IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.01.2020
DELIVERED ON : 13.01.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos.19816 and 19822 of 2019

Adithya Modi .. Petitioner in both WPs

Vs

1 Union of India
Rep. by the Cabinet Secretary
Cabinet Secretariat, Government of India
Rashtrapathi Bhawan
New Delhi – 110004.

2 Ministry of Information and Broadcasting
Rep. by the Secretary
Shastri Bhawan
New Delhi – 110001.

3 Ministry of Youth Affairs and Sports
Rep. by the Secretary
Shastri Bhawan
New Delhi – 110001.

4 Prasar Bharti
(India's Public Service Broadcaster)
Prasar Bharati Secretariat
Prasar Bharati House
Copernicus Marg, New Delhi – 110001. .. Respondents in both WPs.

PRAYER in W.P.No.19816 of 2019: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Declaration, declaring that the restriction cast by the Impugned Provisions Section 3(1) of the Broadcasting Act limiting the mediums of broadcasting through which the Respondent No. 4 can retransmit the live broadcasting signals of the sporting events of national importance as shared with it to only the Respondent No.4's terrestrial networks and DTH networks is null and void and unconstitutional and consequently declaring that the Respondent No. 4 has the right to retransmit the live broadcasting signals of the sporting events of national importance as shared with it by the content right owners/holders as well as the broadcasting service providers on any of the mediums available on free-to-air basis to the benefit of the citizens of India, including but not limited to the respondent No.4's OTT platform as well as other third party platforms which retransmit the content on a free-to-air basis.

PRAYER in W.P.No.19822 of 2019: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Declaration, declaring that the restriction cast by the Impugned Provisions Section 3(1) of the Broadcasting Act limiting the obligation of the content rights owner or holder as well as television/radio broadcasting service provider to only share the live broadcasting signals of the sporting events of national importance with Respondent No. 4 in the event of a live television broadcast on any cable or DTH network or radio commentary broadcast in India to the exclusion of a live broadcast through any other medium (including but not limited to the internet,

OTT platforms and other third party platforms that retransmit Doordarshan channels on a free-to-air basis), is null and void and unconstitutional and consequently directing the respondents to undertake any and all requisite measures towards ensuring that all the citizens/viewers of India have the right to access and enjoy the live broadcasting of the sporting events of national importance, through all mediums available on free-to-air basis, in the present and future.

For Petitioner : Mr.Karthik Seshadri
for M/s.Guru Dhananjay
For Respondents : Ms.Sunita Kumari
Senior Panel Counsel

COMMON ORDER

HON'BLE CHIEF JUSTICE

The right to acquire knowledge is a natural right. The acquisition of knowledge includes within its fold the receiving of information through natural perceptions like sight, hearing and other forms of human experience. To put a State control over the exercise of such natural rights either constitutionally or through a command of law has been of immense debate not only in this country in the post-constitutional era, but across the world, in support of such natural rights. This experience of a human being through perceptions is also susceptible to change with new ideas

and new interpretations generated on the basis of more experience resulting from consequences. It is for this reason that one needs to be reminded of what *Mathew Tobriner* said on 3.2.1964 in the *Wall Street Journal*:

> *"Man's drive for self-expression, which over the centuries has built his monuments, does not stay within set bounds; the creations which yesterday were the detested and the obscene become the classic of today."*

2. When the State in power under authority from the Constitution and the law proceeds to take control and regulate such rights *vis-a-vis* in relation to modern means of communication, the transmission and dissemination of such information that may be informative and educative comes in for legal debate. Many legal battles have been fought in favour of free information, the right to freedom of press being one of the shades of them. The right of an individual has been protected, at least in democracies and the statement of *Justice Thurgood Marshall* in *Stanley v. Georgia, 394 U.S. 557 (1969),* is worth remembering that is extracted herein under:

> *"If the 1st Amendment means anything, it means that a State has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch."*

3. The question is as to whether an individual has an absolute right of access to an untrammeled flow of information and any law that chills or restricts free dissemination should be immediately declared to be *ultra vires*, be it the Constitution or the laws?

4. The question that has been raised in the present writ petitions is about seeking the enforcement of a fundamental right guaranteed under Part-III of the Constitution of India under Article 19(1)(a) read with Articles 19(2) and 19(6) contending that restricting the mode of free transmission of sports and entertaining information impinges upon the fundamental rights of a citizen to receive information through internet services, including all forms thereof.

5. After we had reserved judgment, the Apex Court in a historic decision in the case of *Anuradha Bhasin v. Union of India*

and Ghulam Nabi Azad v. Union of India, in Writ Petition (Civil) No.1031 of 2019, decided on 10.1.2020, through a Three-Judges pronouncement has touched upon some parameters relating to this aspect as well and we shall therefore refer to the same also in our judgment.

6. In the nascent years of information technology, when internet facilities and electronic communications were only known to the western world a distinction was drawn, between a broadcast through radio and television and that through internet services which did not have any wide reach then, in the case of *Reno v. American Civil Liberties Union, 512 U.S. 844 (1997)*. The petition had been filed by Janet Reno, U.S. Attorney General, challenging the Federal District Court order that had held two provisions of the Communications Decency Act of 1996 as unconstitutional under the First Amendment. The Court held that unlike the broadcast medium either on a telephone or radio, internet was a scarce commodity and, therefore, did not require any extensive regulation.

7. The scene has changed immensely thereafter and has rather reversed, inasmuch as internet facilities are now deep and pervasive almost affecting every individual's life, including the right to privacy. The vast expanse of internet facilities allowing free access to communication and accessibility to information and entertainment has now been discussed by the Apex Court in the case of *Anuradha Bhasin* (supra).

8. It is in the said background we now proceed with the case at hand.

9. The petitioner, who claims himself to be a full time professional in the field of Sound Engineering and Music and is running a Home Theatre Consultancy firm, has come up in this public interest litigation stating that he is a sports lover and during his interaction with many sports personalities he has been able to gather that the millions of individuals of this country are unable to enjoy any such interaction so as to gain inspiration from the performances and achievements of the sports personalities on account of limited means of information and entertainment and,

therefore, he has prayed for a declaration that the restrictions contained under Section 3(1) of the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007 (for brevity, "*the 2007 Act*") insofar as it limits the retransmission of live broadcasting signals only through its terrestrial network and Direct-to-Home networks as *ultra vires* provisions of Articles 19(1)(a) of the Constitution of India read with Article 14 thereof.

10. The contention is that the limiting of retransmission only through these two modes amounts to negating the right to free information of individuals through other modes, including Over-the-Top (OTT) platform, and therefore citizens having access to the internet are being denied access to sports events of national importance and the like, as the Prasar Bharati is not adopting these methods due to the restriction contained in Section 3(1) of the 2007 Act, as referred to herein above.

11. It is the further contention of learned counsel for the petitioner that Prasar Bharati should also be authorized to use any

other medium, including third party platform, which transmits the contents on free-to-air basis that will help to achieve the object of the 2007 Act. Any restriction thereon impinges the fundamental rights of freedom to information as guaranteed under Article 19(1)(a) of the Constitution.

12. Learned counsel for the petitioner contends that the Prasar Bharati Corporation was set up with a provision for a Broadcasting Council to enable it to ensure a citizen's fundamental right to be informed freely, truthfully and objectively through adequate coverage about the country's diverse culture and to cater to various sections of the society. This being the primary object under which the Prasar Bharati was incorporated, namely the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 (for brevity, "*the 1990 Act*") the subsequent Act of 2007, which is in relation to sports broadcasting signals in particular, should not restrict any such transmission or retransmission once this responsibility and obligation under law has been conferred upon the Prasar Bharati itself.

13. The submission is that restricting the modes of transmission amounts to restricting the right to free information and entertainment to the teeming millions, particularly in the rural areas, where now the latest internet technology is available to the multitudes who can through Apps like OTT be benefitted, provided the Prasar Bharati adopts these methods and does not confine it only to the two modes prescribed under Section 3(1) of the 2007 Act.

14. The submission, in effect, is that keeping in view the large number of internet subscribers that has now reached almost 600 million throughout the country, for which reliance has been placed on the data of the Telecom Regulatory Authority of India, restricting it to the two modes for no rational basis amounts to violating the fundamental rights of the citizens of this country in having free access to information and entertainment relating to sports programmes, for which essentially the enactment came to be adopted by the Government.

15. It is urged that such an Act also violates Article 14 of the Constitution of India, inasmuch as there is a large section of society which is entirely dependent only on the present mode of Prasar Bharati dissemination system of broadcasting, particularly in rural areas, that is being deprived of free access through internet and other services that can be very possibly, without any prejudice to any stakeholder, be adopted by the Prasar Bharati, but which is not being done on account of the restrictions as contained in Section 3(1) of the 2007 Act.

16. Learned counsel has further submitted that the very purpose for which the Prasar Bharati has been set up is evident from the provisions of Section 12 of the 1990 Act, where the Corporation in the discharge of its function has to be guided by the objectives as contained in Section 12(2)(e) in particular, and further by adopting modern methods as provided for under Sections 12(2)(n), (o) and (p) of the 1990 Act.

17. The contention is that by not adopting such methods, which is on account of the restriction placed under Section 3(1) of the 2007 Act, the very purpose of the 1990 Act is being frustrated with deprivation of such right of free information to the public at large.

18. Learned counsel submits that in such circumstances an appropriate declaration should be issued by reading down the phrase "*terrestrial networks and Direct-to-Home networks*" in Section 3(1) of the 2007 Act by deleting them and leaving it open to the Prasar Bharati to adopt all modes as available in modern technology, including the OTT Apps, for the purpose of such retransmission.

19. We have also heard learned counsel for the respondents 1 to 4, who, even though has not filed any counter affidavit, has yet advanced submissions contending that none of the rights of the citizens are being affected, much less there being any violation of the fundamental rights, inasmuch as there is neither any prohibition

nor restriction so as to totally deprive any citizen of such free information or broadcast of sports programmes which are being relayed through the adopted methods as per the statutory provisions.

20. Having considered the submissions raised on either side, we find that the technology mentioned in Section 3(1) of the 2007 Act refers to terrestrial networks and Direct-to-Home networks. The said modes were accepted modes of transmission when the 2007 Act came to be framed and it is not the case of the petitioner that they cease to be a viable mode at present resulting in any restriction of transmission of any sports programme through the Prasar Bharati. In our considered opinion, dissemination of information through a particular scientific method as contained in the enactment was done with a view to ensure propagation of information which appears to be evident from the object and reasons of the 2007 Act, which is extracted herein under:

> "***Statement of Objects and Reasons.***-
>
> *The distribution of broadcasting signals of sporting events of public interest in India is characterized by*

a few dominant exclusive rights holders or broadcasters and distribution platforms. They acquire exclusive rights for all the available platforms including satellite and cable, terrestrial, Direct-to-Home and radio. Terrestrial platform, is exclusively owned by Prasar Bharati as of now and sports commentary has not yet been opened up for private FM broadcasters. The end result is that large numbers of listeners and viewers in India specially those who do not have access to satellite and cable television and most of which are in rural areas are denied access to these events.

2. Hence the Government in its Downlinking and Uplinking Policy guidelines issued with the approval of the Cabinet, provided for mandatory sharing of sports signals of national importance with Prasar Bharati in order to provide access to the largest number of listeners and viewers, on a free to air basis, of sporting events of national importance whether held in India or abroad.

3. Despite the fact that these executive guidelines have been issued with the approval of the Cabinet, they have been challenged in the Courts of law as lacking statutory sanction.

4. During the recent India-West Indies One Day series, people could not watch the first match of the series due to BCCI's right holders' refusal to provide live feed to Doordarshan, the public broadcaster having reach up to 98% of Indian population and only network having terrestrial rights of broadcasting.

5. For the reasons given above, it became necessary to promulgate an Ordinance, namely Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Ordinance, 2007 with a view to give immediate effect to the proposal. The provisions made under the guidelines have been subsumed under the Ordinance to provide a statutory basis and strong legislative force with retrospective validity and to protect all the actions taken under these guidelines. The Ordinance further provides for notification of sporting events of national importance, which are to be mandatorily shared with Prasar Bharati. The Ordinance also empowers the Central Government to specify a percentage of the revenue received by Prasar Bharati to be utilized by Prasar Bharati for broadcasting other sporting events.

6. The Bill seeks to replace the said Ordinance."

21. A perusal thereof would therefore indicate that Section 3 of the 2007 Act itself was enacted to ensure that no member of the citizenry is deprived of any such access on a free to air basis of sporting events of national importance, whether held in India or abroad. The access to such information was therefore ensured through the said statutory provision. What the petitioner appears to contend is that this indication of only two modes does not allow the Prasar Bharati to adopt any other mode of dissemination and broadcast. In this regard, we may point out that this is a matter of policy, based on expert consultation, as to the mode and manner of transmission and retransmission of broadcasting signals that are designed to provide free access to the citizenry at large. The said modes as prescribed in Section 3 of the 2007 Act were found to be suitable modes and the said modes do not lose their efficacy by passage of time. The modes were valid then and do not become invalid on account of any new further technological developments. A future technology available, which is more easily accessible, may

have other dimensions to be considered before being implanted in the Act itself and, therefore, it is not for the Court to strike down the existing modes on the ground that the other modern methods do not find place in the Act. The prescribed modes limit transmission through particular methods but they do not prohibit or eliminate transmission by way of total exclusion for anybody to construe a constitutional violation. The method of transmission can be regulated by law and the restrictive methods do not violate a citizen's right to free information.

22. Learned counsel contends that with scientific technology, the law should also evolve and the Court should therefore adopt an evolutionary approach in interpreting the law and while doing so if the restrictions are clearly visible, then the said mischief should be rectified by appropriately deleting the offending parts of Section 3(1) of the 2007 Act, so as to make it all inclusive, making it open for the Prasar Bharati to adopt all such methods that may be available for free broadcast and transmission of signals for sports events.

23. There cannot be any quarrel with the proposition that the Prasar Bharati has been conferred with the function of adopting suitable methods of free transmission as per Section 12 of the 1990 Act. The 2007 Act, which is a later Act, has brought about a method of mandatory sharing of certain sports broadcasting signals in special circumstances which have been spelt out in the objects and reasons of the Act.

24. The validity of Section 3 of the 2007 Act came to be tested in the case of *Union of India v. Board of Control for Cricket in India and others, reported in (2008) 11 SCC 700*, where the Apex Court upheld the validity of the said provision, as is evident from a perusal of the said judgment. However, in the present case, the challenge sought to be raised is from another angle contending that the same has to be tested keeping in view the rights of the citizens at large to have free access to information through other modes. We may point out that the very phrase "*its terrestrial networks and Direct-to-Home networks*" appearing in Section 3(1) of the 2007 Act

was made the basis of contention between the parties, which was noted in paragraph (29) of the said report and came to be answered by the Bench *vis-a-vis* the rights of a content rights owner or holder and television or radio broadcasting service provider. The legislative intent was clearly interpreted upholding the confining of the transmission only through the terrestrial and Direct-to-Home networks of the Prasar Bharati. We may however note that adoption of other technical modes of transmission was not the issue raised therein, as has been canvassed before us in the present writ petitions. Nonetheless, the validity of Section 3 of the 2007 Act was upheld by the Supreme Court in the aforesaid judgment.

25. The question of restriction of the rights of the citizen to free information, in our opinion, is neither prohibited nor restricted, inasmuch as the transmission continues through the modes as contained in Section 3 of the 2007 Act. In the absence of any material to infer that there is an absolute prohibition to access to such information or entertainment, it will not be appropriate for us to conclude on any valid principle of law that this amounts to

impinging upon the right of freedom of expression, which includes the freedom to information, to have been violated in any way so as to give rise to a concern of violation of fundamental rights. The prescription of the modes also cannot be said to be arbitrary or discriminatory, inasmuch as such a prescription does not create any embargo on the rights of individuals and citizens and, therefore, cannot be said to be violative of Part III of the Constitution of India, including Article 14 thereof. There is no manifest arbitrariness in the provisions as they stand today or even when they were enacted. The right to freedom of expression, including access to information, is *per se* not absolute and is subject to restrictions as may be reasonably permissible under law and, therefore, particular choices of modes of transmission may by itself be not a fundamental right.

26. The contention of the learned counsel is that an Act which may have been initially valid can be invalidated later on and for that reliance has been placed on paragraph (32) of the judgment in the case of *Satyawati Sharma v. Union of India, reported in (2008) 5 SCC 287*, followed by paragraphs (34) to (39) of the judgment in

the case of *Dharani Sugars and Chemicals Limited v. Union of India, reported in (2019) 5 SCC 480*.

27. There cannot be any dispute with the aforesaid proposition of law, but in the challenge raised before us to the provision, as discussed herein above, we find no plausible reason to grant a declaration as prayed for, inasmuch as even today we do not find any such prohibition or restriction which may violate the fundamental rights of the citizens of this country in receiving free information and having free access to any entertainment of a sports channel, the transmission whereof is being made by Prasar Bharati.

28. The provisions of Section 3 are prescriptive, but the 2007 Act does not prohibit Prasar Bharati from adopting any new technological devices or methods of transmission. The technique which is now sought to be made the basis of challenge to the provisions of Section 3(1) of the 2007 Act are technological advancements that may not even have been available at the time of the enactment of the law in question. It is therefore not a deliberate

omission on the part of the legislature that can possibly give rise to a suspect challenge. It is also not the case of the petitioner that this accessibility has been favoured through modern methods by Prasar Bharati to one class of people and denied to another. It may be a legitimate expectation of the petitioner that such accessibility ought to be adopted as it does not cause any prejudice to anyone, nor does it violate any law.

29. It is here that we may now put on record the latest dictum of the Apex Court in the case of *Anuradha Bhasin* (supra). The accessibility to information through the medium of internet in the light of fundamental rights guaranteed under Part III of the Constitution of India were dealt with by the Apex Court. Paragraphs (22) to (28) of the said judgment are gainfully extracted herein under:

> *"22. Now, we need to concern ourselves about the freedom of expression over the medium of internet. There is no gainsaying that in today's world the internet stands as the most utilized and accessible medium for exchange of information. The revolution within the cyberspace has been phenomenal in the*

past decade, wherein the limitation of storage space and accessibility of print medium has been remedied by the usage of internet.

23. At this point it is important to note the argument of Mr. Vinton G. Cerf, one of the 'fathers of the internet'. He argued that while the internet is very important, however, it cannot be elevated to the status of a human right. [Vinton G. Cerf, Internet Access is not a Human Right, The New York Times (January 04, 2012)]. Technology, in his view, is an enabler of rights and not a right in and of itself. He distinguishes between placing technology among the exalted category of other human rights, such as the freedom of conscience, equality etc. With great respect to his opinion, the prevalence and extent of internet proliferation cannot be undermined in one's life.

24. Law and technology seldom mix like oil and water. There is a consistent criticism that the development of technology is not met by equivalent movement in the law. In this context, we need to note that the law should imbibe the technological development and accordingly mould its rules so as to

cater to the needs of society. Non recognition of technology within the sphere of law is only a disservice to the inevitable. In this light, the importance of internet cannot be underestimated, as from morning to night we are encapsulated within the cyberspace and our most basic activities are enabled by the use of internet.

25. We need to distinguish between the internet as a tool and the freedom of expression through the internet. There is no dispute that freedom of speech and expression includes the right to disseminate information to as wide a section of the population as is possible. The wider range of circulation of information or its greater impact cannot restrict the content of the right nor can it justify its denial. [refer to Secretary, Ministry of Information & Broadcasting Government of India v. Cricket Association of Bengal, (1995) 2 SCC 161; Shreya Singhal v. Union of India, (2015) 5 SCC 1].

26. The development of the jurisprudence in protecting the medium for expression can be traced to the case of Indian Express v. Union of India, (1985) 1 SCC 641, wherein this Court had declared

that the freedom of print medium is covered under the freedom of speech and expression. In Odyssey Communications Pvt. Ltd. v. Lokvidayan Sanghatana, (1988) 3 SCC 410, it was held that the right of citizens to exhibit films on Doordarshan, subject to the terms and conditions to be imposed by the Doordarshan, is a part of the fundamental right of freedom of expression guaranteed under Article 19(1)(a), which can be curtailed only under circumstances set out under Article 19(2). Further, this Court expanded this protection to the use of airwaves in the case of Secretary, Ministry of Information & Broadcasting, Government of India (supra). In this context, we may note that this Court, in a catena of judgments, has recognized free speech as a fundamental right, and, as technology has evolved, has recognized the freedom of speech and expression over different media of expression. Expression through the internet has gained contemporary relevance and is one of the major means of information diffusion. Therefore, the freedom of speech and expression through the medium of internet is an integral part of Article 19(1)(a) and accordingly, any restriction on the same must be in accordance with Article 19(2) of the Constitution.

27. In this context, we need to note that the internet is also a very important tool for trade and commerce. The globalization of the Indian economy and the rapid advances in information and technology have opened up vast business avenues and transformed India as a global IT hub. There is no doubt that there are certain trades which are completely dependent on the internet. Such a right of trade through internet also fosters consumerism and availability of choice. Therefore, the freedom of trade and commerce through the medium of the internet is also constitutionally protected under Article 19(1)(g), subject to the restrictions provided under Article 19(6).

28. None of the counsels have argued for declaring the right to access the internet as a fundamental right and therefore we are not expressing any view on the same. We are confining ourselves to declaring that the right to freedom of speech and expression under Article 19(1)(a), and the right to carry on any trade or business under 19(1)(g), using the medium of internet is constitutionally protected."

The last quoted paragraph (28) however says that the right to access the internet as a fundamental right has not been argued and, therefore, was not being answered as an issue.

30. The aforesaid judgment was assessing a situation where it had to decide the choice between security of the State on one hand and the liberty of the individual on the other. It was a case where internet facilities had been suspended in the State of Jammu and Kashmir, as it then was, whereas the same was in vogue in the rest of the country. Internal private and public communication was severely hit and it is on the said grounds that the challenge raised to the restriction imposed came to be questioned before the Apex Court. The Apex Court clearly held that expression of views through internet is also part of free speech and is constitutionally protected so long as it is within the parameters of Articles 19(2) and 19(6) of the Constitution of India.

31. In the instant case, the access to viewing sports programmes and entertainments through internet applications is the

issue raised. This is therefore a cause for a more legitimate concern rather than an alleged pernicious activity which may involve the security or threat for security of the State as in the case of *Anuradha Bhasin* (supra). The instant issue of accessibility through internet has to be gauged as to whether it is essential and necessary for an individual to have access to such programmes freely through the internet services transmitted by the Prasar Bharti. A restriction thereon can be placed if the accessibility in any way is so uncensored that it may attract the framing of a restrictive law in terms of Articles 19(2) and 19(6) of the Constitution of India.

32. As observed above, in the instant case, no such action or declaration has been made by the respondent Government as to why it cannot or will not adopt other methods. The validity of Section 3 of the 2007 Act has already been upheld, as noted by us in the case of *Union of India v. Board of Control for Cricket in India and others* (supra). The question is as to whether such an accessibility through Prasar Bharati by adopting the modes as suggested by the petitioner would be feasible and permissible and

can such a deviation be allowed as claimed by the petitioner.

33. There can be no gainsaying that the right to claim information through a particular electronic mode or App may by itself be not a fundamental right, but access to the internet is the norm and any restriction thereon has to be on the anvil as to whether any deviation can be allowed. The material placed before us does not lead to any inference of arbitrariness or discrimination in the choice of mode of transmission by Prasar Bharati and the additional modes as suggested by the petitioner do not seem to have been asserted before the respondents in any form for them to respond to the same. The respondents have not even filed a counter affidavit and, therefore, we cannot travel into the realm of reading into the provisions and expansion of the modes of transmission as desired by the petitioner or reducing the statute in an open-ended form as suggested in these writ petitions. This is a clear subject of policy decision to be undertaken by the Government after examining various factors, as this will involve not only the appreciation of the substantive rights being claimed by the

petitioner, but also the procedural mechanism for dissemination of transmission that may be dependent on contracts and other statutory regulations governing transmissions. It is not only the transmission of the contents of an information but also the mode thereof that can fall under the regulatory control of the State. This would therefore necessarily involve an exercise to consider and weigh the essential nature of the legitimate expectation claimed by the petitioner relating to the right of access to information concerning sports and other entertainment activities. Apart from this, the Government will also have to apply the test of proportionality in order to allow any other modes of transmission through the internet services keeping in view the objects and reasons as enunciated in the 1990 Act read with the 2007 Act and ratio of the judgments in the cases noted above.

34. After all nothing is permanent in the material world, particularly in science and technology, except change. Law does not change as fast as technology and to keep pace the Government should be more alert and attentive to the needs of the society. The

assessment has to be from the technical, commercial, legal and other secured interest angles for permitting transmission and re-transmission of broadcasts. Laws of the nature presently involved are not moral principles of eternal value and therefore cannot claim immunity from change. This is more applicable where development in the scientific methods of application, particularly in electronics and communications that affects the entire global population be it in the remotest or busiest of areas, are witnessing a meteoric change every moment much faster than fashion and competing with man's imaginative power. These advancements outlive law and resist any form of unnecessary legal repression, and therefore a change may be the need of the hour. The predictability of a law to survive is an assurance of its validity. This is possible only if the law is reasonably adaptable to human needs. To keep it stifled and caged may generate doubts that need to be answered favourably. The impact of change in the world of technology is so fierce and competitive that like a dress code, it is not the same at morning and at night. The law should therefore cater to both without compromising with other competing requirements.

35. Aristotle rightly observed "even when laws have been written down, they ought not remain always unaltered" because "Time is the best interpreter of every doubtful law" as the Roman thinker Dionysius said. Roscoe Pound caputred this thought by stating simply "Law must be stable, and yet it cannot stand still. Law is to be not read backwards, but forward. Law is experience developed by reason and applied continually to further experience". Law is a human process and a tool of invention, not stagnation. The petitioner may be espousing a public cause, but there may be other beneficiaries about whom we cannot fathom at present. For the time being it is best to remember Livy in the History of Rome (C.10 B.C.):

> "No law perfectly suits the convenience of every member of the community; the only consideration is, whether upon the whole it be profitable to the greater part."

36. We, therefore, leave this request moved by the petitioner

open to be assessed by the Government itself as to whether an unrestricted open accessibility to the viewing of sports and entertainment channels through Prasar Bharati would be feasible upon a consideration of the nature of the infringement as claimed by the petitioner. The Government, therefore, should and must respond. We, therefore, direct the respondents 2 to 4 to coordinate amongst themselves and such other necessary authorities who deserve to be consulted in the process and take an appropriate decision in the matter supported by cogent and plausible reasons preferably within three months.

37. The writ petitions are therefore disposed of with the said observations. No costs. Consequently, W.M.P.Nos.19346 and 26512 of 2019 are closed.

(A.P.S., CJ.) (S.P., J.)
13.01.2020

Index : Yes
sasi

To:

1 The Cabinet Secretary
Union of India
Cabinet Secretariat, Government of India
Rashtrapathi Bhawan
New Delhi – 110004.

2 The Secretary
Ministry of Information and Broadcasting
Shastri Bhawan
New Delhi – 110001.

3 The Secretary
Ministry of Youth Affairs and Sports
Shastri Bhawan
New Delhi – 110001.

4 Prasar Bharati
(India's Public Service Broadcaster)
Prasar Bharati Secretariat
Prasar Bharati House
Copernicus Marg, New Delhi – 110001.

THE HON'BLE CHIEF JUSTICE
AND
SUBRAMONIUM PRASAD,J.

(sasi)

W.P.Nos.19816 and 19822 of 2019

13.1.2020