

(1993) 09 DEL CK 0002

In the Delhi High Court

Case No : Civil Writ Petition No's. 3104, 3117, 3248, 3275, 3370, 3376 and 3402 of 1993

Home Communication Ltd. and Another

APPELLANT

Vs

Union of India and Others
 Arvind Gupta Vs Union of India and Others
 Bennett. Coleman and Co. Ltd. Vs Union of India and Others
 Hindustan Times Ltd. Vs Union of India and Others
 Vijay Malhotra Vs Union of India and Others
 Indus Television Vs Union of India and Others
 Indian Express Newspapers (Bombay) Ltd. Vs Union of India and Others

RESPONDENT

Date of Decision : 21-09-1993

Acts Referred:

Citation : (1993) 3 AD 1013 : (1993) 52 DLT 168

Hon'ble Judges : V.K. Jain, J;D.P Wadhwa, J

Bench : Division Bench

Advocate : A.H. Desai, P. Chidamabaram, Ashok Sagar, Ravinder Narayan, Sumit Kachwala, P. Sisodia, Arvind Gupta, Raj Birbal, Ashok Lavania, Kapil Sibal, Manmohan, C.S. Vaidhyanathan, P. Nagesh, Arun Jaitley, Rajiv Nayar, R.N. Karanjawal, Swachi Aggarwal, Dipankar Gupta and Madan Lokur, for the Appellant;

Judgement

D.P. Wadhwa, J.

(1) All these petitions have been beard together, as same questions either in, support or against the scheme for allotment of time slots on satellite channels of Doordarshan arise therein. Pleadings are, however, complete in C.W.P. 3248/93 filed by Bannett, Coleman & Co. Limited which we will generally refer to in the course of this judgment.

(2) Civil Writ Petition No. 3104/93 was filed by Home Communication Network Ltd. and another in 6/07/1993. In this a restraint order is sought on the respondents not to deviate from the basis of first come first served (FCFS" for short) set out in the scheme, and for setting aside the decision order dated

3/07/1993 seeking to change the FCFS basis of allotment of time slots. Civil Writ Petition 3117/93 was filed by Dr. Arvind Gupta also on 6/07/1993. In this the petitioner prayed for a writ that effect not be given to public notice inviting applications from "interested applicants" for preferential allotment of time slots to different class of applicants on FCFS basis, or any other basis and for setting aside the impugned public notice. A direction is also sought against the respondents for laying down clear, intelligible and fair standards for granting licenses for time slots to "eligible applicants" on satellite channels. And lastly, a direction to the respondents to lay down the eligibility criteria for interested applicants seeking licenses for transmitting programmes on satellite and metro channels. Other five writ petitions (CWP No. 3248/93 by Bennett, Coleman & Co Ltd .; CWPNo. 3275/93 by Hindustan Times Ltd. ; Cwp No. 3370/93 by Vijay Malhotra of Sri Productions : Cwp 3376/93 by Indus Television : and Cwp 3402/93by Indian Express Newspapers (Bombay) Ltd. were filed later in the second and third week of July 1993. In these five petitions the principal prayers are that the criteria of F.C.F.S. basis for allotment of time slots be quashed and that a proper eligibility criteria be laid for allotment of time slots taking into account the experience, the track record, the financial backing as well as quality of product produced by the applicants. In one of these petitions there is also a prayer that a direction be issued to the respondents not to make allotment on the basis of Random Number Generation method ("RNG"for short) and to formulate a fair, reasonable and just scheme for the purpose .The respondents are : Director General, Doordarshan ; Union of India through the Secretary in the Ministry of Information and Broadcasting; and the Deputy Director General, Satellite Channels, Doordarshan.

(3) The immediate cause for filing these writ petitions was that though under the scheme the date for receiving the applications for allotment of time slots on satellite channels of Doordarshan was 5/07/1993 but the queue outside the office of Doordarshan started forming on 23/06/1993 itself. The basis of allotment at that time was FCFS.

(4) Doordarshan is a department of the Central Government under the charge of the Director General in the Ministry of Information and Broadcasting for television broadcasting and has no independent entity of its own .

(5) The scheme in question had been formulated in pursuance of, as would appear) a policy decision of the Central Government that licenses be granted to private producers for showing their programmes on television for general reception in the country, telecasting to be done by Doordarshan through satellite. This way the respondents also endeavored to earn maximum revenue for the country. The scheme, it has been contended by the respondents, does not pertain to the Prime Channel of Doordarshan, or even to the Metro Channel, i.e., the second channel in the four metropolis of Delhi. Bombay, Calcutta and Madras when for some time in a day the Metro Channel is not linked with satellite. Except for this, programmes on the Entertainment Channel on the satellite can

also be seen on the Metro Channel.

(6) The scheme thus now framed is in pursuance of decision of the Central Government to introduce five satellite based channels including metro channel which, under a different scheme, had already commenced satellite telecast from 1/04/1993.

THOUGH there is challenge to whole of the scheme as such, but the principal challenge is two fold : (1) The basis of FCFS and even of Rng is illegal and arbitrary. With this is also attached the question of earning of more public revenue by the Central Government, and (2) the eligibility criteria .Should it be there or not, and if so, in what form?

(7) A question has also been raised as to how the scheme has come to be formulated. Was it in pursuance of a Cabinet decision or of the Ministry of Information and Broadcasting? Also what is the scope and authority of Air Time Committee of India (ATCI)? Do the functions of ATCI covered allotment of time slots on five satellite channels under the scheme.

(8) We may also note that the main dispute concerns the entertainment channel and its prime time.

(9) For the purpose of coming into operation of the scheme, the applications were to be received as from 5/07/1993 onwards on FCES basis and since the scheme is on FCFS basis all applications were required to be submitted in person or through a designated representative. This led to formation of queue outside the office of the Doordarshan as from 23/06/1993 itself threatening to create a law and order problem. A suit was filed on 2/07/1993 in the Court of the District Judge, Delhi, by Bennett, Coleman and Co. Ltd. praying for a direction to the Delhi Police to remove the que formed outside the office of Doordarshan which was alleged to have blocked the entry to the gate of the Doordarshan and providing police protection to the plaintiff for its ingress and egress to the office of Doordarshan (Satellite Channel) at Tolstoy Marg, New Delhi. In this the Additional District Judge on the following day, i.e.. 3/07/1993, directed to remove the persons "who have made up the queue in front of the gate of the said premises and are causing blockage to the entry of the other persons to the office....."

(10) On 3/07/1993 the Central Government by a public notice advised all concerned that receipt of applications on F.C.F.S. basis on 5/07/1993 stood postponed and the allotment in future would be done through random number generation method through a computer. A fresh date was to be notified separately for receipt of the applications. This, it would appear ,led to filing a civil suit (Suit No. 1395/93) on the original side of this Court by plaintiffs numbering five and against three respondents, namely Director for General, Commissioner of Police, Delhi, and Union of India in the Ministry of Information and Broadcasting. These five plaintiffs were (1) Octave Communications Pvt. Ltd., (2) United Television, (3) New Delhi Television Pvt. Ltd. (4) Nimbus Sports &

Communications Pvt. Ltd., and(5) Samrat Video Vision Pvt. Ltd. The plaint was signed and verified on 3/07/1993 and was presented at the residence of Justice Arun Kumar at 10.00 a.m. on 4/07/1993 which was a Sunday. The plaintiffs prayed for:

(A) A decree for declaration holding and declaring that the timeslot allotment scheme introduced for the metro channels by Doordarshan should continue to be based on a first come first served basis and that the random number allotment is illegal and void.

(B) An order for permanent injunction restraining the defendants or any of their officers, servants and agents from disrupting or in any other way disturbing the structure, sequence or arrangement of the queue which has been formed outside the premises of Doordarshan, 4 Tolstoy Marg, New Delhi, ever since the 23/06/1993 and further from adopting any scheme for allotment which is contrary to the defendants published guidelines for time slot allotment as contained in their booklet marked "A".

(C) An order for mandatory injunction directing the defendants to reconstitute the queue if forcibly broken by the time this petition is heard by this Hon'ble Court in accordance with the register maintained by the members of the queue.

An application was also filed along with the suit seeking certain interim orders. The Court passed the following order on 4/07/1993 : Suit No. 1395/93 and I.A. Nos. /93 : (to be registered) Counsel for the plaintiffs undertakes to pay the requisite Court fee by 6/07/1993. Let the Suit and the Applications be registered. Summons in the Suit and Notices in the Applications to issue to the Defendants forthwith by 6th July 1993. It is stated that Defendant No. 1 has circulated another Scheme for allocation of time slots on five new channels. According to the new scheme the applications are to be accepted with effect from 9/07/1993. The question really is as to whether Defendant No. 1 is entitled to change the Scheme which had already been announced and allegedly acted upon by various applicants. Therefore, notice in the interim applications has been issued for 6/07/1993.

IN the meanwhile, I appoint Shri C.S. Rawat, Deputy Registrar of this Court, to verify the position of the queue at the site and report about the sequence in which the parties have formed the queue. The plaintiffs have filed a list of Applicants who are forming the queue at present on record. Shri Rawat will verify the queue which is stated to be in existence with particular reference to the said list. Mr. Rawat will act and carry out this assignment today itself in view of the urgency of the matter. In case Police assistance is required to carry out this assignment. Shri Rawat will be entitled to seek the same and the S.H.O. of the area concerned will provide all the necessary assistance. The fee of Shri Rawat is tentatively fixed at Rs. 3,000.00."

(11) It is unnecessary for us to go into the question of the correctness of the report of the Local Commissioner or the register as that issue does not pertain to

us in this petition.

(12) Earlier to the present impugned scheme there was a "Scheme of Allotment of Time Slots on the Metro Channels of Doordarshan and FM Channels of All India Radio in Delhi, Bombay, Madras and Calcutta" as per Annexure to the public notice No. 8/I/1992-PBC dated 28/09/1992 issued by the Ministry of Information & Broadcasting ("Ministry" for short .Government of India, notifying the scheme. Under this scheme a Broadcasting Council now known as Air Time Committee of India "A.T.C.I."for short) was to be formed comprising a Chairman and eight other members to be appointed by the Central Government by issue of notification in the Official Gazette. The Chairman was to be a person of stature and eminence, and ex-officio members were to be Engineer-in-Chief Doordarshan/AIR India Radio and a representative of the Ministry, and other members were to be drawn from amongst media persons, authors, playwrights, performing artists and film personalities of stature and eminence with knowledge and expertise of electronic media. The A.T.C.L. was to have a tenure of three years. Terms and conditions of the members were prescribed and so also the functions to be performed by the A.T.C.L. The Government was also to have powers to issue instructions and lay down policy guidelines. the scheme prescribed the eligibility criteria for the licensees. The A.T.C.I. was to invite applications for allotment of time slots on metro channels and then to allot to the successful applicants the appropriate time slots. The A.T.C.I.was also to oversee through AIR/Doordarshan the adherence to the stipulated technical parameters for ensuring national radio frequency management. The scheme also laid down guidelines governing the programmes. The A.T.C.I. was enjoined to periodically review the programmes put out by the licenses and also to redress the grievances of individual or institution against any particular programme. The A.T.C.I. was empowered to suspend and revoke the license and also to renew the license. In the event of war or natural calamity the Government might, in public interest, take over the control and/or management of all broadcasting under the licenses issued under the Scheme. The license fee was to be fixed by the Government and it was the Government to give the interpretation if there was any doubt regarding any provision of the scheme. One of the eligibility criteria for the license under the scheme was that applicants should have proven track record in producing television/radio programmes, feature films, video films, video magazines, documentaries etc. By another public notice dated 14/10/1992, the A.T.C.I. was constituted with Mr. P.S. Deodhar as Chairman .

(13) As to how much license fee was to be charged, the matter was deal in the Ministry. Mr. K..P. Pandian, Deputy Secretary (Finance),recorded a note on 29/03/1993 after his discussion with Mr. Deodbar.He recorded that there was difference between the proposal of Mr. Deodhar and the rates as worked out by the Finance Wing. Mr. Deodhar, it appears, wanted to reduce the rates. Then the next note is of Mr. S.C. Malik.Additional Secretary and Financial Adviser, dated 30/03/1993. He noted that the difference in the license fee suggested by the Ministry and the A.T.C.I in respect of non-prime time was narrow and that the

difference was only Rs.5,000.00 for 1/2 hour per metro. He noted the real difference lay in the Prime Time rates where the A.T.C.I. was proposing Rs. 40,000.00 for 1/2 hour per metro and the Ministry was proposing Rs. 80,000.00 for 1/2 hour per metro. Mr. Malik recorded that it was generally agreed that the Prime Time slots would be utilised for film and film-based programmes, sitcoms and scaps, which would have the capacity to garner advertisement at very high rates and thus pay the license fee proposed by the Ministry. He said that but under the garb of promoting cultural-social programmes, which would really go in the non-prime time, the A.T.C.I. was trying to keep a lower rate of license fee for the Prime Time and this appeared to be an irreconcilable difference. The Secretary in the Ministry agreed, and then the matter went to the Minister. He wanted that matter be discussed and recorded that note did not indicate any course of action. This was on 31/03/1993. Then after the discussion, the following decision was stated to have been arrived at on 6/04/1993:

(I) There would be a categorisation of time on the Metro Channel as follows:

(A) Prime Time : 7.30 p.m. to 10 00 p.m on week days and 6.30 p.m. to 11.30 p.m. on Saturdays and Sundays .

(B) Non-Prime Time : 6.30 p.m. to 7.30 p.m. and 10.00 p.m. to 11.30 p.m. on week days.

However, and film-based programmes would be considered as Prime Time telecast irrespective of the hour on all days.

(II) The rate of telecast for 1/2 hour on a single metro basis will be Rs. 54,000.00 for Prime Time and Rs. 30,000.00 for Non-Prime Time. Additional uplink charge will be Rs. 10,000.00 per 1/2 hour. The above rates will be reviewed after a period of one year."

It was clarified that the rates stated above would be applicable for the Metro channel which will have terrestrial distribution in the four metro cities, in respect of pure Satellite Channels without any terrestrial distribution through transmitters, the rates will be Rs. 10,000.00 for 1/2 hour except in the case of the Sports Channel where it will be Rs. 3,000 "-per 1/2 hour. The above rates were also to be reviewed after a period of one year. This was finally approved by the Minister on 10/04/1993.

(14) It would appear that in the meanwhile, the Minister made a statement in the Parliament on 24/03/1993 regarding starting of additional satellite channels on Doordarshan by utilising spare capacity on the transponders of INSAT-ID and INSAT-IIA. The modalities of allotting time on these two new channels were stated to have been deliberated at a great length in the series of meetings taken by the Secretary. In his note dated 13/04/1993 sent to the Prime Minister, the Minister gave the resume of the formation of A.T.C.I., the scheme for allotment of time slots on second channel (Metro Channel) of Doordarshan and proposal to start additional satellite channels from 1 May 1993. The Minister said that the

role of A.T.C.I. in the changed scenario had been reviewed and it was felt that an essential pre-requisite for the success of the new venture would be to keep the satellite channels outside the purview of Doordarshan enabling it to concentrate on the efficient functioning of the primary channel. He said that it was the considered view of his Ministry that the task of handling the second channel and the satellite channels must be done by a common body. He said a number of alternatives were examined in the connection which he noted in his note. It is not necessary to set out all the alternatives except to note Alternative-4 which is as under :-"Alternative-4 Pending establishment of a new company which may take sometime, Nfmc can be entrusted with the management of the new channels by earmarking its existing staff for a new Television Division .The Memorandum of Association of the Nfmc under the heading Distribution and Exhibition reads as under ; -Distribution : To carry on in India or elsewhere the business of distribution of films whether made in India or imported from abroad.""Exhibition : To exhibit films either directly or through other agencies."Films include Tv and video films too. It is possible to cover the new activity under these two Clauses of the Memorandum of Association. After decanalisation of the import and export of films Nfmc work has reduced. Very little incremental expenditure on staff will be required. Also, as a company, it can hire equipment like uplink station, pay lease charges of the space segment from outside authority and can even set up uplink equipment on its own. Then this note ends with the following observations of the Minister :-"5. This Ministry is in favor of adopting the course of action suggested in alternative-4. Once this is approved, the Scheme notified in September 1992 would be amended to replace the ATCI with the Board of NFDC. The Board itself would be reorganized by including suitable number of television professionals. In the interregnum ,the management of the channels would continue to" be handled through Doordarshan with suitable consultants employed for this purpose.6. The course of action proposed in the preceding paragraphs submitted for Prime Minister's information and guidance."

(15) It is for this interregnum period that the present impugned scheme is stated to have been introduced. As to how this took shape we might start with the note dated 19/04/1993 of Mr. Sanjiv Datta, Deputy Secretary(BP). It records that terms and conditions for the allotment of time slots on satellite channels have been framed in a manner similar to that adopted while allotting time slots in the metro hour introduced from 26/01/1993. then the salient features of the scheme are recorded. Mode of selection prescribed is : "First-come first-served basis subject to a graded preference linked to the number of days/weeks for which time slots applied for". Each applicant would be eligible for four half an hour slots per day, and in respect of films allottees entitled to one film slot per day. Then the note describes the advertisement time, license fee and as to how the same is to be paid, the bank guarantee and the processing fee. Public notice is proposed to be issued in the week of 19/04/1993 itself and application forms made available at 15 Doordarshan Kendras from 23/04/1993. the date of receipt of applications would commence from 7/05/1993 onwards and each applicant would

be given three months time for preparation of programme. Producers would ,however, be allowed to commence telecast immediately or before the three months. The programmes would not be previewed but would have to adhere to the provisions of the Air Broadcast Code, Advertising Codes of Doordarshan, Cinematograph Act, Copyright Act and other relevant laws of the land. The Secretary approves the note and then the Minister records on 19/04/1994, itself as under :-"What about the notice of the metro channel as per Air Time Committee recommendations? Those may be put up. When are they going to be published? "On 28-4-1993, Mr. Sanjiv Datta again records that copy of the communication received from the Cabinet Secretariat indicated that the entire gamut of the satellite channels etc. was required to be discussed by the Core Group on Media which was chaired by the Cabinet Secretary in its next meeting scheduled to be held on 30/04/1993. It was, Therefore, mentioned that in this view of the matter the Minister may approve the publishing of the document being one prepared by Mr. Deodhar and as subsequently edited in the light of the agreement reached in the meeting taken by the Minister on 22/03/1993, he deferred till the results of the deliberations by the Core Group on Media become known. It was explained that discussion of the Core Group on Media pertained to the four long term alternatives suggested in the note sent by the Minister to the Prime Minister. Then the next relevant note is dated 14/05/1993 again of Mr. Datta where he records that the document received from the Atci incorporating all the amendment agreed upon in the meeting taken by the Minister on 22/03/1993 had been got printed and a copy was placed in the file. On this the Minister records : "Please give wide publicity to A Tci through electronic and print media "The file is marked back to the Secretary who then notes as under :--"May kindly refer to his orders. On going through the files it is seen that Shri Deodhar in his letter dated 29-1-93 had enclosed this document detailing the manner in which the allotment of timeslots on the Metro/FM channels of DD/AIR was proposed to be done ,had asked that the said document be got printed and available to the applicants along with the application form. In other words ,the document was meant only for the applicants. Since there are no applicants and the application form has not been finalised we may not be able to give it away. The document has been printed. We may, Therefore, go ahead and allow D.D. to notify the details of application, terms, etc. for the three channels now.Sd/-14-5-93"

(16) When the first noting in the file(F.No.8-4-93-PBC) started it was mentioned that there satellite channels will start functioning as from 15/05/1993 and these were the entertainment channel, sports channel, and business news and current affairs channel. The other two channels enrichment channel and music channel, were proposed to start from 14/08/1993. It is in this context the Secretary refers to three channels in his note. On this the Minister calls for a meeting to discuss the public notice. On the following day, i.e., 15/05/1993. the Minister agrees that public notice should issue only on 1 June, 1993 and in the meanwhile publicity should be given to the printing of the document received from the Atci

incorporating the agreements reached in the meeting taken by the Minister on 22/03/1993. The public notice is published thus with the approval of the Government and it will be necessary to refer the same in some what detail.

(17) Before this public notice is published on 1 June, 1993 Mr. Datta records a note on 31/05/1993 and the draft public notice was again submitted to the Minister for his approval. This note is then marked to the Additional Secretary who records as under :-"2. Mib discussed the draft Public Notice for the satellite channels of Doordarshan this morning with Secretary when As & FA, As and the undersigned were also present.3. In so far as the preference for allotment was concerned it was clarified by Secretary that considering the large amount of times slots (half an hour) that would become available on these channels ,it would be extremely difficult for any single party to corner an exceptionally large chunk of time. Moreover, the restriction of two time slots of half an hour per applicants per week during the prime time would also enable a broad casting of the licenses on these channels. (Para 9.2)4. As regards the setting aside of time slots for young talent was concerned, it was clarified that the same could either be den by reserving certain specific time slots for such producers or allotting time on the entertainment channel to Nfdc for this purpose. Accordingly ,the following provision is being made in the draft Public Notice (para 10.3) :A one hour time chunk in the morning transmission of the entertainment channel on every Saturday would be utilised for encouraging young talent. The details in this regard would be announced later.5. In so far as the question of the Appellate Authority was concerned ,the provision in para 15.1 of the draft Public Notice has been amplified in the following manner ","Government also reserves the right to set up a separate body for this purpose.7. The draft Public Notice is submitted for MIB's kindapproval."On this the Additional Secretary and Financial Adviser records as under ;-"Air Time Committee of India, which is not yet defunct, was to invite applications for allotment of time slots on the metro channel of Doordarshan and Fm Channels of Air w.e.f. 15th August ,1993.In view of this, it does not appear consistent that time slots on the entertainment Channel (erstwhile Metro Channel) can be allotted by the Government or Doordarshan bypassing Atci unless a formal dissolution of Atci is notified. The other channels can however be operated by the Government outside the ambits of ATCI.This may perhaps be taken into account before finalising the Public Notice. "The file is then sent to the Secretary whose note is as under :-"Since Atci has resigned there is no body as such to take any decisions .As and when the Atci or another organisation take sits place the channel can be operated by it if Govt. so decides. Basically the channels belong to Doordarshan and all transponders have been allotted in its name. As such they have the right tope rate them unless the Govt. specifies any other body. There is also a financial loss to the Government by not operating the channels-not to talk of permitting the foreign Tv networks Star, Zee and Atn to take money away from the country. May kindly approve the notification to enable a timely start to the channels.Sd/-31/5/93"Finally the Minister records as under : "Reservations for young talents could be made on all

the other channels too. Approved, proposal for restructuring Nfbc maybe put up,Sd/-31 May 93"

(18) We may now refer to the public notice bringing out the scheme which public notice has the sanction of the Government. Four new satellite based channels are sought to be introduced in addition to the metro channel which already had commenced satellite telecast (from 1 April 1993). Applications were to be available at various Doordarshan Centres from 15/06/1993. These applications were to be received in the Doordarshan office of satellite channels at 4 Tolstoy Marg, New Delhi, from 5/07/1993 onwards. There was to be no closing date. Applications would be received from 11.00 a.m. to 2.00 p.m. on all working days. The application was to be accompanied with a bank guarantee of certain amount as mentioned in the public notice. Separate application was to be made for time slots on each channel. Then the public notice describes five channels: (1) Entertainment Channel, (2) Sport Channel, (3) Business News and Current Affairs Channel, (4) Enrichment Channel, and (5) Music Channel. As to what programmes are to be telecast on entertainment channel, the Public Notice gives no indication, but order respecting four channels it is mentioned as to what the programmes would be respecting these channels. We may note, however, that enrichment channel is meant to provide an opportunity to independent producers, Govt. bodies and agencies and other interested parties to produce programmes of general interest. Eligibility criteria for licenses, the allotment of time, and preference for allotment are mentioned in paras 3, 9 and 10 of the public notice which may be reproduced as under :

3. Eligibility Criteria for Licenses

3.1. Parties interested in obtaining a license under this Scheme should meet the following criteria : (a) Should be a citizen of India for individual/company with majority Indian shareholding/partnership form all of whose partners are citizen of India. (b) Should not have been declared as insolvent or convicted in a criminal case. (c) Should produce sufficient evidence of sound financial standing. (d) Must confirm in writing, willingness to abide by the guidelines spelt out in this scheme. (e) Should furnish a written undertaking to conform to all the conditions specified in the license or any subsequent directive of the Government.

3.2. All applications would be received at the Doordarshan Office of Satellite Channels located at 4, Tolstoy Marg, New Delhi-110001 from 5th July 1993 onwards. There is no closing date. Applications would be received at the above premises from 11.00 a.m. to 2.00 p.m. only on all working days. Each applicant will be given a computerised receipt giving all the details. At the time of applying, each application must be accompanied with a Bank Guarantee (as per specimen attached with the application form) equivalent to 10% of the total license fee payable but subject to a minimum sum of Rs. 50,000.00 in case of entertainment channel and Rs. 10,000.00 in case of other channels and a maximum of 180 Rs. 10.00 lacs. A non-refundable processing fee of Rs. 1,000.00 per application, per channel would also be payable. A separate application must be made for time slots on each channel.

9. Allotment of Time

9.1. Time on all the channels will be allotted in chunks of half an hour each, 5-1/2 minutes of

advertisement time will be available in each half-an-hour slot on each channel out of which 30 seconds will have to be used for social advertising and 30 seconds will be used by Doordarshan for cross channel promotion. Doordarshan will, however, not pay any amount to the licensee for the utilisation of time for cross channel promotion.

9.2. Each producer can avail a maximum of 2 half-an-hour timeslots per channel per week in prime time except in the case of: I) Feature films where an allottee will be allowed to exceed this limit, if required, to telecast a feature film in full. (ii) Any excess of half-an-hour will be reckoned as a unit of half-an-hour slot.

10. preference for Allotment

10.1. Allotment shall be made to the applicants on "first come first served" basis subject to the following preferences to the applicants applying for: NON-PRIME TIME: 1. All 365 days of the year. 2. All 182 days of the six months. 3. All 90 days of the three months. PRIME-TIME: 1. Once a week for 52 weeks. 2. Once a week for 26 weeks. 3. Once a week for 13 weeks.

10.2 First allotment of slots will be made after 7 days of the first date of receipt of applications. Subsequently, allotment will be made on the first working day of every month for the applications received during the previous month.

10.3 A one hour time chunk in the morning transmission of the entertainment channel on every Saturday and at an appropriate time on the other channel would be utilised for encouraging young talent. The details in this regard would be announced later.

(19) On 3/07/1993 the Minister directed that schedule of receipt of applications on 5/07/1993 should be postponed and the allotment would be done on a future date through random number generation through computer. This is how the note proceeds: The matter regarding the allotment of time slots on the metro (Entertainment) and other Satellite Channels was discussed in a meeting chaired by Mib today where Secretary, As & Fa, Asjs (P & F) and the undersigned were also present.

2. Mib referring to the various adverse comments being made in the press regarding the proposed selection of allottees on the principle of first-come-first-served felt that the following aspects needed to be looked into in greater detail: (i) trading of timeslots, (ii) their usurpation for communal/anti national/undesirable purpose, (iii) formation of cartels/mafias, (iv) need for transparency and fairness of the entire operation, and (v) prevention of Allotment through proxy. The suggestion made by Shri Suresh Pachauri, MP in the meeting of the consultative committee for a review of the announced system of allotment which found general support from the other members was also mentioned by MIB.

3. Keeping the above factors in mind along with the delay in the launch of INSAT 2B by a fortnight it was agreed that the scheduled receipt of application on 5.7.1993 should be postponed and the allotment done at a future date through random number generation through a computer.

4. A note from Mib to the Prime Minister in the matter is placed below as desired. (R. Basu) Addl. Secy. 3.7.93 Sd/- (K.P. Singh Deo) 3.7.93"

(20) It will be seen that when the Minister approved this note, it had not been seen by the Secretary and the file did not come to the Minister through him. Nevertheless, the Minister could and did take the decision and that decision is of

the Government.

(21) Then it would appear that a new file or part file in the Minister is opened on the same day, i.e., 3/07/1993, and starts with the following note of the P.S. to the Minister and then the Minister sends this note to the Secretary for comments. This is how the file begins :MIB's Office mib desires to know as to what line of action is being contemplated regarding the press reports of 3/07/1993 which alleges malpractices pertaining to Doordarshan channel forms, queue etc.MIB further desires that in view of the above development, the programme could perhaps be postponed by one month i.e., instead of 5/07/1993, the date of submission of channel forms could perhaps be Thursday ,5/08/1993.Sd/-(Abhijit Bhattacharyya)PS to MIB3.7.93MIBMay put up comments.Sd/-(K. P. Singh Deo)3.7.93SECYThe above two notes of the P. S. to the Minister and the Minister himself are typed written. Then on this the Secretary records his note in his own hand and sends the same to the Minister, and again the Minister also records his note in his own hand. Both these notes are as follows: "When the Metro Channel was that produced on January 26, 1993 similar allegations were made in newspapers. They accused Doordarshan of favoritism. When no one came up initially amongst those who were registered in the beginning it was commented upon that at least Doordarshan had no favorites. In the instant case we have no knowledge as to who is applying except for newspaper report .It is a question of believing the newspapers without any evidence. For all we know the best of the producers may have applied. 2. When the time slots are sold whether by first-come-first-served basis or by other means any party can apply for any number of slots except when we restrict as we have done in prime time. If parties form cartels it will still remain whether it is by random number generation or by taking in open tenders parties have formed cartels. In the instant case I would like to submit that we are not paying anything to the parties instead we are receiving money. The same newspapers are saying that our charges are very high. If it is so how will people benefit by taking time slots. They have to give bank guarantees and make payments one week before the programme can be shown. It is also a little difficult to appreciate that a sponsor will be willing to invest in a programme without seeing. The advertising agencies who have to give money will have to make sure that the programme will ensure viewer ship. It is in this context that the situation will also have to be studied. 3. The Secretary ISRO had assured me that the satellite will be available well before 15/08/1993 if the launch is success-ful. Any statement to the contrary will cause himembarrassment.4. This may also give handle to the foreign satellite networks that we are not capable of handling the satellite system.5. Mib had very correctly given his guidance and advice that on 5/07/1993 we should have observers to ensure that no one does any malpractice. This would be easily arranged.6. It is my humble suggestion that the above points may kindly be considered before a postponement to 5/08/1993 as indicated by Ps to Mib is considered. The possibility of a legal situation arising may also kindly be seen. May like to review the matter at his convenience.Sd/-R.

K. Bhargava 3.7.1993 MIB We have discussed this note and Secretary's comments. Secretary and As (in charge of Doordarshan) were present. We reviewed the entire question/subject in toto. The various implications were discussed. 2. Secretary's comments are logical. The system of first-come-first-served has stood the test of time since 26/01/1993 till date nor criticism or mala fide intention/favoritism has been alleged. So we can follow this system. Credibility of ISRO has to be safeguarded. "A" to be enforced comprising MHA, ISRO be entertained and date for accepting be announced for 9/07/1993 since postponement has been announced. (initial) R.K. Bhargava 3.7.93 AS(B) Sd/- (initial) (K. P. Singh Deo) 3.7.93 Minister, Min. of I & B It has become 3.7.93 sub-judice. (initial) 5.7.93 On 5/07/1993 the Minister again records as under: "Since the matter is subjudice now, it is advisable not to implement the orders on page 4, nor to issue and obtain orders. We will review this case after Court disposal. In the meantime, let there be a Contingency Plan prepared for Telecasting from 15/08/1993 from other sources/resources including our own in-house production sources. We may review over a week. Sd/- (K. P. Singh Deo) Minister, Min. of I & B. 5.7.93

(22) A great deal of criticism has been made as to the functioning of the Ministry, first giving a go-by to the first-come-first-served basis and going for random number generation and then on the same very day again reversing this decision and going back again to first-come-first-served basis. This decision to go back again to F.C.F.S. basis was not known till an affidavit was filed by Mr. R. K. Singh b, Deputy Director General, respondent No. 3 on 14/07/1993. He said as under: "1. On 3.7.1993, it was initially decided that the receipt of applications on per the Doordarshan Satellite Channels Scheme will not be on first-cum-first-served basis but on random number generation. However, it was soon realised that allotment of timeslots on the basis of random number generation may not be as simple as it appears and accordingly, pending final decision; the date of receipt of applications was extended from 5.7.1993 to 9.7.1993. 2. Immediately on coming to know the first internal communication whereby random number generation was sought to be introduced, applicants filed proceedings in this Hon'ble Court. 3. Now, on a careful consideration of all the issues that have been raised, it has been decided that the Scheme will continue to be operative on the "first-cum-first-served" basis. Under the circumstances, the petition filed by the petitioner may be liable to be dismissed as infructuous by this Hon'ble Court. "In any case this reversal of the decision on the same day, as noted above has been commented upon. It was pointed out that a message was communicated by Mr. R.K. Singh, Ddg, on 3/07/1993 by Fax and Telex to Doordarshan Kendras and a notice was pasted outside the office of the Doordarshan. This read as under: "The Government has decided to postpone the receipt of applications on the metro and the satellite channels scheduled for 5/07/1993. A fresh date for the same would be announced separately. The Government has also decided that the allotment on these very application forms will be made on the basis of random number generation. A fresh date for receipt of applications and allotment of time

slots on the basis of random number generation will be notified separately. This¹⁸⁵ may please be notified to all concerned and also announced on Doordarshan & Radio immediately and also later in the evening. "Petitioners said that announcement of this notice was made on the Doordarshan on 3/07/1993 at 5.45 p.m. and even as late as at 10.00 p.m. It was being announced that Government had adopted the random number generation. The respondents have been unable to tell us to at what point of time on 3/07/1993 this decision was reversed and they went back to FCFS basis. As a matter of fact every attempt seems to be in direction to keep from the Court the details and the fact that the decision from FCFS to Random Number Generation taken on 3/07/1993 was reversed on the same day itself. In the affidavit of Mr. R. K. Singh, Deputy Director(Satellite Channel) dated 14/07/1993, which has been reproduced above, there is no mention as to when the reversal of the decision from R.N.G.method to F.C.F.S. was taken. Rather impression is sought to be given that the decision to go back to F.C.F.S. was taken on some day after 3/07/1993. We were not satisfied with this affidavit and on 15/07/1993 we directed as under: "In answer to show cause notice a brief affidavit has been filed by the respondents 1 & 3. It is stated therein that when the scheme was formulated time slot was to be allotted on the basis of "first come first served". Thereafter, allotment was changed to random number generation method. Again on rethinking, it is now decided that first come first served method should be made the basis for allotment of time slot. We are not satisfied with this affidavit. We, Therefore, direct the respondent to file a detailed affidavit in the matter. ..."At the same time we issued Rule D. B. Then again Mr. Singh filed his affidavit dated 27/07/1993 on behalf of the respondents. When he said in his first affidavit that "on 3/07/1993 it was initially decided that the receipt of the applications under the Doordarshan Satellite Channel Scheme will not be on first come first served basis but on Random number generation", he explains now that this decision was temporarily taken. This is what he says in his affidavit dated 27/07/1993;"¹⁴. It is true that the first-come-first-served basis was temporarily given up on 3/07/1993 in avour of random number generation. The reasons for this were that the entire system of allotment of first-come-first-served basis was sought to be subverted by some people who formed a queue outside the office of Doordarshan on 23.6.1993, about 12 days before the receipt of applications.¹⁵ The number of persons joining this queue kept increasing day by day and, as reported in the press, it had swelled to about 250. Meanwhile, some others formed a second queue. A number of articles with photographs kept appearing daily in the press commenting adversely on the system of allotment and alluding to the possibility of a law-and-order problem on the day the applications were to be received (5th July). It was also alleged that certain people had formed cartels with the¹⁸⁶intention of cornering all the time slots and trading them subsequently at a premium. The system of allotment was also considered to discriminate against those applicants who did not live in Delhi.¹⁶ On 3.7.1973 Bennett, Coleman & Co. approached the Court of the Additional District Judge Delhi alleging that those in one of the queues were blocking entry of bonafide persons into the

offices of Doordarshan.¹⁷ In the light of all these factors, it was decided on 3/07/1993 to (i) postpone the date for receipt of applications, and(ii) change the system of allotment to Random Number Generation through a computer. An internal communication to this effect was accordingly sent by the Government to Doordarshan the same day. Later in the day, a copy of the internal communication issued by the Doordarshan Directorate to its Kendras in Delhi, Bombay, Calcutta and Madras in this matter was pasted outside the Doordarshan office at 4, Tolstoy Marg by the police authorities, presumably in the hope that the queues that had formed there would disperse and they would be in a position to report compliance of the order of the Additional District Judge, Delhi, directing the police to remove the queue and allow it to form only 2 hours before the time of submission of applications prescribed by Doordarshan."Then he says that matter regarding change in the method of allotment was subsequently examined in greater detail and it was decided to continue with the original basis of allotment, i.e., FCFS. As to what considerations now went into we may again reproduce relevant paras from the affidavit of Mr. Singhi"¹⁸. The matter regarding the change in the method of allotment was subsequently examined in greater detail when it was observed that the system of allotment through random number generation would require some amendment to the Scheme already announced on 3/06/1993 namely:(i) A closing date for the Scheme would have to be fixed so that only those applications that are received upto the stipulated time would be considered for the random number generation. Further, it would entail fixing a closing date every time additional time slots were to be allotted in the future, e.g., to fill up vacancies caused by earlier allottees dropping out midway voluntarily or as a result of punitive action for violation of the terms and conditions of the license.(ii) It would be necessary to issue a fresh public notice announcing the amendments and give a reasonable time to the applicants to prepare their applications afresh. These amendments could have given rise to a fresh round of litigation which would have further delayed the implementation of the scheme.¹⁹ It was also felt that the adoption of a new system of allotment would be unfair to the applicants who had intended to apply as per the Scheme announced on 3/06/1993 since they were required to submit a bank guarantee of an appropriate amount along with the applications. These bank guarantees may have to be extended for which bank charges, interest, etc.may have to be paid. Further, many of them would have tied up arrangements for the procurement of software for being telecast in the channel of their choice on which they harbored a reasonable hope of securing a time slot and delay in selection could have caused them avoidable hardship.²⁰ Moreover, the efficacy of the method of first-come-first-served had been reasonably established while allotting time slots on the Metro channel in January, 1993.²¹ It was believed that the criticism of the original method of Allotment had been orchestrated with some ulterior motive by parties who had not secured a place near the head of the informal queue that had formed outside Doordarshan's office, and by those who felt that Government may recognize the validity or legality of the informal queue.²² In so far as the allegation of cartelization if

concerned, it is respectfully submitted that it is totally misconceived. The 1/2 hour slots available for allotment in the new 5 channels per year will be 27,872 of which 5148 will be on Prime time and the balance 22,724 will be on non-prime time. It is very unlikely that such a large number of slots can be sold at a premium. Moreover, it has specifically been mentioned in the scheme that transmission time will be gradually increased. This should also act as a disincentive. The Scheme requires the allottee to deposit the license fee seven days prior to the date of telecast in the succeeding week. Therefore, the weekly advance deposits for all slots in all channels together would be as follows: Entertainment Prime Time = Rs. 97,18,000 Channel Non-Prime Time = Rs. 1,22,22,000 Sports Channel = Rs. 2,52,000 Business Channel = Rs. 9,80,000 Enrichment Channel = Rs. 1,68,000 Music Channel = Rs. 16,10,000 Rs. 2,49.50,000 Besides having to arrange such huge amounts, the allottees would have to arrange for the sale of over 44 hours per week (or over 2,300 hours per year) of commercial time.²³ There is not a single production house in the country which has the capacity to provide 8 hours of programming per day for 365 days in a year even on a single channel. It is clear that merely obtaining time is not enough in itself. The allottee will need to procure good quality programmes, develop an infrastructure to ensure full commercial exploitation of the time slot, all subject to the acceptability of the viewer who is the final judge. A chart detailing the relevant figures is annexed here to as Annexure R-2.

(24) In this context, it may be mentioned that apart from the license fee payable, the cost of producing a half hour programme varies from Rs. 1.5 lakhs to Rs. 4 lakhs depending on the seats and fees paid to artistes. The cost to an allottee of a single half-an-hour slot on a single day in the prime time entertainment channel will average out to about Rs. 5 lakhs and for a single week to Rs. 35 lakhs and for 52 weeks Rs. 18.20 crores. The allottees can recover this cost only from sponsors/advertisers whose willingness to finance would depend solely on viewer acceptability of the programme. In the ultimate analysis Therefore, it will be the viewers and viewers alone who will decide and control the quality of the programmes. There is, Therefore, no chance for any bad or mediocre programme surviving under these conditions on a sustained basis. Production has to be planned well in advance and it may take up to three months of advance planning. It is for this reason that though the satellite channels will be operational from 15th August, the licencing period will start from 15th October.

(25) It is submitted that rather than creating cartels, the satellite channels will act as catalyst for giving opportunities to smaller companies who will be able to produce attractive programmes for these channels. It will also bring out hidden or untapped talent in the country.

(26) In the present Scheme, the number of hours broadcast per week will be 268. As against this, it is worth mentioning that the hours broadcast per week by Doordarshan presently is as follows - 62 hours - 22 hours - 21 hours - 16 hours In

other words, on the five satellite channels more than double the amount of hours will be broadcast than in the present broadcasting schedule of Doordarshan. Under these circumstances, it is unthinkable that a group of people can garb all the time slots and successfully sell them at a premium subsequently given all these constraints.¹⁸⁹

(27) Given all these constraints, it is clear that the theory of cartelization is red herring. As these factors were taken into consideration for continuing with the first-come-first-served basis of allotment. "Again we groped in dark as to when the decision to go back to FCFS was taken and in so much detail that we required that the relevant files be produced in Court for our examination. The files were not available in the Court at that time and the learned Solicitor General appearing for the respondents admitted that he himself had not seen the relevant files and further that decision taken by the Government was not in any one of the files and there were number of files. He said it would take two days time to collect the files. We gave him time for the purpose. As to how the matter was examined in the Ministry the notes from the files reproduced above speak for themselves. We are really appalled to see as to how the decision has been arrived at in the Ministry. It would appear that some unseen hand had been working in the Ministry when decision from FCFS to Rng was reversed. What were the considerations that weighed for reversing this decision are certainly not all those mentioned in the affidavit of Mr. Singh. In this long affidavit filed by the respondents every attempt has been made to conceal from this Court as to when the reversal of decision from FCFS to Rng was taken. But for the production of the files we would certainly have been misled to believe that decision was taken at a later date after 3/07/1993. We disapprove of this conduct of the respondents. When the decision on 3/07/1993 was taken there was no question of the principle of first come first served being given up temporarily. The affidavit of Mr. Singh dated 14/07/1993 does not say as to when it dawned upon the respondents that the allotment of time slots on the basis of Random Number Generation might not be as simple as it appeared. He is also wrong when he says that "immediately on coming to know the first Internal communication whereby random number generation was sought to be introduced, applicants filed proceedings in this Hon'ble Court". We have seen above that wide publicity was given till late in the night on 3/07/1993 of the change from FCFS to Rng and the first suit in this Court was filed only on 4/07/1993. The factors which existed for change of decision from FCFS basis to Rng were still existing when on that very date (but we do not know at what time) this decision was again reversed. This decision forgoing back to FCFS basis is arbitrary and has been taken without application of mind. Considerations which led to the reversal of the decision which are now sought to be projected were not there. In a matter of such a magnitude affecting million of viewers of this country, the Ministry should act in such a fashion surprises us. We wished there would have been an expert committee, whether inside or outside the Ministry, to guide it.

(28) In the note to the Prime Minister dated 3/07/1993 the Minister informed

him that it had been decided that the receipt of the applications for allotment of time slots on satellite channels which was scheduled for 5/07/1993 had been postponed and that the allotment, of time slots will be at a later date through random number generation through computer instead of "first come first served basis" and that fresh dates for this process would be announced separately,

(29) During the course of hearing of the petitions we were shown two separate files, may be part files, none of which have been now put in file No. 8/4/93-PBC. After the decision was taken by the Minister in the part files that the date for receipt of applications which was fixed for 5/07/1993 should be postponed and the allotment to be done at a future date through random number generation through a computer, there are nothings from 7/07/1993 to 4/08/1993. After this the second decision also dated 3 July 19⁹³ of the Minister again going back to F.C.F.S. basis is in a file which is in two sheets. The noting on the second sheet of 5/07/1993 says that since the matter was sub-judice it was desirable not to implement the order for going back to F.C.F.S. basis. These two sheets are now pagged 26, 27 and 28 and there is endorsement that these have been merged in the main file No. 8/4/93-PBC. We have not been able to find if this change of decision going back to F.C.F.S. was also communicated to the Prime Minister Mr. Sanjiv Datta, Deputy Secretary (BP) records his note on 8/07/1993. saying that as per decision of the Minister which was on the file that the receipt of applications scheduled for 5/07/1993 be postponed and allotment of time slots be done at a later date through random number generation and that the note informing this change was sent to the Prime Minister by the Minister himself on 3/07/1993 and subsequently the same day directions were also issued to Doordarshan regarding the postponement of the receipt of applications and the new system of allotment of time slots. This note makes the following points;-1. The matter was again discussed in a meeting held in the Minister's Chamber on 5/07/1993 when Mr. Sanjiv Datta, Deputy Secretary (BP), Additional Secretary, Joint Secretary (B) were also present. Developments pursuant to litigation in the Delhi District Court and Delhi High Court were discussed "specially in the light of the change in the manner of allotment of time slots approved by Mib on 3.7.1993, i.e., random number generation in place of on first-come first-served basis."2. In so far as the formation of queues outside the Doordarshan office was concerned, it was clarified that no recognition had been given to any of these queues by Doordarshan at any stage. Appointment of an Assistant Registrar of Delhi High Court was noted who had verified the register being maintained in respect of one queue.3. As regards the question of introducing any kind of weight age linked to experience, it was pointed out that the basic promise of the scheme was that it would be driven by market forces and as such there was no need to introduce any quality or experience parameters as an essential precondition for allotment of time slots.4. Ministry's stand in Delhi High Court in the Civil Suit was to be of allotment of time slots on the basis of random number generation. However, it was also to be made clear that in case the Court favored first come first served basis, the Ministry would have no objection to reverting to the same. This note is

then marked to the Joint Secretary (B). He records that it was decided that in the meeting referred to in the above note of the Deputy Secretary that the following instructions be given to the Additional Solicitor General who was to appear in that matter in the absence of the Solicitor General: -"(i) the queue being formed outside No. 4, Tolstoy Marg, had no sanction by Doordarshan or by Government; (ii) that weight age would be determined by market forces ; (iii) the scheme would be made operative from 15.8.93 as announced; and (iv) the onus would rest on the Court regarding either the "first come first served" system (regarding which the Court of the Vacation Judge had already appointed a local Commissioner to verify the register and the applicants physically in the queue on 4.7.93), or the method of random Number Generation, which was in accordance with the MIB's note to Pm dated 3.7.93, wherein it had been decided that the receipt of applications scheduled for 5/07/1993 may be postponed, and that the date of allotment of time slots be done at a later date through the computer, instead of "first come first served" basis, and that fresh dates for this process would be announced separately. In accordance with this, Ddg, (Shri R.K. Singh) sent fax messages to the concerned Doordarshan Kendras on 3/7/93."The note of the Joint Secretary (B) is also dated 8/07/1993 and he marks the same to the Additional Secretary who after putting his signatures sends the same to the Secretary who records the following note ; "Since we gave a public notice in announcing the scheme, any amendment would also require a public notice. It will also require time to be given to the public so that they may make necessary preparations for participating in the scheme. Since so far we have not issued any public notice for amending the scheme, our existing scheme stands. As such it is submitted that we may take a consistent stand on the present scheme, the earlier model of which, namely, the Metro Scheme, has stood the test of time. We may show the Court how the Metro Scheme was earlier criticised in the same manner and how once it became a success it was accepted by the public. Eventually, we shall have 8 hrs. per channel and thus 40 hours per day. Even taking a figure of 300 days it gives us 12000 hours in a year and on half an hour basis 24000 programmes. To preview, understand and decide quality would be a gigantic task and would need consideration. For the present we may not announce the postponement as the Courts have intervened. We may in consultation with Courts only announce a date. The contingency plan of starting the channel of 15/8/93 is being separately submitted to MIB. Sd/-10/7/93 MIB The note is then sent to the Minister who gives the following endorsement :- Seen, Sd/-19 July 93. 192 It is astonishing that in all these nothings there is no mention of the Minister reversing the decision and again going back to F.C.F.S. method which decision was also of 3/07/1993. Perhaps this later decision was kept a closely guarded secret even from the officials of the Ministry. Minister in his later note recorded that he had discussed the note with the Secretary and A.S. (in charge, DdI But there are nothings which we have mentioned above that even the Secretary and the Minister do not say that decision for going for allotment to random number generation through computer has been reversed. As we have seen above, these two sheets containing this later decision of the

Minister have been brought on the file only on 9/09/1993 when we had called for the files. We have been unable to appreciate this veil of secrecy kept even from the other senior officers of the Ministry of reversing the decision from R.N.G. to F.C.F.S. This would also appear to explain the inconsistent stand taken by the respondents before us first staling us that Doordarshan did not recognise the queue and then subsequently the Solicitor General lukewarm in his approach and unable to make a categorical statement as to the status of the queue when the Court persistently asked him to spell out the stand of the respondents on the queue formed outside the office of Doordarshan and it being still there. But this decision would appear to have come to the knowledge of the first few persons standing in the queue outside the office of Doordarshan and that would explain why the queue was not broken up in spite of orders of the Court.

(30) There has been shifting of stand by the Government as to how the allotment Is to be made. There reversal of the stand from random number generation again to FCFS would appear to be shrouded in mystery. While a great deal of publicity was given in the electronic media of the stand of the Government for going into random number generation till late in the night of 3/07/1993 there is noting on the record as to when the public was made known of reversal of this stand till the affidavit dated 13/07/1993 was filed by respondent No, 3 in the writ petition No. 3104/93 (Home Communication Network Limited). This petition questioning the change of method of Allotment from F.C.F.S. to random number generation was filed on 6/07/1993. It came up for admission on the following day when it was adjourned to the next day. On 8/07/1993 when notice were issued in this petition, the petitioner was not aware of the reversal of stand from random number generation to F.C.F.S., otherwise perhaps he would not have pressed the petition. In this petition plea of legitimate expectation has also been raised saying that the respondents must stick to its method of allotment announced in the public notice, i.e., F.C.F.S. basis. As a matter of fact. plea has also been raised relying on the doctrine of promissory estoppel. It is stated that the respondents are estopped from altering the basis of allotment originally represented to the petitioner and the public at large. Petitioner says he is fifth in the queue which was formed outside the office of Doordarshan on 23/06/1993. Petitioner, Therefore, says he was certain to be allotted a timeslot. The scheme of random number generation in itself has not in terms been criticised by this petitioner. Other petitioners have done so. They have said that both the schemes- F.C.F.S. and Random Number Generation, are violati"ve of equality clause under "Article 14 of the Constitution being arbitrary and discriminatory. It is stated that auction of time slots could have been the best method as only genuine people would have come forward and it would have generated more revenue for the Government. It is one of the well recognized method of distribution of largess and the very fact that it was not considered by the respondents would be enough to strike down the scheme of F.C.F.S. and R.N.G. though we are not suggesting and it is no intention of ours to suggest that respondents should resort to the auction method.

(31) On 6/08/1993 the Minister granted approval to rescind the scheme for allotment of time slot notified in September 1992 through Public Notice in the Gazette of India. (Extraordinary) on that day itself. His note reads as under :-"DS (BP) has described the entire evaluation of the Atci from its formation, deliberations, communications with the Ministry, through their presenting the document and raising various points while not responding to any queries and clarifications asked by the Ministry. Even after rectifying all doubts in the discussion with the Chairman on 22/03/1993, the Committee members resigned and the Chairman requested vide his letter dated 29/03/1993 to be relieved/released of his position as Chairman of ATCI for the simple reason that Parliament, which was in session asked to whom the Government is responsible, was informed of the Satellite channels without informing the Atci which is a creation of Government. It is a question of the tail wagging the dog. Not satisfied with the resignations, which were widely published in the Print Media (which was ridiculed in Parliament), files and inimical works and criticism of the dept./ ministry was mounted in the same media. The Govt. kept silent, keeping in view that eminent and elderly persons need not be offended by issuing rejoinders. Apparently consideration, courtesy and good behavior has been mistaken for weakness, indecisiveness and inept functioning by Govt.JS (B) in his first note described the Chairman's action of addressing the Solicitor General as unusual and so also marking his correspondence to the Division Bench of the Delhi High Court, presently hearing the case as unusual. I would term it unethical and improper, and reflects megalomaniac traits. I feel enough mischief and sabotage of the Satellite channels and national interests and pride has been placed in the last few months .It is high time to put some stop to it. I agree with the Secy."s proposal endorsing the Js (B) proposals in his second note seeking approval for rescinding of the Scheme of allotment of timeslots notified as 28.9.1993.In my discussion with Mos Law telephonically I had mentioned that he would be seeing all the documents. connected with ATCI and Mos Law wanted that a written opinion should be obtained from Law Secy. Js (B) informed me that A.S, Law opinion at note sheet page. 2 may be deemed to have the Secy."s concurrence. Approve Js (B)"s proposal as recommended by him. Cabinet Secy. and Pmp may please be informed. There is no need to give publicity at telic moments(1.006.8.93)"In pursuance thereof the notification is issued the same day.

(32) Thus, the A .T.C.I, which was constituted with Cabinet decision with specific purpose of allotment, or we may say management, of time slots on the Metro Channels of Doordarshan in September 1992 met its end on 6/08/1993. We would not know why the Chairman and all the members of A.r.C.I. had tendered their resignations earlier in March 1993.

(33) We have seen above the license fee fixed for prime time and non-prime time under the scheme envisaged under public notice dated 28/09/1992 of allotment of time slots on metro channel of Doordarshan. Same very license fee has now been fixed for the entertainment channel. On our directions the respondents filed the basis for fixing license fee for allotment of time slots on

entertainment channel of Doordarshan, and it is as under : "The following three elements were taken into account for computing the license fee :-(i) Direct cost of transmission to be incurred by Doordarshan.(ii) Opportunity cost.(iii) Uplink charge. Direct Cost On the replacement cost [Rs. 700 lakhs) interest @ 18% per annum (Rs. 126 lakhs) and depreciation @ 9% per annum (Rs. 63lakhs) have been worked out and these two elements together with the annual operation cost (Rs. 171 lakhs) give a direct cost of Rs.260 lakhs per annum, i.e., Rs. 3,560 per half an hour slot (based on 10 hours daily transmission). Opportunity Cost The maximum revenue realisable on the second channel per metro for 10 hours of transmission each day works out to Rs. 3650 lakhs per annum (as per existing rate card). The revenue foregone as a result of the new scheme works out to Rs. 50,000.00 per half an hour slot. Uplink Cost Rs. 10,000.00 Direct cost Opportunity cost == Standard license fee. Rs. 3560 + Rs. 50,000 == Rs. 53,560 or say Rs. 54,000.00 Standard license Fee Uplink cost == license fee for prime time slot Rs. 2.16,000 + Rs. 10.000 = Rs. 2,26,000 Standard license fee - 50% discount on Operating Cost x 4 + Uplink Cost = license fee for non-prime time slot. Rs. 54,000 - Rs. 25,000 == Rs. 28,560 or Rs. 30,000.00 Rs. 1,20,000 + Rs. 10.000 = Rs. 1,30,000.00 "It will at once be noticed that the direct cost does not take into account the cost of the satellite. Mr. Solicitor General said that cost of satellite and its putting in the orbit has been provided in the budget allocation, though not of the Ministry of Information and Broadcasting and that as the things stood this Ministry is not to pay to other department (Space) for utilising part of the capacity of the satellite. This appears to us to be rather odd. We desired to know whether payments were made by the Ministry to the Department of Space for the use of the transponders on the satellite were taken into account. The reply is as under : - "In this regard, it is submitted that presently no lease charges are payable for the transponders of the Indian satellites by the user Department since the funding for the satellites is being provided from the budget of the Department of Space as part of its R&D plan. If such lease charges become payable in the future, the same would also be taken into account while computing the license fee for the time slots on the Satellite Channels. There is, however, no gain saying the fact that the said addition would result in a substantial enhancement of the current license fee. "This stand is, however, not reflected in any of the files shown to us. We also enquired from the respondents if while fixing the license fee any study was made as to what were the charges of advertisement of Star T.V. an affidavit was filed by Mr. Sanjiv Dutta, Deputy Secretary in the Ministry. The affidavit starts with an objection that since the quantum of license fee or even the basis on which the license fee worked out had not been challenged by any of the petitioners at any stage of arguments or in the pleadings even though all the petitioners were aware of the quantum of license fee payable, this question was never in issue before this Court. By making such a statement respondents are showing ignorance that whole of the scheme is under challenge, and when the stand of the Government itself is that it had reached a policy decision to privatize the time on the satellite channels and at the same time to earn revenue, the question of license fee squarely falls for consideration.

In the first instance when Dr. Gupta filed his writ petition (CWP No. 3117/93) it was in the nature of a public interest litigation. We may, however, note that it was that stand of Dr. Gupta that the license fee fixed was on a higher side. As to whether the rates charged by Star T.V. were taken into account, the respondents had to say the following in their affidavit :- "In this regard it is submitted that this element was considered and it was concluded that a comparison with Star Tv was not relevant for several reasons such as : (i) Star Tv is watched in several countries from Hong Kong to Dubai .The Entertainment Channel will be available only in India and the majority of viewers will be in the four metros. (ii) Star Tv broadcasts only in English whereas the Entertainment Channel will be multilingual and will, Therefore, have a larger viewership. (iii) It is possible that Star Tv may have deliberately kept their charges low with an eye on market entry, even incurring initial losses. 8. This Hon'ble Court may be pleased to appreciate the following facts: (i) The Entertainment Channel will need some time to reach an optimum viewership. It was, Therefore, decided to fix the license fee on a conservative basis (based on incremental cost instead of total direct and indirect cost). (ii) When the privatization of the Metro Channel started on 26.1.1993, the license fee was fixed at Rs.80,000.00 per hour (that is standard license fee of Rs. 54,000 + 50% premium on the operating cost-Rs. 25,000). This was considered to be very high. Accordingly the license fee was reduced to Rs. 54,000.00 by removing the 50% premium on the operating cost. (iii) The license fee has been fixed for one year only and will be reviewed thereafter. (iv) The entire concept of the Satellite Channels is new and untested and a wide latitude ought to be given to the Government fixing the license fee."

(34) Mr. Gupta, learned Solicitor General, also said that this scheme was only for interregnum period till the Ministry heard from the Prime Minister or any Cabinet decision was communicated to it. When there was a scheme for allotment to time on Metro Channel a high power committee had been constituted. This scheme which is far bigger in scope and intent also needed such a committee. The Minister in his note to be the Prime Minister had given four alternatives and had said that the Ministry was in favor of adopting a Course of action suggesting in alternative No. 4 which we have reproduced above. This needed approval and the Minister has said that for the interregnum the management of the channel would continue to be handled through Doordarshan with suitable consultants employed for this purpose. Without waiting for any response, this scheme was brought into force, and we are told this is for interregnum period till the matter is considered by the Prime Minister or by the Cabinet. From the scheme none can make out that it is for interregnum period. It talks of allotment time slots for 52 weeks and there being a clause for renewal as well. We fail to understand why such an elaborate scheme containing legal loopholes; was at all devised if it was to operate only for an interregnum period, In this connection note of Mr. Sanjiv Datta, Deputy Secretary (BP) dated 28/04/1993 has been noted by us above. He has referred to a communication received from the Cabinet Secretariat which is as under :- Prime Minister's Office Enclosed are two notes, from I & B Minister

and SeerI&B, on J& B Ministry's proposal to extend the transmission services of Doordarshan and AIR. Pm has desired that the raised in these notes should be examined in detail by the Group on Media-in particular issues such as the management structure, private participation in the proposed management. to ring of the news and current affairs programmes and the financial viability of the proposed channels. Cabinet Secretary may kindly send the views and recommendations of the Code Group urgently for submission to PM.Sd/-(P.V. R.K. Prasad) Information Adviser to PM "This communication was addressed to the Cabinet Secretary, and this was received by the Secretary in the Ministry on 28/04/1993.

(35) Dr. Gupta (CPW No. 3117/93) said that the satellite was owned by the Department of Space in the Ministry of Science and Technology and not by the Ministry of Information and Broadcasting and this Ministry, therefore, could not make use of the satellite. He said that when there was the Prasar Bharati (Broadcasting Corporation of India) Act, 1990, the scheme could not be floated in the exercise of executive powers by the respondents. Dr. Gupta said that when a comprehensive legislation has been made by the Parliament, the Central Government could not keep the Act in abeyance and not enforce it and proceed to take a decision of such a magnitude. He said when there was an explosion in the electronic media it was right time that an expert committee was constituted of experts from the law, media, economics, culture, etc., presided over by a retired Judge of the High Court or the Supreme Court. Dr. Gupta said that consideration of revenue was of paramount importance and auction of time slot was the best method in the circumstances of the case. He also said any concept of primetime was not of much relevance. If a programme was good and shown evening the middle of night a person would get up and see the same and that would be the prime time. Dr. Gupta also referred to report of the Interdepartmental Committee on Introducing Competition in the Electronic Media called the Varadan Committee report and also to the scheme of allotment of air time on the metro channel of Doordarshan and All India Radio by the Air Time Committee of India (ATCI) also called the Deodhar Committee report referred to above. Dr. Gupta said there should be an Act, on the lines of the Broadcasting Act, 1990, of England. Then his argument was that Ministry of Information and Broadcasting was incompetent to grant license in question as that was within the domain of the Department of Telecommunications in the Ministry of Communication. Media, Dr. Gupta said, was under, exposure from outside and when the State was withdrawing from active participation, then there had to be a regulatory control, a composite media policy had to be framed. He then referred to Indian Wireless Telegraphy Act, 1930 and to the Indian Telegraph Act, 1885, to contend that authority competent to grant license would be Telegraph Authority and that would be to Director General of Post and Telegraph, as defined in the Indian Telegraph Act. We do not think we have to refer to these to enactments as only time slots are being offered to the public and the whole operation is in the hands of the Government itself. There is no question of grant

of any license under these two enactments. Though Dr. Gupta said that auction was the best method, the English Broadcasting Act provided that while granting license based on auctioning the commission constituted under that Act might disregard the requirements imposed under the Act and award the license to an applicant who had not submitted the highest bid if it appeared to the commission that there were exceptional circumstances which made it appropriate for them to award the license to that applicant. Federal Communication Commission in the United States of America, Dr. Gupta said, protected the public interest by ensuring that no monopoly existed in radio and television broadcasting, though there the electronic media was completely owned by the private sector.

(36) A committee under the Chairmanship of K.A. Varadan, Additional Secretary in the Ministry of Information and Broadcasting was constituted by office memorandum dated 3/09/1991 consequent upon Government's decision to introduce competition in the electronic media by offering telecasting/broadcasting rights to Public Corporation, which conform to the parameters to be laid down by law to help evolve a broad frame work for introducing such competition. This committee was also to make an in-depth study of all aspects relating to the offering of telecasting/broadcasting rights to public corporations and other related matters, through extensive discussions with those who had shown interest in acquiring such right and otherwise, and suggest to the Government the most suitable option (s) available for implementation of this scheme including the detailed parameters subject to which the telecasting/broadcasting rights could be offered to public corporations. The object for which this Varadan Committee was formed would certainly be relevant to an extent in the present case, though the Committee would appear to have been set up when it was proposed to offer the rights to public corporations. This Committee prefaced its report as under:—"The announcement of Government's intention to offer broadcasting rights to suitable organisations in order to provide competition to the Government-owned T.V. and Radio channels and, thereby offer more choice to the listeners/viewers marked a major change in the broadcasting policy of the Government. This naturally gave rise to a lot of lively interest in the country on the practical possibilities of such a change. Some individuals and organisations also responded in writing showing their interest in and willingness for running new channels. At the same time, some intellectuals and media experts also cautioned the Government against the dangers to the country of indiscriminate opening up of broadcasting. Government appointed a Committee on 3-9-1991 to study various aspects of this proposal and make suitable recommendations. The composition of the Committee and its terms of reference are at Annexure 1. The Committee had several sittings during September and October 1991. The Committee also met representatives of groups which had shown interest in setting up and running the new broadcasting channels. The Committee also met some experts in the field of communications to know their viewpoints. The Committee gathered as much information as possible about the broadcasting systems in some countries in the world and studied them. The

issues involved are of profound importance to the Indian society .The Committee found its task both challenging and rewarding. The Committee has attempted to formulate various options to us her in a new broadcasting system and spell out their pros and cons .The Committee has also made its recommendations on these options.The Committee met many individuals and groups and had valuable exchange of views on the subject. We wish to thank all of them. The Committee, particularly "wisbes to place on record its appreciation and thanks for the help rendered by Shri G. Balagopal,Director in Information and Broadcasting Ministry who is now on study leave pursuing a subject in the field of broadcasting. With his keen interest in and knowledge of the subject and painstaking efforts to collect all relevant facts and analyze them the Committee's task was made infinitely easier. The Committee has pleasure in submitting its report to the Government. We hope that this report will facilitate appropriate decision-making by the Government on a new broadcasting system for the country. "The Committee suggested that the Broadcasting Council of India to be constituted through a legislation amending the relevant sections in thePrasar Bharati Act which should be entrusted with the functioning of licensing ,monitoring of programmes and quality rating, etc. Various other suggestions were also made. The Committee also examined international comparisons with reference to the provisions existing in the United Kingdom, United States of America, Japan, France, Germany, Australia and the Soviet Union. The Prasar Bharati Act, which is yet to be enforced and where certain amendment is are contemplated, establishes a Corporation to be known an Prasar Bharati (Broadcasting Corporation of India). It gives the functions and powers of the Corporation so established. The Solicitor General said that the present scheme was broadly in consonance with this Act and that Varadan Committee was an inter-departmental committee and suggestions were not binding on the Central Government and Atci was constituted when the Government had no scheme to introduce satellite channels and its functions related merely to metro channel .But then both these reports certainly have relevance to the scheme now formulated for award of time slots to private persons. As to the position in other countries, learned Solicitor General said that it was not necessary to deal with those provisions and that because an issue had been dealt with in a particular manner in one country did not mean that the manner in which another country dealt with the same issue was arbitrary. Thus, what is the experience of other countries, according to the respondents, is of no relevance to them. In the discussions in the Ministry which have been reflected in the notes which we have quoted in extenso, for bringing into operation the scheme in question, there is no whisper if the recommendations of Varadan Committee report and Deodhar Committee report and the provisions of the Prasar Bharati Act were at all referred to. "Let knowledge come from every side" is perhaps not the motto for the people in the Ministry of Information and Broadcasting.

(37) The learned Solicitor General said that the Prasar Bharati Act had not yet been brought into force and various consultations were in progress with regard

thereto. We have noted above, that Varadan Committee recommended certain modifications in this Act. It is well settled that until an Act is brought into force it would be inoperative in the constitutional sense and could not be called in aid to control executive action or for any other purpose. Learned Solicitor General is right in his submission that in such a situation that executive powers of the Central Government remain unfettered and co-extensive with the legislative powers of the Parliament. In this connection the learned Solicitor General referred to the decisions of the Supreme Court in (1) *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, ; (2) *The State of Orissa v. Chandrasekhar Singh Bhoi etc.* AIR1973 S.C. 398 ; (3) *A.K. Roy and Others Vs. Union of India (UOI) and Others*, ; and(4) *Union of India and others Vs. Sukumar Sengupta and others*, .

(38) To bring an Act into force after it is passed by the Parliament, is a legislative function, as the law stands today. But some day this question may have to be re-examined if without enforcing that particular Act which is on statute book the Government could exercise same very functions as envisaged under that Act. Therefore, how can executive keep the sovereign will of the Parliament in abeyance which otherwise has enacted a law on the subject .The learned Solicitor General had submitted that in any event the present scheme did not in any way violate the present provisions of the Prasar Bharati Act or the objectives which were to guide the proposed Corporation contemplated under that Act.

(39) Under the Government of India (Allocation of Business) Rules, 1961, framed under Clause (3) of Article 77 of the Constitution, the business of the Government shall be transacted in the ministries, departments, secretariats and offices specified in the first schedule to these Rules. Then under Rule 3, the distribution of subjects among the departments shall be as specified in the second schedule to the Rules. Doordarshan is one of the attached and subordinate organisations in the Ministry of Information and Broadcasting. Admittedly, the satellite does not belong to this Ministry ,but the schema for its five channels envisages use of the satellite. Under Rule 4 of the Government of India (Transaction of Business) Rules, 1961, also framed under Clause (3) of Article 77 of the Constitution, when the subject of a case concerns more than one department, no order be issued until all such departments have concurred, or, failing such concurrence, a decision there on has been taken by or under the authority of the Cabinet. There is no mention in the files shown to us or in the counter-affidavit filed by the respondents that the Department of Space has concurred in the use of its satellite by the Ministry of Information and Broadcasting. Sub-rule (3) of this Rule 4 provides that Ministry of Law shall be consulted on-(a) proposals for legislation; (b) the making of rules and orders of a general character in the exercise of a statutory power conferred on the Government; and (c) the preparation of important contracts to be entered into by the Government. Again neither the files of the respondents nor the scheme tells us if the Ministry of Law was at all consulted. It is un denying that the scheme provides for entering into a contract which is an important one involving

as much as a whopping sum of Rs. 249,50,000/ is to be obtained by the Ministry for licensing of time slots on the five channels. Mr. MadanLokur, Central Government Standing Counsel for the respondents, submitted that Cabinet had constituted an INSAT Coordination Committee with the Secretary, Department of Space, as Chairman and that this Committee had permitted the use of five transponders on the satellite by the Ministry. Mr.Lokur, Therefore, said that there was concurrence by the Department of Space permitting the user of transponders on Insat-2-B by the Ministry. In this connection we do find a letter dated 4/06/1993 written by the Secretary, Ministry of Information and Broadcasting, to Professor U.R. Rao,Secretary, Department of Space. Mr. Lokur admitted that Ministry of Law was not consulted when the public notice giving the impugned scheme was issued .He said that when scheme for allotment of time slots on Metro Channel was introduced in January 1993 Ministry of Law was consulted and terms and conditions were settled by the Ministry of Law. Mr. Lokur placed on record a copy of the contract. We find scheme introduced at that time formed the terms and conditions of the contract. The case of the respondents before us is that scheme for allotment of time slots on Metro Channel was insignificant to the present scheme for allotment of time slots on satellite channels. There are material differences between the two schemes .As a matter of fact, the dispute in the present case, as we have seen above, pertains to the Entertainment Channel including the Metro Channel and that too for the prime time period. This programme can now be seen all over the country with the help of dish antenna and on the Metro Channel by a terrestrial telecasting in the metropolis. Mr. Solicitor General was at pains to tell us that scheme of allotment of time slots of one hour on Metro Channel introduced earlier was of no relevance to the allotment of 50hours of time slots on satellite channels. It was the bounden duty of the Ministry of Information and Broadcasting to consult the Ministry of Law before finalising the scheme as the scheme itself forms the terms and conditions of the contract to be entered into with the prospective allottee.The provisions of Clause (c) of Sub-rule (3) of Rule 4 of the Government of India (Transaction of Business) Rules which require consultation with the Ministry of Law on the preparation of important contracts, to be entered into by the Government are mandatory and these provisions have been violated by the Ministry. The scheme must fail on that account. During the course of arguments, and as we earlier noted more than once, we were told by the learned Solicitor General that the scheme framed was only for an interregnum period till a policy was formulated by the Cabinet. We really wonder what an effort has been gone into to introduce this scheme only for an interregnum period which we have not been told how long it will last .We do appreciate, however, the stand of the respondents that it is left to the Cabinet to take the decision on the question of allotment of timeslots on satellite channels as this was done in the case of allotment of timeslots on Metro Channel for the earlier scheme.

(40) Again during the course of arguments we had occasion to examine the scheme as informed to the public by means of public notice. This is a hastily

drafted document with many loopholes. For example, it starts with the application from parties interested in obtaining a license under the scheme. After the party gets the license, does the party become a licensed programmer, or a mere programmer, or a licensee, or even a producer. These different expressions have been used without any definition, and it says that management may on repeated infringement of the guidelines for programmes by the licensee, etc. suspend or revoke the license. But before that the licensee, is to be informed in writing and he is to give his Explanation within fifteen days. This Explanation is to be examined by the Government whose decision is to be communicated to the licensee. Are management and Government two different entities? In the scheme there is provision for appeal also. The appeal in case of any dispute can be made to the Government in the Ministry of Information and Broadcasting which can either dispose of the appeal itself or refer it for disposal to the designated authority for this purpose. It is stated that Government also reserves the right to set up a separate body for this purpose. It is unnecessary to multiply other anomalies in the scheme. We had occasion to remark during the course of arguments that such a scheme would be a lawyer's paradise. That is precisely the reason why the law mandates consultation with the Ministry of Law.

(41) Once having held that order of the Government reversing the basis of allotment from Random Number Generation to FCFS was illegal, it is not necessary for us to go into the question if the "criterio of first come first served is valid as the decision to have the basis of random number Generation would stand in view of the order of the Government dated 3/07/1993. Nevertheless, since a great deal of arguments have been addressed we may well examine this question.

(42) It is contended that three possible methods of selection come to mind : (1) first-come-first-served, (2) random number generation, and (3) auction. In the counter affidavit the respondents said that the three possible methods of selection were (1) F.C.F.S., (2) R.N.G., and (3) selection that the on the basis of proven track record, i.e., quality criterion. It was admitted question of auction of time slots was never examined. It was submitted by the learned Solicitor General that the three methods of choice were : (1) F.C.F.S., or (2) at random among the applicants, or (3) by auction. We believe when the words "at random among the applicants" are used reference is to random number generation. Respondents say that F.C.F.S. had been successfully tried earlier by the Government and governmental agencies in the past. Doordarshan and All India Radio had also successfully used the-first-come-first-served basis for allotment of time slots on Metro and FM Channels. It is stated that in January 1993 under the scheme for metro channel Doordarshan had received over 300 applications and time slots were allotted on F.C.F.S. basis. Before we examine the three methods of choice we may note that under the scheme an applicant is required to indicate the number of slots applied for as well as three preferences for the time desired. The applications are to be received in sequence and the divided into four groups, depending upon the number of time slots applied for. Each group is then

to be considered separately and applications accepted for the time applied for, it available, in the order of preference indication. If none of the time preferences applied for are vacant, then the applicant is offered a time slot to be selected by computer in accordance with a programmed sequence. Respondents contend that the FGFS basis contemplates the physical formation of a queue and an orderly entry of applicants to the receiving "window". It is stated that this is the most appropriate method to be adopted where no pre-selection is contemplated. Then it is argued that queue is a system universally used for an orderly dispensation, and that this is not an arbitrary method. It is contended that merely because applicants formed the queue in advance does not render the method arbitrary. Many queues are formed in advance for popular sports events, school admissions, cinema shows, railway tickets and so on. A possibility of disruption does not detract from the reasonableness of the method when any method is capable of subversion. Then the respondents say that merely because there is possibility of disruption of queue, or a law and order problem may be created, would not make the basis of F.C.F.S. in itself invalid. About random number generation method the respondents contend that this is also in the nature of queue formation with the only difference that who has come first is determined by the computer at random. This method, according to the respondents, could not be restarted to because the scheme envisages no closing date. About auction the respondents case is that action may fetch the highest price, but it was felt that at this stage it was not a desirable method. Every half-an-hour slot will have to be considered separately for auction again amongst the applicants divided into four groups. It is stated that it will give preference to money power and inhibit talent, and since the "market" is not known, it was not considered to be an appropriate procedure to be followed at this stage.

(43) When auction itself was not taken into consideration there is no point arguing that this method is not good at this stage. Nobody in the Ministry has examined this aspect of the matter. When in the present case the applications were to be received on and as from 5/07/1993 and a queue outside the office of the Doordarshan started forming from 23/06/1993 itself, which led to filing of a civil suit and Court ordering even breaking of the queue, respondents could have examined the question of auction as well. When the response was overwhelming and tremendous and the Ministry was still not considering this method that would again be an act of unreasonableness at the cost of public revenue. This method is now sought to be given a go-by on a spacious plea that every half-an-hour slot will have to be considered separately for auction. When the channels are to be privatized in the sense that time slots are to be allotted to the public, and there is no preselection and no other pre-selection criteria, the idea of getting maximum revenue could not have escaped the minds of the respondents. Yet we find in the notes in the file there was no such discussion. In the present situation, perhaps the auction was one of the best methods to be considered for allotment of slots. The learned Solicitor General said it was no function of the Court to suggest which method for allotment of time slots was more

appropriate. Mr. Ashok Desai, appearing for petitioner in writ petition filed by Home Communication Network Limited (CWP No. 3104/93) referred to certain observations of Frankfurter J. In *Liyod Morey v. George v. Doud*, 1957 (354)US 457, saying that "the Courts have only the power to destroy, not to reconstruct". Reference was also made to a decision of the Supreme Court in *G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others*, , where the Supreme Court cited with approval the observations of the House of Lords in *Nottinghamshire County Council v. Secretary of State for the Environment* 1986 (1) AC 240, wherein it was held as under: "Unless and until a statute provides otherwise, or it is established that the Secretary of State has abused his power, these are matters of political judgment for him and for the House of Commons. They are not for the Judges or your Lordships House in its judicial capacity." Mr. Solicitor General also submitted that a number of options may all fall within the range of reasonableness, and referred to Wade's *Administrative Law*, Sixth Edition (page 407) where the learned author said that "two persons may give two opposite conclusions on the same set of facts without forfeiting their rights to be regarded as reasonable."

(44) We may also note a decision of the Supreme Court in *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, , where the Court said "it is significant to note that emphasis now is on review ability of every State action because it stems not from the nature of function, but from the public nature of the body exercising that function." Thus, every executive action whether under the authority of law or otherwise would be open to judicial review.

(45) We may refer to the doctrine of "Wednesbury unreasonableness" as propounded in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation*, (1948) 1 K.B. 223. In this case, under a certain enactment the local authority had power to grant licensees for cinematograph performances under "subject to such conditions as the authority think fit to impose". When in this case the authority granted the license a condition was imposed that no children under the 15 years of age should be admitted with or without an adult. This was challenged. It was held that the local authority had not acted unreasonably or ultra virus in imposing the condition. Lord Greene Mr. who delivered the judgment observed as under :- "It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably." Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of authority. Warrington L.J. in *Short v. Poole*

Corporation, (1926) Ch. 66. gave the example of the red haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another."

(46) Mr. Desai said that this principle of *Wednesbury* unreasonableness had been approved by the Supreme Court in *G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others*, . Mr. Desai stressed that it was well settled principle that in matters of economic policy the Government was the best judge and the Court would not interfere merely because a better alternative was available, and that the point to note was that a thing could not be unreasonable in the legal sense merely because the Courts thought it unwise. To support this submission Mr. Desai referred to decisions of the Supreme Court in (1) *Gupta Sugar Works Vs. State of U.P. and Ors.*, ; (2) *Shri Sitaram Sugar Company Limited v. Union of India and Ors.* (1991) 3 S.C.C.223 - (3) *Peerless General Finance and Investment Co. Limited and Another Vs. Reserve Bank of India*, ; (4) *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, ; and (5) *R.K. Garg v. Union of India and Others*, Air 1981 S.C. 2138. There cannot be any dispute on the proposition so advanced by Mr. Desai. But here the question is entirely different. We find the respondent have not acted reasonably in adopting the basis of FCFS. All the options available were not considered at all. learned Solicitor General himself admitted that there could be three methods of Allotment of such time slots. He could not find any answer as to why all the methods do not even find mention, what to say of discussion, in the files. The scheme for allotment of time slots on Metro Channel started in January 1993 was entirely different as the respondents themselves say so and the basis of FCFS adopted in that scheme could not be applied in the impugned scheme. Even this fact does not find mention in the files when the first note starts. Instances have been given where allottees in the first scheme had to abandon their projects in between causing disruption in the continuity of the programmes. We may also note that in the first scheme applications for allotment could be given in the office of the Doordarshan in four metropolises.

(47) Be that as it may, the Court expected the authorities to consider all possible options and then to arrive at one option in an objective manner. In the present case we find the three methods of choice agreed to even by the respondents have not been examined at all in the Ministry and the mode of selection is just mentioned as first come first served basis. When number of methods were available, the Ministry could not choose one without considering other methods. Even Rng method could not have been chosen that way. Action of the respondents had to be transparent in selecting the basis of allotment which is not so here. We are not impressed with the arguments of the learned Solicitor General that first come first served method is there for buying railway tickets, sports events, cinema shows, school admissions, etc. He said people stand in queue before a store many days in advance to buy a thing at bargain price. The

approach to the problem itself is wrong and instances inappropriate. Where a person does not get the ticket it affects him personally. If he cannot go by a train on a particular day ,he can go on a following day. If he does not get admission in one school of his choice he may be disappointed or even get admission in other school ,or he may face disappointment when he does not get ticket to watch a certain sports event. He can go for another show if he cannot get a ticket for a particular cinema show. Also the thing a person wanted to buy at a store at a particular bargain price, he can get that very thing from another store though paying a little extra. Here the relationship of licensor and licensee between the Govt. and the producer is not limited to both these two only ,but there are the millions of viewers in the country whose interests are paramount ,the present scheme notwithstanding. It is certainly not for us to analyze as to which of the three methods is good. What the Court would of the Cabinet. The eligibility criteria in the scheme issued in the Public Notice dated 28/09/1992 was that "applicants should have proven track record in producing television/radio programmes, feature films, video films ,video magazines, documentary, etc." Mr. Birbal said that though other criteria in the earlier scheme had been adopted in the present scheme, but not the eligibility criteria. He said the key issue raised by him was not the validity of the scheme itself, but the process of processing the applications and the allotment of time slots. He said the satellite channels were launched to fight the invasion of foreign channels and commercial running of channels, i.e., independent running and the earning of revenue. He said both these twin objects could not be realised by the first come first served method .He said the allotment should be merit oriented and then auctioned. and for merit internal and external norms could be fixed. He said if perchance the first man in the FCFS scheme had no experience or resources he might run away or black market the time by selling it to another person on premium. A some sort of precrisor ship was a must to save the viewers from dirty programmes, Mr. Birbal said that number of persons after taking time slots on metre channel in the earlier scheme, who came first in the queue, ran away and Doordarshan had to go for some other programmes which were atrocious. He said there was no reason why Doordarshan should not learn from past experience and again resort to trial and error method.Mr. Birbal said that it was strange that there look into is whether there has been application of mind in choosing a particular method particularly keeping in view that best programme is available for the viewers and public revenue does not suffer. Whether a producer will be able to earn some profit and also earn fame in the bargain by adopting a particular method, he will himself be the best judge. It is true that when certain events happen subsequently after a policy decision is taken those events may not be taken into consideration to judge the validity of the policy. But here the case is different .By themselves watching the subsequent events the respondents changed its policy. These events also informed the respondents of tremendous response of the public to the scheme. When those events still existed the respondents again went back to its original policy putting a question mark on their conduct. Arbitrariness and non-application of mind its writ large on the face of it. When a policy is

framed it should be kept in mind as to how best it can be implemented. A public body cannot close its mind to the consequences that may result in enforcing a scheme. Respondents here have not acted reasonably.

(48) Mr. Raj Birbal appearing for Bennett, Coleman & Co. Limited (CWP No. 3248/93) stressed that eligibility criteria as laid down in the scheme of allotment of time slots on metro channels of Doordarshan annexed with the public notice dated 28/09/1992 could not be given a go-by in the present scheme when the earlier scheme had the backing was no eligibility criteria and no track record to be seen while allotting a timeslot, but the track record of the licensees in terms of quality of their programmes was to form essential criteria for considering the renewal of their licenses under the scheme.

(49) Mr. Sibal appearing for the Hindustan Times Limited did not wholly agree with Mr. Raj Birbal. He said he was not for pre-selection or preview and if the Government wanted that there should be no control, then there should be no control and this was a policy decision which he said could not be challenged. What Mr. Sibal sought to project was that to say that pre-selection and pre-view should not be there, was different from saying that there should be short listing of persons with a proven track record capable of putting up programmes in the entertainment channel. Mr. Sibal said while examining the validity of the policy and the scheme the Court must look at the issue from the point of view of public which ultimately is the beneficiary of all programmes. It is the right of the general public and not that of the entrepreneur of the Government. Mr. Sibal said that the principle of "first come first served" was applicable only in such situations where the recipient of the distribution of the largess was entitled to refuse to deal in the said commodity, and that it applied only to such cases involving the Government and the vendee where the vendee had the absolute right in discretion to deal with the commodity in the manner it liked and the public was entitled not to purchase the said commodity. He said such a principle was wholly inapplicable to the concept of public broadcasting where the general public had no right not to view the programme. He said if it was an import license the question would have been different and the only affected party would be the competitor, but here it is the general public. Mr. Sibal said that the present scheme was unworkable, and, perhaps, auction could have been a better method. He said between FCFS and Random Number Generation the latter would be still better as everybody would have a chance there. He cautioned that it was not for the Court to formulate any method. Mr. Sibal said that privatization of channel was a policy decision and could not be challenged, but FCFS was the implementation of that policy decision and could be challenged. He said short listing was not pre-selection, and even grading is a way of short-listing FCFS could work only if the demands were less and slots were more which was not the case here, so Mr. Sibal put in. Mr. Sibal said that the FCFS method as envisaged will result in black marketing of time slots by unscrupulous licensees which will be at the cost of the public revenue as well as sufferings of the viewers. Mr. Sibal said that the present policy was unconstitutional because treated unequal

equally, was against public policy, ignored merit and did not formulate any eligibility criteria and had no rational nexus with the objects sought to be achieved, i.e. to meet the challenge of foreign channels beaming their programmes in the country and the scheme tended to create monopoly in the hands of few. The policy sought to be implemented, he said, did not take in account that the nature of commodity to be distributed and its possible impact on the general public. He said the scheme was also bad because it allowed an individual or entity to block the entire channel by securing the Govt. with a bank guarantee of Rs. 10 lakhs. It was also bad because different companies with common directors could book half-hour slots and exceed the maximum available time of one-hour slot to one entity. The policy as it stands promotes trafficking in licenses and fails to address itself to the consequences and the policy to be adopted in the event a particular programme fails. Mr. Sibal also said that entertainment had not been defined anywhere in the scheme and it could be that any person buying the time slot for entertainment channel could put up any programme which might be meant for sports channel or enrichment channel. But then entertainment is a -word use in common parlance. It is not necessarily confined to shows, performances, films, etc. One person may find a programme interesting or amusing, the other may not. Similarly for some a cricket match or a soccer match may provide entertainment but the same may not be the liking of others. It is difficult to lay down any parameter as to what programmes can be telecast on entertainment channel. There cannot be water tight compartment for all the different five channels. Perception differs from person to person. When the scheme is unworkable, Mr. Sibal said, it would be arbitrary, unjust, unfair, and in this connection he referred to a decision of the Supreme Court in *M/s. Orissa Cement Limited v. Union of India*, (1962) Supl. 3 S.C.R. 837. In this case there was a certain scheme under the Provident Funds Act, 1952, for the establishments of the Provident Fund. The scheme provided for contribution by the employer to the provident fund at 12 of the basic wages and dearness allowance, and it was to be borne equally by the employer and the employee. It was the employer who was to pay the whole of it in the first instance and half of the amount paid by him on account of the employee was to be recouped by him by deducting the same from the wages of the employee. The scheme was modified whereby all employees even of the contractor who were directly connected with any manufacturing process carried out in a factory or establishment were also covered under the scheme. Again the scheme was modified and the effect was that there was no distinction between the workmen employed by the contractors who were directly connected with the manufacturing process in the factory or establishment, and those who were not so connected. This was challenged, the Court said the latest notification was unconstitutional and void. The Court further said that though the scheme was well designed to carry out the intentions of the Provident Funds Act in its application to workmen directly employed, but it broke down in extension to contract labour as in that case the employer would not be able to recoup the share of the contribution of the employee. The Court said that the scheme operated unfairly and harshly on

persons who employed contract labour and that if further resulted in discrimination between those who employed contract labour and those who employed direct labour. the Court, Therefore, held that the scheme could not be said to be reasonable and must be struck down as not falling within the protection afforded by Clause(6) Article 19, and infringing the right of the petitioner under Article 19(i)(g) of the Constitution. We do not think this decision has any direct application to the issues involved in the present case.

(50) Mr. Sibal then said F.C.F.S. was also arbitrary on the ground that the persons living in far off places in the country were put to disadvantage as under the scheme they had to present their applications in person. He said a man with resources could employ three sentries to give eight-hours duty with three shifts outside the Doordarshan office for forming queue one month in advance and meet their expenses. Other persons may not be in that position and may not be also in a position to stand in queue for such along period. He said only 52 persons first in the queue would get the timeslots and 53rd person would be denied. Then those persons would advance their claim of renewal as well. Mr. Sibal queried how could it be that when a queue is formed on a particular day the 53rd man is denied his right of consideration .He said the FCFS was per se arbitrary. In support of his submissions Mr. Sibal referred to a decision of the U.S. Supreme Court in *Red Lion Broadcasting Co. Inc. etc. v. Federal Communication Commission*, 395 Us 367. In this case the question was about the validity of the Federal Communications Commission (constituted under the Federal Commission Act)which required the broadcasters to offer to an individual personally attacked in broadcasts, a reasonable opportunity to respond over the licensee's facilities. Before 1927 the allocation of frequencies was left entirely to the private sector and the result was chaos. Various conferences were held and it was resolved that regulation of the radio spectrum by the Federal Government was essential and that regulatory power should be utilised to ensure that allocation of this limited resource would be made only to those who would serve the public interest. The Federal Radio Commission was established to allocate frequencies among the competing applicants in a manner responsive to the public "convenience, interest, or necessity. "license to broadcast do not confer any ownership of designated frequencies, but only the temporary privilege of using them. During the course of discussion ,the U.S. Supreme Court said : "Because of the scarcity of radio frequencies, the Government is permitted to put restraints on licensees in favor of others whose views should be expressed on this unique medium. But the people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purpose of the First Amendment. It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount .

(51) Mr. Arun Jaitley, appearing for Indian Express News-papers (Born.)Ltd. (CWP 3403/93) said that the object of the impugned scheme was to free T.V. channels from the State control and to attract best talent. He said F.C.F.S. had no nexus to the object sought to be achieved by the scheme. Mr. Jaitley said that the

quality considerations as laid down by the A.T.C.I. were kept aside and so also the eligibility criteria. There have to be controls on the qualitative aspects of the programmes which the applicants seek to telecast, a media which was most powerful and effective for dissipating knowledge and information. Mr. Jaitley said laying of qualifications for selecting the prospective licensees was must. He said the credibility of Doordarshan programme has already declined to abysmal depth and any unchecked grant of licenses would only aggravate the situation. We do not think Mr. Jaitley is right here. As noted above, it is only the best programme which would survive and will generate revenue for the licensees by getting more advertisements. Guidelines are laid in the scheme and, as noted above, there are checks and controls which will motivate the licensee to come out with best possible programme and any deviation from the right path will expose him to a great risk. Mr. Jaitley also said that random number generation method may be good but still a minimum criteria was necessary. He conceded that it was not for the Court to reframe the policy. Mr. Jaitley said that right to knowledge is inherent in Article 19(1)(a) and that whosoever desires to exercise that right must undergo stricter test. In support of his submission Mr. Jaitley referred to a few decisions of the Courts, but because of the view which we have already taken on the F.C.F.S. basis it is not necessary for us to refer to the same.

(52) Mr. Vaidhyanathan, appearing for Indus Television (C.W.P.No. 3376/93) referred to the impracticability of the allotment of time slots as given in the scheme. He said unequals have been treated with equals. Persons having special knowledge in the field have been lumped together with those having no experience whatsoever. Mr. Vaidbya nathan said that when the demand exceeded supply the selection method should have been resorted to and the scheme presently adopted by the respondents was in total negation of the principle of Article 14 of the Constitution. He said F.C.F.S. basis has assumed that everybody will get the time slots which would not be so in the present case. He said there should have been two stages : (1) elimination; and (2) selection; and in the second stage these timeslots could have been auctioned. Mr. Vaidbya nathan said it was a case where a committee should have been constituted of persons having expert knowledge in the field to advise the Government. He saw no reason why the recommendations of the A.T.C.I. have been ignored by the respondents. F.C.F.S., according to Mr. Vaidhyanathan, was full of mischief. Again, because of the view which we have taken on allotment of time slots on F.C.F.S. basis as well as on random number generation it is not necessary for us to refer to arguments of the Counsel in any further detail.

(53) We do not think the petitioners are right when they contend that there should be an eligibility criteria, or the credential of the applicant should be based on his, proven track record. As Dr. Gupta described electronic media is under going a process of explosion. The respondents are right in their submission that it is difficult to lay down parameters of a track record. It is a new experiment. Guidelines have been laid. There are checks and controls. We also do not find much difference between reselection and proven track record. The conditions in

the present scheme are quite tough and respondents say only the best will be able to match any service. This is how the respondents put in : "An applicant is required to submit a substantial bank guarantee. He is required to make advance payments every week. The responsibility of exploitation of commercial time is entirely his own. He will have to attract sponsors and advertisers to cover his cost and the fees. A low grade or mediocre production will almost necessarily have poor viewer ship and will not be able to exploit the commercial time. Thus only attractive viewer acceptable programmes will survive. The Scheme will ensure good quality viewer acceptable programmes. The viewer and viewer alone will be the ultimate judge. The method of selection is, it is respectfully submitted , reasonable. "In short, the respondents contend it is a case of survival of the fittest with over 100 satellite channels crowding the Indian skies in very near future. Respondents are right when they say that howsoever chosen, a tremendous amount of flexibility should be available to a licensee. The programmes need not be based on the personal artistic talents of the licensee. The licensee can engage directors, actors, actresses and programme presenters. Such persons are not likely to be permanent employees of any person or organisation. He can engage another person to make the programme for him or acquire broadcasting rights over productions made by others in the country or abroad .The contents of the programmes can be widely different such as cartoons, Serials ,quiz programmes and competitions, magic shows, circus events ,fashion shows, interviews, games and so on. The possibilities are limitless and imagination is the only limit. It may be pointless to speak about past experience of the licensee in this context. It does not need a doctor to set up a hospital, a teacher to set up a school or an engineer to set up an industry .It is very difficult in this situations to apply any objective test to determine an acceptable applicant and eliminate one who is not. Serious differences of opinion are likely and any choice made by any person is vulnerable to allegations of favor. Perceptions of what is good entertainment is subjective and each of us have our own views. Any choice at the threshold on the basis of past performance has the tendency to create monopolies and to inhibit new entrants in the field. Stand of the respondents is correct that to pre-view, understand and decide the quality of programme would be a gigantic task and difficult to perform.

(54) Thus, if the respondents have reached a decision that there should not be any pre-view or pre-selection, no fault could be found with it. Perhaps, the petitioners would not have raised such a plea themselves if they were sure of allotment of time slots to them. It is unnecessary restriction which perhaps nobody would like when ultimately the sole judge is the viewer. We would, therefore ,reject the submission of the petitioners that any eligibility condition was a must and absence of that would make the scheme invalid. As far as basis of allotment is FCFS we have already held it is arbitrary and has to be set aside.

(55) No case of promissory estoppel or legitimate expectation as contended by Mr. Desai appearing in the writ petition of Home Communications Network Ltd.

(CWP 3104/93) is made out. In this case the petitioner contends that action of the respondents in cancelling/altering the basis of allotment of time slots is illegal. A specific representation was made that the award of the license for a time slot would be on FCFS basis. Petitioner therefore, says that on the strength of this representation it altered its position to its detriment. It says it fulfilled all the requisite criteria and secured fifth position in the queue for submitting application and entered into diverse arrangement/agreement with Indian and foreign parties with respect to the programming to be broadcast. Petitioner in this case further says that it made huge financial commitments to the tune of Rs. 2.78 crores in respect of the entertainment channel and already incurred an expense of about Rs. 17 lakhs in connection with the Metro Channel. We do not think that on such averments any case of promissory estoppel or legitimate expectation is made out. Only two documents being the letters dated 25/06/1993 and 29/06/1993 of M/s. Buna Vosta International Inc., a foreign company, and addressed to the petitioner have been brought on record. These two letters are after the date of the queue which was stated to have been formed outside the office of Doordarshan on 23/06/1993. These two letters speak of possibility of entering into certain arrangements/agreements to acquire programming from among the feature films and television series that will serve the audiences in media. But for these two letters there is nothing on record to support what the petitioner contends. We also do not know these two letters were in response to what the petitioner represented or wrote. In any case such type of exercise has to be made by any party who would like to have time slots on Doordarshan channel. Though the petitioner says it fulfilled all the criteria as laid in the scheme but there is no mention if on 23/06/1993 when it secured its position in the queue it was having all the papers to be submitted with the application which consisted of the main application, the bank draft of the processing fee, bank guarantee, a declaration duly notarized and also an indemnity bond duly notarized. Simply by scoring a position in the queue formed voluntarily by few people without any authority of the respondents a few days earlier to the date of the application would not advance the case of the petitioner. Rather in the absence of all the relevant documents with the applicant in the queue we would say his position would not be bona fide. The queue if formed should be of the bona fide persons having along with all the documents to be submitted at the time of receipt of applications.

(56) In view of the above discussions we hold as under :-1. The impugned, scheme to introduce five satellite based channels is bad in law. It is set aside.2. The basis of first come first served for allotment of time slots on satellite channels is arbitrary. It is unreasonable, unjust and unfair. The order dated 11/07/1993 of the Central Government in the Ministry of Information and Broadcasting reverting back to the allotment of time slots on this basis is set aside.3. The random number generation method, though it treats all the applicants equally and the allotment would be dependent on chance and not on merit entailing an element of lottery, is not valid as all the methods available for

allotment of timeslots on satellite channels have not been taken into consideration, and has, Therefore, also to be set aside.⁴ A mandamus is issued to the respondents to introduce a proper scheme for allotment of time slots on satellite channels after due consideration in view of the observations in the judgment.⁵ Accordingly, writ petition filed by Home Communication Network Limited (CWP No. 3104/93) is dismissed and Rule in this case is discharged. Other petitions are allowed. There will be no order as to costs. Rule is made absolute.