting. There are some entities in the news business which believe that copyrighted content could be unrestrictedly used for news reporting. It is perhaps on account of this reason as well that

several news channels resorted to carrying extensive footage of the programme.

31. The core content of SKS is the public display of private moments of personal embarrassment. Whether this could be termed as "unabashed" or "uninhibited" is a matter of individual perspective. It would require a mature audience to not think of such display as an invitation to invade the privacy of others. Informed viewers of rational choice might be able to "switch off" or "surf away" from SKS when they find that it offends their sensibilities. But that cannot be said of every viewer. By running scrolls, tickers and advisories warning viewers of the adult content of SKS, SIPL acknowledged that it was not meant for unrestricted public viewing. In other words, it was conscious that the programme attracted Rule 6(1)(o) CTN Rules. Yet, it took a chance by slotting SKS at prime time in order to maximize on the unrestricted public viewership. Faced with the protests, voiced through MPs in the Rajya Sabha, SIPL shifted SKS to a non-prime time slot. SIPL also constituted its own advisory panel to avoid future breaches by it of the PC. SIPL cannot be heard to say that what was being objected to was not known to it.

32. Consequently, de hors the question whether the two episodes of SKS violated Rules 6(1)(a), (d) and (i) CTN Rules, there appears to be little doubt that it did violate Rule 6(1)(o). In view of this conclusion, the remand of the matter to the I&B Ministry for a fresh decision on whether the two episodes of SKS telecast on 17th and 21st July 2009 violated Rules 6(1)(a), (d) and (i) CTN Rules is obviated. For telecasting the episodes of SKS which were not suitable for unrestricted exhibition at prime time on 17th and 21st July 2009, thus violating Rule 6(1)(o) CTN Rules, the warning administered to SPC by the I&B Ministry by the impugned order was justified as a valid exercise of statutory power by the regulatory authority.

33. For the aforementioned reasons, the writ petition is dismissed with no order as to costs.