* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **LPA No.1327/2007**

% Judgment delivered on: 04.02.2015

BOARD OF CONTROL FOR CRICKET IN INDIA & ANOTHER … Appellants

Versus

PRASAR BHARATI BROADCASTING CORPORATION OF INDIA AND ANOTHER … Respondents

WITH

WP(C) No.8458/2007

BOARD OF CONTROL FOR CRICKET IN INDIA AND ANOTHER … Petitioners

versus

PRASAR BHARATI, BROADCASTING CORPORATION OF INDIA AND ANOTHER … Respondents

AND

WP(C) 9610/2007

RAVI DEV GUPTA … Petitioner

versus

UNION OF INDIA & OTHERS … Respondents

Advocates who appeared in this case:-

For the Appellant/Petitioner/BCCI	:	Mr Amit Sibal with Ms Radha Rangaswamy, Mr Prateek Chadha, Mr Amrinder Singh and Mr Raman Kumar
For the Appellant/ESPN & Star	:	Mr Sudhir Chandra Aggarwal and Dr Abhishek Manu Singhvi, Senior Advocates with Mr Saikrishna Rajagopal, Mr Gopal Jain, Mr Siddharth Chopra, Ms Sneha Jain and Ms Savni Dutt
For the Respondent/Prasar Bharati	:	Mr Paras Kuhad, ASG with Mr Rajeeve Sharma, Mr Jitin Chaturvedi, Mr Uddyam Mukherjee and
For the Respondent/UoI	:	Mr Jatan Singh

CORAM:
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

BADAR DURREZ AHMED, J.

1. This group of matters comprises of one appeal (LPA No.1327/2007) and two writ petitions [WP(C) 8458/2007 and WP(C) 9610/2007]. As common issues arise, these matters are being disposed of by this common judgment.

2. LPA 1327/2007 is an appeal preferred by the Board of Control for Cricket in India (BCCI) and Nimbus Communications Limited. During the pendency of the appeal, appellant Numbers 3 and 4 were also added being ESPN Software India Pvt. Ltd and Star India Pvt. Ltd. Star India Pvt. Ltd, on the termination of the agreement by the BCCI and Nimbus, entered into a

Media Rights Agreement with BCCI with effect from April 2012 which would continue upto 31.03.2018. ESPN Software India Pvt. Ltd is responsible for the distribution of the sports channels, including ESPN, STAR Sports, STAR Cricket, STAR Sports 2, STAR Cricket HD and ESPN HD. Because of the events taking place during the pendency of the appeal, ESPN Software India Pvt. Ltd and Star India Pvt. Ltd have been added as appellant Nos. 3 & 4.

3. The said appeal (LPA No.1327/2007) is directed against a learned single Judge's judgment dated 05.11.2007 in WP(C) 7655/2007. The writ petition had been filed by the appellant Nos. 1 and 2, namely, BCCI and Nimbus. By virtue of the impugned judgment dated 05.11.2007, the said writ petition was dismissed. In that writ petition, BCCI and Nimbus had sought a direction to be issued to respondent Nos. 1 & 2 (Prasar Bharati Broadcasting Corporation and Union of India) to encrypt Doordarshan's Satellite Transportation Feed of live broadcasting signals of cricket matches organized by BCCI to the Doordarshan Kendras and transmission towers throughout India for subsequent broadcasts on Doordarshan's terrestrial networks. A declaratory writ was also sought for declaring that no person other than Prasar Bharati had the right to transmit, relay or offer for exhibition, the live broadcasting signals of sports events shown by Prasar Bharati under the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007 (hereinafter referred to as 'the Sports Act'). A declaration was also sought that no cable television network, Direct-to-Home (DTH) Network, multi-system network or local cable operator could

broadcast such sports events without a licence from the content owners. Finally, a direction was also sought against the respondent No.1 for notifying that the Doordarshan signals relayed live in respect of the sports event, including cricket matches notified under the Sports Act, should be carried on cable television networks, DTH Broadcasting networks, Multi-System Cable Networks, etc. pursuant to Section 8 of the Cable Television Networks (Regulation) Act 1995 (hereinafter referred to as 'the CTN Act').

4. The learned single Judge, by virtue of the judgment dated 05.11.2007, rejected each of the prayers and, as aforesaid, dismissed the said WP(C) 7655/2007. The learned single Judge analysed the various provisions of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 (hereinafter referred to as 'the Prasar Bharati Act'), the CTN Act, the Sports Act and the Guidelines for Downlinking of TV Channels issued on 11.11.2005 as also the Guidelines for Uplinking from India issued on 02.12.2005 and concluded that Parliament had consciously chosen not to prescribe encryption for transmission of the feed received by Doordarshan to its Kendras. The learned single Judge, with regard to the notification issued under Section 8 of the CTN Act, held that carrying of sporting events in the designated Doordarshan Channels was a matter of policy with which the court could not interfere. He, however, observed that if non-encryption resulted in the violation of any copyrights, which the appellants held as content owners, they were free to seek redressal. The learned single Judge, however, refrained from giving any opinion as to whether the non-encryption of Doordarshan's Satellite Transportation Feed of Live

Broadcasting Signals of cricket matches to Doordarshan Kendras and transmission towers for subsequent broadcasting on Doordarshan's terrestrial networks, resulted in any violation of the copyrights of the appellants. In view of the above, as mentioned earlier, the learned single Judge dismissed the said writ petition.

5. Aggrieved by the said order and / or judgment, the appellants BCCI and Nimbus filed the said LPA (1327/2007). As pointed out above, subsequently, because of the intervening events, ESPN Software India Pvt. Limited and Star India Pvt. Ltd have been added as appellants 3 and 4.

6. WP(C) 8458/2007 was initially filed by BCCI and Nimbus. Subsequently, as in the case of LPA No.1327/2007, ESPN Software India Pvt. Ltd and Star India Pvt. Ltd have been added as petitioner numbers 3 and 4. In WP(C) 8458/2007, the petitioners referred to above, have sought the striking down of Section 3 of the Sports Act insofar as it relates to cricket test matches. There is also a prayer for striking down the notification dated 13.09.2000 issued by Prasar Bharati Broadcasting Corporation (Respondent No.1) (hereinafter referred to as 'Prasar Bharati') under the CTN Act, *inter alia*, mandating that DD1 (National Channel) and DD (News Channel) be carried compulsorily by cable operators. The striking down of the order dated 29.05.2007 issued by the Government of India, Ministry of Information and Broadcasting was also sought. By virtue of the said order,

clause 7.9 was added to the Schedule to the Licence Agreement for DTH services. Clause 7.9 was to read as under:-

> "The licencee shall carry or include in his DTH services the TV Channels which have been notified for mandatory and compulsory carriage as per the provisions of Section 8 of the Cable Television Networks (Regulation) Act, 1995 as amended, failing which the licensor shall be at liberty to take action as per clause 20.1 of this agreement."

7. In WP(C) 8458/2007, it was further prayed that Notification dated 03.07.2007 issued by the Central Government and the Notification dated 19.10.2007 issued by the Ministry of Information and Broadcasting be struck down. By virtue of the notification dated 03.10.2007, the Central Government, in purported exercise of the powers conferred under Section 2(1)(s) of the Sports Act, notified the following sporting events in respect of cricket to be of national importance:-

(1) All official one-day and Twenty-20 matches played by the Indian Men's cricket team and such test matches as are considered to be of high public interest by the Central Government;

(2) Semi-finals and Finals of Men's World Cup and International Cricket Council Championship Trophies;

8. The notification dated 19.10.2007 issued by the Ministry of Information and Broadcasting once again invoked the powers under Section 2(1)(s) of the Sports Act, thereby notifying the India-Pak Test series of

cricket to be played in November-December 2007 as a sporting event of national importance. The other prayers in the said WP(C) 8458/2007 related to interim orders.

9. WP(C) 9610/2007 has been filed by one Ravi Dev Gupta claiming to be the President of Akhil Bharatiya Grahak Panchayat, a body registered under the Societies Registration Act, 1860. It is said that the said body raises various issues relating to consumers. The writ petition is in the nature of a Public Interest Litigation (PIL). In WP(C) 9610/2007, a declaration has been sought that a portion of the notification dated 03.10.2007, to which we have referred to above, is *ultra vires* the Sports Act and also Article 14 of the Constitution of India. According to the petitioner, the offending portion of the said notification is – "*such test matches as are considered to be of high public interest by the Central Government*". A prayer has also been made for commanding the respondents (Union of India and Prasar Bharati) to live telecast the feed from the content holders of all test matches being played by the Indian Men's Cricket Team with any other test match playing country recognized by ICC. A further prayer has also been made to direct the live telecast of test matches being played between India and Australia with effect from 26.12.2007. In essence, this writ petition seeks that all test matches being played by the Indian Men's Cricket Team with any other test match playing country should be mandatorily telecast live from the feed provided by the content holder. The petitioner has even challenged the discretion of the Central Government to specify as to which test matches are to be considered of high public interest. We may add that, initially, WP(C)

9610/2007 was filed against only two respondents – Union of India and Prasar Bharati. However, subsequently, BCCI and Taj Television Limited were also added as respondents.

10. Before we set out the rival contentions of the parties, it would be appropriate to refer to the provisions of the various Acts and Rules. The Prasar Bharati Act came into operation on 15.09.1997. And, by virtue of Section 3 thereof, Prasar Bharati was established as a corporation. Its functions and powers were spelt out in Section 12 thereof. Section 12(1) provides that "*subject to the provisions of the Prasar Bharati Act, it shall be the primary duty of Prasar Bharati to organize and conduct 'public broadcasting services' to inform, educate and entertain the public and to ensure a balanced development of broadcasting on radio and television"*. Section 12(2)(e) clearly stipulated that "*Prasar Bharati shall, inter alia, be guided by the objective of providing adequate coverage to sports and games so as to encourage healthy competition and the spirit of sportsmanship*". Section 12(3) stipulates the steps which Prasar Bharati may take for realizing the objectives spelt out in Section 12(2). Section 12(3)(a) enables Prasar Bharati to take steps to ensure that broadcasting is conducted as a public service to provide and produce programmes. Section 12(3)(c) enables Prasar Bharati to negotiate for purchase of or, otherwise acquire programmes and rights or privileges in respect of respondents and other events, films, serials, occasions, meetings, functions or incidents of public interest for broadcasting and to establish procedures for the allocation of such programmes, rights or privileges to the services.

11. From these provisions, it is clear that Prasar Bharati has the primary duty to organise and conduct public broadcasting service with the object of informing, educating and entertaining the public and to ensure a balanced development of broadcasting on radio and television. One of its objectives is to provide adequate coverage on sports and games so as to encourage healthy competition and the spirit of sportsmanship. In order to realize this goal, the Prasar Bharati has been empowered to negotiate for purchase, or otherwise acquire programmes and rights or privileges, *inter alia*, in respect of sports.

12. The next set of provisions relates to the CTN Act. The preamble to the CTN Act indicates that it is an Act "*to regulate the operation of cable television networks in the country and for matters connected therewith or incidental thereto*". Section 3 of the CTN Act stipulates that no person shall operate a cable television network unless he is registered as a cable operator under the Act. The expression "cable operator" has been defined in Section 2(aiii) as follows:-

> "**2. Definitions."**– In this Act, unless the context otherwise requires –
>
> xxxx xxxx xxxx xxxx xxxx
>
> (aiii) "cable operator" means any person who provides cable service through a cable television network or otherwise controls or is responsible for the management and operation of a cable

> television network and fulfils the prescribed eligibility criteria and conditions."

The above definition was introduced with retrospective effect from 25.10.2011 and earlier the expression "cable operator" was defined under Section 2(aa). However, the said amendment is not a matter of much concern insofar as the present group of cases is concerned.

13. The most important and material provision of the CTN Act, insofar as we are concerned, is Section 8 thereof. This has also undergone an amendment by virtue of Act 21 of 2011 with retrospective effect from 25.10.2011. Though the amendment has been brought about after the decision of the learned single Judge in WP(C) 7655/2007, it will not alter the position insofar as the cases before us are concerned. We are, therefore, referring to the provisions of Section 8 of the CTN Act as they stand today. Section 8 reads as under:-

> "**8. Compulsory transmission of certain channels.**– (1) The Central Government may, by notification in the Official Gazette, specify the names of Doordarshan channels or the channels operated by or on behalf of Parliament, to be mandatorily carried by the cable operators in their cable service and the manner of reception and re-transmission of such channels.
>
> Provided that in areas where digital addressable system has not been introduced in accordance with the provisions of sub-section (1) of section 4A, the notification as regards the prime band is concerned shall be limited to the carriage of two Doordarshan terrestrial channels and one regional language

channel of the State in which the network of the cable operator is located.

(2) The channels referred to in sub-section (1) shall be re-transmitted without any deletion or alteration of any programme transmitted on such channels.

(3) Notwithstanding the provisions of sub-section (1), any notification issued by the Central Government or the Prasar Bharati (Broadcasting Corporation of India) in pursuance of the provisions of sub-section (1), prior to the 25th day of October, 2011 shall continue to remain in force till such notifications are rescinded or amended, as the case may be."

14. A plain reading of Section 8(1) makes it clear that the Central Government is empowered to specify the names of Doordarshan channels or the channels operated by or on behalf of the Parliament, by a notification in the Official Gazette, to be mandatorily carried by the cable operators in their cable service and also specify the manner of reception and retransmission of such channels. The proviso makes it clear that where the digital addressable systems have not been introduced in place of the earlier addressable systems, the notification with regard to the prime band would be limited to the carriage of two Doordarshan Terrestrial Channels and one regional language channel of the State in which the network of the cable operator is located. It is also made clear by virtue of Section 8(3) that notwithstanding the provisions of sub-Section (1), any notification issued by the Central Government or Prasar Bharati in pursuance of the provisions of sub-Section (1) prior to 25.10.2011 (the date from which the amendment took effect), shall continue to remain in force till such notifications are rescinded or amended, as the case may be. All that Section 8 does is to permit the

Central Government to specify the Doordarshan channels or the channels operated by or on behalf of the Parliament to be mandatorily carried by the cable operators. The earlier notifications issued under Section 8, including the notification dated 13.09.2000 to which we have alluded above, required the carrying of DD1 (National Channel) and DD (News Channel) and one regional language channel by the cable operators.

15. The next set of provisions, which need our attention, is to be found in the Sports Act. The preamble to the Sports Act indicates that it is an Act "to provide access to the largest number of listeners and viewers, on a free to air basis of sporting events of national importance through mandatory sharing of sports broadcasting signals with Prasar Bharati and for matters connected therewith or incidental thereto. Section 3 of the Sports Act is the most important Section for our purposes and it reads as under:-

> **"3. Mandatory sharing of certain sports signals. –** (l) No content rights owner or holder and no television or radio broadcasting service provider shall carry a live television broadcast on any cable or Direct-to-Home network or radio commentary broadcast in India of sporting events of national importance, unless it simultaneously shares the live broadcasting signal, without its advertisements, with the Prasar Bharati to enable them to re-transmit the same on its terrestrial networks and Direct-to-Home networks in such manner and on such terms and conditions as may be specified.
>
> (2) The terms and conditions under sub-section (1) shall also provide that the advertisement revenue sharing between the content rights owner or holder and the Prasar Bharati shall be in the ratio of not less than 75:25 in case of television coverage and 50:50 in case of radio coverage.

(3) The Central Government may specify a percentage of the revenue received by the Prasar Bharati under sub-section (2), which shall be utilised by the Prasar Bharati for broadcasting other sporting events."

16. We note that Section 3 uses several expressions, such as "cable network", "Direct-to-Home network," "sporting events of national importance" and "terrestrial networks". In order to understand these expressions, it would be necessary to see the definitions of "Direct-to-Home (DTH) Broadcasting Service", "sporting events of national importance" and "terrestrial television service" as provided in Section 2(1)(j), (s) and (t) which are set out hereinbelow:-

"2. Definitions.– (1) In this Act, unless the context otherwise requires,–

xxxxx xxxxx xxxxx xxxxx xxxxx

(j) "Direct-to-Home (DTH) broadcasting service" means a service for multi-channel distribution of programmes direct to a subscriber's premises without passing through an intermediary such as a cable operator by up linking to a satellite system;

xxxxx xxxxx xxxxx xxxxx xxxxx

(s) "sporting events of national importance" means such national or international sporting events; held in India or abroad, as may be notified by the Central Government in the Official Gazette to be of national importance;

xxxxx xxxxx xxxxx xxxxx xxxxx

(t) "terrestrial television service" means a television broadcasting service provided over the air by using a land-based transmitter and directly received through receiver sets by the public."

17. We may also refer to Section 5 of the Sports Act which reads as under:-

> **"5. Power of the Central Government to issue Guidelines.–** The Central Government shall take all such measures, as it deems fit or expedient, by way of issuing Guidelines for mandatory sharing of broadcasting signals with Prasar Bharati relating to sporting events of national importance:
>
> *Provided* that the Guidelines issued before the promulgation of the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Ordinance, 2007 (Ord. 4 of 2007), shall be deemed to have been issued validly under the provisions of this section."

18. A reference also needs to be made to the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Rules 2007 (hereinafter referred to as 'the Sports Rules') and, in particular to Rule 3(7) which reads as under:-

> "**3. Sharing of Sports Broadcasting Signals with Prasar Bharati.**–
>
> xxxxx xxxxx xxxxx xxxxx xxxxx
>
> (7) The Prasar Bharati shall have the right to retransmit the signals on its terrestrial and Direct-to-Home networks including the AM and FM Channels of the All India Radio."

19. From the above provisions of the Sports Act and Sports Rules, it appears that no content rights owner or holder and no television broadcasting service provider can carry a live television broadcast on any cable or DTH network or radio commentary broadcast in India of sporting events of national importance unless it simultaneously shares the live broadcasting signal, without its advertisements, with Prasar Bharati "to enable them to re-transmit the same on its terrestrial networks and DTH networks" in such manner and on such terms and conditions as may be specified. It is also pertinent to note that Section 3(2) indicates that the terms and conditions referred to in Section 3(1) shall also provide that the advertisement revenue sharing between the content rights owner or holder and the Prasar Bharati would be in the ratio of not less than 75:25 in the case of television coverage. This means that if the shared content is re-transmitted by Prasar Bharati on its terrestrial networks and DTH network and it earns advertisement revenue from the same, such revenue shall be shared with the content rights owner / holder and Prasar Bharati in the ratio not less than 75:25 in the case of television coverage.

20. Mr Sudhir Chandra, senior advocate and Dr Abhishek Manu Singhvi, senior advocate argued on behalf of ESPN Software India Pvt. Ltd and Star India Pvt. Limited, respectively, in these matters. Mr Amit Sibal advanced arguments on behalf of BCCI and Mr Paras Kuhad, Additional Solicitor General of India, appeared on behalf of Prasar Bharati and Union of India.

21. Mr Sudhir Chandra submitted that the issue at hand related to the interplay between the provisions of Section 3 of the Sports Act and Section 8 of the CTN Act. He submitted that Section 3 of the Sports Act required a content rights owner to mandatorily share simultaneously the live broadcasting signal of sporting events of national importance, without advertisements, with Prasar Bharati to enable Prasar Bharati to re-transmit the same on Prasar Bharati's terrestrial networks and DTH networks. He submitted that the mandatory sharing of the live broadcasting signals was only for the purposes of enabling Prasar Bharati to re-transmit the said signals on Prasar Bharati's terrestrial networks and Prasar Bharati's DTH Networks and did not extend to cable operators. This is so, because cable operators cannot be regarded as part of Prasar Bharati's terrestrial networks or Prasar Bharati's DTH Networks. He submitted that while the provisions of Section 3 are clearly mandatory, the provisions of Section 8 of the CTN Act are not compulsory on the Central Government. Referring to Section 8 of the CTN Act, Mr Sudhir Chandra submitted that it stipulates that the Central Government "may", by notification in the Official Gazette, specify the names of Doordarshan channels or the channels operated by or on behalf of Parliament, to be mandatorily carried by the cable operators in their cable service and the manner of reception and re-transmission of such channels. He submitted that, while it was compulsory for the cable operators to carry the specified Doordarshan channels and channels operated by or on behalf of Parliament, it was not compulsory on the Central Government, inasmuch as the Central Government could choose which channels were to be mandatorily carried by the cable operators. It was further submitted that

Section 8 of the CTN Act was separate and distinct from Section 3 of the Sports Act. There was no obligation cast under Section 8 of the CTN Act to violate Section 3 of the Sports Act. He submitted that ESPN / STAR do not have any objection, nor can they have, for showing the live telecast of the cricket matches on the terrestrial networks or DTH networks of Prasar Bharati. His objection is that the live feed cannot be shared with private cable operators. He referred to the Supreme Court decision in the case of ***State of Madhya Pradesh and Others v. Vishnu Prasad Sharma and Others*****: AIR 1966 SC 1593**. In that decision, with reference to the Land Acquisition Act 1894, the Supreme Court observed as under:-

> " … As the Act is an expropriatory Act, that interpretation of it should be accepted which puts the least burden on the expropriated owner".

22. Mr Sudhir Chandra submitted that Section 3 of the Sports Act was also an expropriatory legislation and it should be so interpreted as to cast the least burden on the expropriated owner, which, in the present case was the content rights owner, namely, ESPN / STAR. A reference was also made by Mr Sudhir Chandra to the Supreme Court decision in the case of ***Devinder Singh and Others v. State of Punjab and Others*****: AIR 2008 SC 261**, wherein once again, with reference to the Land Acquisition Act, 1894, which was an expropriatory legislation, the Supreme Court held as under:-

> "41. … expropriatory legislation, as is well-known, must be strictly construed. …"

23. It was, therefore, contended by Mr Sudhir Chandra that Section 3 of the Sports Act should be construed strictly and in a manner which casts the least burden on the expropriated owner. It was, therefore, submitted that the simultaneous live broadcasting signal, which was mandatorily to be shared with Prasar Bharati, could only be utilized by Prasar Bharati for re-transmitting the feed on its own terrestrial networks and its own DTH networks and not through the network of cable operators by employing the route of Section 8 of CTN Act. Section 8 of the CTN Act, could not be read as being destructive of Section 3 of the Sports Act.

24. It was further submitted by Mr Sudhir Chandra that there is no doubt that there was public interest in the sharing of the live broadcasting signal with regard to cricket matches of national importance over the terrestrial and DTH networks of Prasar Bharati, but this cannot be extended to cover cable operators. Normally, cable operators would have had to take a licence from ESPN / STAR, but because DD1 and DD (News Channel) are compulsorily required to be shown on cable by virtue of Section 8 of the CTN Act, if the live feed is broadcast on these channels, the cable operators would not and do not need to take a licence from ESPN / STAR as their viewers would be able to see the cricket matches, in any event.

25. A reference was made to the Supreme Court decision in the case of ***State of Rajasthan and Others v. Aanjaney Organic Herbal Pvt. Limited*:**

2012 (10) SCC 283, wherein the Supreme Court recognized the well-settled principle that (para 12):-

> "… a thing which cannot be done directly cannot be done indirectly over-reaching the statutory restriction."

26. Dr Abhishek Singhvi submitted that Star India Pvt. Ltd was the owner of the rights and ESPN Software India Pvt. Ltd was the broadcaster. The rights had been purchased from BCCI in every form for a huge sum of Rs 3851 crores for the period April 2012 to March 2018. Section 3 of the Sports Act was aimed at people, who did not have access through the private platform, but had access to the terrestrial and DTH network of Doordarshan. He further submitted that, as per the TRAI Consultation Paper 5 of 2013, only 4.29% of the viewers do not have access to cable / private platform. He submitted that the private platform / cable operators, in any, event, charge a fee / bouquet charges and the consumers / subscribers are not getting their television content free.

27. Dr Singhvi further submitted that by placing the live broadcasting signal in the two Doordarshan channels, which have to be compulsorily carried by the cable operators under Section 8 of the CTN Act, ESPN / STAR are hit on two counts. First of all, they lose their subscription money and, secondly, they lose out on the advertisement revenue. The end result of this scheme is that it benefits the cable operators at the cost of ESPN / STAR. Dr Singhvi submitted that when there is an expropriation for

purpose 'X', the same must be used for purpose 'X' only. Meaning thereby that when the expropriation by virtue of Section 3 of the Sports Act is for re-transmission of the live broadcasting signals on Prasar Bharati's terrestrial networks and Prasar Bharati's DTH networks, then it must be used for that purpose only and cannot be used for extending the expropriation to cover re-transmission through cable operators. A reference was made to the Supreme Court decision in the case of ***Rajasthan State Road Transport Corporation and Others v. Zakir Hussain*****: 2005 (7) SCC 447**, wherein the Supreme Court held as under:-

> "33. … it is settled law that where an Act creates an obligation and enforces the performance in a specified manner, the performance cannot be enforced in any other manner."

28. A reference was also made to ***Royal Orchid Hotels Limited and Another v. G. Jayarama Reddy and Others*****: 2011 (10) SCC 608** which was also a decision in the context of the Land Acquisition Act, 1894. The Supreme Court observed as under :-

> "38. … the courts have repeatedly held that in exercise of its power of eminent domain, the state can compulsorily acquire land of the private persons, but this proposition cannot be overstretched to legitimize a patently illegal and fraudulent exercise undertaken for depriving the land owners of their constitutional right to property with a view to favour private persons. …"

29. It was submitted that ESPN / STAR's rights had been mandatorily acquired under Section 3 of the Sports Act for the specific purpose of re-

transmitting the same on Prasar Bharati's terrestrial and DTH networks. But, it has directly resulted in benefiting cable operators at the cost of ESPN / STAR. According to Dr Singhvi, this has resulted in a subscription loss of Rs 970 crores and a loss of advertising revenue to the extent of Rs 245 crores since 2007.

30. Dr Singhvi further submitted that the Sports Act was a specific Act and compared to the CTN Act, it was a later Act. He submitted that the power under the CTN Act could not be used in derogation of the Sports Act. He referred to the preamble of the Sports Act which, as pointed out earlier in this judgment, indicated that it was an Act to provide access to the largest number of listeners and viewers, "on a free to air basis" of sporting events of national importance through mandatory sharing of sports broadcast signals with Prasar Bharati and for matters connected therewith or incidental thereto. A reference was made to the Lok Sabha debates and, particularly to the discussion held on 08.03.2007 at the time of introduction of the Bill, which was the precursor, which later matured into the Sports Act. The Minister of Parliamentary Affairs and Minister of Information and Broadcasting in his speech stated as under:-

> "There were two things to be taken into account while this issue came before us. Firstly, the uplinking of a game from India to outside, and, secondly, downlinking a game from outside to India. There was a guideline duly approved by the Cabinet that: "Please do share live feed to Doordarshan to support those viewers who do not have any cable network." Indian population in the remote areas want to watch their popular

games, but they are always deprived for not having wider support to the games …"

xxxxx xxxxx xxxxx xxxxx xxxxx

"As you know, the terrestrial network belong to Prasar Bharati, and it has the widest coverage so far as the common people are concerned, whom we call *aam admi* within the villages. They were crying that in spite of the Government guidelines, they could not watch the game."

31. In this backdrop, Dr Singhvi submitted that the respondents cannot be permitted to carry the live broadcasting signals of cricket matches of national importance in Prasar Bharati's channels, which are to be compulsorily carried by the cable operators by virtue of Section 8 of the CTN Act.

32. Mr Amit Sibal, appearing on behalf of the BCCI, submitted that the manner in which the respondents have operated the provisions of Section 8 of the CTN Act, grants an illegitimate benefit to Doordarshan and cable operators at the cost of BCCI. He submitted that BCCI survives on media rights and not on gate receipts. If the media rights are whittled, ultimately, the sport of cricket would suffer. Mr Sibal referred to the Supreme Court decision in the case of ***Secretary, Ministry of Information and Broadcasting, Government of India and Others v. Cricket Association of Bengal and Others*****: 1995 (2) SCC 161**, where BCCI has been recognized as

a sports organizer as distinct from a business organization. The Supreme Court observed as under:-

> "75. It can hardly be denied that sport is an expression of self. In an athletic or individual event, the individual expresses himself through his individual feat. In a team event such as cricket, football, hockey etc., there is both individual and collective expression. It may be true that what is protected by Article 19(1)(a) is an expression of thought and feeling and not of the physical or intellectual process or skill. It is also true that a person desiring to telecast sports events when he is not himself a participant in the game, does not seek to exercise his right of self expression. However, the right to freedom of speech and expression also includes the right to educate, to inform and to entertain and also the right to be educated, informed and entertained. The former is the right of the telecaster and the latter of the viewers. The right to telecast sporting event will therefore also include the right to educate and inform the present and the prospective sportsmen interested in the particular game and also to inform and entertain the lovers of the game. Hence, when a telecaster desires to telecast a sporting event, it is incorrect to say that the free speech element is absent from his right. The degree of the element will depend upon the character of the telecaster who claims the right. An organiser such as the BCCI or CAB in the present case which are indisputably devoted to the promotion of the game of cricket, cannot be placed in the same scale as the business organisations whose only intention is to make as large a profit as can be made by telecasting the game. Whereas it can be said that there is hardly any free speech element in the right to telecast when it is asserted by the latter, it will be a warped and cussed view to take when the former claim the same right, and contend that in claiming the right to telecast the cricket

matches organised by them, they are asserting the right to make business out of it. The sporting organisations such as BCCI / CAB which are interested in promoting the sport or sports are under an obligation to organise the sports events and can legitimately be accused of failing in their duty to do so. The promotion of sports also includes its popularization through all legitimate means. For this purpose, they are duty bound to select the best means and methods to reach the maximum number of listeners and viewers. Since at present, radio and TV are the most efficacious methods, thanks to the technological development, the sports organisations like BCCI / CAB will be neglecting their duty in not exploring the said media and in not employing the best means available to them to popularise the game. That while pursuing their objective of popularising the sports by electing the best available means of doing so, they incidentally earn some revenue, will not convert either them into commercial organisations or the right claimed by them to explore the said means, into a commercial right or interest. It must further be remembered that sporting organisations such as BCCI / CAB in the present case, have not been established only to organise the sports events or to broadcast or telecast them. The organisation of sporting events is only a part of their various objects, as pointed out earlier and even when they organise the events, they are primarily to educate the sportsmen, to promote and popularise the sports and also to inform and entertain the viewers. The organisation of such events involves huge costs. Whether surplus is left after defraying all the expenses, is ploughed back by them in the organisation itself. It will be taking a deliberately distorted view of the right claimed by such organisations to telecast the sporting event to call it an assertion of a commercial right. Yet the MIB has chosen to advance such contention which can only be described as most unfortunate. It is needless to state that we are, in the

circumstances, unable to accept the ill-advised argument. It does no credit to the Ministry or to the Government as a whole to denigrate the sporting organisations such as BCCI / CAB by placing them on par with business organisations sponsoring sporting events for profit and the access claimed by them to telecasting as assertion of commercial interest.

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81. It is unnecessary to repeat what we have stated while dealing with the first contention earlier, with regard to the character of BCCI / CAB, the nature of and the purpose for which the right to access to telecast is claimed by them. As pointed out is not possible to hold that what the BCCI/CAB are in the present cast claiming is commercial right to exploit the event unless one takes a perverse view of the matter. The extent of perversity is apparent from the contention raised by them that to engage a foreign agency for the purpose is to make it a device for a non-citizen to assert his rights under Article 19(1)(a). It cannot be denied that the right to freedom of speech and expression under Article 19(1)(a) includes the right to disseminate information by the best possible method through an agency of one's choice so long as the engagement of such agency is not in contravention of Article 19(2) of the Constitution and does not amount to improper or unwarranted use of the frequencies. Hence the choice of BCCI/CAB of a foreign agency to telecast the matches, cannot be objected to. There is no suggestion in the present case that the engagement of the foreign agency by the BCCI/CAB is violative of the provisions of Article 19(2). On the other hand, the case of MIB, as pointed out earlier, is that the BCCI/CAB want to engage the foreign agency to maximise its revenue and hence they are not exercising their right under Article19(1)(a) but their commercial right under Article 19(1)(g). We have pointed out that argument is not factually correct and what in fact that BCCI/CAB is asserting is a right under Article 19(1)(a). While asserting the said right, it is incidentally going to earn some revenue. In the

> circumstances, it has the right to choose the best method to earn the maximum revenue possible. In fact, it can be accused of negligence and may be attributed improper motives, if it fails to explore the most profitable avenue of telecasting the event, when in any case, in achieving the object of promoting and popularising the sports, it has to endeavour to telecast the cricket matches. The record shows that all applications were made and purported to have been made to the various agencies on behalf of CAB for the necessary licences and permissions. All other Ministries and Departments understood them as such and granted the necessary permission and licences. Hence, by granting such permission, the Government was not in fact granting permission to the foreign agency to exercise its right under Article 19(1)(a). If, further, that was the only objection in granting permission, a positive approach on the part of the MIB could have made it clear in the permission granted that it was being given to CAB. In fact, when all other Government Departments had no difficulty in construing the application to that effect and granting the necessary sanctions/permissions at their end, it is difficult to understand the position taken by the MIB in that behalf. One wishes that such a contention was not advanced."
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> (Underlining added)

33. It was further contended by Mr Sibal that in the preamble of the 2007 Act, the very important words, "on a free to air basis" cannot be ignored while considering this case. In other words, the idea and object behind the Sports Act was to provide access to the largest number of viewers, "on a free to air basis", insofar as sporting events of national importance were concerned through the methodology of mandatory sharing of sports broadcasting signals with Prasar Bharati. It was contended that this aspect should not be lost sight of. Consequently, the mandatory sharing of signals did not extend to cable operators. Furthermore, Section 8 of the CTN Act,

in any event, did not cover private DTH networks. Therefore, the live broadcasting signals of cricket matches of national importance cannot be carried by private cable operators or by private DTH networks as that would be violative of the very object and purpose behind the Sports Act and, in particular, Section 3 thereof.

34. Mr Kuhad, the learned Additional Solicitor General of India, appearing on behalf of Prasar Bharati and the Union of India submitted that broadcasting has always been a State monopoly and has two elements. The first being the programme content and the second being the aspect of broadcasting itself which, in itself has three further elements of uplinking, downlinking and distribution. He submitted that airways operate in different frequencies. Some are reserved for the police and defence, etc. and some are reserved for television etc. A range of frequencies is known as a spectrum. He referred to the Supreme Court decision in ***Centre for Public Interest Litigation v. Union of India*****: 2012 (3) SCC 1** to contend that the 2G Spectrum was regarded as a national resource. He submitted that approximately 155 million households all over India are connected to television. Out of these, 95 million households are connected through cable. 55 million households are within the reach of DTH networks. Only about 4.6 million households are connected via the terrestrial networks of Prasar Bharati. He submitted that ESPN / STAR wants that free broadcasting should be limited to these 4.6 million terrestrial connections. The learned ASG made the following five propositions:-

(1) Due to its nature, the exercise of medium's rights has tremendous impact and implications on a citizen's right to know and receive information encompassed under Article 19(1)(a) of the Constitution of India and, therefore, it is the primary duty of the State to regulate it in public interest;

(2) Since broadcasting is an activity, which is based on the utilization of natural resources, it brings within its character, the public trust doctrine which entails that a natural resource cannot be used for maximization of profits of private entities, but should be used for the maximization of public interest. Consequently, broadcasting is subject to public trust obligations and regulations;

(3) A citizen being a member of society, enjoys cultural rights which extend to his / her right to access of cultural content;

(4) The spectrum is a scarce resource and the community has an inalienable right to utilize that natural resource so as to secure access to the content flowing through the spectrum;

(5) Broadcasting, because of its importance, has throughout the world been held by States as a monopoly. By virtue of the Indian Telegraph Act 1885 read with the Indian Wireless Telegraphy Act, 1933, the State, in India, continues to enjoy the right to maintain this monopoly. Thus, the state has absolute freedom to regulate the grant of licences to

broadcast with reference to such conditions as are in consonance with public interest.

35. With regard to public trust doctrine, it was submitted that modern industrial and post-industrial corporations control such a large extent of economic and social activities that they have a wide and pervasive impact on the lives of most people. It was further submitted that the public right to use the natural resources cannot be permitted to be impacted by private agreement. Reliance was placed on the Supreme Court decision in ***Reliance Natural Resources Ltd v. Reliance Industries Ltd*: 2010 (7) SCC 1 (*para 151)***. A reference was also made to paragraph 75 of the Supreme Court decision in the 2G Spectrum case [***Centre for Public Interest Litigation and Others v. Union of India and Others*: 2012 (3) SCC 1**], wherein the Supreme Court observed as under:-

> "75. The State is empowered to distribute natural resources. However, as they constitute public property/national asset, while distributing natural resources, the State is bound to act in consonance with the principles of equality and public trust and ensure that no action is taken which may be detrimental to public interest. Like any other State action, constitutionalism must be reflected at every stage of the distribution of natural resources. In Article 39(b) of the Constitution it has been provided that the ownership and control of the material resources of the community should be so distributed so as to best sub-serve the common good, but no comprehensive legislation has been enacted to generally define natural resources and a framework for their protection. of course, environment laws enacted by Parliament and State legislatures

deal with specific natural resources, i.e., Forest, Air, Water, Costal Zones, etc."

(Underlining added)

36. A reference was made to the decision of the U.S. Supreme Court in ***Turner Broadcasting System, Inc. et al. v. Federal Communications et al.*: 512 US 622 (1994)**. The question before the Supreme Court pertained to Sections 4 and 5 of the Cable Television Consumer Protection and Competition Act 1992. Those provisions required cable television systems to devote a portion of their channels to the transmission of local broadcast television stations. The question was whether such provisions abridged the freedom of speech or of the press in violation of the First Amendment of the US Constitution. It was noted in the said decision that in contrast to commercial broadcast stations, which transmit signals at no charge to viewers and generate revenues by selling time to advertisers, cable systems charge subscribers a monthly fee for the right to receive cable programming and rely to a lesser extent on advertising. An argument was raised that the must carry regulations were content based and the object behind those provisions was to promote speech of a favoured content. This argument was repelled by the US Supreme Court. It was observed that the overriding objective behind enacting the must carry provisions was not to favour programming of a particular subject matter, view point or format, but rather to preserve access to free television programming for the 40 per cent of Americans without cable. The said decision was cited by the learned ASG in order to draw a parallel with the similar must carry obligation cast by

Section 8 of the CTN Act insofar as the two Doordarshan channels were concerned.

37. A reference was made to an article – "Indian DTH Industry: A Strategic Analysis" – by Dheeraj Girhotra, which was published in March 2012 in the International Journal of Marketing, Financial Services and Management Research. This was cited in support of the submission that there was rapid growth of the DTH networks in India and that the people were switching over from terrestrial to DTH or cable networks.

38. Mr Kuhad made a reference to the European Union Directive – Television Without Frontiers, which was adopted in 1989 and amended in 1997. Article 3(a)(1) of the European Union Directive was referred to and the same reads as under:-

> "Each Member State may take measures in accordance with Community law to ensure that broadcasters under its jurisdiction do not broadcast on an exclusive basis events which are regarded by that Member State as being of major importance for society in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events via live coverage or deferred coverage on free television. If it does so, the Member State concerned shall draw up a list of designated events, national or non-national, which it considers to be of major importance for society."

39. On the basis of the above extract, it was contended that the objective of providing live coverage on free television was to enable the substantial proportion of the public to follow events of major importance to society. Similarly, the position in India is that sporting events of the national importance are to be accessible to major sections of society on a free basis.

40. Mr Kuhad then referred to Broadcasting laws of sporting events in Australia. He submitted that during investigations into the possible social, economic and technical ramifications of the introduction of cable and subscription television to Australia in 1982, free-to-air broadcasters had argued that siphoning of programmes would be an inevitable consequence of a pay television environment and that it would have considerable social costs for audiences. It was submitted that after weighing the findings of these investigations, the Government of Australia decided to impose an anti-siphoning regime on pay television which conferred power to introduce an anti-siphoning list and to specify events that should be televised free to the public. It was contended that siphoning refers to the practice used by the pay television broadcasters by which they appropriate, or 'siphon off' certain events that have been traditionally shown on free-to-air television so that viewers who do not subscribe to their services are unable to view those events. It was contended that in Australia, the regime was put in place inasmuch as it was found to be in public interest for all the people to be able to see important events that reflect Australia's national identity and that public interest was imperfectly served if important sporting events were to migrate permanently to pay television. It is for this reason that governments

impose licence conditions and regulations on free-to-air broadcasters which oblige those broadcasters to act in the public interest. It was further submitted by Mr Kuhad that the must carry obligations, such as those to be found in Section 8 of the CTN Act, is not specific to India and is an international phenomenon. It is essential to effectuate the public rights to access television which provides the public with information as regards events of national importance, including the sporting events.

41. Referring to the Supreme Court decision in ***Novartis AG v. Union of India & Others*****: 2013 (6) SCC 1**, it was submitted that the Supreme Court had, in the said decision, observed that the best way to understand a law is to know the reason for it. The Supreme Court observed as under:-

> "25. It is easy to know why Section 5 was deleted but to understand the import of the amendments in Clauses (j) and (ja) of Section 2(1) and the amendments in Section 3 it is necessary to find out the concerns of Parliament, based on the history of the patent law in the country, when it made such basic changes in the Patents Act. What were the issues the legislature was trying to address? What was the mischief Parliament wanted to check and what were the objects it intended to achieve through these amendments ?
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> 26. The best way to understand a law is to know the reason for it. In *Utkal Contractors and Joinery Pvt. Ltd. and Ors. v. State of Orissa and Ors.*: (1987) 3 SCC 279, Justice Chinnappa Reddy, speaking for the Court, said:
>
> > '9. ... *A statute is best understood if we know the reason for it. The reason for a statute is the safest guide to its interpretation*. The words of a statute take their colour from the reason for it. How do we discover the reason for

a statute? There are external and internal aids. The external aids are statement of Objects and Reasons when the Bill is presented to Parliament, the reports of committees which preceded the Bill and the reports of Parliamentary Committees. Occasional excursions into the debates of Parliament are permitted. Internal aids are the preamble, the scheme and the provisions of the Act. Having discovered the reason for the statute and so having set the sail to the wind, the interpreter may proceed ahead."

(Emphasis added)

27. Again in Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and Ors.: (1987) 1 SCC 424 Justice Reddy said:

"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. *A statute is best interpreted when we know why it was enacted.* With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. *If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context.* With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.

> It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression 'Prize Chit' in *Srinivasa*and we find no reason to depart from the Court's construction.
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> (Emphasis added)

> 28. In order to understand what the law really is, it is essential to know the "why" and "how" of the law. Why the law is what it is and how it came to its present form? The adage is more true in case of the law of patents in India than perhaps any other law. Therefore, in order to correctly understand the present law it would be necessary to briefly delve into the legislative history of the law of patents in the country."
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> (Underlining added)

With this in mind, Mr Kuhad referred to the preamble of the Sports Act and emphasized that the objective was to provide access to the largest number of listeners and viewers on a free-to-air basis of sporting events of national importance.

42. A reference was also made to the Statement of Objects and Reasons of the Sports Act which reads as under:-

> "**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.

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.

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.

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.

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.

The Bill seeks to replace the said Ordinance."

43. On the basis of the above, it was submitted that the object was to ensure that the citizens right to be informed freely, truthfully and objectively was fully protected and that the Prasar Bharati does not stray from the objective of ensuring adequate coverage to the country's diverse culture and of catering to the various sections of the society. This was in consonance of the citizens fundamental rights enshrined under Article 19(1)(a) of the Constitution to receive information. Broadcasting represented a means for securing this constitutional goal. A reference was made to Section 12(2)(b) of the Prasar Bharati Act which spelt out the objective of safeguarding the citizen's right to be informed freely, truthfully and objectively on all matters of public interest, national or international, and of presenting a fair and balanced flow of information, including contrasting views without advocating any opinion or ideology of its own. A reference was also made to Section 12(2)(e) of the Prasar Bharati Act to emphasise that one of the objectives of Prasar Bharati was to provide adequate coverage to sports and games so as to encourage healthy competition and the spirit of sportsmanship. Section 12(2)(n) was referred to inasmuch as it emphasizes the objective of Prasar Bharati of providing a comprehensive broadcast coverage through the choice of appropriate technology and the best utilization of the broadcast frequencies available and ensuring high quality reception. A reference was also made to Section 12(3)(a). All these provisions, according to the learned ASG, indicated that the rights of

citizens to receive information are of vital importance and whenever there is a conflict, the rights of private broadcasters have to give way to the rights of citizens.

44. With reference to ***Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal*** *(supra)*, Mr Kuhad submitted that Article 19 (1)(a) of the Constitution was a two-fold right. It entailed a right to express as also a right to receive information / to be informed. He submitted that media, including the television, is the mechanism to effectuate this right. He further submitted that the rights of citizens were sacrosanct and that the right of the citizens as viewers and listeners is paramount and not the rights of the broadcasters. He submitted that the Sports Act was enacted to effectuate these constitutional rights of the citizens. Furthermore, the expression appearing in Section 3 – "*to enable them to retransmit the same on its terrestrial networks*" – was aimed at stipulating that the said live broadcasting signal could be carried only over free-to-air channels and could not be exploited or re-sold for commercial purposes. This was in line with the must carry obligations stipulated under Section 8 of the CTN Act of 1995 whereunder, *inter alia*, two Doordarshan channels have to be carried by the cable operators. He also emphasized that DTH operators since 2006, were also complying with the must carry obligations by virtue of an amendment in their licence conditions referred to earlier in this judgment. Consequently, it was submitted that there was no conflict between the provisions of Section 3 of the Sports Act and Section 8 of the CTN Act.

45. On the basis of all these submissions, Mr Kuhad submitted that the appeal as well as the writ petitions were liable to be dismissed.

46. By way of the rejoinder, Dr Singhvi reiterated that Prasar Bharati can only re-transmit the live broadcasting signals on its own terrestrial networks or DTH networks as stipulated in Section 3 of the Sports Act. It cannot further be re-transmitted through any private cable or DTH networks. He submitted that broadcasting in India was defined into two platforms, one being the Prasar Bharati Platform and the other being the non-Prasar Bharati platform. The simultaneous sharing of the live broadcasting signal as stipulated under Section 3 of the Sports Act is to enable Prasar Bharati to re-transmit the same on its networks, that is, on the Prasar Bharati platform. Prasar Bharati cannot re-transmit the said live broadcasting signals through a private network as that would entail broadcasting through a non-Prasar Bharati platform.

47. Dr Singhvi further submitted that the arguments of Mr Kuhad with regard to the spectrum were irrelevant. He submitted that this case has nothing to do with the spectrum. The question here is only with regard to the content. He submitted that the CTN Act must be read in the context of Section 3 of the Sports Act and that limits the scope to the terrestrial and DTH networks of Prasar Bharati. It was further submitted by Dr Singhvi that the Sports Act was an expropriatory legislation and Section 3 thereof is

in the nature of compulsory acquisition of the content owners property for the purposes of re-transmission on Prasar Bharati's terrestrial and DTH networks. On the other hand, Section 8 of the CTN Act is an exception to the Interconnect Regulations 2004 which provides that a broadcaster of television channel cannot insist on any distribution platform to carry its channel whereas every broadcaster of TV channels is obliged to provide its signal to every distribution platform, on a non discriminatory basis. He reiterated that Section 3 of the Sports Act was a later special law dealing with compulsory acquisition of content, whereas Section 8 of the CTN Act was an earlier general law dealing with the cable television network. Therefore, Section 8 needed to be interpreted in such a way that it did not take away anything from Section 3 of the Sports Act. He further submitted that Prasar Bharati had no power to share any third party content *de hors* Section 3 of the Sports Act. Thus, when Prasar Bharati cannot directly share any content under Section 8 of the CTN Act, it also has no authority to indirectly acquire content under Section 8 of the CTN Act. It also has no authority to indirectly acquire content under Section 3 of the Sports Act and then voluntarily share the same under Section 8 of the CTN Act. He further emphasized that any Doordarshan channel, which is carried by a private platform under Section 8 of the CTN Act, is not free to the viewers. He referred to Section 4A of the CTN Act to indicate that it provides that the cable operator was entitled to charge a Basic Tier Fee from the subscriber for providing free-to-air channels at a tariff specified by the Tariff Order. The applicable Tariff Order dated 21.07.2010 specified that a cable operator could charge Rs 150/- as the Basic Tier Fee for providing access even for

free-to-air channels. This fee would be chargeable to a subscriber even if he / she did not avail any pay channels and only subscribes to free-to-air channels, including the Doordarshan channels. Thus, the compulsory carrying of the Doordarshan channels under Section 8 of the CTN Act does not mean that they would be free for the subscriber of a cable connection. It was, therefore, contended that the Doordarshan channels would be truly free to the consumers only when they are accessed through Prasar Bharati's terrestrial and DTH networks.

48. Finally, it was submitted that the object and purpose of Section 3 of the Sports Act was to make available the telecast of the sporting events of national importance to such subscribers who had no access to such events. These were those subscribers, who had no cable or DTH connection and only had a Doordarshan's terrestrial or DTH connection which was free in the hands of the subscribers. By carrying the shared signals on channels, which are compulsorily carried on private cables and DTH platforms, Prasar Bharati is making available the shared signals on platforms where they are already available and is thereby offering the content to subscribers in direct competition to the broadcaster, who is the owner of that content. It was submitted that Section 3 of the Sports Act is not about creating of a competing entity but about availability of live broadcast signals to those subscribers, who had no access. It was, therefore, contended that the live broadcast signals, which were mandatorily to be shared under Section 3 of the Sports Act ought not to be permitted to be carried by cable operators.

49. Mr Sudhir Chandra, in rejoinder, reiterated his opening arguments. He also submitted that the content rights owner had two rights under the Copyrights Act, 1957. But, we need not go into that as aspect of the matter as we are concerned only with the interplay between Section 3 of the Sports Act and Section 8 of the CTN Act in the backdrop of the constitutional rights of the citizens. He reiterated that the case was not about spectrum, but about content. Furthermore, the limitation with regard to sharing was clearly spelt out in Section 3 of the Sports Act itself and the same was limited to the re-transmission of the live broadcasting signals on Prasar Bharati's terrestrial networks and DTH networks. He further submitted that it is an administrative act on the part of Prasar Bharati to carry a particular content on a particular channel. There is no compulsion on Prasar Bharati to carry the shared live broadcasting signal on a channel which has been notified under Section 8 of the CTN Act. He also referred to paragraphs 6 and 79 of the Supreme Court decision in the case of ***Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal*** *(supra)* which read as under:-

> "6. The telecasting is of three types, (a) terrestrial, (b) cable and (c) satellite. In the first case, the signal is generated by the camera stationed at the spot of the event, and the signal is then sent to the earthly telecasting station such as the T.V. center which in turn relays it though its own frequencies to all the viewers who have T.V. screens/sets. In the second case, viz., cable telecasting, the cable operator receives the signals from the satellite by means of the parabolic dish antenna and relays them to all those T.V., 337 US 1screens which are linked to his cable. He also relays the recorded file programmes or cassettes through the cable to the cable-linked viewers. In this case, there is no restriction on his receiving the signals from any satellite to

which his antenna is adjusted. There is no demand made by him on any frequency or channel owned or controlled by the national government or governmental agencies. The cable operator can show any event occurring in any part of the country or the world live through the frequencies if his dish antenna can receive the same. The only limitation from which the cable T.V. suffers is that the programmes relayed by it can be received only by those viewers who are linked to the dish antenna concerned. The last type, viz., satellite T.V. operation involves the use of a frequency generated, owned or controlled by the national Government o, 337 US 1 r the Governmental agencies, or those generated, owned and controlled by other agencies. It is necessary to bear in mind the distinction between the frequencies generated, owned and controlled by the Government or Governmental agency and those generated and owned by the other agencies. This is so because generally, as in the present case, one of the contentions against the right to access to telecasting is that there are a limited number of frequencies and hence there is the need to utilise the limited resources for the benefit of all sections of the society and to promote all social interests by giving them priority as determined by some central authority. It follows, therefore, that where the resources are unlimited or the right to telecast need not suffer for want of a frequency, objection on the said ground would be misplaced. It may be stated here that in the present case, the contention of the MIB and DD against the right to telecast claimed by the Cricket Association of Bengal (CAB)/Board of Control for Cricket in India (BCCI) was raised only on the ground of the limitation of frequencies, ignoring the fact that the CAB/BCCI had not made demand on any of the frequencies generated or owned by the MIB/DD. It desired to telecast the cricket matches organised by it through a frequency not owned or controlled by the Government but owned by some other agency. The only permission that the CAB/BCCI sought was to uplink to the foreign satellite the signals created by its own cameras and the earth station or the camera or the cameras and the earth station of its agency to a foreign satellite. This permission was sought by the CAB / BCCI from VSNL which

is the Government agency controlling the frequencies. The permission again cannot be refused except under law made in pursuance of the provisions of Article 19(2) of the Constitution. Hence, as stated above, one of the important questions to be answered in the present case is whether the permission to uplink to the foreign satellite, the signal created by the CAB/BCCI either by itself or through its agency can be refused except on the ground stated in the law made under Article 19(2).”

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79. As stated earlier, we are not concerned in the present case with the right of the private broadcasters, but only with the limited right for telecasting particular cricket matches for particular hours of the day and for a particular period. It is not suggested that the said right is objectionable on any of the grounds mentioned in Article 19(2) or is against the proper use of the public resources. The only objection taken against the refusal to grant the said right is that of the limited resources. That abjection is completely misplaced in the present case since the claim is not made on any of the frequencies owned, controlled and utilised by the DD. The right claimed is for uplinking the signal generated by the BCCI/CAB to a satellite owned by another agency. The objection, therefore, is devoid of any merit and untenable in law. It also displays a deliberate obdurate approach.”

50. Mr Sibal, appearing on behalf of the BCCI, reiterated his opening arguments.

51. There is no quarrel with the proposition advanced by the learned ASG that a citizen has not only a right to expression, but also a right to receive information. If, in any manner, this right to receive information is curtailed,

the centre can always step in to protect the same. It is for this reason that by virtue of Section 3 of the Sports Act, content owners in respect of sporting events of national importance are mandatorily required to simultaneously share the live broadcasting signal of sporting events of national importance with Prasar Bharati to enable them to re-transmit the same on its terrestrial networks and DTH networks. At the point of time when the CTN Act came into being, Prasar Bharati, through the medium of Doordarshan, had the widest coverage insofar as television networks were concerned. Cable operators had recently entered into the field. And, by virtue of Section 8, they were compulsorily required to carry DD1 and DD (News channels). The idea behind that was that programming of national importance should be carried to the maximum number of persons. There is also no dispute with the proposition that a public right cannot be changed by a private agreement, but, in the present case, it is not a private agreement that is in question. But, a provision of the statute, namely, Section 3 of the Sports Act.

52. The learned counsel appearing on behalf of the ESPN / STAR and BCCI are, in our view, correct in submitting that Section 3 is an expropriatory provision and that the same has to be construed strictly and in such a manner that it places the least burden on the expropriated owner. If one were to interpret Section 3 in this manner, it would be evident that the object of simultaneous sharing of the live broadcasting signal with Prasar Bharati is only to enable them (Prasar Bharati) to re-transmit the same on its terrestrial networks and DTH networks. Strictly speaking, these networks have to be those of Prasar Bharati and not of private players, such as the

cable network operators. Section 2(1) of the Sports Act does give an indication, when it defines "terrestrial television service" that a terrestrial network carries signals over the air using land based transmitters which are directly received through receiver sets by the public. It is obvious that the expression "terrestrial networks" used in Section 3 of the Sports Act must be read in this context. It does not involve the carrying of the signals through a cable network. In the same fashion, the meaning of DTH networks can be discerned from the definition given to "DTH broadcasting service" in Section 2(j) of the Sports Act. Read in this manner, DTH networks would entail multi-channel distribution of programmes directly to the subscribers' premises without passing through an intermediary, such as a cable operator by uplinking to a satellite. In other words, DTH network also does not entail the signals passing through a cable operator. Thus, in either eventuality, that is, in the case of a terrestrial network or a DTH network, the intervention of a cable operator is specifically ruled out.

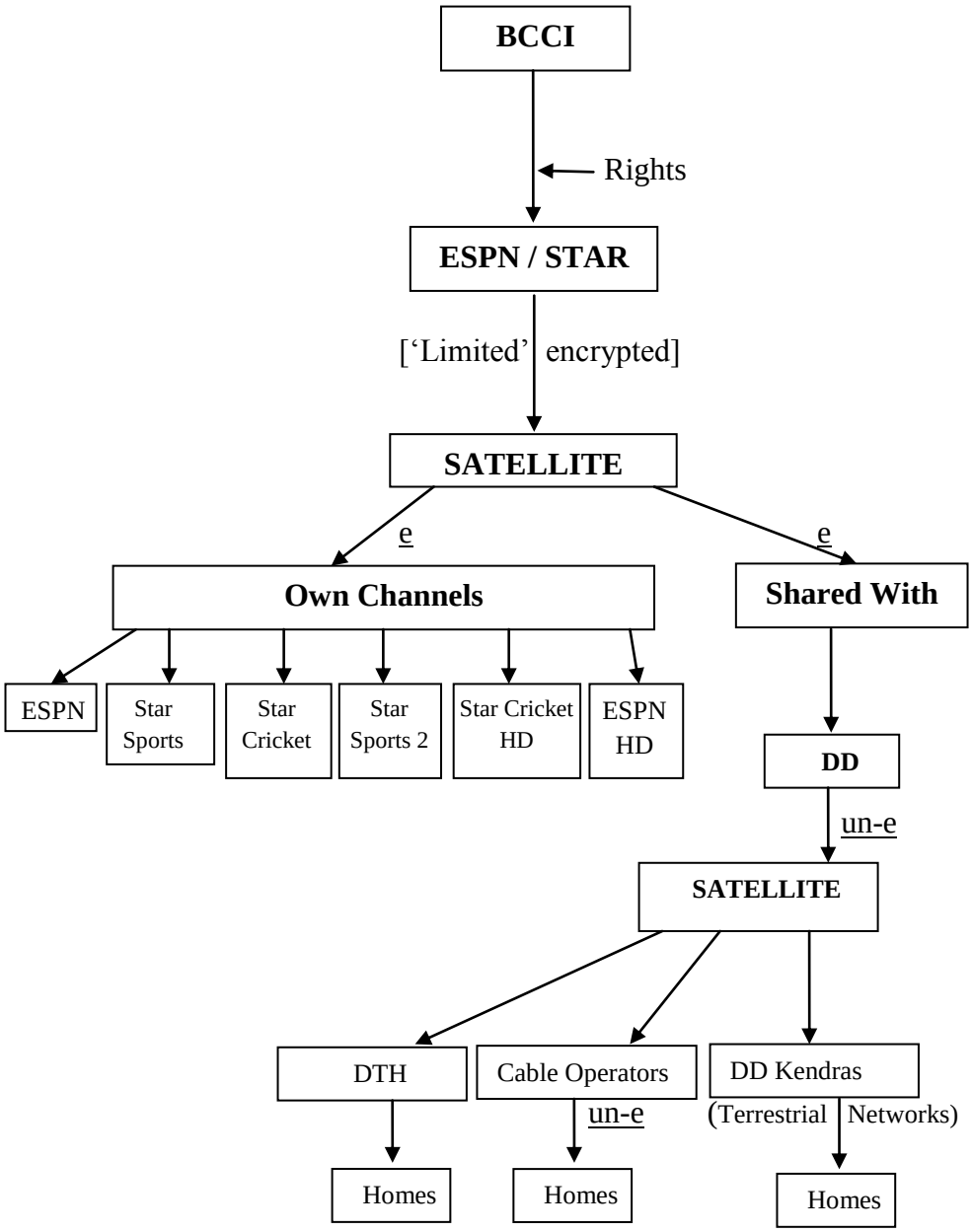
53. This being the case, when we strictly interpret the provisions of Section 3 of the Sports Act, it becomes clear that the simultaneously shared live broadcasting signal can only be re-transmitted by Prasar Bharati without the intervention of a cable operator. In other words, such a shared live broadcasting signal cannot be carried through a cable operator. This limitation is not by way of a private treaty, but by way of a statutory provision. It is not as if public interest is being given a go-by for the sake of private interest.

54. There is logic and reason behind interpreting Section 3 of the said Act in the manner suggested on behalf of ESPN / STAR and BCCI and, as indicated above. The logic being discernible from the very object and purpose of the Sports Act. The object and purpose of the Sports Act is to provide access to the largest number of the viewers, on a free-to-air basis on sporting events of national importance through mandatory sharing of sports broadcasting channels with Prasar Bharati. There is merit in what Dr Singhvi submitted that the purpose and object behind Section 3 of the Sports Act is not to re-transmit the live broadcasting signals in such a manner so as to reach those consumers / subscribers, who, in any event, are connected by cable. It is essentially directed towards those citizens who do not have access to cable television and only have access to the terrestrial and DTH networks of Prasar Bharati.

55. We also agree with the submissions made by the learned counsel appearing on behalf of ESPN / STAR that the issue raised in the present matters is not with regard to the spectrum, but with regard to the content. ESPN / STAR has paid huge sum of money (Rs 3851 crores) to BCCI to purchase the content rights for the period April 2012 to March 2018. It has purchased those rights from BCCI which has been recognized as an organizer of the Sports (Cricket) and BCCI has also been recognized as being fuelled by the motive to promote the game of cricket rather than for pure business gain. The learned counsel for the BCCI had also submitted that the BCCI derives its substantial revenue from media rights and not from gate receipts. It is these revenues, which are spent for the development of

sports and sporting facilities relating to cricket all over India. If these revenues are affected, it is ultimately the sport of cricket which would suffer. Therefore, there has to be protection of the value of the content rights without, of course, impinging on the public interest rights of citizens. We may point out that by virtue of Section 12(3)(c) of the Prasar Bharati Act, Prasar Bharati is empowered to negotiate for purchase of, or otherwise acquire, programmes and rights or privileges in respect of sports and other events, films, serials, occasions, meetings, functions or incidents of public interest for broadcasting and to establish procedures for the allocation of such programmes, rights or privileges to the services. Accordingly, it was open for Prasar Bharati to have also negotiated for the purchase of the content rights in respect of the sporting events of national importance, including cricket matches. If that had been the case, Prasar Bharati would have been free to direct the cable operators to carry the live broadcasting signals of cricket matches on cable networks. That would be so because the content rights would belong to Prasar bharati. But, by virtue of Section 3 of the Sports Act, although Prasar Bharati has not paid for it, the live broadcasting has to be shared by the content rights owner with Prasar Bharati, compulsorily. It is in the nature of a compulsory exaction. But, it must be read with the limitation prescribed in the Section itself and, that is, to enable Prasar Bharati to re-transmit the same on its terrestrial networks and DTH networks. It cannot expand this manner of acquisition to such an extent as to virtually become the content rights owner itself.

56. To be clear, the following diagram gives the manner in which the whole system operates:-



57. BCCI is the content rights owner. It has sold these rights to ESPN / STAR, which, in turn, sends the live feed in an encrypted form to its satellites. From the said satellite, the feed is sent to its own channels (ESPN / STAR Sports, STAR Cricket, STAR Sports 2, STAR Cricket HD and ESPN HD) for distribution either through their own DTH networks or through cable operators. In either eventuality, they are subscribed services. Alongwith signals sent through their own distribution channels, ESPN / STAR shares the signals with Prasar Bharati, which is sent to Prasar Bharati in an encrypted form. Prasar Bharati re-transmits the signals in an encrypted form to its satellite, which, then streams that signal to three different networks. The three networks being the DTH network of Prasar Bharati, the DD Kendras (terrestrial networks) and private cable operators through the must carry obligation stipulated under Section 8 of the CTN Act. Thus, cable operators have access to the broadcast of the sporting events through two different channels. One through the channels of ESPN / STAR and the other through the channels of Doordarshan. While, the former is to be paid for, the latter is free.

58. From the above, it is evident that what ESPN / STAR and BCCI are objecting to is not the transmission of the signals through the DTH and terrestrial networks of Prasar Bharati, but the free transmission of the signals by Prasar Bharati through cable operators. This, according to ESPN / STAR, has hit them in two ways. The first being by reduced advertisement revenue and the second being by reduced subscription revenue. Those homes, which were connected via cable networks would have paid for

receiving the live broadcast signals had Prasar Bharati through Doordarshan not provided the same free of cost to the cable operators. Although there is an argument that by virtue of Section 3(2) of the Sports Act, the advertisement revenue received by Doordarshan in respect of the shared content was also to be shared in the ratio of not less than 75:25, it still does not cater to the loss of subscription revenue. Furthermore, it has been pointed out that the advertisement revenue, which ESPN / STAR would have made on its own, would not be matched by Prasar Bharati and, therefore, the provision of Section 3(2) of the said Act was no consolation for providing the feed free to the cable operators.

59. As a result of the foregoing discussion, the interplay between the provisions of Section 3 of the Sports Act and Section 8 of the CTN Act have to be read in such a manner that the shared live broadcasting signal, which Prasar Bharati receives from ESPN / STAR, should not be placed in the channels of Doordarshan which are to be compulsorily carried by the cable operators under Section 8 of the CTN Act. We do not agree with the view taken by the learned single Judge in PW(C) 7655/2007, which forms the subject matter of LPA No.1327/2007, that carrying sports in a designated Doordarshan channel is a matter of policy. In our view, it is a matter of administration. But, even if we regard it as a matter of policy, such policy cannot override the statutory provisions contained in Section 3 of the Sports Act in the manner which we have interpreted. The appeal as well as WP(C) 8458/2007 are allowed to the extent that the live broadcasting signal shared by ESPN / STAR by virtue of Section 3 of the Sports Act with Prasar

Bharati, shall not be carried in the designated Doordarshan channels under the must carry obligation cast by Section 8 of the CTN Act on cable operators. This shall operate prospectively. WP(C) 9610/2007 is dismissed. The parties are left to bear their own costs.

BADAR DURREZ AHMED, J

VIBHU BAKHRU, J

February 04, 2015
dutt