

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO 2955 OF 1987

2262

Minoo R. Masani & Another Petitioners

Versus

Union of India Respondent

I N D E X

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NC 2955 OF 1987

In the matter of Article 226 of
the Constitution of India;

And

In the matter of Articles 14,
19(1)(a) and 19(1)(g) of the
Constitution of India;

And

In the matter of the Government
monopoly in broadcasting
through All India Radio and
Doordarshan;

And

In the matter of the refusal to
permit the Petitioners to set
up an independent broadcasting
station for radio and
television in the western
region.

1. Minoo R. Masani, of Bombay,)
Indian Inhabitant, residing at)
Breach Candy House, Bhulabhai)
Desai Road, Bombay 400 026 ..)
2. P. C. Chatterjee, of Delhi,)
Indian Inhabitant, residing at)
Flat 2D, Block F, Saket, New)
Delhi 110 017) Petitioners

Versus

Union of India) Respondent

To

THE HON'BLE THE CHIEF JUSTICE AND
HIS COMPANION JUSTICES OF THE
HIGH COURT OF JUDICATURE AT BOMBAY,

THE HUMBLE PETITION OF
THE PETITIONERS ABOVENAMED

MOST RESPECTFULLY SHEWETH:-

1. The Petitioners are citizens and nationals of India. Petitioner No 1 has been closely associated with the social and political life of the Indian people for over fifty years, and was an active participants in the freedom movements. The 1st Petitioner was a member of the Constituent Assembly and was a member of the Advisory Committee on Fundamental Rights. The 1st Petitioner has also been a member of Parliament from 1945 to 1970 and has, at all times, been a champion of individual freedom and human rights. The 2nd Petitioner was, for several years, the Director-General of All India Radio. The 2nd Petitioner has first hand knowledge of the technical intricacies of broadcasting and communication through the media of radio and television.

2. The Petitioner state that they wish to set up an independent broadcasting station for radio and for television, to function alongside All India Radio and Doordarshan. For this purpose, the Petitioners intend to establish a public limited company and it is proposed that the Board of Directors of this Company shall comprise of men and women of high standing and integrity as also with a knowledge of the technical aspects of media communication. Initially, the headquarters of the proposed broadcasting station will be in Bombay and the Petitioners intend to initially use transmitters of medium power.

3. By their letter dated 11th September 1986 addressed to the Hon'ble Mr V N Gadgil, the then Minister of Information and Broadcasting, Government of India, the Petitioners applied for a license to establish two broadcasting stations, one for radio and the other for television, to function alongside All India Radio and Doordarshan. In the said letter, the Petitioners inter alia stated that the Petitioners were of the view that under the Constitution of India, these facilities were open to the Union of India, the State Governments, as also to the people of India. It was further stated in the said letter that the purpose of establishing these broadcasting services was to supplement what the Governmental agencies were doing, both in the way of education and information, in a manner that would be objective, and not committed, as the Government agencies are, to the official point of view, both in regard to the news and features. It was stated that as soon as the Petitioners received the consent of the Government of India to the aforesaid proposal, the Petitioners would establish a public limited company to commence and organise these services. The Petitioners assured the Government that they

would strictly adhere to the frequencies assigned to the Petitioners so that they did not interfere with other user; and further that the Petitioners would follow all directions on technical matters currently enforced by the Wireless Adviser to the Government of India. All further details could be discussed between the Government and the Petitioners, once the Government accepted in principle the Petitioners' request to establish the said two broadcasting stations. Hereto annexed and marked Exhibit "A" is a copy of the said letter dated 11th September 1986.

Ex. "A"

4. By a letter dated 17th October 1986, the Petitioners were forwarded a copy of the proforma for application for the grant of a license under the Indian Telegraph Act, 1885. The said letter, addressed by the Engineer for the Assistant Wireless Adviser to the Government of India, stated that the Petitioners' letter dated 11th September 1986 had been forwarded to the Ministry of Communications for necessary action and pursuant thereto, a copy of the proforma for application along with annexures was being forwarded to the Petitioners. The Petitioners were requested to fill in the forms and forward the same to the Ministry of Communications. Further action would be taken on receipt of the completed application. Hereto annexed and marked Exhibit "B" is a copy of the said letter dated 17th October 1986, together with the proforma.

Ex. "B"

5. The Petitioners state that as the said proforma had apparently been forwarded due to a misunderstanding regarding the nature of the request made by the Petitioners for a license to establish two broadcasting stations, the Petitioners addressed a letter dated 23rd December 1986 to the Hon'ble Mr Ajit Panja, the Minister of State for

Information and Broadcasting, whereby the Petitioners enclosed a copy of their previous letter dated 11th September 1986 requesting for a license to set up two broadcasting stations, one for radio and the other for television. The Hon'ble Minister's attention was drawn to the reply received by the Petitioners and a copy of the same was forwarded to the Hon'ble Minister. The Petitioners state that on a consideration of the reply dated 17th October 1986, and the forms enclosed with the said letter, the Petitioners found that the forms had no relevance to the application that had originally been made to the Minister Information & Broadcasting. It was made clear that the Petitioners were not applying for a license to own a wireless transmitter. The Petitioners request was much more far-reaching and involved a policy decision which had to be taken by the Government of India. Since the Minister for Information & Broadcasting had not replied to the Petitioners' original letter dated 11th September 1986, and as the communication from the Ministry of Communications appeared to be the result of some misconception, the Petitioners once again requested the Hon'ble Minister to consider the proposals regarding the setting up of two broadcasting stations. Hereto annexed and

Ex. "C"

marked Exhibit "C" is a copy of the said letter dated 23rd December 1986. By their letter dated 24th January 1987, the Petitioners once again requested the Hon'ble Minister to reply to their said proposals. By his letter dated 6th February 1987 addressed to the 1st Petitioner, the Hon'ble Minister acknowledged receipt of the letter dated 23rd December 1986 and informed the 1st Petitioner that the matter was being examined by the Ministry. Hereto annexed and

Ex. "D"

marked Exhibit "D" is a copy of the said letter dated 24th

Ex. "E"

January 1987. Hereto annexed and marked Exhibit "E" is a copy of the said letter dated 6th February 1987.

6. By a letter dated 24th February 1987, the Hon'ble Minister of State for Information & Broadcasting informed the 1st Petitioner that the license to own and operate a broadcasting transmitter was issued by the Ministry of Communication under the Indian Telegraph Act, 1885, and the Petitioners were advised to take up the matter with the Ministry of Communication. Hereto annexed and marked Exhibit "F" is a copy of the said letter dated 24th February 1987. By his letter dated 25th February 1987, the 1st Petitioner acknowledged receipt of the said letter dated 24th February 1987 and stated that he looked forward to bearing the Hon'ble Minister. Hereto annexed and marked Exhibit "G" is a copy of the said letter dated 25th February 1987.

Ex. "F"

Ex. "G"

7. The Petitioners state that consequent upon the suggestion to follow up the matter with the Ministry of Communication, the Petitioners addressed a letter dated 10th March 1987 to the Hon'ble Mr Arjun Singh, the Minister of Communications, wherein the Petitioners set out the past correspondence that had ensued on the subject regarding the setting up of a broadcasting station for radio and television to operate in the Western region of India alongside All India Radio and Doordarshan. Copies of the relevant correspondence were enclosed. By the said letter, the Petitioners submitted that as far as they were aware, there was no form in existence for the Petitioners to ask for facilities for broadcasting, nor had the time come to complete such a form, if any existed. It was submitted that the application for license could only be made when a Joint Stock Company was established to undertake this activity. The establishment of such a Company and the raising of capital would be pointless unless the Ministry concerned and the Union Government agreed

in principle to a service of this nature being operated under the various conditions set out in the letter dated 11th September 1986. The Petitioners therefore requested the Hon'ble Minister to consult his colleagues in the Cabinet and to thereafter give a suitable reply as to whether or not the Government of India was agreeable in principle to permit the Petitioners to set up the proposed broadcasting stations.

Ex. "H" Hereto annexed and marked Exhibit "H" is a copy of the said letter dated 10th March 1987.

8. By a letter dated 27th March 1987, the Hon'ble Mr Arjun Singh acknowledged the said letter dated 10th March 1987 and informed the 1st Petitioner that he was having the matter examined. Hereto annexed and marked Exhibit "I" is a copy of the said letter dated 27th March 1987.

Ex. "I"

9. On 7th May 1987, the 1st Petitioner sent a reminder to the Hon'ble Mr Arjun Singh. Hereto annexed and marked

Ex. "J" Exhibit "J" is a copy of the said reminder letter. However, the 1st Petitioner thereafter received a letter dated 28th April 1987 (hereinafter referred to as "the said impugned letter") from the Ministry of Communication, saying that it would not be possible to grant a license to set up a

Ex. "K" broadcasting station. Hereto annexed and marked Exhibit "K" is a copy of the said impugned letter.

10. The Petitioners state that, at present, the Government exercises a total and complete monopoly on communication through the media of radio and television broadcasting. For this purpose, the Government has set up All India Radio and Doordarshan as departmental limbs of the Ministry of Information & Broadcasting. Neither All India Radio nor Doordarshan are separate companies or corporation

incorporated under the Companies Act, or under any specific legislation. As mere departmental limbs of the Ministry of Information & Broadcasting, All India Radio and Doordarshan function under the total control and supervision of the Ministry for Information & Broadcasting in the same manner as any other department under its control.

11. The Petitioners state and submit that the aforesaid monopoly in broadcasting through the medium of radio and television, by way of executive/administrative action to the total exclusion of all citizens of India, and the refusal on the part of the Respondent to permit the Petitioners to set up two broadcasting stations, one for radio and one for television, to function alongside All India Radio and Doordarshan amounts to a clear violation of the Petitioners' fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India. The only permissible restraint of the right to freedom of speech and expression is the restriction contained in Article 19(2), which states:

"2. Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, insofar as such law imposes reasonable restrictions on the exercises of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offense."

It will thus be seen that whatever restriction the Government seeks to impose of the right to freedom of speech and expression has to be imposed by law; either an existing law at the time when the Constitution came into force or a law enacted thereafter. Secondly, the restriction on the right to freedom of speech and expression has to be a reasonable restriction on the exercise of this right. Furthermore, the restriction has to be in the interest of the sovereignty and integrity of India, the security of the State, etc., as set out in Article 19(2) and for no other purpose. The Petitioners state and submit that the monopoly created by the Government in broadcasting, through All India Radio and Doordarshan and the complete restraint on all citizens of India from exercising their right to freedom of speech and expression through the medium of setting up broadcasting stations for radio and for television is clearly ultra vires of Article 19(1)(a) and is not saved by Article 19(2) of the Constitution of India. The said monopoly amounts to a total and complete restraint on the freedom of speech and expression guaranteed to all citizens of India under Article 19(1)(a) of the Constitution of India and the same is without authority of law, in that there is no legislation which permits such a monopoly to be created in favour of the Government. Equally, there is no legislation which purports to prohibit any citizen of this country from engaging himself in broadcasting through radio and television, thereby exercising the right to freedom of speech and expression. It cannot be disputed that just as the freedom of the press is encompassed within the right to freedom of speech and expression guaranteed under Article 19(1)(a), the freedom to express oneself through the medium of radio or television is also encompassed within the guaranteed right of freedom of speech and expression. This right, as stated hereinabove,

can only be reasonably restricted by law in the interests of the sovereignty and integrity of India, the security of the State, etc., as set out in Article 19(2) of the Constitution of India. In the present case, as there is no such legislation, on the subject and as the said monopoly is sought to be created by executive/administrative fiat, the same is clearly ultra vires of Article 19(1)(a) of the Constitution, is null and void and of no legal effect whatsoever.

12. Without prejudice to the aforesaid submission, it is submitted that presuming, whilst denying, that the Respondents are entitled to restrict the freedom of speech and expression through the medium of setting up broadcasting stations for radio and television because of the provisions of the Indian Wireless Telegraphy Act, 1933, and in particular, section 3 thereof, it is submitted that such restriction can only be reasonably imposed, and the said Act cannot be used as an instrument for creating a State monopoly in broadcasting through the medium of radio and television. The Statement of Objects and Reasons of the said Act makes it abundantly clear that the said Act was enacted not with a view to create in favour of the Government a monopoly in broadcasting to the exclusion of all citizens of India, but with a view to regulate the possession of wireless and telegraphy apparatus in India and with a view to ensure that the Indian State Broadcasting Service is not deprived of its fees for licenses for wireless apparatus.

13. Section 3 of the said Act merely prevents any person from possessing telegraphy apparatus except under and in accordance with a license issued under the said Act. Section 4 confers on the Government power to exempt any

person or class of persons from the provisions of the said Act. Section 5 states that the telegraph authority constituted under the Indian Telegraph Act, 1885, shall be the competent authority for issuing licenses under the said Act. It is quite apparent that the said Act has been enacted for controlling the possession of wireless telegraphy apparatus and the granting of licenses to persons who wish to possess such apparatus toward this and Section 6 provides for penalties for contravention of the provisions of the said Act.

14. The Petitioners further submit that on a true construction, the said Act has nothing whatsoever to do with the setting up of broadcasting stations for radio and television, nor does it purport to confer upon the Government the right of setting up broadcasting stations for radio and television to the exclusion of all others.

15. The Petitioner further submit that admittedly, All India Radio and Doordarshan have not been set up under the provisions of the said Act. As stated hereinabove, All India Radio and Doordarshan have been set up merely as departments of the Ministry of Information and Broadcasting. The Petitioners state and submit that if, however, on a true construction of the said Act, and section 3 thereof in particular, it is held that the Government has the right to prevent all citizens of India from establishing broadcasting stations for radio and television, then the said Act and section 3 thereof in particular is clearly ultra vires of Article 19(1)(a) of the Constitution of India as it amounts to an unreasonable restraint on the freedom of speech and expression guaranteed by that Article to all citizens of India.

16. The Petitioners submit that the freedom of speech and expression including the freedom of the press and the freedom to express oneself through other means such as broadcasting on radio and television, are not only valuable freedoms in themselves, but are basic to a democratic form of government which proceeds on the theory that the problems of government can be solved by the free exchange of thoughts and by public discussion. The freedom of speech and expression, including the freedom of the press, has been upheld by the Courts in India and, in particular, by the Supreme Court of India, on numerous occasions. All attacks on the freedom of the press, whether by the device of excessive taxation or otherwise, have been repelled as amounting to a direct infringement of the freedom of the press and, as a result thereof, on the right to freedom of speech and expression guaranteed by Article 19(1)(a). In fact, this Hon'ble Court has gone so far as to hold that the provisions of the Monopolies and Restrictive Trade Practices Act, 1969, do not apply to the press, as it would amount to an unreasonable restraint on the right guaranteed by Article 19(1)(a). It is submitted that the right to freedom of speech and expression includes all forms of expression which are necessary for communication between persons and the right to set up broadcasting stations for radio and television, as a means of such expression is clearly encompassed within the right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India. It is submitted that under the Constitution of India, the Petitioners have a right to set up the said broadcasting stations for radio and television and the Respondents cannot prevent the Petitioners from doing so. The refusal on the part of the Respondents to permit the Petitioners to set up a broadcasting station for

radio and television is ex facie ultra vires of Article 19(1)(a) of the Constitution of India, is without the authority of law, is contrary to law, and is null and void and of no legal effect whatsoever.

17. Without prejudice to the aforesaid, the Petitioners submit that the monopoly created by the Respondents in broadcasting through All India Radio and Doordarshan and the refusal to permit any other citizen from creating and running a corporation or company for setting up broadcasting stations is clearly violative of the right to carry on any occupation, trade or business guaranteed under Article 19(1)(g) of the Constitution of India. The only restriction that can be imposed on this right is contained in Article 19(6) of the Constitution of India, which states:

"(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to -

(i) the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business; or

(ii) the carrying on by the State or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens, or otherwise."

It will thus be seen that any restriction on the right guaranteed under Article 19(1)(g) can only be imposed by any law existing at the time when the Constitution came into force, or by any law enacted thereafter. Furthermore, this restriction has to be a reasonable restriction in the interests of the general public. It is submitted that there is no existing law, nor any law enacted by Parliament, for restricting the right of citizens to carry on the business of establishing and running broadcasting stations. Equally, there is no existing law, nor any law enacted by Parliament for the creation of a monopoly in favour of the State or any Corporation owned or controlled by the State for the running of broadcasting stations.

18. It is further submitted that it is manifestly in the public interest to permit the dissemination of news by parties other than those controlled and owned by the State. The free flow of information, and the voicing of opinion, even if it be critical of the Government, is basic to any democratic society. A plurality of views on issues relevant to the citizens of this country, is what distinguishes this country from totalitarian and dictatorial societies. The free press in this country serves, in a large measure, this vital and basic function. However, the most potent medium for disseminating news in the country is wholly and solely within the control of the Government, to the great detriment of the people. No democratic government should be permitted

to exercise power to choose what information and news should be allowed to be disseminated and what information and news should be suppressed from the people. The Government, through All India Radio and Doordarshan, does precisely this. The Petitioners submit that the only way in which the citizens of this country can obtain news and information in a free and objective manner is by the creation of broadcasting stations independent of Government control. Presuming, whilst denying, that there is any legislation which permits the Government to refuse permission to the Petitioners to set up broadcasting stations for radio and television, ex facie, the same would be ultra vires of Article 19(1)(g) and would not be saved by Article 19(6) as it would not be a reasonable restriction in the general public interest. As submitted hereinabove, such a restriction would not only amount to an unreasonable restriction but would be manifestly contrary to the public interest. It is submitted that the Petitioners cannot be deprived of the right to carry on business through the creation and running of broadcasting stations for radio and television.

19. In these circumstances, it is submitted that the refusal on the part of the Respondents to permit the Petitioners to establish broadcasting stations for radio and television is clearly ultra vires Article 19(1)(g) of the Constitution of India, is null and void, and of no legal effect whatsoever.

20. Without prejudice to the aforesaid submissions, the Petitioners submit that the creation of a monopoly by the Government by executive/administrative fiat and the exclusion of all citizens from establishing broadcasting stations is arbitrary and unreasonable and is consequently ultra vires

Article 14 of the Constitution of India. Article 14 enjoins upon the State to act in a fair, just and reasonable manner, and in a manner that accords with the public good. It is of the essence of a democratic form of Government that there should be free and open flow of information; and the dissemination of news from varied sources is integrally connected with this essential pre-requisite of a democratic form of Government. One of the organs which fulfills this role is the press, the freedom of which is guaranteed, inter alia, under Article 19(1)(a) of the Constitution of India. Broadcasting through radio and television ought, under normal circumstances, to play a similar role. However, the arbitrary, unreasonable and illegal manner in which the Government has created a monopoly on communication through the total control of radio and television acts an obstacle and a barrier to this free flow and dissemination of news and information. In the last 25 years, commissions appointed by the Government itself have advocated de-control and autonomy for All India Radio and Doordarshan. The Petitioners crave leave to refer to and rely upon these commission reports when produced. In fact, the Government has refused to even consider autonomy for All India Radio and Doordarshan, let alone private broadcasting stations to function alongside All India Radio and Doordarshan. It is submitted that the citizens of this country have a right to fair and impartial dissemination of news without the inevitable and inherent bias that is to be found when the means of communication are controlled by the Government. In this connection, the study carried out by the Indian Committee for Cultural Freedom and the Indian Liberal Group to monitor the broadcast of news in English by Doordarshan is enlightening and clearly establishes the biased manner in which the news is broadcast, and what is worse, the manner in which important news is

Ex. "L"

suppressed. Hereto annexed and marked Exhibit "L" is a copy of the said study report dated 28th January 1987. In the aforesaid circumstances, it is submitted that the refusal on the part of the Respondents by the said impugned letter dated 28th April 1987 refusing to grant a license to the Petitioners and thereby refusing to permit the Petitioners to set up broadcasting stations for radio and television amounts to an arbitrary and unreasonable exercise of power and the same is violative of Article 14 of the Constitution of India.

21. In these circumstances, the Petitioners submit that they are entitled to the following declarations of this Hon'ble Court:

(i) that the monopoly created by the Government by executive/administrative fiat through the creation of All India Radio and Doordarshan to the complete exclusion of all other citizens is ultra vires Articles 14, 19(1)(a) and 19(1)(g) of the Constitution of India, is without the authority of law, contrary to law, null and void and of no legal effect whatsoever; and

(ii) that the refusal of the Respondents to permit the Petitioners to establish broadcasting stations for radio and television and the refusal to grant to the Petitioners a valid license for this purpose is ultra vires Articles 14, 19(1)(a) and 19(1)(g) of the Constitution of India, is without the authority of law, contrary to law, null and void and of no legal effect whatsoever.

22. In the premises aforesaid, the Petitioners submit that the Petitioners are entitled to a writ of mandamus, or a writ in the nature of mandamus, or any other appropriate writ, order or direction of this Hon'ble Court under Article 226 of the Constitution of India against the Respondents:

- (i) ordering and directing the Respondents to forthwith withdraw and cancel the said impugned letter of refusal dated 28th April 1987;
- (ii) ordering and directing the Respondents to forthwith permit the Petitioners to establish broadcasting stations for radio and television in the western region of India to function alongside All India Radio and Doordarshan; and
- (iii) ordering and directing the Respondents to forthwith grant to the Petitioners a valid license for establishing the said broadcasting stations for radio and television.

23. The Petitioners state and submit that they have demanded justice but justice has been denied to them.

24. The Petitioners state that they have no other adequate, alternative or equally efficacious remedy available to them, and that the reliefs claimed herein, if granted, will be complete.

25. The Petitioners state that they have not filed any other Petition in this Hon'ble Court or in the Hon'ble Supreme Court of India pertaining to the subject matter of this Petition.

26. The Respondents have their offices in Bombay. The Petitioners intend to set up the broadcasting stations for radio and television with its headquarters in Bombay. A substantial and material part of the cause of action arises at Bombay. This Hon'ble Court therefore has jurisdiction to entertain, try and dispose of this Petition.

27. The Petitioners will rely on documents, a list whereof is hereto annexed.

The Petitioners therefore pray:-

(a) that this Hon'ble Court be pleased to declare:-

(i) that the monopoly created by the Government by executive/administrative fiat through the creation of All India Radio and Doordarshan to the complete exclusion of all other citizens is ultra vires Articles 14, 19(1)(a) and 19(1)(g) of the Constitution of India, is without the authority of law, contrary to law, null and void and of no legal effect whatsoever; and

(ii) that the refusal of the Respondents to permit the Petitioners to establish broadcasting stations for radio and television and the refusal to grant to the Petitioners a valid license for this purpose is ultra vires Articles 14, 19(1)(a) and 19(1)(g) of the Constitution of India, is without the authority of law, contrary to law, null and void and of no legal effect whatsoever.

(b) for a writ of mandamus, or a writ in the nature of mandamus, or any other appropriate writ, order or direction of this Hon'ble Court under Article 226 of the Constitution of India against the Respondents:

- (i) ordering and directing the Respondents to forthwith withdraw and cancel the said impugned letter of refusal dated 28th April 1987;
- (ii) ordering and directing the Respondents to forthwith permit the Petitioners to establish broadcasting stations for radio and television in the western region of India to function alongside All India Radio and Doordarshan; and
- (iii) ordering and directing the Respondents to forthwith grant to the Petitioners a valid license for establishing the said broadcasting stations for radio and television.

(c) for costs;

and

(d) for such further and other reliefs as the nature and circumstances of the case may require.

Petition drawn by:

MR. NAVROZ H. SEERVAI,
Advocate,
High Court, Bombay

Sd/-

Advocate for the Petitioners

1.

Sd/-

(MINOO R. MASANI)

2.

Sd/-

(P. C. CHATTERJEE)

PETITIONERS

I, MINOO R. MASANI, of Bombay, Indian Inhabitant, the Petitioner No 1 abovenamed residing at Breach Candy House, Bhulabhai Desai Road, Bombay 400 026, do hereby solemnly declare and say that what is stated in paragraphs 1 to 10 of the foregoing Petition is true to my own knowledge and what is stated in the remaining paragraphs 11 to 27 is stated on information and belief and I believe the same to be true.

Solemnly declared at Bombay)
aforesaid this 7th day of)
September, 1987.)

Sd/-

Advocate for the Petitioners

Before me,

Sd/-

Sd/-

Associate
High Court, Bombay.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO 2955 OF 1987

In the matter of Article 226 of
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through All India Radio and
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And

In the matter of the refusal to
permit the Petitioners to set
up an independent broadcasting
station for radio and
television in the western
region.

1. Minoo R. Masani, of Bombay,)
Indian Inhabitant, residing at)
Breach Candy House, Bhulabhai)
Desai Road, Bombay 400 026 ..)
 2. P. C. Chatterjee, of Delhi,)
Indian Inhabitant, residing at)
Flat 2D, Block F, Saket, New)
Delhi 110 017) Petitioners
- Versus
- Union of India) Respondent

To,

The Prothonotary & Senior Master
High Court, Bombay

Madam,

We, the Petitioners abovenamed, do hereby appoint
Shri D. H. Nanavati, Advocate & Solicitor, to act, appear
and plead for us in the above matter.

IN WITNESS WHEREOF we have set and subscribed our
respective hands to this writing.

Dated this 7th day of September, 1987.

ACCEPTED:

Sd/-

Advocate
Lentin Chambers
Dalal Street
Fort
Bombay 400 023

1. Sd/-

(MINOO R. MASANI)

2. Sd/-

(P. C. CHATTERJEE)

Registered No.143

PETITIONERS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO 2955 OF 1987

Minoo R. Masani & Another Petitioners

Versus

Union of India Respondent

MEMORANDUM OF REGISTERED ADDRESS OF THE PETITIONERS

C/o: D H Nanavati
Solicitor & Supreme Court Advocate
Lentin Chambers, 4th Floor
Dalal Street, Fort
Bombay 400 023

Sd/-

Advocate for the Petitioners

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO 2955 OF 1987

Minoo R. Masani & Another Petitioners

Versus

Union of India Respondent

LIST OF DOCUMENTS REFERRED TO & RELIED ON BY THE PETITIONERS

- 1 Reports of Government appointed commissions
advocating de-control and autonomy for All India
Radio and Doordarshan;
- 2 Correspondence prior to the Petition.

Sd/-

Advocate for the Petitioners

EXHIBIT "A"

From: M. R. Masani & P. C. Chatterjee

102-A

11th September 1986

Mr. V.N.Gadgil
Minister for Information & Broadcasting
Government of India
NEW DELHI

Dear Sir,

We hereby apply for a licence to establish two broadcasting stations, one for Radio and the other for Television, to function alongside AIR and Doordarshan. We are of the view that, under the Constitution of the Republic of India, these facilities are open to the Union and State Governments and also to the people of India.

The purpose of our wishing to establishing these broadcasting services is 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, both in regard to news and features. We hope to provide fuller and more comprehensive coverage than is available at present to listeners and viewers. Our services will be directed to meeting the needs of both the rural and urban population.

As soon as we receive your consent to this proposal, we shall establish a Public Limited Company to commence and organise these services. We can assure you that the Board of Directors of our proposed enterprise will be composed of patriotic men and women of standing and integrity.

It is proposed that, to begin with, the headquarters of these stations will be in Bombay, with transmitters of medium power so that our programmes will be available to substantial sections of the population in this region. We assure Government that we shall adhere strictly to the frequencies assigned to us so that we do not interfere with other users and follow all directions on technical matters currently enforced by the Wireless Adviser to the Government of India.

We are of course agreeable to Parliament legislating in due course for suitable supervision and social control over such broadcasting services by establishing a Commission or body of a quasi-judicial nature which will ensure that the official agencies, ours and other private services, function in the public interest and maintain certain standards.

All details can be discussed between Government authorities and ourselves in due course, but it is important that in principle our request is accepted to make such discussion meaningful.

Yours truly,

sd/-

(M. R. Masani)

sd/-

(P. C. Chatterji)

EXHIBIT "B"

GOVERNMENT OF INDIA

REGISTERED

MINISTRY OF COMMUNICATIONS
W. P. C. WING
SANCHAR BHAVAN, 20, ASHOKA ROAD
NEW DELHI 110 001

No.L.14027/171/86-LR

Dt 17-10-1986.

To

S/Shri M.R.Masani & P.C.Chatterji,
148, Mahatma Gandhi Road,
Bombay-400 023.

Sub:-License for wireless station under
Indian Telegraph Act, 1885.

Sir,

I am directed to refer to your letter No.102-A dated 11th September, 1986, addressed to the Hon'ble Minister for Information & Broadcasting, which has been forwarded for further necessary action to this Ministry and to enclose a copy of the proforma for application along with annexures. A copy of the detailed instructions for filling the forms is also enclosed. Annexure-III and IV may kindly be forwarded in quadriplicate. Further action will be taken on receipt of your completed application.

Yours faithfully,

sd/-

(P. S. Bhardwaj)
Engineer
for Assistant Wireless Adviser to
the Govt. of India.

Encl: a.a

29

NO:
Government of India
Ministry of Communications
Sanchar Bhavan, 20, Ashoka Road,
W.P.C. Wing, New Delhi - 110 001.

Dated the _____

To

SUBJECT: Grant of licence for fixed/land/mobile wireless stations under Indian Telegraph Act, 1885.

Sir,

I am directed to refer to your letter NO. _____ dated _____ and to say that a licence from this Ministry is necessary to establish, maintain and work wireless telegraphs/wireless telephones in India, under statutory provisions.

2. I am, therefore, to enclose herewith the proforma application forms. Annexure I, II, III & IV. Detailed instructions for filling up the forms are enclosed. (Annexure III may be submitted in duplicate only in case where the applicant is a private firm/company).

3. The question of issue licence as well as the authorisation of frequencies will be examined after the receipt of completed application.

4. If the communication facility is desired from P&T on rent and guarantee basis, the application may be submitted in duplicate.

5. The purchase of wireless equipment for the proposed stations may not be finalised unless this Ministry conveys its agreement, in principle, to grant the licence and allocates frequencies for the purpose. However, the details of equipment such as frequency range, emission with bandwidth, rated power output must be indicated in the appropriate column in consultation with the manufacturer/supplier of the equipment, if need be.

6. The case for conveying this Ministry's agreement in principle to grant the licence can be examined only on receipt of the application duly completed in all respects. The licence fee and royalty payable, equipment and spot frequency(ies) to be used and any other condition(s) to be observed before the grant of licence will be conveyed in the said agreement, if and when issued. In case the application is incomplete in any respect, it will be returned.

Yours faithfully,

For Assistant wireless Advisor to the Government of India
Telephone No. 380896

NOTE: Please read instructions before filling up the application.
Incompleted application shall not be accepted.

...2/-

INSTRUCTIONS FOR FILLING OF THE APPLICATION:

The application form should be retyped with all the answers. The original form may be retained for future use. Following instructions may be observed itemwise for filling the application.

ANNEXURE - I.

1. Wherever possible, the application should be submitted in the name of the organisation/firm instead of an individual.
2. The address should be good enough for registered letters.
3. The information should be clearly indicated whether the applicant is:
 - i) a Central Government department whose expenditure is met from the Consolidated Funds of India.
 - ii) any Central/State Government department, other than (i) above.
 - iii) a Central/State Government undertaking.
 - iv) a Statutory Corporation, Public Sector Undertaking or Autonomous body.
 - v) a Joint sector company where the Central/State Government holds a majority share.
 - vi) a co-operative venture, and if so, registered or not.
 - vii) a private limited company, and if so, whether registered or not, also indicate whether incorporated in India or not.
 - viii) any other, give details.
- NOTE: i) In case the applicant belongs to the category 3(i) to (iii), a copy of the application should be sent to this Ministry and another copy should be routed through the controlling Ministry/Department. (ii) Application for wireless equipment to be operated within airport area should be routed through DGCA, New Delhi and that within ports/harbour area for fixed/land mobile proposal through Delhi shipping, Bombay.
4. Details of the applicants business activity and the products should be given, highlighting its importance to the country. Failure to give adequate information may result in delay in processing the application.
5. In case the applicant already holds a licence (issued by this Ministry) in respect of some other requirement either at the same place or another place the licence number should be given here (Licence issued in respect of aircrafts and ships need not be mentioned).
6. (a) Detailed need for wireless communication and the nature of traffic expected to be passed should be given.
(b) Whether the use of wireless communication facility would be limited to periods when the existing facilities have broken down, should be indicated.
7. The telephones and telex facilities already available at fixed stations (see item (a) of Annexure-II) should be given with a clear indication as to why those cannot meet the communication requirements.

8. The number of wireless equipment proposes to be used should be given here, divided under various sub-heads. This breakup should tally with the figures given in Annexure-II. Standby acts are to be kept normally at one or more of the fixed locations without being these are meant to be put into use in the event of the breakdown of the sets in actual use.
9. (a) Information given here must be precise and supported by a sealed geographical map clearly showing longitude and latitude markings and indicating:
 - (i) the relative position, to scale of all the fixed stations with their four-digit geo-coordinates. Six-figure coordinates may be required in special cases.
 - ii) the area of operation of mobile stations marked on the geographical map with distance in KMS. (whether vehicle mounted or handheld), its justifications, type of vehicle for the vehicle mounted mobile, the person who would use these should be indicated.
- (b) an indication as to which station or group of stations would communicate with which other stations.
- (c) the maximum and minimum distance over which communication will take place.
- (d) indicate the number of independent links to be formed and the frequencies already authorised for the same link.
10. If the operators are foreign nationals, give the answer in "YES" and furnish particulars of each individual including :-
 - (a) Name in full:
 - (b) Father's Name :
 - (c) Nationality :
 - (d) Date and place of Birth :
 - (e) Permanent address :
 - (f) Present Address :
 - (g) Passport Number and its validity :
11. Feasibility surveys are often conducted by the manufacturers of wireless equipment, on request by the intending purchasers. If such a survey has been done, a copy of the report thereof may be attached.
12. The declaration must be signed by the applicant.

ANNEXURE - II

- a) (i) Under this sub-head, all the fixed stations giving their location and the type of equipment proposed at each, should be listed. Particulars of antenna including relative gain should also be given.

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Application for a licence to establish, maintain and work
Fixed/Land/Land Mobile Wireless Telegraph/Telephone Stations
In Indian Telegraph Act, 1885.

ANNEXURE - I : PARTICULARS OF REQUIREMENTS

1. Name of the applicant :
2. (a) Postal Address :
3. (b) Telegraphic Address :
- (c) Telephone/Telex Number :
3. Status :
4. State the nature of activity in which engaged (viz. industrial production, manufacture, mining etc.,)
5. Details of the licence(s)/authorisation(s), if any, already hold in respect of Wireless equipment used i.e. licence(s) NO., Frequency(ies) and parameters etc.
6. (a) Explain in detail the purpose for which wireless facility is required.
7. (b) Indicate clearly if the wireless facility is desired to standby to existing facilities or as primary mode of communications.
7. Indicate the Telephone/Telex Numbers at the fixed stations presently available.
8. State the total No. of stations (wireless sets) proposed in the application :
 - a) Fixed
 - b) Mobile (Vehicle mounted)
 - c) Man-pack (Hand Held)
 - d) Standby

NOTE FOR RADIO PAGING SYSTEMS :

Indicate separately the number of paging receivers with talk-back facility and those without talk-back facility. If the NO. of fixed stations is more than one, give necessary justification.

- (ii) Height of antenna above ground level (AGL) may be indicated in column 6(a) when it is to be installed on ground. However, when antenna is to be installed on top of an existing building, the height of antenna above the top of the building may be indicated in column 6(b).

NOTE: If the height of antenna above the top of the existing building is 3 meters or less and also the location of the station is more than 3 Kms from the nearest airport, then the site is exempted from "Mast Height Clearance".

- (b) These are for information similar to sub-head(a) above but in respect of mobile stations. Where different groups of mobile stations intend to work with different fixed stations, these may be sub-divided and shown in separate rows. The information here should tally with that given in item 9 of Annexure-I. Further in case the wireless facility is desired in company's executive's car/residence the recommendations, for this specific purpose, of the Central/State Government agency, under whose purview the business of the company falls, may be forwarded along with the application.
- (c) Standby sets are those not used normally but stored at fixed locations. They are to be used only when one of the normal equipment fails. No licence fee/royalty is charged for standby sets.
- d)iii) In case the equipment is capable of operation on present frequencies only, these may be indicated. It may not, however, be possible to allocate the frequencies desired. As such, procurement of equipment must not precede the allocation of frequencies. Allocation of more than one frequency is subject to detailed justification based on nature of communication desired, and the traffic density.
- iv) Indicate whether the communication facility will be used round the clock or only during day time. In the latter case give time from _____ to _____.
- v) Indicate clearly the type of emission including the band-width and modulation characteristics indicating the details of modulating signals. (Ordinarily, telephone is permitted in VHF band whereas teleprinter (on radio) and telephone (single side-band), suppressed or reduced carrier) is permitted in HF band).
- vi) Except when justified on traffic considerations, only simplex mode is licensed.
- vii) Reference of the equipment type approval of this Ministry for the proposed equipment, if any.

12. DECLARATION :

- 1) I hereby solemnly declare that the foregoing facts are true and correct and nothing material has been concealed therefrom. I also agree that in case any information given by me herein-before is found false at a later date, the licence, if granted, will be cancelled.
- 2) I undertake to observe the conditions of the licence (if and when issued) and such other conditions as may be specified by the Central Government. I also undertake to renew the licence every year by paying licence fee and royalty, as applicable. It is understood that the inability to establish or use a communication link licensed by the Ministry of communications would be no ground for claiming refund of licence fee and royalty already paid.

Dated :

Place :

Signature of Applicant _____

Name/Designation :

Office Stamp :

....4/-

9. (a) Scale area geographical map depicting the following should be forwarded :
- i) Location of each fixed station with four digit coordinate (six figure coordinates may be required in special cases) and their inter-distances in Kms.
 - ii) Area of operation of mobile station should be marked on the geographical map with distance from base station/control station. The map should indicate the Geo-Coordinates i.e. Latitudes and Longitudes marked on it.
- (b) Indicate the name of stations which will communicate with each other directly or through repeater, if any.
- (c) Indicate the minimum and maximum distance (distance between two farthest points) over which communication will be established.
- (d) Indicate the Number of independent links to be formed i.e. whether all the stations will in different Groups independently. In the latter case, indicate number of such groups (links).
- (e) Indicate whether the proposed stations will work:-
- (i) as additional stations in a net with the existing licenced stations on the same frequency authorised to the applicant.
 - (ii) on the same frequency but independent of the existing licenced stations.
- In case of (i) & (ii) above, indicate the licence New/Agreement No. and Frequency parameters authorised/earmarked to the applicant.
- (iii) On separate frequency(ies) to be authorised New Stations.
10. Indicate if the equipment will be operated by foreign nationals. If yes, furnish the desired particulars (see instructions).
11. Has any survey, or feasibility test of the proposed communication facility been carried out? If so, a copy of the report may be enclosed. As far as possible please inform WPC before such test are carried out so that a representative of WPC/Monitoring Organisation could also be present if necessary.

ANNEXURE -II

PARTICULARS OF WIRELESS EQUIPMENT

a) FOR FIXED STATIONS:

1.	2.	3.	4.	5.	6.	7.	8.
Location with complete address of each station alongwith pin code(also indicate whether it is a factory, office or residence)	Figure geographical co-ordinates of each location of fixed stations(six figure coordinates may be required in special cases.	Type No. of equipment	Rated power output	Type of antenna & relative gain of directional antenna	Height of antenna above ground level (A.G.L)	Distance from the nearest airport (Kms.)	Stations will communicate with.

NOTE : In case of directional antenna, azimuth of maximum radiation in degrees from the true North and bandwidth of radiation alongwith polarisation characteristics of transmitting antenna should be indicated.

b) FOR MOBILE STATIONS :

	No. of Stations.	Type No. of equipment.	Rated power output at the input of the antenna	Area of operation (see item 9 of Annexure-I)	Station will communicate with.
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- i) Total Number of vehicle mounted stations
- ii) Total number of Hand-Held stations.

NOTE: i) Justification for vehicle mounted and hand held mobile stations should be indicated.

ii) Type of vehicle and the persons who would use the vehicle mounted mobile stations should also be mentioned.

iii) Area of operations bounded by approximate longitude and latitude positions should be depicted on the area geographical map.

- iv) In case wireless facility is desired in Company's executive's Car/residence, the recommendations for the specific purpose of the Central/State Government agency under whose purview the business of the company falls, may be forwarded along with the application.

c) STANDBY SETS :

Sl.No.	Location where those could be kept normally.	Type Number or equipment.	Rated Power out put.
--------	---	------------------------------	-------------------------

- d)
- i) Name of manufacture from where equipment is proposed to be purchased.
 - ii) Frequency range covered by the equipment.
 - iii) Specific spot frequencies, if any, proposed to be used. Otherwise, number of frequencies desired may be indicated.
 - iv) Proposed hours of use.
 - v) Type of emission along with bandwidth and modulation characteristics indicating the details of modulating signals.
 - vi) Mode of communication Simplex/Duplex.
 - vii) Reference of the equipment type approval of this Ministry for the proposed equipment, if any.

ANNEXURE - III
(TO BE SUBMITTED IN QUADRUPLICATE)

1. Name & Address of the applicant.
2. Status of the applicant
(Whether private, Limited or Public, Limited, Company)
3. Purpose :

<u>No. of</u>	<u>Location of each fixed station &</u>
<u>Station</u>	<u>area of operation in case of mobile</u>

4. a) Fixed :
b) Vehicle mounted mobile :
c) Hand Held mobile
(attached separate sheet;
if required).
5. Equipment proposed.
6. Power Output.
7. Frequency(ies) or
frequency band which
frequencies are to be
allocated.
8. Type of emission.
9. Proposed hours of
operation.
10. Particulars of foreign
nationals(if any, who
will operate the wireless
equipment.

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ANNEXURE - IV:

(TO BE SUBMITTED IN QUARRIPLICATE)

HERFONAL PARTICULARS OF OWNER, MANAGING DIRECTOR
OR EXECUTIVE DIRECTOR AS THE CASE MAY BE.

- a) Name in full :
- b) Father's Name :
- c) Designation whether
Owner, Managing Director
or Executive Director :
- d) Nationality :
- e) Date & Place of Birth :
- f) Permanent address :
- g) Present address :
- h) Passport Number
if any :

EXHIBIT "C"

From: M.R. Masani & P.C. Chatterji

102-A

23rd December, 1986.

Dear Mr. Panja,

I enclose herewith a copy of a letter dated 11th September 1986 written by Mr. P.C. Chatterji and myself to your predecessor as Minister for Information & Broadcasting. In reply to that letter, we received a letter No. L.14027/171/86-LR dated 17.10.1986 addressed to us by Mr. P.S. Bharadwaj, on behalf of the Assistant Wireless Adviser to the Government of India. A copy of the letter is attached. On considering this letter and forms enclosed with it, we find that that these forms have no relevance to the application that we had made to the Minister for Information & Broadcasting.

It is not only for a wireless transmitter that we are applying. Our request is much more far-reaching and involves a policy decision by the Union Government. What we had asked for was an agreement in principle to our setting up a joint stock company to establish radio and television stations in Western India, which would supplement and function alongside of AIR and Doordarshan. We had offered that, as soon as this agreement in principle was conveyed to us, we would be available to discuss with the Minister or those that he might appoint and work out the necessary details.

Since the Minister for information and Broadcasting has not replied to our letter, and the communication from the Ministry of Communications is the result of some misconception and is off the mark, we are writing again to

request you to be good enough to consider the proposal that we had made in our letter of 11th September which we realise may involve a change in the policy of the Government. If necessary, you may consult the Union Cabinet before letting us have a considered reply.

Yours faithfully,

sd/-

(M. R. Masani)

sd/-

(P. C. Chatterji)

Encls:

1. Copy of our letter dt. 11.9.1986
2. Copy of Mr.P.S.Bharadwaj's letter dt.17.10.1986.

cc: Soli Sorabjee

The Hon'ble Mr Ajit Panja
Minister of State for Information & Broadcasting
Government of India
NEW DELHI

MRM:KVI

Original forwarded thru' Mr.P.C.Chatterji, with copy to Mr. Chatterji.

EXHIBIT "D"

From: M.R.Masani & P.C.Chatterji

102-A

24th January, 1987.

Dear Mr.Panja,

We had written to you on 23rd December requesting a reply to our enquiry whether or not the Union Government would agree to our establishing a Corporation to run a radio & television station in Western India which would supplement and function alongside AIR and Doordarshan. Since we have not yet received a reply from you, we enclose a copy of that letter for ease of reference.

We shall be obliged if you will kindly let us have a reply to our letters at your early convenience.

Yours sincerely,

sd/-

(M. R. Masani)

sd/-

(P. C. Chatterji)

Encls: Copy of our letter dated 23.12.1986

The Hon'ble Mr Ajit Panja
Minister of State for Information & Broadcasting
Government of India
NEW DELHI

MRM:KVI

EXHIBIT "E"

From the Hon'ble Mr Ajit Kumar Panja

No. IBM/1113

MINISTER OF STATE
INFORMATION & BROADCASTING
INDIA

New Delhi 110 001

February 6, 1987

Dear Shri Masani,

Thank you for your letter dated 23rd December, 1986, which I received here today, regarding license for wireless station, agreement for setting up a joint stock company to establish Radio & T.V. Stations in Western India. I am getting the matter examined in the Ministry.

With warm greetings,

Yours sincerely,

sd/-

(AJIT KUMAR PANJA)

Shri M. R. Masani
148, Mahatma Gandhi Road
Bombay-400023.

EXHIBIT "F"

From the Hon'ble Mr Ajit Kumar Panja

D.O.No.704/20/86-B(D)/422

MINISTER OF STATE
INFORMATION & BROADCASTING
INDIA

New Delhi - 1

February 24, 1987

Dear Shri Masani,

Please refer to your letter dated 23rd December, 1986 regarding setting up a Joint State Company to establish Radio & TV Stations in Western India.

2. I have had the matter examined. I find that the licence to own and operate a broadcasting transmitter is issued by the Ministry of Communication under Indian Telegraph Act, 1885. We don't recommend grant of licence to any private party to own and operate a broadcasting transmitter. You may take up the matter with the Ministry of Communication.

With warm greetings,

Yours sincerely,

sd/-

(AJIT KUMAR PANJA)

Shri M. R. Masani
148, Mahatma Gandhi Road
Bombay-400023.

EXHIBIT "G"

From: M.R.Masani

102-A

25th February, 1987.

Dear Mr.Panja,

Thank you for your letter No.IBM/1113 dated 6th February 1987. I shall look forward to hearing from you again soon.

Yours sincerely,

sd/-

(M. R. Masani)

Mr. Ajit Kumar Panja
Minister of State
Information & Broadcasting
Government of India
NEW DELHI - 110 001

C.C., N.O.O. to Mr.P.C.Chatterji
New Delhi

for information

MRM:KVI

EXHIBIT "H"

From: M.R.Masani & P.C.Chatterji

102-A

10th March, 1987.

Dear Mr. Arjun Singh,

For several months now we have been endeavouring to get a reply from the Union Government to our request for facilities to establish a broadcasting service for Radio and Television to operate in the western region of India alongside of AIR and Doordarshan. On 11th September 1986, we first wrote to Mr Gadgil who was then Minister for Information & Broadcasting. A copy of that letter is * attached. He passed on our letter to your Ministry, namely the Ministry of Communication who, through the Assistant Wireless Adviser to Government of India wrote to us on ** 17.10.1986 forwarding a form for a wireless transmitter (copy enclosed).

2. Since this was not the appropriate form, we again wrote to Mr Gadgil's successor, Mr. Ajit Kumar Panja, on 23rd *** December 1986 (copy attached) from which you will see that we repeated our request and asked Mr Panja to get us a reply in principle to our enquiry. Mr. Panja was good enough to reply by D.O. letter No. D.O.704/20/86-B(D)/422 dated **** 24.2.1987, copy attached, once again referring us to your Ministry.

3. This letter is therefore being addressed to you in conformity with Mr. Panja's suggestion. As far as we are aware, there is no form in existence for us to ask for facilities for broadcasting - radio and television - nor has

the time come for us to complete such a form. The application for a licence can only be made when a Joint Stock Company or Corporation is established to undertake this activity. You will appreciate that the establishment of such a Company, the raising of capital, etc., would be pointless unless you and the Union Government were to agree in principle to a service of this nature being operated under the conditions set out so clearly in our letters to Mr. Gadgil and Mr. Panja annexed to this letter.

4. We shall be grateful therefore if you will kindly consult your colleagues in the Cabinet and let us have your reply in principle. It is only then that we can enter into detailed discussion with whatever officials you designate to work out the details.

5. We shall very much appreciate your kind personal attention to this matter, which you will appreciate is a matter of considerable national importance, and let us have an early reply.

Yours sincerely,

sd/-

(M. R. Masani)

sd/-

(P. C. Chatterji)

Encls: As per *, **, *** & **** above

Mr Arjun Singh,
Minister for Communication,
Government of India
NEW DELHI.

MRM:KVI

EXHIBIT "I"

From the Hon'ble Mr Arjun Singh

920/7C/87-V

MINISTER OF COMMUNICATIONS
GOVERNMENT OF INDIA
NEW DELHI 110 001

27 March, 1987.

Dear Shri Masani,

I am in receipt of your letter dated the 10th March, 1987 regarding establishing of a broadcasting service for Radio & Television to operate in the western Region of India.

I am having it examined.

With regards,

Yours sincerely,

sd/-

(ARJUN SINGH)

Shri M. R. Masani
148, Mahatma Gandhi Road
Bombay-400023.

EXHIBIT "J"

From: M. R. Masani:

102-A

REGISTERED A.D.

7th May, 1987

Dear Mr. Arjun Singh,

As far back as 27th March you had, by your D.O. letter No. 920/MC/87-V, kindly mentioned that you are having my letter to you of 10th March regarding the establishment of a broadcasting service to operate in the Western region of India examined.

I think you will agree that enough time has passed to enable you to let us have a reply to our request without further delay.

Many thanks.

Yours sincerely,

sd/-

(M. R. Masani)

Mr. Arjun Singh
Minister of Communications
Government of India
NEW DELHI 110 001

MRM:KVI

EXHIBIT "K"

GOVERNMENT OF INDIA
MINISTRY OF COMMUNICATIONS
SANCHAR BHAVAN, 20, ASHOKA ROAD
NEW DELHI 110 001

No.L.14027/171/86-LR

28 April 1987

To

Shri M.R.Masani
148, Mahatma Gandhi Road,
Bombay 400023.

Sir,

I am directed to refer to your letter No.102-A dated 10th March 1987 addressed to Shri Arjun Singh, Minister of Communications and to state the Government's policy in this regard has already been communicated to you by the Minister of Information & Broadcasting through his letter dated 24th Feb. 1987. In view of this, it is regretted that it would not be possible to grant a licence for setting up a private broadcasting service in any part of the country.

Yours faithfully,

sd/-

(T. C. Gupata)
Assistant Wireless Adviser to
Government of India.
TeL: 380951

sa*

Not for publication before the morning of January 31, 1987.

DOORDARSHAN

A Study of its "News in English"

The Indian Committee for Cultural Freedom, and the Indian Liberal Group commissioned a study to monitor Doordarshan's "News in English".

The Purpose - to assess Doordarshan's standards of objectivity, fairness and good reporting.

Spread over ninety days between April and August/1986, the study used The Times of India's coverage of news as reference.

The study confirms what is already widely accepted - that Doordarshan is guilty of not only distortion but also suppression of news. The study also comes up with factual evidence of the disproportionate coverage given to the establishment in general and the Prime Minister in particular.

This report, based on the study, provides conclusive evidence, if any were required, of the manipulation of a vital medium - a state monopoly - to subserve the interests of the party in power.

The report is divided in 3 parts:

1. Excessive projection of Ministers;
2. Suppression and censorship of inconvenient news; and
3. loaded and distorted news.

EXCESSIVE PROJECTION OF MINISTERS

The eminence of personalities involved in events is a factor which makes for news. But when the most inconsequential of events are not only mentioned but are also accompanied by film clips because some minister or the other happens to be present, then the telecast becomes objectionable. This is what is happening on Doordarshan. As it would require a tome to give a day-by-day commentary, we give below a summary of the news telecast on 10

different days between April and August 1986. These days have been selected at random. (Asterisks indicate these items were not reported in The Times of India).

April 24

1. The Prime Minister's visit to Rajasthan.
2. The Prime Minister's statement in the Rajya Sabha that India will not be cowed down.
- 3.*The information and Broadcasting Minister, Mr.V.N. Gadgil giving away the Harischandra Prize.
- 4.*The Home Minister, Mr. Narasimha Rao presides over a lecture-cum-demonstration of yoga by Swami Ram.
- 5.*The President & the Prime Minister giving a send-off to the Seychelles President.
6. The Prime Minister's address to the bi-annual Army meet.

May 5

1. The Prime Minister speaks to a Science and Technology Seminar.
2. The Prime Minister's statement on the Muslim Bill while speaking on the Education Policy.
3. A two-day Seminar of Doordarshan Directors featuring Information and Broadcasting Minister, Mr. V.N.Gadgil and Mr. Harish Khanna, Director-General of Doordarshan.

May 18

1. Mr. Narasimha Rao inaugurating the Anant Balike School.
2. Mr. Shankaranand's statement that only certain irrigation projects have received techno-clearance.
3. Mrs. Moshina Kidwai inaugurating an Ayurvedic Vidyapeeth.
4. Report that Mr. V.N. Gadgil will lead the Indian delegation to the 9th Film Festival at Tashkent.

May 27

1. The Prime Minister's informal chat with pressmen saying some peace has returned to the Punjab.
- 2.* The Vice-President inaugurates a Photography Exhibition organised by the Inter-Parliamentary Union.
- 3.* The Vice-President releases a book on Mr. Jawaharlal Nehru's death anniversary.
- 4.* The Prime Minister ~~contributing~~ to the Jawaharlal Nehru Trust.
- 5.* The Prime Minister inaugurates a seminar on Mr. Nehru.
6. Mr. Arun Nehru is unwell.

May 28

- 1.* The Prime Minister speaks at the CSIR Conference.
2. Mr. Laldenga calls on Sardar Buta Singh.
3. Mr. Arun Nehru is improving
- 4.* Mr. Neil Kinnock meets the Prime Minister.
- 5.* Mr. Jagdish Tytler lays the Foundation-Stone for an air-terminal.
6. Documentary on India containing interview with the Prime Minister dealing with current Indian problems.

June 26

1. The Prime Minister in Mauritius.
2. Mr. K.R. Narayanan inaugurates a two-day "National Liberation" Seminar.
3. Mr. Ram Niwas Mirdha introduces the Speed Post Service.
4. Mr. V.N. Gadgil announces that Telugu programmes from Hyderabad will be telecast throughout Andhra Pradesh.

July

1. The Prime Minister speaks to Congress(I) party workers in Calcutta.
2. The Prime Minister presents awards at the meeting of a Ladies Study Group.

3. The Prime Minister inaugurates a new Doordarshan Kendra.
4. The Prime Minister meets a group of Industrialists.
5. Celebrations marking the signing of the Mizo Accord.
6. Mr. Chidambaram inaugurates a programme organised by the Indian Institute of Public Administration.

July 19

1. Mr. Venkateshwaran arrives in Beijing.
2. Mr. Bhajan Lal and another Congress(I) leader elected to the Rajiya Sabha.
3. The Prime Minister meets the President of India.
- 4.* Mr. Narasimha Rao participates in a meeting of the Sports Authority of India.
- 5.* Mr. K.C. Pant inaugurates a Seminar on "Taking Science to the masses".

August 9

1. The Prime Minister's Press Conference in Mexico.
- 2.* New Ceremonial Lounge at Indira Gandhi Airport inaugurated by Mr. Jagdish Tytler.
- 3.* The President inaugurates the All India Penology Conference in Agra.
4. Mr. Chidambaram's statement in Parliament on the arrest of Mr. Badal and Mr. Tohra.
5. *Floral tributes to Mrs. Indira Gandhi on the occasion of the Quit India Anniversary in Delhi.

August 13

1. The Prime Minister's statement in the Lok Sabha regarding the Gorkhaland agitation.
2. Mr. Shiv Shankar calls for extension of co-operation - SAARC Meeting.
3. Mr. Buta Singh's statement in the Lok Sabha that the Centre had asked the CBI to look into Gen. Vaidya's murder.

- 4.* The President releases a book "Azadi-ki-Kahani".
Mr. Narasimha Rao speaks on the occasion.
- 5.* The Prime Minister says that his Government is determined to preserve Unity.
6. The Prime Minister express unhappiness over diversion of AI plane due to technical snag.

The Prime Minister himself is reported to have rebuked Doordarshan for overprojecting him. He is reported as saying "from my point of view, it is counterproductive and I have told them very categorically that they should not project me... but somehow these people lack imagination and are so bureaucratic".

In an interview with Mr. Khalid Mohammed on April 13, 1986, Mr. Harish Khanna, the Director-General of Doordarshan observed that the Prime Minister felt that if he was inaugurating a building, information should be provided about the building... instead of just focussing on the Prime Minister.

Our study shows that five months after the above statements, things have not changed materially.

Doordarshan's coverage is marked by sycophancy. It is interesting to note that on May 27, while Doordarshan covered in detail the Prime Minister's participation in functions organised in Delhi on Nehru's death anniversary, it failed to cover several important items which received front page coverage in The Times of India that day. Among these:

- a) A bandh in Darjeeling for the second day running.
- b) An invitation from Mr. Ramakrishna Hegde to Mr. S.M. Joshi and Mr. Sharad Pawar to settle the boundary dispute, and
- c) Reports of factional fighting in the office of the Gujarat Pradesh Congress.

The Times of India also carried in its middle page that Mr. Pranab Mukherjee had formed a "front group". This was ignored by Doordarshan.

SUPPRESSION AND CENSORSHIP OF INCONVENIENT NEWS

Doordarshan as a government department perverts the proper function of media as the watch-dog of democracy. A survey of the news broadcast on five days selected from our study period reiterates this point.

May 17

Doordarshan omitted any news of Belgaum and the border conflict. Neither did Mr. Tripathi's pleading on behalf of Mr. Pranab Mukherjee and others find any mention. Both these items made it to the front page of the Times of India.

Other items ignored were a report on how the Arwal firing was pre-planned; on the Talcher fire - how danger signals were ignored. On the other hand, Doordarshan reported a conference on how to deal with drought; Mrs. Moshina Kidwai's inauguration of a machine at AIMS where she was the chief guest at their Convocation; and the de-railment of a passenger train in Bangladesh, all of which were accompanied with film footage.

Reports of the Arwal firing in Bihar in which a number of Harijans were massacred found no place in the telecast on May 17. The report which appeared in the Times of India revealed that the police action was pre-planned. Why was this issued blacked out? Doordarshan should have made the viewer aware of the horrors being perpetrated on the Harijans as a result of collusion between the rich and those responsible for law and order.

The Times of India reported that the Karnataka-Maharashtra border conflict was brewing in the early days of May. This development found no place in the news telecasts of that period. Even when the conflict made front page news in the newspaper, T.V. did not think it worth mentioning.

July 15

The lead item in the news telecast was TULF discussions with President Jaywardene of Sri Lanka, then a news report on the Reserve Bank of India introducing machinery for speedy clearance of cheques; an item on tree plantation; a report on the Sri Aurobindo Ashram handicraft centre; news of a meeting of the national integration committee presided over by Vice-President Venkatraman. But the telecast excluded news of Chinese intrusion into Indian territory headlines in every newspaper. It was one of the deepest intrusions since the 1962 war. The Chinese had penetrated 6 to 7 Kms. into Indian territory in Arunachal Pradesh.

Why is the news on Doordarshan cluttered up with trivialities? Of the nineteen items included in the telecast on July 15, only three or four had news value.

On the other hand, Doordarshan omitted reports of:

- a) 'Protected' U.S. Aid for Pakistan;
- b) Mr. Ghulam Nabi Azad's visit to Goa to evolve a consensus among ruling Congress MLAs;
- c) The Andhra Pradesh Government's decision to hike the Backward Classes quota to 44% and
- d) A new power base of young congressmen sought to be established to fight the 'old guard'.

All these reports appeared on the front page of The Times of India that day.

July 17

The news telecast opened with a report on the opening day of the monsoon session of Parliament - the Prime Minister expressing sorrow over the death of Jagjivan Ram, followed by other MPs expressing similar sentiments. The next was an item in which the Prime Minister expressed solidarity with the struggle against apartheid in South Africa; an item on how it was forty years since India banned trade with South Africa (no reference however to the fact that despite this ban, India continues its diamond trade with South Africa - an article that appeared in the Sunday Observer); British Minister Howe's visit to South Africa; General Ershad's pilgrimage to Ajmer, and so on. The papers that day were, on the other hand replete with reports of terrorists being trained in Pakistan, the U.S. resolve to protect Pakistan; and the Chief Minister of Arunachal Pradesh saying Chinese claims on Arunachal Pradesh was baseless.

July 20

The telecast this day included news of India's withdrawal from the Commonwealth Games; the President's visit to Kathmandu, the inauguration of a film festival and the crisis faced by OPEC.

There was no reference to a Parliamentary panel's indictment of Gujarat Chief Minister Amarsingh. A five-member parliamentary delegation led by Mr. Madhu Dandavate issued a statement that inept handling by the police and the State's political leadership had triggered off the lawlessness during the Rath Yatra in Ahmedabad.

Is it anathema for Doordarshan to carry news items critical of the party in power?

On July 27, the news that the army was called out in Kalimpong - a 42-cms news item in The Times of India on page one was blacked out by TV News.

One could continue. For instance, the suppression of the following news:

- a) Sobharaj's escape,
- b) the Chernobyl disaster (until much later),
- c) the Gorkhaland issue (until it became a political weapon for the ruling party),
- d) the communal clashes in Ahmedabad,
- e) the Karnataka-Maharashtra border dispute,
- f) the Arwal massacre.

These lead to TV News' loss of credibility.

III

LOADED AND DISTORTED NEWS

It is fortunate for the televisions news viewer that other sources of information are available. Otherwise, Doordarshan would be misinforming the public on a number of issues. A warped sense of priority leads Doordarshan to clutter up its news with trivialities such as Zail Singh releasing a book on Brahmavidya or Ramesh Bhandari inaugurating an exhibition of Ranganathan's cartoons but omit news of Chinese encroachments into Indian territory in Arunachal Pradesh or police firing in Arwal on Harijans. Their coverage of the opposition bandh in February drew fire from all sides. The eminent critic Amita Malik commented on the "ostrich like coverage" of the Delhi Bandh.

Again on July 28, the TV newscast report that the bandh that day was largely peaceful. In fact, Mr. Buta Singh's thanks to the people for remaining calm was telecast. The Times of India on the other hand reported that violence marred the bandh in Delhi, 35 buses were damaged and a Deputy Commissioner of Police and two others were stabbed.

Projection of one point of view is a regular feature on Doordarshan's news telecast. That is why there was no proper evaluation of the Non-Aligned Meet at Harare. Mr. Dhiren Bhagat in his article in the Sunday Observer revealed

the manner in which Khomeini's speech at Harare was totally blacked out.

Again, if one had viewed the telecast on August 4, the news on the Commonwealth laid greater emphasis on Rajiv's itinerary rather than the failure of the Commonwealth to force Britain to impose sanctions.

Most of Doordarshan broadcasts on economic issues are exercises in newspeak. We are constantly bombarded with news about the success of the 20-Point programme (20.6.86), share market boom- all-time high investments (21.5.86), record output of potato crops (8.7.86), the World Bank lauding the Indian system of buffer stocks (8.7.86) or how crop insurance schemes have been adopted by 15 states (18.5.86) or a 5.7% increase in oil export and a 11% increase in minimum wages for miners (28.6.86).

Totally omitted are news items like the one which appeared on 20.5.86 in the Times of India on how the crop insurance scheme is likely to be a big drain (19.5.86), oil valued at Rs. 350 crores lost at Bombay High (22.5.86), ONGC ineptness hit private firms (25.5.86), FCI's wheat had become unfit for human consumption (23.4.86).

Why is it that Doordarshan only interviews people who endorse the government's point of view? At the time of the Kumbh Mela tragedy, none of the pilgrims interviewed found fault with the police machinery which all newspaper reports pointed out had broken down.

When Charles Sobhraj escaped from Tihar Jail, the telecast failed to mention it nor was there an indictment of security lapses. On the other hand, when bread with morphine hidden in it was discovered being passed on to one of the prisoners, Mr. Kapur the Lt. Governor spoke to Doordarshan about how jail authorities had been toned up and further improvements in jail administration were taking place!

A criticism of the government is not an attack on it and is permissible under the AIR Code which also applies to Doordarshan. Unfortunately for the viewer, Doordarshan is not following the Code which has been agreed to by all the parties. The result is there is only one point of view presented and that is the government's point of view.

The views telecast on the news education policy were one-sided. One heard the official point of view. But there were no reports of the critical views of eminent educationalists. The newspapers reported their views many of which were quite critical. But Doordarshan saw fit not to publicise the criticism.

Reports are sometimes only partially true. For instance, in the telecast on July 22, Mr. Bhardwaj said in regard to the Bhopal tragedy that the U.S. Judiciary was in our favour. But what he did not say was that not a paise had been paid to the victims of the tragedy and the Rs. 50 crores received was for relief and not compensation. Nor was the fact that Union Carbide had sold its Division, mentioned. All this was part of a news item on the first page of The Times of India.

Untruths are also resorted to. While one can understand the need for restraint so as not to inflame communal passions, one does not have to utter falsehood. On July 25, Doordarshan broadcast a statement by Mr. Buta Singh in the Lok Sabha stressing that members of both communities were killed whereas the fact was otherwise. This erodes TV's credibility.

Television news' promotion of "national unity and integrity" consists of film clips of Id, Buddha Purnima or Ganesh Utsav celebrations. It also consists of religious heads praying for peace or sharing satsangs or showing Ministers presiding over yoga demonstrations or releasing religious texts like the one on Brahmavidya. This certainly is no way of promoting secularism and most certainly not of national unity and integrity.

Namedia in its seminar "A Vision for Indian Television" in March this year spoke of the need to great news as a process not merely as an event, as a fact and not as an act. It is a worthwhile effort to bring about this transformation for here is a medium which can at the same moment reach millions of people and unlike print, does not call for "previous preparation for assimilation".

For a thorough analysis and expose of Doordarshan news, we cannot do better than turn to the Joshi & Working Group's Report on TV Software. (It will be recalled that the Group was set up by Mrs. Indira Gandhi's government in 1982). The Report says, under the heading VIP ORIENTED NEWS, "This could well be a description of Doordarshan news. It is a pity that a television system which is not only publicly funded but is also run by the Government, on the ground that this is necessary to make television serve the purpose of development in the direction of socialism, should show such little orientation towards

the common people in its news and current affairs programmes A witness said to us that Doordarshan's news bulletins often sound like court circulars. Another witness said that while it was the Prime Minister's duty to go from place to place and convey to different audiences the message of national unity, communal harmony etc., it was neither necessary nor appropriate for Doordarshan's news bulletins to report the same messages repetitively to the same audience ... Doordarshan news needs to be gathered and presented from perspectives not only of the Government, the ruling party, and the urban well-to-do. but also of the many other social, economic and political groups who constitute the nation... the record of the Indian Press, which is privately-owned and run for profit, has been better in this respect than of Doordarshan which is subsidised by the tax payer and is run ostensibly in the public interest". (Chapter V paras 5,6 and 8).

Bombay,
January 29, 1987.

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO 2955 OF 1987

Minoo R Masani & AnotherPetitioners

Versus

Union of India.Respondents

I, MINOO R. MASANI, of Bombay, Indian Inhabitant, the 1st Petitioner abovenamed, residing at Breach Candy House, Bhulabhai Desai Road, Bombay 400 026, do hereby swear and state as follows:-

1. I am the 1st Petitioner herein, and along with the 2nd Petitioner, I have filed the above Petition against the Union of India under Article 226 of the Constitution of India, inter alia challenging the complete monopoly exercised by the State in radio and television broadcasting through All India Radio and Doordarshan respectively. The Petition has been filed inter alia for a declaration of this Hon'ble Court that the monopoly created by the Government by executive/administrative fiat through the creation of All India Radio and Doordarshan to the complete exclusion of all other citizens in ultra vires of Articles 14, 19(1)(a) and 19(1)(g) of the Constitution of India; for a declaration of this Hon'ble Court that the refusal of the Respondents to permit the Petitioners to establish broadcasting stations for radio and television and to grant the Petitioner a valid licence therefor is ultra vires of Articles 14, 19(1)(a) and 19(1)(g) of the Constitution of India; for a writ of mandamus inter alia ordering and directing the Respondents to permit the Petitioners to establish broadcasting stations for radio and television in the western region of India to function

alongside All India Radio and Doordarshan; and for other reliefs as therein set out. I crave leave to refer to and rely on the Petition when produced. I repeat, maintain and confirm all that is stated in the said Petition.

2. As set out in the Petition, the 2nd Petitioner and I applied to the Government of India for a licence to set up two broadcasting stations, one for radio and the other for television, to function alongside All India Radio and Doordarshan, in the western region of India, with the aim of supplementing the said two government controlled and owned media. However, the Government of India has categorically refused to grant us the requisite licence.

3. I say and submit that as set out in the Petition, the said monopoly exercised by the State in the media of radio and television is clearly violative of the fundamental rights of the citizens of this country as contained in Articles 14, 19(1)(a) and 19(1)(g) of the Constitution of India, and, in particular, constitutes an unreasonable and unconstitutional restraint on the citizens' right to freedom of speech and expression. I submit that it is manifestly in the public interest to permit the dissemination of news by parties other than those controlled and owned by the State. I submit that the said monopoly runs counter to the basic tenets and the very foundation of a democratic society. I submit that the State ought not to be permitted to exercise such power to choose what news and information is disseminated to the people and what is suppressed from them, particularly as the two media in which the State exercises the said monopoly are by far the most potent public media today. In these circumstances, I submit that grave prejudice

will be caused to the citizens of this country if the reliefs as prayed for are not granted, and I therefore submit that the Petition be made absolute with costs as prayed for.

Sworn at Bombay, this 7th)
day of September, 1987. . . .)

sd/-
Before me,

sd/-
Advocate for the Petitioners

sd/-
Associate
High Court, Bombay

O. O. C. J.

Minoo R. Masani & Anr. ... Petitioners

Union of India Respondents

Dated this 7th day of September, 1987

Advocate for the Petitioners
Lentin Chambers, 4th Floor
Dalal Street, Fort
Bombay 400 023

HIGH COURT

O. O. C. J.

WRIT PETITION NO. 2955 OF 1987

Minoo R. Masani & Anr ... Petitioner

Versus

Union of India Respondent

P E T I T I O N

Dated this 7th day of September, 198

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D. H. N A N A V A T I

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