
(1996) 07 KAR CK 0027
In the Karnataka High Court
Case No : Writ Petition No. 3168 of 1992

Keshavan V. Chalam

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 11-07-1996

Acts Referred:

Constitution of India, 1950 — Article 19(1)(A)

Citation : (1997) 2 KarLJ 33

Hon'ble Judges : Tirath Singh Thakur, J

Judgement

1. This writ petition seeks a mandamus against the respondents directing them to consider the petitioner's application for the grant of a licence to set up and run a private TV and Radio Station.

2. An application was addressed by the petitioner to the Hon'ble Minister for Information and Broadcasting, Government of India seeking a licence to run a private Radio and Television Station. Having received no reply from the Government, the petitioner brought up the matter in this Court in W.P. No. 17466 of 1991, which was dismissed by a Single Judge of this Court by order dated 12th of August, 1991 as premature. Some reminders appear to have been sent thereafter by the petitioner to the Government to which, he invoked no response. He has now come up with the present writ petition for a mandamus directing the respondents to consider his application for the issue of the licence as already indicated earlier.

3. Counsel appearing for the petitioner argued that the right to establish a Radio or Television Station is implicit in the guarantee contained in Article 19(1)(a) of the Constitution of India. He submitted that freedom of speech and expression must carry with it the right to express one's conviction and opinion freely by word of mouth, writing, printing, picture or in any other manner. It was urged that the Parliament could only place reasonable restrictions on the said right on the grounds of security of the State, public order, decency or morality etc., but could not abrogate or negate the right itself. It was contended that if hundreds of

foreign Radio and Television Stations were Broad/Telecasting their programmes into Indian Air Space and millions of Indians were receiving and benefiting from the same, there was no reason why the petitioner should be deprived of a similar facility.

4. The question whether or not the right to use airwaves for purposes of broadcasting or telecasting programmes with the help of Radio or Television Stations was implicit in Article 19(1)(a) of the Constitution fell for consideration before the Supreme Court in the case of Secretary, Ministry of Information and Broadcasting, Government of India and Others v Cricket Association of Bengal and Others, AIR 1995 SC 1236. Their lordships came to the conclusion that the right of free speech guaranteed by Article 19(1)(a) did not include the right to use airwaves, which are public property and that such a right did not flow from Article 19(1)(a) nor was the same implicit in it. As to whether such a right should or should not be granted to the citizens of this country was a matter of policy for the Parliament to determine having regard to the revolution in the technology and the developments all around. The Parliament, it was observed, may or may not decide to confer such a right, but in case it does decide to confer the same, it can be only by way of an enactment to that effect. The position was summed up in paragraph 97(b) of the judgment thus:-

"97(b) Airwaves constitute public property and must be utilised for advancing public good. No individual has a right to utilise them at his choice and pleasure and for purpose of his choice including profit. The right of free speech guaranteed by Article 19(1)(a) does not include the right to use airwaves, which are public property. The airwaves can be used by a citizen for the purpose of broadcasting only when allowed to do so by a statute and in accordance with such statute. Airwaves being public property, it is the duty of the State to see that airwaves are so utilised as to advance the free speech right of the citizens which is served by ensuring plurality and diversity of views, opinions and ideas. This is imperative in every democracy where freedom of speech is assured. The free speech right guaranteed to every citizen of this country does not encompass the right to use these airwaves at his choosing. Conceding such a right would be detrimental to the free speech rights of the body of citizens inasmuch as only the privileged few powerful economic, commercial and political interests-would come to dominate the media. By manipulating the news, views and information, by indulging in misinformation and disinformation, to suit their commercial or other interests, they would be harming and not serving the principle of plurality and diversity of views, news, ideas and opinions. This has been the experience of Italy where a limited right, i.e., at the local level but not at the national level was recognised. It is also not possible to imply or infer a right from the guarantee of free speech which only a few can enjoy".

5. The above judgment provides a complete answer to the petitioner's case and since it is not in dispute that the Parliament has not so far enacted any law conferring a right upon the citizens to establish or run a Radio or Television

Station, the question of enforcing any such non-existent right through the medium of a writ does not arise. It follows that in the absence of any such enactment conferring such a right, the petitioner's request for a licence in his favour or consideration of his prayer for the grant of any such licence is misconceived.

6. In the result, this writ petition fails and is accordingly dismissed, but in the circumstances, without any orders as to costs.