Excerpts from the historic judgement in 1995 which stated that the air waves are not the monopoly of the Indian government

Secretary, Ministry of Information and Broadcasting
vs
Cricket Association of Bengal

*(Reddy, J., concurring) **

While I agree with the conclusion arrived at by my learned Brother Sawant** , J. in para 122 of his judgement , I propose to record my views and conclusions on the issues arising in these matters in view of their far-reaching importance..
b)Airwaves constitute public property and must be utilized for advancing public good. No individual has a right to utilize them at his choice and pleasure and for the purposes of his choice including profit. The right of free speech guaranteed by Article 19 (1) (a) does not include the right to use airwaves, which are public property. The airwaves can be used by a citizen for the purpose of broadcasting only when allowed to do so by a statute and in accordance with such statute. Airwaves being public property, it is the duty of the State to see that airwaves are so utilized as to plurality and diversity of views, opinions and ideas. This is imperative in every democracy where freedom of speech is assured. The free speech right guaranteed to every citizen of this country does not encompass the right to use these airwaves at his choosing. Conceding such a right would be detrimental to the free speech rights of the body of citizens in as much as only a privileged few - powerful economic, commercial and political interests - would come to dominate the media. By manipulating the news, views and information, by indulging in misinformation and disinformation, to suit their commercial or other interests, they would be harming - and not serving - the principle of plurality and diversity of views, news, ideas and opinions. This has been the experience of Italy where a limited right, i.e., at the local level but not at the national level was recognized. It is also not possible to imply or infer a right from the guarantee of free speech, which only a few can enjoy.
a) Broadcasting media is inherently different from press or other means of communication / information. The analogy of press is misleading and inappropriate. This is also the view expressed by several constitutional courts including that of the United States of America
b) I must clarify what I say; it is that the right claimed by the petitioners (CAB and BCCI)- which in effect is no different in principle from a right to establish and operate a private TV station- does not flow from Article 19 (1) (a); such that a right is not implicit in it. The question whether such right should be given to the citizens of this country is a matter of policy for Parliament. Having regard to the

revolution in information technology and the developments all around, Parliament may, or may not, decide to confer such right. If it wishes to confer such a right, it can only be by way of an Act made by Parliament. The Act made should be consistent with the right of free speech of the citizens and must have to contain a strict programme and other controls, as has been provided, for example, in the Broadcasting Act, 1991 in the United Kingdom. This is the implicit command of Article 19 (1) (a) and is essential to preserve and promote plurality and diversity of views, news, opinions and ideas.
c) There is an inseparable interconnection between freedom of speech and the stability of the society, i.e., stability of a nation-State. They contribute to each other. Ours is a nascent republic. We are yet to achieve the goal of a stable society. This country cannot afford to read into Article 19 (1) (a) an unrestricted right to listening (right of broadcasting) as claimed by the petitioners herein.
d) In the case before us, both the petitioners have sold their right to telecast the matches to a foreign agency. They have parted with the right. The right to telecast the matches, including the right to import install and operate the requisite equipment, is thus really sought by the foreign agencies and not by the petitioners. Hence the question of violation of their right under Article 19 (1) (a) resulting from refusal of licence/ permission to such foreign agencies does not arise.

2. The Government monopoly of broadcasting media in this country is the result of historical and other factors. This is true of every other country, to start with. That India was not a free country till 1947 and its citizens did not have constitutionally guaranteed fundamental freedom till 1950 coupled with the fact that our Constitution is just about forty-five years into operation explains the Government monopoly. As pointed out in the body of the judgement, broadcasting media was a monopoly of the Government, to start with, in every country except the United States where a conscious decision was taken at the very beginning not to have State monopoly over the medium. Until recently, the broadcasting media has been in the hands of the public/statutory corporations in most of the West European countries. Private broadcasting is comparatively a recent phenomenon. The experience in Italy of allowing private broadcasting at local level (while prohibiting it at a national level) has left much to be desired. It has given rise to powerful media empires not conducive to free speech right of the citizens.

3. a) It has been held by this court- and rightly- that broadcasting media is affected by the free speech right to the citizens guaranteed by Article 19 (1) (a). This is also the view expressed by all the constitutional courts whose opinions have been referred to in the body of the judgement. Once this is so, monopoly of this medium (broadcasting media), whether by Government or by an individual, body or organisation is unacceptable. Clause (2) of the Article 19 does not permit a monopoly in the matter of freedom of speech and expression as it is permitted by Clause (6) of Article 19 vis-à-vis the right guaranteed by Article 19 (1) (g).
b) The right of free speech and expression includes the right to receive and

impart information. For ensuring the free speech right of the citizens of this country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. A successful democracy posits an aware citizenry. Diversity of opinions, views, ideas and ideologies is essential to enable the citizens to arrive at informed judgement on all issues touching them. This cannot be provided by a medium controlled by a monopoly- whether the monopoly is of the State or of any other individual, group or organization. As a matter of fact, private broadcasting stations may perhaps be more prejudicial to free speech rights of the citizens than the government- controlled media, as explained in the body of the judgement. The broadcasting media should be under the control of the public as distinct from Government. This is the command implicit in Article 19 (1) (a).

5. The CAB did not ever apply for a license under the first proviso to Section 4 of the Telegraphic Act nor did its agents ever make such an application. The permissions, clearances or exemption obtained by it from the several departments (mentioned in judgement) are no substitute for a license under Section 4 (1) proviso. In the absence of such a license, the CAB had no right in law to have its matches telecast by an agency of its choice. The legality or validity of the orders passed by Shri N.Vithal, Secretary to the Government of India, Telecommunications Department need not be gone into since it has become academic. In the facts and circumstances of the case, the charge of mala fides or of arbitrary and authoritarian conduct attributed to Doordarshan and Ministry of Information and Broadcasting is not acceptable. No opinion need be expressed on the allegations made in the Interlocutory Application filed by BCCI in these matters. Its intervention was confined to legal questions only.
6. Now the question arises, what is the position till the Central Government or the Parliament takes steps as contemplated in para 4 of the summary, i.e., if any sporting event or other event is to be telecast from the Indian soil ? The obvious answer flowing from the judgement (and paras 1 and 4 of this summary) is that the organizer of such event has to approach the nodal ministry as specified in the decision of the Meeting of the Committee of Secretaries held on 12-11-1993. I have no reason to doubt that such a request would be considered by the nodal ministry and AIR and Doordarshan on its merits, keeping in view the public interest. In case of any difference of opinion or dispute regarding the monetary terms on which such telecast is to be made, matter can always be referred to an arbitrator or panel of arbitrators. In case, the nodal ministry or AIR and Doordarshan find such broadcast/telecast not feasible, then they may consider the grant of permission to the organizers to engage an agency in addition to AIR/Doordarshan, if they are of the opinion that such a course is called for in the circumstances.
For the above reasons, the appeals, writ petition and applications are disposed of in the above terms. No costs.

Notes
** (1995) 2 S.C.C. 161, 252, 298-301.*

*** Justice Sawant stated:*
2. We, therefore, hold as follows:
a) The airwaves or frequencies are a public property. Their use has to be controlled and regulated by a public authority in the interests of the public and to prevent the invasion of their rights. Since the electronic media involves the use of the airwaves, this factor creates an inbuilt restriction on its use as in the case of any other public property.
b) The right to impart and receive information is a species of the right to freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution. A citizen has a fundamental right to use the best of means of imparting and receiving information and as such to have an access to telecasting for the purpose. However, this right to have an access to telecasting has limitations on account of the use of the public property, viz., the airwaves, involved in the exercise of the right and can be controlled and regulated by the public authority. This limitation imposed upon the nature of the public property involved in the use of the electronic media is in addition to the restrictions imposed on the right to freedom of speech and expression under Article 19(2) of the Constitution.
c) The Central Government shall take immediate steps to establish an independent autonomous public authority representative of all sections and interests in the society to control and regulate the use of the airwaves.
d) Since the matches have been have been telecast pursuant to the impugned order of the High Court, it is not necessary to decide the correctness of the said order.
e) The High Court will now apportion between the CAB and DD the revenues generated by the advertisements on TV during the telecasting of both the series of the cricket matches , viz., the Hero Cup, and the International Cricket Matches played in India from October to December 1994, after hearing the parties on the subject.
The civil appeals are disposed off accordingly
In view of the disposal of the civil appeals, the writ petition filed by the Cricket Association of Bengal also stands disposed off accordingly.
Secretary, Ministry of Info. and Broadcasting. v. Ass'n of Bengal (1995) 2 S.C.C. at 251-52.