



**BEFORE THE GRIEVANCE REDRESSAL BOARD  
DIGITAL PUBLISHER CONTENT GRIEVANCES COUNCIL**

**In the matter of: Oversee Grievance ID – 044 of 2023**

**Complainant/Appellant: Mr. Satish Waghela**

**ORDER**

1. The Grievance Redressal Board of DPCGC (hereinafter referred to as the Council) has received a Level-II complaint against the member platform 'ULLU' (hereinafter referred to as Platform). It is registered as an Appeal and given Registered Grievance ID 044 of 2023. Notice of this Appeal was served upon the Platform with an opportunity to file its reply/written statement to the said grievance. The Platform has filed its reply. The Council also fixed the matter for oral hearing on 13.06.2023 at 5 p.m. The Complainant appeared himself in support of his grievance/Appeal. On the other hand, the Platform was represented by Ms Priyanka Chaurasiya, Advocate who presented the case on behalf of the Platform. The Council proposes to dispose of the complaint by the present Order.

## **GIST OF THE COMPLAINT/APPEAL**

2. Mr. Satish Waghela (hereinafter referred to as the Appellant) feels aggrieved by certain episodes in the web-series named as *Charamsukh, Polangtod, Secretary, Jananejane*. His submission is that these web-series show only obscenity and nudity which is contrary to the law of the land as well as the Information and Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules, 2021). It is, *inter alia*, pointed out that the contents include breasts of women being pressed. Women are shown kissing their bums and private parts and there is also use of sexual language. It is stated that all the visuals in the web-series contain only sexual contents. It is also mentioned that the Complainant had raised grievance with the Platform vide his communication dated 20.03.2023 and sharing screenshots of these web-series wherein offending contents appear. However, the Complainant being unsatisfied by any remedial measures taken by Platform, the Complainant has escalated up his complaint to Level II. Thus, according to the Complainant, these web-series need to be taken off the air.

## **RESPONSE OF THE PLATFORM**

3. The Platform has denied all claims, accusations and allegations asserted by the Complainant. It is stated that the Platform is a video streaming/OTT Platform that offers a wide variety of genres from drama, horror, suspense, thriller to comedy and beyond which targets audience above eighteen years of age. It is emphasized that the Platform is not available to persons below the age of eighteen years and the viewership is confined to adults who possess adequate

maturity and discretion to decide whether to watch such web-series or not. It is also stated that the Platform is complying with the IT Rules, 2021 as it has self-clarified the Online content for suitable audience.

4. It is also emphasized that the Platform has mentioned that safeguards are being followed by them in order to restrict the exposure of mature content to minors, which are as under:
  - a) Only users who are above the age of 18 can sign up for an account on the OTT Platform;
  - b) 18+ mature rating and content description are displayed at the show selector screen;
  - c) Upon proceeding to the payment page, a pop up appears with a declaration from the Account Holder stating “Adult content” and seeking confirmation of the age of the account holder to be above 18 years of age;
  - d) A *Disclaimer* is provided on all the videos/content available on the platform stating the content is suitable only for viewers who are “Adults”.
  - e) Once a web-series with rating of A or 18+ begins, the said Rating is displayed on the top.
  - f) The downloading of the **App** is subject to the terms and conditions of the Platform which also require the Account holder to warrant that the User is above 18 years of age and the

content is strictly available only upon the user confirming the same.

5. The Platform has also taken shelter of constitutional provision contained in Article 19(1)(a) of the Constitution of India which guarantees freedom of speech and expression. It is argued that the producers of these web-series as well as the Platform enjoy artistic freedom which is a part of freedom of speech and therefore, there is no violation of any laws. It is emphasized that the so called offensive scenes of the web series are the artistic portrayal of the events and a part of the artistic work which cannot be termed as obscene/vulgar.

## **ANALYSIS**

6. The members of the Council were provided with the screen shots of certain portions of the aforesaid web-series. After viewing that, the Council found that the Complainant has raised a serious issue for consideration by this Council and therefore, watched some of these episodes in full as well. The Council has also considered the respective submissions contained in the complaint as well as response of the Platform and deliberated the matter with all seriousness which it deserves.
7. At the outset, it needs to be emphasized that the learned Authorised Representative of the Platform had highlighted that apart from these web-series in respect of which the complaint is made, the Platform is streaming various web-series in other genres as well in respect of which there is no issue raised. The Council wants to make it clear that it is concerned with the web-series which are specifically referred to by the Complainant in his complaint. If some of the contents (or all

the contents) of some of these web-series or all these web-series do not pass the muster of law and are not protected by the artistic freedom guaranteed under Article 19(1)(a) of the Constitution, the Council has adequate powers to give suitable directions in respect of offending episodes/web-series. Merely because other web-series shown on the Platform are compliant with the IT Rules, and do not violate any law, would not mean that the web-series in question also get validation on that account.

8. Before proceeding further, the Council would like to state the legal principles which are to be kept in mind while undertaking the review of the web-series in question in respect of which the present complaint is made.

### **Legal Position**

9. Undoubtedly, Article 19(1)(a) of the Constitution ensures and guarantees artistic and literary freedom to every citizen of this country, as a form of right of speech. This right, however, is not absolute but subject to reasonable restrictions which are contained in Article 19(2) of the Constitution. Thus, while exercising his right of speech which is guaranteed in varied forms, a citizen cannot transgress the limits of restrictions contained Article 19(2). One such limitation/restriction is that art or culture should not be obscene. Obscenity is treated as penal offence as well as per the provisions of Section 292 of the Indian Penal Code (IPC). Restriction can also be imposed in the interest of public order, decency and morality. For ascertaining the legal position, the Council has, in particular, gone through the following judgments:

- i) *Ranjit D. Udeshi v. State of Maharashtra*, (1965) 1 SCR 65;
- ii) *Aveek Sarkar and Anr v. State of West Bengal and Ors*, (2014) 4 SCC 257;
- iii) *Bobby Art International and Ors v. Om Pal Singh Hoon and Ors*, (1996) 4 SCC 1;
- iv) *TVF Media Labs Pvt Ltd and Ors. v. State (Government of NCT of Delhi) and Ors*, Crml MC 2214/2020 decided on 06.03.2023

10. The legal position contained in various judgments referred to above postulates that while adjudging whether a particular literary piece is obscene or not, there is a vast area of thought, speech and expression of artistic quality is available, which is not to be reduced to a level where the protection of the least capable and most depraved harms what is morally healthy and cannot be viewed and read. Substantial allowance in favour of freedom leaving vast area for creative art to interpret life and society is to be accorded to. The Apex Court has emphasized that the requirement of art and literature includes 'social life' not in its ideal form, but the line is to be drawn where the average moral man begins to feel embarrassed or disgusted at a naked portrayal of life without the redeeming touch or art or genres or social value. Sex and obscenity are always not synonymous, and it is wrong to classify sex essentially obscene or even indecent or immoral. At the same time, concern has to be to prevent the use of sex designed to play a commercial role by making its own appeal.

11. In order to adjudge whether a particular work is obscene or not, it is required to apply the 'Community Tolerance Test' i.e., ROTH Test in contrast with HICKLIN test. As per ROTH test, when the material is taken as a whole, and is found to be lascivious and tends to deprave a person who reads or sees or hears that material, it is said to be

obscene. The work is to be viewed in the background in which it is shown and the message it seeks to convey. The Apex Court has also explained that there is some difference between obscenity and pornography in that the latter denotes writings, pictures, etc. intended to arouse sexual desire while the former may include writings, etc. not intended to be so but which have that tendency. At the same time, both obscenity and pornography offend against public decency and morals though pornography is obscenity in a more aggravated form. It, therefore, follows that even when a particular writing, picture or movie has the tendency to arouse sexual desire and offends public decency and morals, that is prohibited. The Courts have held that the law seeks to protect not those who can protect themselves but those whose prurient minds take delight and secret sexual pleasure from erotic writings.

### **Application of legal principles in the present case**

12. As already mentioned above, the Council has watched the web-series in question viz., *Charamsukh*, *Polangtod*, *Secretary*, *Jananejane*. Without discussing the details of each of these web-series, it may be appropriate to observe that the following common features are found in all these web-series:
  - i) There is hardly any storyline. Some sort of pretentious 'story' is created which cannot be termed as a story in strict sense.
  - ii) There is hardly any message, much less a meaningful message that is sought to be projected.

- iii) Primary object in all these web-series is to depict sexuality and nudity and a majority of the web-series only contain sexual content.
- iv) From the word 'Go', i.e., from the very beginning, the episodes start exhibiting sex and nudity. There is a total lack of any context or any social objective that is sought to be achieved. On the contrary, as mentioned above, the sole purpose and objective seems to arouse sexual desire and deprave the mind of the viewers. On reviewing these web-series in entirety "from the point of its overall impact", the Council finds that there is no social message in any of these series and the sole purpose is to depict sex and nudity likely to deprave the corrupt those whose minds are open to influence of this sort.
- v) The Council does not find any artistic content or creativity and is of the opinion that producing these series is a misuse of artistic freedom. (In fact, the solitary aim of those producing these web-series is to depict sexual contents). Offending works fall within the four corners of obscenity and lie on the borderline of pornography. It lacks decency and is bereft of moral values and does not pass the muster of "Community Tolerance Test".

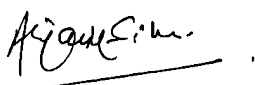
### **Dispositive Order**

13. Considering the legal position enumerated above, the Council takes grave objection on the content available on the platform in its present form. It finds that most of the episodes in all these series contain sexual and nude scenes. The Council while reprimanding the Platform thereby provides a strong advisory to the Platform to take off these web-series from the Platform altogether or make suitable edits (if



even feasible) to the offending and objectionable scenes to ensure that they are in compliance with the IT rules 2021.

14. The Council further advises the platform to ensure that all the content on its platform must comply with the test of obscenity and pornography as enumerated under the various laws of the land. The Platform is strongly advised to ensure that the content published/transmitted by it does not fall foul of the principles laid down in the Code of Ethics provided under the IT Rules, 2021 and must pass the muster of the various tests of obscenity and pornography in India.
15. If the Platform does not adhere to the advisory issued by the Council within a period of 15 working days, and the Complainant continues to be aggrieved by the content available on the Platform, he is at liberty to approach the Level III Body under the Oversight Mechanism under Rule 13 of the IT Rules, 2021.



**Justice A.K. Sikri**  
**Former Judge, Supreme Court of India**  
**Chairperson, Grievance Redressal Board**  
**Digital Publisher Content Grievances Council**

Dated: 19.06.2023