

# Challenging a Monopoly 2248

Former AIR DG moves court to challenge Government's radio and tv monopoly.

**L**AST MONTH, advocate and former MP M.R. Masani took the Union Government to court on a unique charge. In a petition filed with the Bombay High Court, Masani and his co-petitioner P.C. Chatterji, former director-general of All India Radio (AIR), declared that the Government's monopoly over the country's broadcast media was illegal and unconstitutional. This petition resulted from the Government's rejection of the petitioners' proposal to set up an indepen-

the Indian Committee for Cultural Freedom and the Indian Liberal Group (Masani is chairman of both) to conduct. The study monitored Doordarshan news between April and August 1986 and compared it to *The Times of India* issues of the period. Not surprisingly, the researchers came up with innumerable instances of the broadcast medium's efforts to "subserve the interests of the party in power" by regularly dishing up "loaded and distorted news," and by "suppressing and censoring inconvenient news."

Nobody in the Government commented on the study, and all that Masani got was a tersely-worded letter from an assistant wireless adviser to the Government regretting that "it would not be possible to grant a licence for setting up a private broadcasting service in any part of the country." Masani discovered that the only legislation the Government could go by, the Indian Wireless Telegraphy Act of 1933 and the Telegraph Act of 1885, allowed the regulation of broadcasting rights, but not their monopolisation by the Government. Declaring that denying members of the public the right to set up their own stations also violated Article 19 of the Constitution (which guarantees the freedom of expression), Masani demanded a court order forcing the Government to license him.

Over the years, many proposals to set up independent stations have been summarily rejected, but no one has taken the matter to court in Bombay. "We've been discussing the issue for a long time, but nobody has had the time to pursue it in court," says Constitution expert Ram Jethmalani. "I'm glad someone has done it now." The only precedent in this instance is a judgement passed by the Delhi High Court in 1981, which dismissed a similar petition filed by P.L. Lakhanpal.

The judges presiding over the Lakhanpal case conceded that the petitioner's request was not unreasonable, but justified the Government's position by taking refuge in clause (2) of Article 19 of the Constitution which allows the restriction of the freedom of

expression in the "interests of the sovereignty and integrity of India, the security of the state... public order, decency or morality". They decided that it would be against "public order" to grant this man a licence, for then "every other individual" would also have to be given one. As for the petitioner's contention that his proposal was rejected by the Centre "to stifle opposition to the Government," the judges retorted that since they were not aware of anyone having been given such a licence, be they for or against the government in power, they could not detect any unfairness behind the current refusal.

And that really is the fact of the matter. No Indian government is likely to give up its stranglehold over such a potent medium easily, even to the extent of granting it autonomy, as per the British system. Over the years, several Government-appointed committees have themselves recommended autonomy for the existing broadcast media, and the B.G. Verghese Committee even prepared a suitable bill, in the '70s. Both the Congress and the Janata governments rejected it. The matter was revived in July this year, when the Supreme Court admitted a writ petition from journalist and social scientist Romesh Thapar, seeking autonomy for AIR and Doordarshan. Unfortunately, Thapar died before the matter was heard, and it is not sure what will now become of his petition. In light of this, it is unlikely that the government will make the sudden, dramatic change in policy that Masani has demanded.

As for his petition, when it eventually comes up for a hearing, the courts can once again take recourse in Article 19(2). Of course, they could grant Masani his plea, whereupon the Government could promptly reject him again, quoting the defences mentioned above. But even if nothing dramatic comes of the whole issue, Masani will have succeeded in generating a fair degree of legal debate on the matter, thus providing the courts some precedent to work with, in the future.

✶ HARINI SWAMY



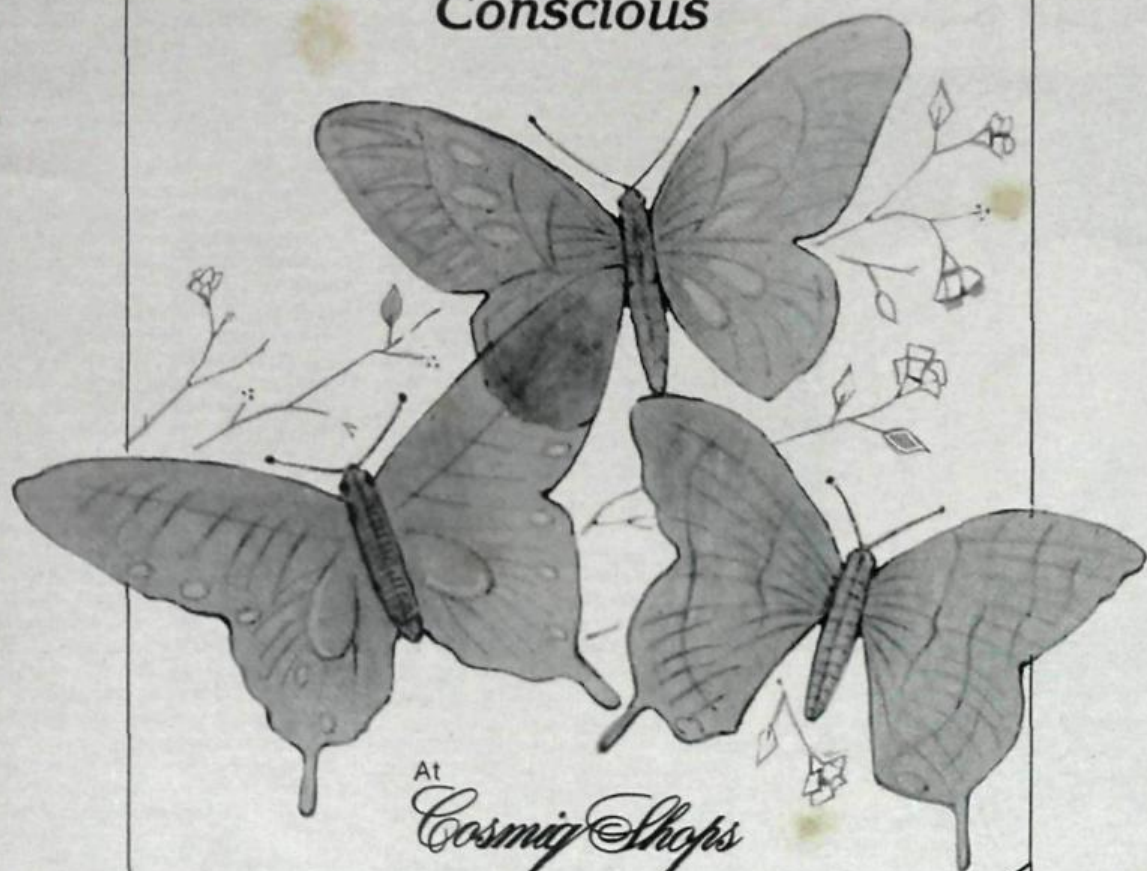
Minoo Masani: fighting for private broadcasting stations

dent radio and television broadcasting station for Western India (to be headquartered in Bombay) and run it as a public limited company.

Masani and Chatterji first sent their proposal to the Centre in September 1986. They declared their wish to "supplement what Government agencies are at present doing, both in the way of education and information, in a manner that will be objective and not committed, as the Government agencies are, to the official point of view." To back their claim of bias on the part of the Government media, they submitted a study they had commissioned

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