

(1999) 01 CAL CK 0004

In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction Original Side A.P.O.T. No's. 795, 794 and 821, G.A. No's. 3920, 3119 and 3981, W.P. No's. 2114, 2116 and W.P. No. APOT No. 795 of 1998

Prasar Bharati Broadcasting Corpn. of India

APPELLANT

Vs

Debyajoti Bose

RESPONDENT

Date of Decision : 21-01-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 19 Rule 2

Constitution of India, 1950 — Article 14, 19, 19(1), 226

Evidence Act, 1872 — Section 115

Prasar Bharati (Broadcasting Corporation of India) Act, 1990 — Section 8(1), 8(4)

Citation : AIR 2000 Cal 43 : (1999) 2 CALLT 183 : 104 CWN 88

Hon'ble Judges : Tarun Chatterjee, J; Bijitendra Mohan Mitra, J

Bench : Division Bench

Advocate : Mr. S.B. Mukherjee, Mr. P.K. Roy and Mr. Samaddar, for the Appellant; Mr. Samaraditya Pal and Mr. Sapatanshu Bose, for the Respondent

Judgement

B.M. Mitra, J.—The connected writ petition has been filed at the Instance of M/s. Rainbow Production Private Ltd., a Company Incorporated under the Companies Act and one Miss Soma Mukherjee, one of the Directors of the petitioner No. 1 company against Prasar Bharati (Broadcasting Corporation of India), a body corporate and its numerous office bearers who are figuring as respondents in the said writ petition. It appears from the perusal of the prayer portion of the connected writ petition that manifold prayers are made, inter alia, for a declaration that Prasar Bharati (Broadcasting Corporation of India) being an autonomous body cannot stall and/or amend any concluded contract entered between any citizen and the corporation and cannot at any stage withhold and/or withdraw its public commitments and for a further writ of Mandamus to give effect to an earlier decision taken by the former Chief Executive Officer, Prasar Bharati which was communicated to the Doordarshan Kendra, Calcutta and also to the petitioners vide letter dated 25.7.98 Issued by the Deputy Director General of Eastern Region and for withdrawing and/or reversing the said decision

in July, 1998 by former CEO of the Prasar Bharati Broadcasting Corporation and also for a further Writ of Mandamus to withdraw the case for finally approving of the proposal by way of scuttling the programme proposed to be telecast on DD-1 and DD-7 channel of Calcutta Doordarshan Kendra on 5.10.98 and also for Issuance of a Writ of Certiorari for transmission of the records and also for an order of injunction restraining the Chief Executive Officer (Acting) from referring the decision of the petitioners to the Prasar Bharati Board and to forthwith give effect to the decision taken by the former officer of Prasar Bharati Broadcasting of India vide letter dated 25.7.98 and for other ancillary reliefs.

2. Before dilating about the detailed developments of subsequent stages during the pendency of the writ petition in details, it appears that in the writ petition an order was passed by the learned single Judge on 22.9.98. From the perusal of which it appears that the certain steps were taken in the matter to allot time for holding a programme known as "Khas Khabar" at DD-1 and DD-7 channel of Calcutta centre of Doordarshan. It has been observed in the said order that from the documents it appears that it was settled in between the Parties that the proposals are already crystallised and the respondent Prasar Bharati Broadcasting Corporation of India has already written to the petitioners about the commercial term to be applicable for telecast for programme at DD-1 (6-10 P.M. to 6-20 P.M.) at Doordarshan Kendra, Calcutta. It further appears that steps have been taken to hold such programme and the petitioner has spent some amount of money to give effect to the said order by letter issued from Prasar Bharati Broadcasting Corporation of India. The first programme of such "Khas Khabar" is to be telecast on and from 5.10.98 and after programme is about to be implemented if any other contrary steps are taken on behalf of the respondents, the respondents would suffer loss and damages. In view of the narration of the same, the learned single Judge has directed that no steps would be taken by the respondents for cancellation of such programme which has already been fixed by the authorities concerned to be telecast on and from 5.10.98 from DD-1 channel. In view of the urgency, Rule 27A of the writ Rules of the original side of provisions of Article 226 of the Constitution of India of the Calcutta High Court have been invoked and in consideration of such urgency has been dispensed with. The learned Judge has passed an order of injunction restraining the Prasar Bharati not to take any further step in this matter or from interfering with telecasting of Bengali news and current affairs programme which is known as "Khas Khabar". Against the said order, an appeal was preferred before the Division Bench of this court and the Division Bench comprising of V.K. Gupta and Sujit Barman Roy. JJ. by an order dated 17.11.98 there was mention not only about the order dated 22.9.98 but also the subsequent order followed which was passed on 25.9.98 which came by way of reconsideration of the earlier order. It also appears in the said order of the appeal court that the fact remains that before 22.9.98 the date when the order was passed by the learned single Judge the programme had not gone on the air and it went on air only on 5.10.98. The appeal court took into consideration the state of events which are continued from

5.10.98 as the programme of "Khas Khabar" has already started for being telecast through Doordarshan from 5.10.98 onwards and in consideration of the suggestion of the learned Cunsels of the contesting parties, the appeal court directed that as the programme went on air from 5.10.98 and in consideration of keeping in view the balance of convenience an order was passed to the effect that the appeal court itself should dispose of the writ petition. it has been further commented upon that in view of telecasting of the programme for a duration of one month and half and no prejudice will be caused to the parties if it is allowed to be telecast for some time more. Accordingly, the appeal court directed the, writ petition, application for stay and appeal to be heard together by the Division Bench. The writ petitioners were given leave to file supplementary affidavit to the writ application and the appellants figuring as respondents filed their affidavit-in-opposition and affidavit-in-reply may be filed to the same. The matter was directed to appeal before the Division Bench and the same was subject to the condition that the writ petitioners would be required to go on paying an amount of Rs. 40,000/- per day to the appellants herein in terms of the aforesaid direction passed by the predecessor Bench of the appellate jurisdiction of this court. The connected writ petition, the application for stay and the appeal, all are directed to be disposed of analogously,

3. The same was followed by another order passed on 9.10.98 by a Bench constituted of G.R. Bhallacharjee and Amitabha Lala, JJ. by an order dated 9.10.98 and the court in the said order has observed that to avoid any scope of multiplicity of proceeding that if any decision taken by way of review in the matter by the authority of Prasar Bharati is taken in the meantime that will not be given effect to by the concerned authority without leave of the appeal court during pendency of the appeal.

4. In the background of the records of the connected proceeding before we deal with the question of the merits of the appeal and the application for stay pending in the appeal, we propose to consider and to take up first the writ petition itself because that is of pivotal significance for the respective cases. The entire super-structure of the other orders passed by the superior forums will be subject to the result of the writ petition and it has been submitted by Mr. Samaraditya Pal, the learned counsel appearing on behalf of the respondents/writ petitioners that as his client is to stick to the order of original adjudicating authority, namely, the decision before the trial court, therefore, the writ petition should be taken up first and there should be threadbare disposal of the writ petition as it will have a germane effect on the fate of the controversy. We are not unmindful of the submission of Mr. Pal and accordingly we allow the learned counsel, namely, Mr. Pal to make his submission on the merits of the writ petition. Even, the writ petition was addressed on merits in great details by Mr. S.B. Mukherjee, the learned Additional Solicitor General appearing on behalf of the concerned respondents contesting the stand taken by the petitioners. We have heard them at length. We propose to proceed further and to analyse the substance of their contention and counter contention hereinafter.

5. It appears from the averments made in paragraph 18 of the connected writ petition where it has been stated that on 25.7.98 the petitioners received a copy of the communication from the DDG (ER) addressed to the Director, Doordarshan Kendra, Calcutta conveying the former approval of the proposed programme of telecast of DD-1 channel from 6-10 P.M. to 6-20 P.M. and at DD-7 from 9-30 P.M. to 9-40 P.M. during the week. The programme required to be telecast in the regional air in regional language in Bengali. It has been further mentioned that in consideration of the same the petitioner has given appointment in favour of some of the experts whose names have been mentioned, namely, one Sri Dibyajyoti Bose and another Sri Abhjit Dasgupta as Executive Editor and Project Consultant and Programme Designer respectively. In view of the averments made in paragraph 28 of the writ petition, a letter was addressed on 3.8.98 to the Controller of Sales, Commerce and Sales Division of Prasar Bharati at Mandi House in New Delhi to convey to them the commercial terms and conditions in regard to the said bulletin approved for the said telecast in DD-1 and DD-7 channels. The petitioners also confirmed that they have offered a M.G. equivalent to one unit to ASB for their programme "Khas Khabar" to be telecast in DD-1 channel from Doordarshan Kendra, Calcutta and as such telecast fee along with FCT permissible to them to DD-1 as also DD-7 may be communicated to them. The petitioners were communicated that telecast fee for telecast of the Bulletin in Doordarshan would be Rs. 34,250/- with permissible FCT of 180 seconds on each episode. In case of telecast programme at DD-7 channel it was intimated by the letter dated 5.8.98 to the Commerce Department that the telecast fees would be Rs. 5,000/- and permissible FCT on the programme would be 105 seconds on each episode as regards telecast programme at DD-7 channel. The petitioners have been alleged to have spent an undertaking financial liability to equip them with machineries and know-how technique so that they can go in hog for the entire programme. There has been numerous detailed recitals for certain paragraphs of the writ petition about the extent of financial involvement to make arrangement by way of prelude for commencement of the programme to be telecast from the Doordarshan Kendra, Calcutta. This court does not intend to go in details about it save and except noting that as per averments made from the side of the petitioners they have undergone substantial exercise in undertaking financial obligation in steering the said programme as proposed to be telecast through DD-1 and DD-7 channels of Doordarshan Kendra. It further appears that lot of recommendations have also been annexed by eminent persons including members of the Parliament, names of whom are not mentioned here and even some of them have participated in the inauguration function or have been tipped for participation of the said programme. It is worthwhile to keep it in mind the caustic comment made by Mr. S.B. Mukherjee, the learned Additional Solicitor General about the purpose of annexing such letters of recommendations and according to him, they cannot improve of it and on the contrary adverse inference is required to be drawn from the same as Prasar Bharati is an autonomous body which is supposed to act free from influence to be exerted from any quarter howsoever high it may be. It has also been further

pointed out by Mr. Mukherjee, the learned Additional Solicitor General that (he said letters annexed are stereo type letters which are written in verbatim, similar language and according to him, dignatories appear to have lent their signatures on dotted line with complete non-application of mind. The petitioners, as per averments contained in the writ petition, were requested by the concerned authority of Doordarshan Kendra. Calcutta to agree to the revised time of telecast programme as reflected from annexure XI as appended in the writ petition from which it appears that revised time was made on every Monday to Friday for telecast of "Khas Khabar" in channel 1 from 6-10 P.M. to 6-20 P.M. on terms of payment of Rs. 34,250/- with 180 seconds of FCT. The programme is slotted as on 9-20 P.M. to 9-30 P.M. on each day of the week in DD-7 channel instead of 9-30 P.M. to 9-40 P.M.

6. As the leave has been given to the writ petitioners by one of the aforesaid orders passed by the Appeal Court of the Division Bench as per agreement by one Smt. Soma Mukherjee on 19.11.98 is taken up for scrutiny and is appended to the original writ petition. In the original writ petition, there was an apprehension expressed from the news spread over through the newspapers that the respondents to the writ petition were trying to interfere with the proposed telecast programme of "Khas Khabar" and being apprehensive of the same the writ petitioners were compelled to file the said writ petition. In the supplementary affidavit, it has been averred that in the next week of October. 1998, a resolution was purported to be taken by the Board of Prasar Bharati that it would not give a news based programme on its primary channel to any private producers until a policy decision to the contrary is taken after further consideration. It was also resolved that any decision/approval given in the past in connection with the news and current affairs items "Khas Khabar" be cancelled.

7. It was also resolved by the members of the Board that the decision of the Board be placed before the Hon'ble Court for implementation with this rider that it will not give a news based programme on primary channel to any private producers unless a contrary decision is taken. It appears as already mentioned that two orders respectively dated 7.10.98 and 9.10.98 were passed by Division Bench of the High Court at Calcutta constituted by separate members in the Bench. Again the respondents in the writ petition filed SLP No. 16718/1998 before the Hon'ble Supreme Court of India. The apex court by order dated 16.10.98 has been pleased to pass an order on the same. But the same was subsequently listed for hearing, and the matter is awaiting disposal. This court has been intimated that the pending matters before the Division Bench are required to be disposed of in the meantime so that the judgments passed herein for scrutiny and also for production before the Hon'ble Supreme Court.

8. It also further appears from the said supplementary affidavit that in terms of item No. 6 which was placed for consideration before the Board of Prasar Bharati and the same has been annexure-C appended to the supplementary affidavit

9. It appears from the averments made in the supplementary affidavit that the

proposal of the writ petitioners was duly approved by the CEO and, thereafter, it cannot be denied that there was a firm commitment. There has been further grievances ventilated at the time of the argument advanced by the learned counsel of the petitioners about the said agenda and Mr. Pal has raised question about the second paragraph of item No. 6 as appearing in annexure-C to the supplementary affidavit.

10. Mr. Pal raised the question that it was not indicated that what type of serious reservation was expressed and according to Mr. Pal, the same was kept delightfully vague with pre-meditated purpose. Further, it appears from the reasons of the relevant paragraphs of the supplementary affidavit that there was no proper projection of the clear picture which was delineated in detailed in the supplementary affidavit, the agenda makes a mention that news and current affairs programme like "Aajtak", "Ankhon Dekhi" were telecast in DD-2 channel and so far as Doordarshan did not have any news and current affairs programme produced by a private party on DD-1 channel. On the contrary, it was averred that from DD-1 channel of National Network of Delhi Doordarshan Kendra, certain programmes were telecast DD-1, namely, "Dopehar Dekhe", "Ankhon Dekhe" a news and current affairs programme being produced by M/s. T.V. Live & India Ltd. produced which was approved by CEO during August, 1998 and now is being telecast on 1-25 P.M. to 1-30 P.M. on primary channel i.e. DD-1 from Monday to Friday.

11. Delhi "Aajtak" another news and current affairs programme is being produced by M/s. T.V. Today Network and is being telecast by said producer from 5-00 P.M. to 5-30 P.M. on Monday to Friday by Doordarshan Kendra, Delhi on primary channel. Aajtak another programme is being also telecast by private producer on 6-15 p.m. to 6-30 pm. On all weekdays by the Doordarshan Kendra on primary channel which is replica of the programme of "Khas Khabar" (Regional Bengali Service) telecast on DD-1.

12. "Subha Sabere" another programme is being telecast from 7-15 A.M. on all Mondays to Saturdays by DD-1 in sponsored category by a private producer. Mr. Pal's complaint was that the agenda did not make any mention about the programme and non-mention of the same has vitiated the resolution as to be taken on item No. 6 and also the same according to Mr. Pal is discriminatory in nature.

13. It has been further stated that the said agenda does not mention about the existence of any policy invoked and speculation about the possibility of coming into force of a future policy cannot be construed to be a criteria standing in the way of the petitioners' right to continue with their programme. There has been an averment made that the respondents in the writ petitions have expressly admitted that proposal of the writ petitioners was duly approved by the CEO and the approval was also communicated by one Sri T.R. Malakar, Dy. ODER Director to the Calcutta Doordarshan, a copy of which was forwarded to M/s. Rainbow Production Private Ltd. In course of arguments, even Mr. Mukherjee, the learned

Additional Solicitor General has to yield that a copy of the letter communicated by Sri T.R. Malakar should not have been forwarded to M/s. Rainbow Production Private Ltd. According to Mr. Pal, the learned counsel for the writ petitioners that the said letter will indicate beyond any shadow of doubt that it is an internal decision and as soon as it has been directed to be communicated to the writ petitioner it partakes of the character of internal decision in view of the communication.

14. The said letter as referred to herein dated 25.7.98 bearing No. PS/DDV(TRM)/25-7 which is annexed as annexure-B1 to the affidavit-in-opposition affirmed by one Smt. Soma Mukherjee on 26.10.98 the said letter in its recital that the matter was further discussed with the Chief Executive Officer and it has been decided to introduce the news and current affairs programme as a sponsored programme on DD-1 from 6-10 P.M. to 6-20 P.M. on all days of the week which will commence from 15.8.98. The repeat telecast on DD-7 could be done as proposed by M/s. Rainbow Production from 9-30 P.M. to 9-40 P.M. with hour updating during time kept between the telecast news bulletin at 6-10 P.M. to 6-20 P.M. The reference to the said letter will reflect the entire correspondences made internally between one Sri Das and T.R. Malakar which to be repeated once again in tune with submission of Mr. Pal, the learned counsel on behalf of the writ petitioners/respondents in the appeal which may bear the imprint of internal decision, but as soon as communication is made to M/s. Rainbow Production Private Ltd. for information. It ceased to be internal because a person is going to be benefited or affected has been intimated about the decision.

15. In the backdrop of the same, the item No. 6 in the agenda vide annexure-C to the supplementary affidavit has come for criticism by Mr. Pal and according to him, the same is the subject matter of challenge because of entry of subsequent events into the vortex of controversy which has been allowed to be done pursuant to the order of the court dated 17.11.98 by the Division Bench as by agreement of parties the same was directed to be done for full and effectual disposal of the controversy. This court does not intend to go in for detailed narration of the factual matrix of the case as emanating from the pleadings of the writ petition and the supplementary affidavit.

16. While addressing the writ petition on merit, Mr. Pal, the learned counsel has initially contended that the controversy which is to be discerned from the perusal of the writ petition can be narrowed down in a limited compass as to when Item No. 6 of the resolution saw the light of the day as according to him that has become substantially the matter of challenge of the writ petitions.

17. Mr. Pal has made a remark in course of the argument that the plea of concluded contract is not very much material for the purpose of adjudication of this controversy. He had, in fact, not addressed at all on the element of aspect of concluded contract as pleaded in the original writ petition, as according to him, it has been supplanted by resolution taken in item No. 6 which was placed for

consideration of the Board to take a decision on the matter with full consideration.

18. In support of his contentions, Mr. Pal has raised the point first by contending that bilateral negotiations resulting in a decision cannot be upset by the act of unilateral review at the behest of the authority. According to him, consensus of negotiated decision cannot be given a go-by unilateral conduct of the authority figuring as one of the parties to the decision.

19. In support of the said proposition, Mr. Pal has referred to the decision of *Union of India & Ors. v. M/s. Anglo Afghan Agency*-reported in AIR 1968 SC 718 and reference has been drawn to paragraph 23 thereof wherein it has been observed that under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot look to indefinite and undisclosed ground of necessity of experience failed to carry out the promise solemnly made by it in order to the claim to be discharged of its own obligation to the citizen on an *ex parte* appraisal of the circumstances in which obligation is arrived at. Mr. Pal has pointed out that it is an *ex parte* appraisal of circumstances which tends to give a go-by to the consensus of negotiated decision as negotiated decision inheres in it the element of mutuality between the two parties in a negotiation on the basis of which consensus is arrived at. According to Mr. Pal, the reference about a policy decision is yet to see the light of the day and when it is still in a state of vacuum, on a speculative basis the settlement of negotiated decision cannot be superseded on a purported reference to a non-existing policy decision during the contemporaneous period. The contemporaneous period is marked by an element of lull resulting in creation of vacuum and, as such, according to him, the same cannot be given effect to. Mr. Pal has also contended that cause of action of the writ petition being the bundle of facts and intervening circumstances ought to be taken note of when particularly the court on a mutual agreement of the parties has given leave to the writ petitioner to come with a supplementary affidavit. According to Mr. Pal, the said agenda being item No. 6 of the resolution is also the subject matter of challenge in the pending writ petition. For making the right of remedy claimed by the party, more meaningfully and also legally and factually in accordance with the current realities, the court can, and in many cases, must take cautious cognizance of events and development subsequent to the proceeding provided the rules of fairness to both sides are scrupulously obeyed. The said view finds its support from the case of *Pasupuleti Venkateswarlu Vs. The Motor and General Traders*, According to Mr. Pal, though the policy is non-existent in a state of embryo but still according to him it is discriminatory in nature in view of the illustrations referred to earlier from supplementary affidavit, namely, about double standard being followed in some of the news and current affairs programme, as mentioned earlier, namely, "Delhi--Aajtak", "Gaon Aajtak", "Subhe Sabere", "Dopehar Dekhe", "Aankhon Dekhe" and according to him, Doordarshan in several centres, such as, in Delhi and Calcutta, which are discriminatory being violative of Article 14 of the Constitution of India. The Governmental authorities of the State are expected to act not only fairly but its

actions should be tested in the touchstone on the anvil of Article 14 of the Constitution of India. A reference is made in this context to the case of *LIC of India and Another Vs. Consumer Education and Research center and Others*, where the apex court has elongated the principle by extending the scope of Jurisdiction of the High Court under Article 226 of the Constitution by holding, (inter alia, that the actions of the State, its instrumentality, in public purposes, where actions bearing insignia of element of public character, are subject to judicial review and validity of such action will be tested on the anvil of Article 14. The rule of reason and rule against arbitrariness and discrimination and rules of fair play and natural Justice are cementing bones which build a layer of superstructure of rule of law applicable in situations or actions by the State instrumentality in dealing with citizens, even the manner and method and motive of decisions in the field of contractual domain where one of the parties to the contract is a "State", the manner, method and motive of prosecution in giving shape to the contract or agreement are subject to Judicial review on the touchstone of relevance and reasonableness which has been observed by this learned Judge in the case of *Green Hut Private Limited and another Vs. State of West Bengal and others*, . Mr. Pal has further contended that even if it be assumed for the sake of argument that there is any question of policy involved but will it be considered as rational? According to him, the telecast programme of "Khas Khabar" is particularly for the regional area being telecast from Doordarshan Kendra, Calcutta, in the regional language, then scuttling of such programme will not ensure to the benefit of the viewers. In order to repel the possible contention of Mr. Mukherjee, the learned Additional Solicitor General, Mr. Pal has pointed out that rationality of the policy is to be tested also from the point of view of the viewers. In furtherance of his submission, Mr. Pal has referred to the rate cards in order to demonstrate the different rates prescribed in order to pinpoint the submissions that it will also warrant an interference that rates as such would indicate that it is for news and current programme to be telecast in DD-1. Mr. Pal has also dwelt on the basis of hypothesis that even if there is policy decision, the same is not immune from Judicial review. According to him, if it is a matter of policy, the question of relevance and reasonableness is also required to be viewed in the perspective on the context of contest for which it is primarily meant. The viewers have also a right as recipients of programme to televised version in regional language so that they can have freedom of thought after they are being fed with information. This tends to generate public information and interaction on facts. Policy decision has its bearing on the object and the same is not immune from Judicial review. In support of the said contention, Mr. Pal has referred to a number of decisions including those of *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, where it has been laid down that when statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons in the shape or otherwise. In absence of the same, if a challenge is thrown, it can then be vitiated by additional grounds later brought out. A further reference was made to the case of *R.B. Secretary of state for Foreign Affairs* exported well

development movement later, reported 1995(1) All AIR 611 Mr. Pal has also referred to and relied upon the case of M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, where it has been observed that the court may determine the question of Impugned decision on its own independent judgment where it is a finding of fact that court examines only the reasonableness of finding when that finding is based on decisions, then judicial review is exhausted. It has been further held that principles of equality governs every state action and policy decision does not have absolute immunity from Judicial review. Mr. Pal has further argued that item No. 6 of the resolution by circulation is ultra vires the provisions of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990. In support of the said provisions Mr. Pal has referred to sections 8(1) and 8(4) of the Act and according to him the same has not been done in accordance with the said provisions. His principal challenge is that resolution by circulation is ultra vires the provisions of the said Act as no sanction has been given for adaptation of resolution by way of circulation. Mr. Pal has also made copious reference to the present composition of the Board of Prasar Bharati and according to him substantial number of members numbering about 7 are absent and therefore it is a truncated body and it cannot be considered to be a composite body. It is not due to casual vacancy in the formation of the Board. It has been also pointed out by Mr. Pal that no proper ground has been taken in the purported resolution of the Board nor any authority has been given in aid of delegation.

20. Mr. S.B. Mookherjee, the Additional Solicitor General appearing on behalf of the concerned respondents has first taken a technical point and according to him the Jural portions of the affidavit are not properly filled up. It has been pointed out by him that on the ground of defect in verification the entire writ petition should be thrown out in limine. It appears from the perusal of the Jural portion of the affidavit that some paragraphs have been ascribed to be submissions which according to him cannot be submission. The tenor of contention of Mr. Mookherjee, the learned counsel, tends to suggest that at best this case can be placed to the position of a defective pleading. The omission to verify a pleading is a mere irregularity. It has been pointed out by the Supreme Court in the case of Bhikaji Keshao Joshi and Another Vs. Brijlal Nandlal Biyani and Others, that if verification of a plaint or petition is found defective, it should not normally be rejected and if such defect is of vital nature it may be cured by process of amendment. A reference may be made to the provisions of Order 19(2) of the CPC which postulates that upon any application evidence may be given by affidavit but the court may at the instances of the either party order attendance for cross-examination of the deponent. A reference to the decision relied on behalf of the respondents, reported in AIR 197, SC P.652. para 11 is a case of total absence of verification and not a case of defective verification. As such, though the objection is technical in nature but the court does not intend to lend much credence to such technical objection and as such the same is required to be overlooked.

21. The learned Additional Solicitor General while dealing with the merit of the writ petition has drawn attention of this court to paragraph 69 of the writ petition as, according to him, the case has been founded on a concluded contract of the petitioners entered by them between period of 25.7.98 to 15.8.98 with the Prasar Bharati Broadcasting Corporation of India. Further attention has been drawn from paragraph 73 of the petition because of the pleading taken therein that certain correspondances dated 25.7.98 and 8.8.98 respectively amount to concluded contract between the parties. Further reference was drawn to ground No. (P) of the writ petition about concluded contract. Then, the attention was drawn to the prayer (b) which seeks a declaration about the concluded contract. Then, reference was made from paragraph 10 of the supplementary affidavit and by placement of reliance on the same it has been contended that entire writ petition is based and/or founded on the formulation of the cause of action of a concluded contract. In view of the submissions made by Mr. Pal, the learned counsel for the writ petitioners, that is not material, Mr. Mookherjee has submitted that it has resulted in, erosion of the foundation of the cause of action of the proceeding and for want of cause of action the same is liable to be set aside. It has been submitted in no unambiguous terms by Mr. Mookherjee that there is no contract in between the parties and parties have been in the negotiating stage far from at the stage of concluded contract and therefore that being stated to be not material, the same is liable to be dismissed for want of cause of action. Mr. Pal has submitted which was referred to in the earlier portion that subsequent events during the pendency of the proceeding if they were allowed to be let into the vortex of controversy with the leave of the court subject to the agreement between the parties, then, the cause of action must be deemed to be continuing one. According to Mr. Pal, his client has been motivated to file the writ petition on the basis of an apprehension which have been subsequently proved out to be true because of the particular item taken in the agenda of the resolution of the meeting and that is the grievance for amelioration of which the petitioner has come to court. In order to seek remedy, the court can in accord with current realities take note of subsequent events in orders to effectuate a full and fair decision on the controversy. According to Mr. Pal, though concluded contract has been pleaded in the original writ petition but which does not emerge to be material in view of subsequent events and the genesis of the controversy has been crystallised in item No. 6 of resolution of the Board meeting as a result of which there is an impending threat for possibility of rescission of an earlier stand taken by the authorised agents on behalf of the Prasar Bharati to telecast the programme as per altered schedule on valid terms. This court is in agreement with the contention of Mr. Mookherjee, the learned Additional Solicitor General, that there is no concluded contract between the parties but nevertheless it appears that at some point of time some internal decision on the part of the authorities have been taken which the petitioner was duly intimated about. Therefore, the compass of the dimension of internal decision has been expanded because of the information conveyed to M/s. Rainbow Productions Private Limited and as such now the cause of action is

continuing because the trail of the same has been casting its shade on the decision making process. In view of the unanimity of the content by Mr. Pal, the counsel of the petitioner, that the question of concluded Contract Is not material and in consideration of submission by Mr. Mookherjee. there Is no contract entered in between the parties, therefore, the scrutiny on the said question any further does not require our attention. The immediate reason to continue in the writ petition for the petitioner Is the aforesaid item taken in the resolution of the Board meeting which tends to affect the right of the petitioners and therefore, such challenge is debatable before this court

22. Mr. Mookherjee, the learned Additional Solicitor General appearing for the respondents has drawn the attention of this court to the plea of promissory estoppel and legitimate expectation taken in paragraphs 56 and 57 of the supplementary affidavit affirmed by one Smt Soma Mukherjee, the writ petitioner No. 2 in her capacity as a director of the writ petitioner No. 1 and it has been specifically- contended by Mr. Mookherjee that in absence of a concluded contract, the propositions canvassed in the supplementary affidavit and also in other portions of the writ petition about promissory estoppel and legitimate expectation do not come in the way at all. So far as promissory estoppel Is concerned, we are quite conscious that in absence of any formal contract entered in between the parties, the question of concluded contract does not arise and the same does not require our scrutiny. Nevertheless, there was an element of promise flowing not from the contract but from the approval accorded as a result of which all preliminary arrangements were made for telecasting the programme of Khas Khabar. The petitioners' contentions rotate round the fact that in view of the internal decision taken which has been conveyed to the writ petitioner No. 1, namely, M/s. Rainbow Productions Pvt. Ltd. as indicated earlier, they are on the doorstep of unfurling the chapter relating to telecasting of the programme of Khas Khabar. The said arrangements cannot be made overnight which require certain preparations to be undertaken being accompanied by investment not only in financial terms but in terms of expertise and building up of infrastructure. The question that looms large before this court that it is not a matter relating to promise, it Is the communication of an internal decision as appearing from annexure TV enclosed to the writ petition dated 25.7.98 addressed to one Sri BISwas on behalf of T.R. Malakar. There has been mention in the said letter about the discussion of the proposal over telephone in between the office hearers figuring in the said letter and it was examined in the directorate in detail. it was further mentioned that it was discussed with the Chief Executive Officer and with his approval it has been decided to introduce the news and current affairs programme as a consort programme on DD-1 with communication to the C.E.O, M/s. Rainbow Production Pvt. Ltd., Calcutta. it further appears from the subsequent annexures, namely, from annexure "H" enclosed to the writ petition dated 5.8.98 and also the materials indicate that terms were varied with mutual agreement for telecast of the programme. The question Is that whether from the said communication of the aforesaid and the records bearing testimony about

such decision being taken generate the element of legitimate expectation and the respondents can be pinned down with the liability flowing from the communications made from their side. In this connection, reference can be made to the case of *Union of India & Ors. v. Anglo Afghan Agencies*, reported in AIR 1968, SC p.718 and paragraph 18 thereof it has been pointed out while dealing with the arguments that the Government is held bound by every representation made by it regarding its function. Even when the respondents are not seeking to enforce any contractual right but they are trying to enforce compliance with the obligation which is laid upon Textile Commissioner by the terms of the scheme. Ultimately, it was held in the said Judgment that the claim of the respondent is appropriately founded upon the equity which arises in their favour as a result of representation made on behalf of the Union of India. The same has been followed by pertinent observation that even though a case does not fall within the ambit of section 115 of the Evidence Act, it is still open to a party who has acted on a representation made by the Government to claim that the Government shall be bound to carry out the promise made by it even though the promise is not recorded in the form of a formal contract. The proposition as expounded in the said Judgment appears to be fitting in the facts of the instant case to the extent that even though in terms section 115 of the Evidence Act does not strictly apply but still it is open to a party who has acted on the basis of a representation though not recorded in the form of a formal contract. A further reference can be made to the case of *Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd.*, where the Supreme Court has held that if a promise is evidenced from the said two documents as a result of which the respondents incurred expenses and suffered liability and acting on the promise of the appellant proceeded to suffer further the principle of promissory estoppel would come into play. On the side of the respondents, reference was made to the case of *Delhi Cloth and General Mills Ltd. Vs. Union of India (UOI)*, where the Supreme Court has held that for the purpose of finding whether an estoppel arises in favour of the person acting on the representation, it is necessary to look into the whole of the representation made where certain rate of freight for carriage was subject to review and on the basis of which a factory was set up by the Company. There, the doctrine of estoppel was not attracted. Here, in the present case before us, there is no controversy with regard to the rate as lot of submissions have been made by Mr. Pal on the rate card, therefore, on the facts of the present case, the abovenoted decision does not squarely apply and on the contrary the earlier decisions have more applicability in the case. Further reference was drawn to the case of *Vasantkumar Radhakisan Vora Vs. The Board of Trustees of the Port of Bombay*, where it has been held that the principle of promissory estoppel has been evolved by equity to avoid injustice which must yield place to equity if larger public interest so requires and if it can be shown by the Government or the public authority that it will be inequitable to hold the public authority to the promise or representation made by it, the court on satisfaction would not in those circumstances raise the equity in favour of the person to whom the representation is made if the court is satisfied that it would be inequitable to

hold the public authority liable to provided the court Is satisfied that the same Is inequitable on facts or on public policy. Here, public policy has not been elaborated nor any new policy Is taken and also facts do not lend credence in support of a suggestion on conclusion beyond any shadow of doubt that the public authority is clamouring for founding its claim on equity based on facts in support of its case. Accordingly, this case also as cited by the respondents appears to be distinguishable in the sense that it does not apply fully. it is clear that even If estoppel does not follow from the contract itself, still on the basis of the representation the authority can be pinned down its liability to honour its representation unless a new policy of the uniform pattern Is adapted and enforced without any stlge of discrimination. Mr. Mookherjee, the learned counsel for the respondents has further submitted that the relief is not available to the writ ptltioners as in absence of a contract there Is nothing which Is specifically enforceable as it has been already indicated that it is the enforcement of a decision which Is the point of controversy in this writ petition and enforcement of a contract is no longer looming large in the horizon of controversy as the same has been relegated to the background. it has been submitted by Mr. Pal. In a tangential direction that it Is for enforcement of time allotted to the writ petitioner for the purpose of telecasting, therefore. it has got nothing to do with any tangential property and a question has been counter-pased as to whether the right of lien of utilisation of time is enforceable in contract. These discussions are not having any germane Implication on the controversy in Issue as it has been spelt out hereinbefore. Therefore, such questions need not be required to be adumbrated any further or greater details. In this context, it has been submitted by Mr. Mookherjee that Prasar Bharati (Broadcasting Corporation of india) Act, 1990 has come into force after about a prolonged period of coming into force of the Act. it has been hinted at that the Act Is in an experimental stage and therefore some time should be given so that an autonomous body created under the Act can function in terms of the statute. Nobody inhibits the right of the corporate authority to proceed in accordance with the statutory provisions and to retain its autonomous character and this court also sincerely desires that its autonomy should be there and policy matters should be enforced uniformly without being influenced by extraneous considerations. The Prasar Bharati Board is statutorily empowed to take any decision in regard to the telecast of programmes but from the latest move initiated by the authority it appears that it tends to interfere with the programme for telecast in respect of a particular proposal which was mooted at the instance of the lone party for the regional purpose. Lot of debate has cropped up with regard to the nature of the programme and it has been sought to be suggested in the affidavit as well as from the records that as per rate cards the same should be designated as news and current affairs programme. Thereafter, in course of exchange of affidavits it transpires that the said telecast programme has been attempted to be ascribed as magazine programme. At the time of argument it has been submitted by Mr. Mookherjee, the learned counsel for the respondents that it Is a programme on hard facts. This coinage of terminology about the

description of programmes has been challenged by Mr. Pal and according to him there should be no entry of terminology excepting the classification which are to be discerned from the rates card as appended to the supplementary affidavit where news and current affairs programmes of regional kendras have also been catalogued. Mr. Pal has led special emphasis that Khas Khabar Is a news based programme as per classification made in the rate cards. it has been sought to be suggested that new policy is required to be taken by way of standard of uniformity and unless the same Is taken it cannot be done or attempted to be Implemented in respect of a lone programme as Khas Khabar. Even in item No. 6 of the agenda of the meeting which Is made annexure "E" to the application for stay filed by the appellants, there some references were made about currency of Bengali news programme being telecast in DD-1, DD-2 and DD-7 and further reference was made to other centres like Chennai, Bangalore and Hyderabad. Even, some of the programmes like Aajtak, Ankhon Dekhl were dubbed as news and current affairs programmes by private party on DD-1. Reference was made at an earlier point of time with regard to the citations made by specific examples drawn by Mr. Pal from Doordarshn Kendara in Delhi as to how such programmes are being telecast in DD-1 channel of Delhi Doordarshan Kendra. it appears that all the news programmes as indicated by Mr. Pal are covered in the said item No. 6. it has been stated and submitted with force that a lone illustration cannot constitute the ingredient of a policy. If a policy is to be adapted the salne is to be adapted by considering the other illustrations and as such it has been critisized that the same item in the agenda of the resolution has a compartmentalised perspective with a lopsided direction. Even, oblique reference about certain stage where serious reservations were expressed but they were not explained in course of hearing as appearing from the application for stay of an order dated 22.9.98 and 25.9.98, it has been alleged that the programme in question are sensitive but that was not involved in the Impugned item. Even line of distinction sought to be drawn between Subha Sabera as a magazine programme and the line of distinction with Khas Khabaras a news bulletein and the said drawing line of distinction and the basis of drawing the same have not been spelt out. it has been commented upon by Mr. Pal that by way of affidavits the same cannot be Improved upon save as what appears from item No. 6 of the resolution in question. Such ingeneous distinction sought to be drawn between the current affairs programme based on news, magazine programme and the programme on news bulletein which have been described by Mr. Mookherjee as a programme of hard news and in absence of such categorisation being spelt out in the item in question of the resolution, this court does not feel encouraged to draw any line of distinction on any basis as to the nature of programme either by placement of reliance on the rate cards or on the item in question purported to be adapted in the Board resolution. This court in view of the discussions made earlier does not feel inclined to enter into such controversy but it proposes to proceed on the basis that item No. 6 of the agenda itself cannot withstand the test of scrutiny. If a new policy Is required to be adapted, the same has to be adapted on a cogent basis to be made uniformly applicable and such should not be done in a manner

by Isolating a lone participant who has been projecting items through T.V. media. For the foregoing reasons, the same cannot be acted upon. A reference may be made to the case of Secretary, Ministry of Information and Broadcasting, Govt. of India and others Vs. Cricket Association of Bengal and others, where it has been held that If the right to freedom of speech and expression as provided under Article 19(1)(g) of the Constitution includes the right to disseminate its information to a wide section of population as Is possible, the access of which includes the right to be so exercised Is also an integral part of the state right to wider range of circulation of information for its greater Impact cannot restrict the compos of the right nor can it justify its denial. The citizen has also a right in its capacity as the recipient and such information it can be stretched to the remotest part of this region so that people may become the beneficiary of the same. If the information is impartial and if it reaches all parts of the region and it has an element of credibility, then, it should not be interferred with but such does not confer any vested right to any party as it Is required to be regulated by public policy. Therefore, policy has got to be framed and unless a uniform pattern of policy sees the light of the day and in the absence of basis of the perspective of specification about the proposed policy, a lone participant in the programme should not be affected in enjoyment of the return of his investment made on honest belief and/or understanding that the same has been accepted because of such representation being made. Even for the sake of argument, no private enterprises could be allowed to telecast their programme in primary channel of Doordarshan which Is mainly the reason for which the resolution was passed and the decision allowing the writ petitioner Rainbow Production Private Ltd. to telecast news and current affairs programme Khas Khabar in DD-I Channel. II Is difficult to understand that in the said resolution nothing has been staled why the private enterprises should not also be allowed to telecast the news and current affairs programme "Khas Khabar" in DD-7 Channel. Instead of dilating in further details, for the reasons as aforesaid, this court hereby sets aside that item No. 6 of the agenda of the resoultlon purported to be taken in the Board meeting and as such a Writ of Mandamus Is Issued commanding upon the concerned respondents to rescind and/or revoke the item No. 6 of the agenda in the Board meeting as reflected from annexure "E" appended to the application for stay of the orders dated 22.9.98 and 25.9.98 passed by the learned trial Judge affirmed by one Arun Kumar Blswas, Director of Prasar Bharatt Board of Doordarshan Kendra, Calcutta. To the extent as indicated, the writ petition stands allowed.

23. There are other two writ petitions which are taken up for hearing at the instance of one Sri Avijlt Dasgupta and another at the instance of one Dlbyojyoti Basu being respectively numbered as W.P. Nos. 2115 of 1998 and 2114 of 1998. In W.P. No. 2115 of 1998. the pettioner as per averment on certain terms and conditions decided to join the services of M/s. Rainbow Productions Pvt. Ltd. for production of the news and current affairs programme in title "Khas Khabar" as Project Consultant and Programmer Designer for the production of said programme. There Is a reference in the petition between the interaction of the

concerned respondents and one M/s. Rainbow Production Pvt. Ltd. and on the basis of which certain prayers have been made in the connected writ petition, namely. Infer aUa amongst others for issuance of a writ in the nature of Mandamus directing the respondents to give effect to the earlier decision vide letter dated 25.7.98 and for other writs to command upon the concerned respondents from resiling from the earlier decision by taking a contrary stand. There has been some narration of facts from paragraph 39 to paragraph 45 of the writ petition and by placement of further reliance on paragraph 52 onwards such prayers seem to have been based. This court after carefully going thorough the averments contained in the writ petition is not satisfied about the locus standi of the writ petitioner to crave for reliefs as sought for in the connected writ petition and there is also no cause of action of the present writ petitioner vis-a-Ms the action of the respondents directly. If there is any cause of action accrued, that is in favour of M/s. Rainbow Production Pvt. Ltd. but not in favour of the writ petitioner. As such, this court does not find any iota of merit in the instant petition either about the locus standi or about the cause of action as pleaded in the writ petition vis-a-vis the writ petitioner. Accordingly, this court does not think it necessary to go in for any indepth analysis on the merit of the writ petition as the locus standi of the petitioner is answered in the negative and the petitioner has not been able to project any cause of action against the concerned respondents. Therefore, the writ petition appears to be liable to be dismissed in limini.

24. Next, W.P. No. 2114 of 1998 was also taken up for analogous hearing along with the other writ petitions. Here, the petitioner claims to have associated himself in his capacity as Executive Editor for production of the telecast programme of Khas Khabar in Doordarshan and there has been terms of employment entered into between the employer and the employee. If the employee has any right, the same is to be invoked against the employer but such petitioner does not have any locus stand to pray for the reliefs as would be appearing from the prayer portion of the writ petition. There is no negotiation in the pleadings between the locus stand of the writ petitioner and his ultimate reliefs claimed against Doordarshan as the said petitioner cannot have any direct claim against the authorities figuring as respondents in the said proceeding. This court has gone through the averments and after going through the averments the court is at a loss to decipher the locus standi of the writ petitioner nor it has been able to connect the cause of action of the present petition vis-a-vis the petitioner for which the petition can be entertained. Accordingly, instead of going into unnecessary exercise of discussion in this matter this court feels that the petition is liable to be dismissed as not maintainable.

25. In the connected appeal, Mr. Mookherjee, the learned Additional Solicitor General appearing on behalf of the respondents has assailed the impugned orders passed by the trial court, particularly, the order of ad- interim injunction and in support of his contention he has relied on a number of decisions reported in AIR 1985 SC 630, Bank of Maharashtra Vs. Race Shipping and Transport Co.

Pvt. Ltd. and another, and Delhi Development Authority Vs. Skiper Construction Company (P) Ltd. and another, . All these decisions of the supreme Court consistently have held that ad-Interim order of injunctions should not be given by way of a relief which may put the contesting side in the position of a detriment. This court accepts the said propositions and it may appear that the learned Judge could not have passed such ad-Interim orders ex parte against the respondent authorities but at the appeal stage it appears that in terms of mutual agreement of the learned counsel of the parties it directed disposal of the pending writ petitions and direction for affidavits were given and they were directed to be disposed of along with the direction for disposal of the pending appeals and application for stay. As the applications for injunction have been taken up for hearing on the basis of the affidavits filed by all the parties and as they have been exhaustively heard by the appellate forum being the Division Bench and the writ petitions stand disposed of in either way as indicated above. Therefore, in view of disposal of the writ petitions in accordance with law, no fruitful exercise will be required to be made on the merits of the appeal as culmination of result in the writ petitions drops the final curtain from the scene of the controversy. In view of the same, no further order needs to be passed on the merits of the pending writ appeal and the application for stay as the instant order has decided the fate of all the pending writ applications. Therefore, the first writ petition No. 2116 of 1998 stands allowed to the extent as indicated hereinbefore and the other two writ petitions as stated above are liable to stand dismissed.

26. This court hereby set aside item No. 6 of the agenda of the resolution purported to be taken in the Board meeting and as such a writ of Mandamus is issued commanding upon the concerned respondents to rescind or revoke the item No. 6 of the agenda in the Board meeting as reflected from annexure "E" appended to the application for stay of the orders dated 22.9.98 and 25.9.98 passed by the learned trial Judge. To the extent indicated the writ petition stands allowed.

27. So far as writ Petition No. 2115 of 98 and writ petition No. 2114 of 98 are concerned, they are liable to be dismissed as the concerned petitioners in the said writ petitions have not been able to project any cause of action against the concerned respondents nor this court has been able to decipher the locus standi of the said writ petitioners in the aforesaid two writ petitions.

28. In view of the same no further order is to be passed on the merits of the pending appeal and the application for stay as the instant order has decided the fate of all the pending writ applications. Therefore, in view of writ petition No. 2116 of 98 being allowed to the extent as indicated and other two writ petitions as aforesaid have stood dismissed. As all the three writ petitions by this common Judgment have been disposed of, the appeal and application for stay have become infructuous and the same is disposed of as such.

29. This order will not prevent the Prasar Bharati to take appropriate steps against the writ petitioner Rainbow Productions Pvt. Ltd. in accordance with law.

We also make it clear that excepting the resolution taken in respect of item No. 6 of the resolution, no further direction is passed.

30. A prayer has been made at the instance of the respondents for stay of operation of the order in respect of the first writ petition preferred by M/s. Rainbow Production Pvt. Ltd. and this court feels that in view of the currency of the programme and in view of the nature of the order passed by this Bench, there is no scope for any order of stay. As such this court is constrained to reject the prayer for stay.

31. All parties are to act on a xerox certified copy of the Judgment to be delivered expeditiously on the usual undertaking.

T. Chatterjee, J.

32. I agree.

33. Petitions disposed of