

That the Petitioner is filing the present writ petition in public interest challenging the validity of the provisions of the Policy Guidelines and of the Grant of Permission Agreements framed by the Government which prohibit private FM Radio and Community Radio stations from broadcasting their own news and current affairs programmes on the same footing as television and print media.

The Government has issued separate policy guidelines for community radio and FM radio, imposing unreasonable restrictions on the broadcast of news and current affairs programmes by them.

The government's control over radio is based on the Indian Telegraph Act of 1885 and the Indian Wireless Telegraphy Act of 1933. Section 4 of the Indian Telegraph Act confers an exclusive privilege on the government in respect of telegraphs, as well as the power to grant licences on such conditions as it thinks fit; Section 3 of the Indian Wireless & Telegraphy Act prohibits the possession of wireless telegraphy apparatus without licence. The government has exercised these statutory powers to impose arbitrary, unreasonable and discriminatory restrictions on the broadcast of news and current affairs related programmes by private FM radio and community radio.

Para 5 (vi) of the Policy Guidelines for setting up Community Radio in India, 2006, provides as follows.

"The Permission Holder shall not broadcast any programmes, which relate to news and current affairs and are otherwise political in nature."

Similarly, successive Government policy guidelines on the expansion of FM radio broadcasting services through private agencies have placed undue restraints on the broadcast of news and current affairs related content.

The restrictions in respect of news and current affairs as specified in the Policy Guidelines of FM Radio Services (Phase II & Phase III), are extracted below.

FM Radio (Phase II) (Policy Guidelines on Expansion of FM Radio Broadcasting Services through Private Agencies, dated 24.09.2008)

“Para 10. News and Current Affairs Programs:

10.1 No news and current affairs programs are permitted under the Policy (Phase-II).

...”

Under Phase III policy guidelines for FM radio, minor modifications have been made to allow the dissemination of news bulletins of All India Radio without any addition or modification.

FM Radio (Phase III) Dated 25.07.2011

“Para 11. News and Current Affairs Programs:

11.1 The permission Holder will be permitted to carry the news bulletins of All India Radio in exactly same format (unaltered) on such terms and conditions as may be mutually agreed with PrasarBharati, No other news and current affairs programs are permitted under the Policy (Phase-III)

11.2 The broadcast pertaining to the following categories will be treated as non-news and current affairs broadcast and will therefore be permissible:

(a) Information pertaining to sporting events excluding live coverage. However live commentaries of sporting events of local nature may be permissible;

(b) Information pertaining to Traffic and Weather;

(c) Information pertaining to and coverage of cultural events, festivals;

(d) Coverage of topics pertaining to examinations, results, admissions, career counseling;

(e) Availability of employment opportunities;

(f) Public announcements pertaining to civic amenities like electricity, water supply, natural calamities, health alerts etc. as provided by the local administration;

(g) Such other categories not permitted at present, that may subsequently be specifically permitted by Ministry of Information and Broadcasting from time to time."

The guidelines also allow 'information' to be broadcast, including news on sports, traffic, weather, cultural events, education and employment, and public announcements made by local authorities on amenities like water and power supply. Effectively, there is a ban on political news more than anything else, since many other kinds of news are allowed under the banner of 'information'.

The prohibition on the broadcast contained in the policy guidelines is buttressed by a contractual restriction stipulated in the Grant of Permission Agreement (GOPA) between the Ministry of Information Broadcasting and the Community Radio/private FM Radio operators. Clause 5 (v) of the GOPA for

community radio and Clause 7 of the GOPA for Phase III FM radio contain identical prohibitory conditions.

In 1995, the Hon'ble Supreme Court gave a landmark judgment in the matter of *Ministry of Information & Broadcasting vs. Cricket Association of Bengal*, (1995) 2 SCC 161 wherein it was held that airwaves were public property to be used to promote public good and expressing a plurality of views, opinions and ideas. This judgment also strongly critiqued the long-held government monopoly over broadcasting. As per the ruling, the 'freedom of speech and expression' guaranteed by Article 19(1)(a) of the Indian Constitution includes the right to acquire and disseminate information. Further, the right to disseminate includes the right to communicate through any media: print, electronic or audio-visual.

It has been 17 years since the aforesaid judgment. Radio broadcasting was thrown open to the private sector in 1999. There have been three rounds of licensing for FM channels so far. At the last count, there were 245 private FM channels and 145 community radio stations in the country. But none of them is allowed to broadcast its own news and current affairs programmes.

India is perhaps the lone democracy where the dissemination of news and current affairs programmes on radio remains a monopoly of the government-owned broadcaster, Prasar Bharati Corporation, which owns and operates the All India Radio/Akashvani. No other democratic country has similar curbs.

None of the USA's 14,000-plus radio stations, the 2,000-odd stations in Spain or the 1,000-plus stations each in Italy, France, Greece and Australia is barred from airing news and related content. In fact, many stations are solely news channels, including specialised ones for community radio.

Countries like Nepal, Sri Lanka, and even Bangladesh, are edging past us in making radio relevant to their citizens. Sri Lanka has about 20 radio stations. In Nepal, Radio Sagarmatha, run by a body of environmental journalists, broadcasts 10 news and sports bulletins, two news magazines, current affairs, morning show, editorials, and 75 minutes of BBC Nepali service every day, besides regular programmes on good governance, gender issues, environment and other public matters. Even in Pakistan, which has recently issued FM licences to 60-odd private players, the government has said that there will eventually be no control over airing of any sort of content over private TV or radio stations. It is high time that India, which is held out as the exemplar of a vibrant, plural democracy, gave meaning to the Constitutional guarantee of freedom of speech and expression in the matter of dissemination of diverse interpretations of the happenings around us on the most popular medium of mass communication..

1927-1947 Sound broadcasting started in India in 1927 with the proliferation of private radio clubs. The operations of All India Radio, as a government organisation mandated to inform, educate and entertain the masses, began formally in 1936. The government control over radio is based

on the Indian Telegraph Act, 1885 and the Indian Wireless Telegraphy Act, 1933.

- 23.07.1977 Terrestrial radio services comprise Amplitude Modulation (AM) radio that uses medium or short wave frequency bands, and Frequency Modulation (FM) that uses VHF frequencies in the 88 MHz to 108 MHz band. AM radio is offered only by AIR, while FM radio which works on line-of-sight principles and can be clearly received within a local area, is offered by both AIR and private channels. AIR began FM broadcasts in Madras on July 23, 1977.
- 1995 The Hon'ble Supreme Court held in *Ministry of Information & Broadcasting Vs Cricket Association of Bengal & Anr* that airwaves were public property to be used to promote public good and expressing a plurality of views, opinions and ideas.
- 1997 TRAI, an independent body to regulate all telecom and communication businesses and recommend terms of licence, monitoring quality, etc of communication service providers set up as per TRAI Act, 1997.
- 1999 FM radio opened to private players. Bids invited for licences to operate 140 FM stations in 40 cities.
- March 2000 29 applicants short-listed for licences to operate 101 FM radio stations. Upon further

screening, letters of intent issued to 93 stations. Ultimately, FM licences granted to 16 companies to operate 37 channels.

16.07.2003 The Economic Times carried a story on this issue and highlighted the fact that there is no such restriction on other democratic countries.

24.07.2003 Many licensed FM stations failed to meet the licence fee requirements and demanded their reduction and a change in the licensing network. MI&B constituted the Radio Broadcast Policy Committee headed by Amit Mitra, Secretary General, FICCI, to make recommendations for Phase II of FM licensing, and to study the desirability and implications of modifying the licensing regime of Phase I licences.

August 2004 The Radio Broadcast Policy Committee recommended the constitution of an independent broadcast regulator. The Committee suggested that pending the creation of a Regulator, a non-statutory Committee be set up with Terms of Reference similar to what the Regulator would have.

TRAI, which had taken over the regulatory responsibilities for broadcasting, recommended removal of the restrictions on broadcast of news and related programmes.

- 2006 Second round of allocation of licences concluded. Government issued policy guidelines for setting up community radio stations.
- 2007 Draft Broadcasting Services Regulation Bill, 2007, containing provisions for an independent broadcast regulator, restrictions on cross-media ownership, and new technologies, formulated.
- 24.09.2008 MI&B issued policy guidelines on expansion of FM radio broadcasting services- Phase II- through private agencies, prohibiting broadcast of news and current affairs programmes.
- 28.11.2008 For Private FM Radio Broadcasting Phase III, TRAI recommended that FM broadcasters may only be permitted to broadcast news, taking content from AIR, Doordarshan, authorized TV news channels, United News of India, Press Trust of India and any other authorized news agency without any substantive change in the content.
- 25.07.2011 Under Phase III policy guidelines for FM, a minor modification made to allow broadcast of FM radio news bulletins of AIR without any addition or modification.
- 10.02.2013 During the 3rd National Community Radio Sammelan, Secretary, MI&B stated that community radio stations would not be allowed to broadcast news for some time to come. As a stop-gap measure, they could be permitted to re-transmit unedited AIR news.

31.05.2013 The petitioner made a comprehensive representation to Minister of I&B for lifting the ban on broadcast of news and current affairs programme by private channels. The representation has not yet elicited any response.

.09.2013 Hence, the present writ petition.

**IN THE SUPREME COURT OF INDIA
(CIVIL WRIT JURISDICTION)
WRIT PETITION (CIVIL) No. OF 2013
(Under Article 32 of the Constitution of India)**

IN THE MATTER OF::

Common Cause: A registered society
Through its Director
Shri Kamal Kant Jaswal
5, Institutional Area
Nelson Mandela Marg,
VasantKunj, New Delhi-70 Petitioner

Versus

Union of India
through its Secretary,
Ministry of Information & Broadcasting,
Shastri Bhavan,
New Delhi-110 001..... Respondent

**WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 32 OF
THE CONSTITUTION OF INDIA**

To,

The Hon'ble Chief Justice of India and His Companion Justices of
the Hon'ble Supreme Court of India.

The Humble petition of the petitioner above-named

MOST RESPECTFULLY SHOWETH:

1. That the Petitioner is filing the present writ petition under Article 32 of the Constitution in public interest questioning the validity of the provisions of the Policy Guidelines and of the Grant of Permission Agreements framed by the Government which prohibit private FM Radio stations and Community Radio stations from broadcasting their own news and current affairs programmes on the same footing as television and print media.

The Government has issued separate policy guidelines for community radio and FM radio and both impose unreasonable restrictions on the broadcast of their own news and current affairs programmes by community radio and FM radio stations. The Petitioner is filing the present petition in public interest as the aforesaid policy guidelines are not only arbitrary and discriminatory, but are also violative of the fundamental right of freedom of speech and expression guaranteed under Article 19 (1) (a) of the Constitution of India.

1. That all the facts mentioned in the writ petition are based on the documents available in public domain and most of them have been downloaded from the internet. The Petitioner has made a representation to the Government *vide* its letter dated 31.05.2013, which is placed as Annexure P9.

Introduction of the Petitioner

2. The Petitioner Society is a public interest organization dedicated to articulation of the common problems of the people. It has been in the forefront of the campaign for governance reforms and probity in public life. It was established by Late Shri H. D. Shourie. The Petitioner Society has filed several public interest petitions before this Hon'ble Court as well as the Hon'ble Delhi High Court. In a writ petition filed by Common Cause, this Hon'ble Court *vide* its order dated May 1, 1990 (AIR 1996, SC 1619) issued

directions for discharge of the accused in all cases where the period of pendency / detention was disproportionately long in relation to the gravity of the offence. Common Cause has also filed a writ petition wherein the Petitioners have made comprehensive suggestions for ensuring speedy justice and liquidating the backlog of court cases. In another writ petition bearing WP No. 24/1995 filed by Common Cause, this Hon'ble Court, vide its order dated April 4, 1996 (AIR 1996 SC 3081), held that the political parties which had failed to file returns of income had violated the statutory provisions of the Income Tax Act. The Court directed that after enquiry, appropriate action should be taken against the defaulting political parties and the Income Tax officers concerned. The Court also held that a political party which is not maintaining audited accounts and has not filed income tax returns was not entitled to any relief in respect of the expenditure incurred in connection with the election of its candidates. In another writ petition filed for enactment of a law to establish the institution of Lokpal for curbing the bane of corruption, this Hon'ble Court ordered the cancellation of irregular allotments of petrol pumps made by the then Minister of Petroleum. Common Cause is co-petitioner in the PIL filed for police reforms. Common Cause had filed a writ petition bearing WP No. 1141/1998 wherein this Hon'ble Court vide its order dated July 1, 1993 (1993 AIR SC 1403) issued time-bound directions for establishment of district consumer forums in accordance with the provisions of the Consumer Protection Act 1986,

providing an effective mechanism for redress of consumer grievances. Common Cause joined hands with Peoples Union for Democratic Rights and Nirman Mazdoor Panchayat Sangam to file a PIL in the High Court of Delhi [Writ Petition (civil) 524 of 2010] for securing the long-denied rights of construction workers engaged in projects related to Commonwealth Games 2010.

Facts of the case:

3. Sound broadcasting started in India in 1927 with the proliferation of private radio clubs. The operations of All India Radio began formally in 1936, as a government organisation, with clear objectives to inform, educate and entertain the masses. The government's control over radio is based on two laws - the Indian Telegraph Act of 1885 and the Indian Wireless Telegraphy Act of 1933. Some of the relevant provisions of these Acts are as follows:

(I) Sec 4 of the Indian Telegraph Act provides:

"Exclusive privilege in respect of telegraphs, and power to grant licenses:

(1) Within [India], the Central Government shall have exclusive privilege of establishing, maintaining and working telegraphs:

Provided that the Central Government may grant a license, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of [India]:

[Provided further that the Central Government may, by rules made under this Act and published in the Official Gazette, permit, subject to such restrictions and conditions as it thinks fit, the establishment, maintenance and working-

(a) of wireless telegraphs on ships within Indian territorial waters [and on aircraft within or above [India], or Indian territorial waters], and

(b) of telegraphs other than wireless telegraphs within any part of [India]."

(II) Section 5(2) enables the government to lawfully intercept telegraph messages on certain grounds. It reads as follows:

"On the occurrence of any public emergency, or in the interest of the public safety, the Central Government or a State Government or any officer specially authorized in this behalf by the Central Government or a State Government may, if satisfied that it is necessary or expedient so to do in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence, for reasons to be recorded in writing, by order, direct that any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission by or transmitted or received by any telegraph, shall not be transmitted, or

shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order..”

(III) Sec 8: Revocation of licenses : *The Central Government may, at any time, revoke any license granted under section 4, on the breach of any of the conditions therein contained, or in default of payment of any consideration payable there under.*

(IV) Section 2(2) of the Indian Wireless Telegraphy Act (No 17 of 1933),

‘wireless telegraphy apparatus’ means any apparatus, appliance, instrument or material used or capable of use in wireless communication, and includes any article determined by rule made under section 10 to be wireless telegraphy apparatus, but does not include any such apparatus, appliance, instrument or material commonly used for other electrical purposes, unless it has been specially designed or adapted for wireless communication or forms part of some apparatus, appliance, instrument or material specially so designed or adapted, nor any article determined by rule made under section 10 not to be wireless telegraphy apparatus;

(V) Section 3-Prohibition of possession of wireless telegraphy apparatus without licence: *Save as provided by section 4, no person shall possess wireless telegraphy apparatus except under and in accordance with a license issued under this Act.*

(VI) Sec 5-Licenses: *The telegraph authority constituted under the Indian Telegraph Act, 1885 (13 of 1885), shall be the authority competent to issue licenses to possess wireless telegraphy apparatus under this Act, and may issue licenses in such manner, on such conditions and subject to such payments, as may be prescribed.*

These licenses are granted by the Wireless Planning & Coordination Authority (WPC) Wing of the Department of Telecommunications (DoT), MI&B. Therefore, to offer most kinds of broadcasting services, a broadcasting company must obtain two types of licenses:

- A Grant of Permission Agreement (GOPA) to offer broadcast services issued by the MI&B under the Telegraph Act.
- A wireless operating license from the WPC Wing of the DOT under the Wireless Telegraphy Act.

4. When India attained Independence in 1947, AIR had a network of six stations and a complement of 18 transmitters. The coverage was 2.5% of the area and 11% of the population. AIR today has a network of 229 broadcasting centres with 148 medium frequency (MW), 54 high frequency (SW) and 168 Frequency Modulation (FM) transmitters. The coverage is 91.79% of the area, serving 99.14% of the people in the largest democracy of the world.
5. Terrestrial radio services can be divided into two main categories, Amplitude Modulation (AM) radio that uses medium or short wave frequency bands, and FM that uses

VHF frequencies in the 88 MHz to 108 MHz band. AM radio is offered only by AIR, while FM radio, which works on line-of-sight principles and can be clearly received within a local area, is offered by both AIR and private channels. AIR began FM broadcasts in Madras on July 23, 1977.

6. In 1995, this Hon'ble Court pronounced a landmark judgment in the matter of *Ministry of Information & Broadcasting Vs Cricket Association of Bengal & Anr*, (1995) 2 SCC 161, wherein it was held that airwaves were public property to be used to promote public good and expressing a plurality of views, opinions and ideas. This judgment strongly critiqued the long-held government monopoly over broadcasting in this country and noted that Indian broadcasting was being governed by archaic laws. The Indian Telegraph Act of 1885 was meant for a different purpose altogether. When it was enacted, there was neither radio nor television, but both these concepts were later sought to be fitted into the definition of 'telegraph'.
7. FM radio was opened to private players in 1999. The Ministry of Information and Broadcasting invited bids for licences to operate 140 FM stations in 40 cities.
8. In March 2000, the government short-listed 29 applicants for licence to operate 101 FM radio stations. Upon further screening, the government issued letters of intent for 93 stations. Ultimately, FM licences were granted to 16 companies to operate 37 channels. The initial FM radio licences were valid for ten years and licensees were required to submit performance bank guarantees equivalent to a

year's licence fee to ensure that they carried out their licence obligation.

9. On 16.07.2003, the Economic Times carried a story on this issue and highlighted the fact that there is no such restriction in other democratic countries. Copy of the article dated 16.07.2003 published in Economic Times is annexed hereto as **Annexure P1 (From page nos. ____ to ____)**.

10. Many of the FM stations that were licensed were financially unsuccessful and could not meet the licence fee requirements. They soon demanded a reduction in licence fee and change in the prevailing licensing network. The MI&B then constituted the Radio Broadcast Policy Committee under the chairmanship of AmitMitra, Secretary General, FICCI, on 24.07.2003, to make recommendations for Phase II of FM licensing, and to "study the desirability and implications of making modifications in the licensing regime of Phase I licences. The Committee called for revisions to the prevailing licence fee structure for FM licences, and recommended the introduction of an annual revenue sharing arrangement that would require FM licensees to pay 4 per cent of their gross revenue as licence fees. It also proposed restructuring the existing licences and restricting the licensees' liability for their original licence fee payments.

11. The Radio Broadcast Policy Committee gave its report in August 2004. As per the report, the radio industry in India is in a nascent stage of growth. However, as the market develops, a number of legal and social issues like

content regulation, networking regulation, etc., as well as technological issues, like digital radio broadcasting (terrestrial/satellite subscription radio channels, etc., are likely to arise in relation to radio. The market forces may not always work in harmony and may sometimes require reconciliation of competing interests. Hence, as the industry develops, it will need an autonomous regulator to provide an appropriate regulatory environment.

The Committee in this respect shared the views and concerns of the Hon'ble Supreme Court as reflected in the case of *Secretary, Ministry of Information and Broadcasting vs. Cricket Association of Bengal*, wherein it was observed that the Central Government should establish an independent autonomous public authority representative of all sections and interests in the society to control and regulate the use of airwaves.

The Committee, therefore, recommended the constitution of an independent broadcast regulator. The Committee further clarified that the Broadcast Regulator should provide and maintain appropriate regulatory environment to foster market-led growth, rather than seek to supplant and substitute market forces through regulation. The main objective of the Broadcast Regulator should be to seek the proper enforcement of rules and regulations and its actions should primarily be complaint-driven.

The Committee suggested that pending the creation of a Regulator (which was likely to take time, requiring Parliamentary approval), a non-statutory Committee be set

up with Terms of Reference similar to what the Regulator would have.

Copy of the Executive Summary of the recommendations of the Radio Broadcast Policy Committee of August 2004 is annexed hereto as **Annexure P2 (From page nos. ____ to ____)**.

12. The Telecom Regulatory Authority (TRAI), an independent body that regulates all telecom and communication businesses in India, recommending terms of licence, monitoring quality, etc of communication service providers, was set up as per TRAI Act, 1997. It took over the regulatory responsibilities for broadcasting in January 2004. In its first set of recommendations to the government submitted in August 2004, it suggested the removal of the restrictions on the broadcast of news and current affairs programmes.

In its recommendations on licensing issues related to the 2nd phase of FM broadcasting, TRAI again advised the government to lift the restrictions on the broadcasting of news and current affairs. It recommended that news broadcasts be allowed after imposing the AIR programme code on the channels, and after considering the existing policies applicable to other media. Allowing news would provide greater variety to audiences and make channels more viable; the possible law and order complications on allowing news broadcasts by private radio stations could be tackled through crime-prevention laws and other

safeguards, it said. Copy of the relevant pages of the TRAI recommendation regarding 2nd Phase of FM broadcasting of August 2004 is annexed hereto as **Annexure P3 (From page nos. ____ to ____)**

13. The second round of allocation of licences concluded in early 2006. The Government also issued policy guidelines for setting up community radio stations in India. The *raison d'être* of community radio was to enable greater participation by civil society, including academia, in issues relating to development and social change. Initially, licenses were issued to renowned educational institutions like IITs/IIMs. The Government has since decided to broad-base the policy by bringing 'Non-profit' organisations like civil society and voluntary organizations, etc. under its ambit. However, the Government in its wisdom decided to impose a prohibition on the broadcast of news and current affairs programmes by community radio stations *vide* Clause 5(vi) of the relevant policy guidelines. Clause 5 (V) of the GOPA for community radio contained identical restrictions. Copies of the Policy Guidelines for Community Radio, 2006 and GOPA for community radio are annexed hereto as **Annexure P4(Colly) (From page nos. ____ to ____)**.

14. The draft Broadcasting Services Regulation Bill, 2007, formulated by the Government had provisions for an independent broadcast regulator, restrictions on cross-media ownership, and new technologies. It was accompanied by a content code for broadcast media. On radio content, the Bill only repeated MI&B's existing policies. But the Bill had

to be shelved after TV broadcasters opposed its provisions on the ground that these would restrict media freedom. TV broadcasters then proceeded to form their own self-regulatory body in 2008.

15. The MI&B issued the policy guidelines on expansion of 2nd phase FM radio broadcasting services through private agencies on 24.09.2008. The guidelines specifically provide as follows.

"Para 10. News and Current Affairs Programs:

10.1 No news and current affairs programs are permitted under the Policy (Phase-II).

Copy of the policy guidelines for 2nd Phase FM radio is annexed hereto as **Annexure P 5 (from page nos. _____ to _____)**.

16. In its recommendations dated 28.11.2008 on the 3rd phase of Private FM Radio Broadcasting, TRAI once again made the following suggestion.

"FM Radio broadcasters may be permitted to broadcast news, taking content from AIR, Doordarshan (DD), authorized TV news channels, United News of India (UNI), Press Trust of India (PTI) and any other authorized news agency without any substantive change in the content. No other source of news is permitted at present".

The Government's response was as follows.

"In the absence of a Regulatory Authority with a localized presence and any arrangement for monitoring the Private channels and the sensitivities involved, it is

not possible to allow complete freedom to Broadcast News even though the content may be sourced from authorized agencies as suggested. What is material is the way of presentation. The same event can be sensationalized or put in a sober manner taking care of the sentiments and sensitivities involved. Thus while the Government can allow the news bulletins of AIR or the Audio version of the news programmes of DD on such terms and conditions to be mutually agreed with PrasarBharati, it is difficult at this stage to allow Private operators to Broadcast news on their own” .

Copy of the relevant pages of the recommendation of the TRAI on 3rd phase of FM radio is annexed hereto as **Annexure P 6 (From page nos. ____ to ____)**.

17. Under Phase III policy guidelines for FM issued on 25.07.2011, a minor relaxation has been made to allow the broadcast of the FM radio news bulletins of All India Radio without any addition or modification by private FM radio stations.

“Para 11. News and Current Affairs Programs:

11.1 The permission Holder will be permitted to carry the news bulletins of All India Radio in exactly same format (unaltered) on such terms and conditions as may be mutually agreed with PrasarBharati, No other news and current affairs programs are permitted under the Policy (Phase-III)

11.2 The broadcast pertaining to the following categories will be treated as non-news and current affairs broadcast and will therefore be permissible:

(a) Information pertaining to sporting events excluding live coverage. However live commentaries of sporting events of local nature may be permissible;

(b) Information pertaining to Traffic and Weather;

(c) Information pertaining to and coverage of cultural events, festivals;

(d) Coverage of topics pertaining to examinations, results, admissions, career counseling;

(e) Availability of employment opportunities;

(f) Public announcements pertaining to civic amenities like electricity, water supply, natural calamities, health alerts etc. as provided by the local administration;

(g) Such other categories not permitted at present, that may subsequently be specifically permitted by Ministry of Information and Broadcasting from time to time.

Para 29. Provisions relating to data broadcasting services in FM sub-carriers (Page 25)

(ii) None of the data services will carry any audio/video/text/data falling within the purview of news and current affairs."

Copies of the policy guidelines for Phase III FM radio dated 25.07.2011 and GOPA, clause 7 of which contains identical restrictions are annexed hereto as **Annexure P7(Colly) (From page nos. _____ to _____)**.

18. The MI&B organised the 3rd National Community Radio Sammelan during 9-11 February 2013 to celebrate a decade of community radio. The celebrations were cut short when the Secretary to MI&B confirmed that community radio stations would not be allowed to broadcast news for some time to come. As a stop-gap measure, he offered community radio stations the permission to re-transmit unedited news from All India Radio (AIR).

The Press Trust of India has filed the following report on the offer made by the Secretary MI&B to the representatives of Community Radio stations.

"While airing of own news content by privately run radio stations is restricted due to its sensitive nature, government will now be allowing Community Radios to retransmit news broadcast by All India Radio.

"That's (news on community radio) an issue, which is quite a sensitive issue. You will realise that in a country like India, where we have no mechanism to know what is going on, if some damage is done, we'll not know for a long time,"

“The fact for the matter is that even for FM which is a far more commercial venture, we have not allowed news which they can create on their own, but we have in the proposed policy that they could perhaps use the AIR news. I am willing to offer that to you,”

Copy of the PTI report dated 10.02.2013 is annexed hereto as **Annexure P8 (From page nos. _____to _____)**.The refusal of the government to allow broadcast of original news on community radio is a serious step backward in our journey towards freedom of speech and expression.

The Petitioner made a detailed representation to the Ministry of Information and Broadcasting on 31.05.2013 requesting the Government to lift the bar from broadcasting news and current affairs programmes by private channels, but the Government has not yet responded to the said representation. Copy of the representation made by the Petitioner Society is annexed hereto as **Annexure P9 (From page nos. _____to _____)**.

19. That the Petitioner has not filed any other writ petition for the same relief before any other court of this country.As the petition involves various private FM news channels/ community radio operating in different parts of the country and the Petitioner is seeking implementation of the judgment of this Hon'ble Court in *Ministry of Information & Broadcasting Vs Cricket Association of Bengal vs. Cricket Association of Bengal, (1995) 2 SCC 161*, therefore, the

Petitioner has no other remedy but to file a writ petition before this Hon'ble Court.

That the present writ petition is being filed on the following grounds amongst others:

GROUNDS

- A. Because the aforesaid Policy Guidelines and of the Grant of Permission Agreements framed by the Government which prohibit private FM Radio stations and Community Radio stations from broadcasting their own news and current affairs programmes are clearly violative of the fundamental right of freedom of speech and expression as guaranteed under Article 19 (1) (a) of the Constitution. It is submitted that the right to freedom of speech and expression also includes the right to information, which encompasses diverse interpretations of news and current affairs. .
- B. Because the aforesaid policy guidelines are in stark contrast to this Hon'ble Court's landmark directive of 1995 in *Ministry of Information & Broadcasting Vs Cricket Association of Bengal vs. Cricket Association of Bengal, (1995) 2 SCC 161*, wherein it was held that airwaves were public property to be used to promote public good and expressing a plurality of views, opinions and ideas. As per the ruling, the 'freedom of speech and expression' guaranteed by Article 19(1)(a) of the Indian Constitution includes the right to acquire and disseminate information. Further, the right to disseminate includes the right to communicate through any media: print, electronic or audio-visual.

C. Because the aforesaid policy guidelines are arbitrary and discriminatory as there is no such restrictions for TV channels and print media and hence, violative of Article 14 of the Constitution. It is submitted that for the bulk of the citizens of this country, radio is virtually the only electronic gadget they can afford. There's no medium other than radio that can offer relevant, local information, either. Radio has a far broader reach than television. According to figures available on the Prasar Bharati website, radio in India has a potential listenership of 99.19% of the population of this vast country. It is perhaps the only policy document where the government does not stop at regulatory compliance, but also attempts to prescribe what kinds of programming should be broadcast.

D. Because India is perhaps the only democratic country in the world where the dissemination of news and current affairs programmes on the radio remains a monopoly of the government-owned broadcaster. No other democratic country has similar curbs. None of the USA's 14,000-plus radio stations, the 2,000-odd stations in Spain or the 1,000-plus stations each in Italy, France, Greece and Australia are barred from airing news and cultural affairs. In fact, many stations are solely news channels, including specialised ones for community radio. Even countries like Nepal, Sri Lanka, and perhaps even Bangladesh, are not having any restriction on broadcast of news

and current affairs programme by private FM channels. In India, the PrasarBharti Corporation owns and operates the All India Radio/Akashvani, which enjoys the monopoly of broadcast of news and current affairs programmes.

E. Because Community radio cannot and should not be restricted to broadcasting government advertisements and information about government schemes. It is equally, if not more, important for these radio stations to engage with local governments and promote transparency and accountability. Further, community radio has its task cut out in dealing with issues of caste, class and gender prejudices within the community that it serves.

In view of the aforementioned facts and circumstances, this Hon'ble Court may be pleased to:

PRAYERS

- a) Issue a writ of mandamus or any other writ or direction of similar nature to declare the impugned provisions of the Policy Guidelines and of the Grant of Permission Agreements framed by the Respondent, vide which private FM Radio stations and Community Radio stations are prohibited from broadcasting their own news and current affairs programmes on the same footing as television and print media, is illegal and unconstitutional being violative of Article 19 (1) (a) of the Constitution;
- b) Issue a writ of mandamus or any other writ or direction to the government to allow private FM Radio stations and Community Radio stations to broadcast their own news and

current affairs programmes on the same footing as television and print media and

- c) Pass any other order or direction as this Hon'ble Court may deem fit and proper.

Petitioner

Through Counsel for the Petitioner
Prashant Bhushan

Drawn By:
Drawn on:
Filed on: