REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5252 OF 2016
(ARISING OUT OF S.L.P. (CIVIL) NO. 8988 OF 2014)

STAR SPORTS INDIA PRIVATE LIMITED .....APPELLANT(S)

VERSUS

PRASAR BHARATI & ORS. .....RESPONDENT(S)

J U D G M E N T

A.K. SIKRI, J.

Leave granted.

2) The instant appeal is filed against the impugned judgment dated October 3, 2013 passed by the Division Bench of the High Court of Delhi in W.P.(C) No. 3611 of 2013 which was filed by the appellant herein. The appeal raises the issue regarding the scope of obligations of a Television Broadcasting Organisation under the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007 (hereinafter referred to as "Sports Act"). We may mention at the outset that under Section 3 of the Sports Act, a Television Broadcasting Organisation is prohibited from

carrying the live television broadcast of a sporting event of national importance on cable or Direct-to-Home (DTH) networks in India, unless it simultaneously shares the live broadcasting signals, without its advertisements, with the Prasar Bharati (respondent No.1) to enable it to retransmit the same on its terrestrial and DTH network.

3) In view of the above statutory obligation, the appellant herein sharing the live broadcast signals with respodnent No.1 Prasar Bharati and there is no dispute about the same. The appellant, as a television broadcaster, is allowed to insert advertisements on its avenue and recoup its advertisements during a break in live play at various points during broadcast, such as, during breaks between overs in a cricket match, at the fall of a wicket, during drink breaks etc. These advertisements are not included while sharing the live broadcasting signals with Prasar Bharati. No dispute about this as well.

4) The problem has, however, arisen in respect of the contents shared with Prasar Bharati which, at times, include some kind of advertisements. According to the appellant, the broadcast signal of a sporting event provided by an event organiser, known as the "world feed" (as the same feed is provided to all broadcasters the

world over), includes the broadcast of the live play of the event as it happens on the field as also certain “features” which enhance a view's experience, such a Hawk-eye, ball delivery speed reference, umpire naming graphics, player statistics, score cards, match summary graphics, replay graphics etc. These features are inserted at the site by or at the instance of the event organiser. Such features invariably contain logos of the event sponsors known as “On-Screen Credits” in industry parlance. These “On-Screen Credits” are, however, included while sharing the live broadcasting signals with Prasar Bharati. Prasar Bharati has taken exception to the aforesaid inclusion treating the same as “advertisements” and, thus, turning it as violative of Section 3(1) of the Sports Act. The appellant, on the other hand, has taken the position that in terms of Section 3(1) of the Sports Act, the obligation of a television Broadcaster, i.e., the appellant, is limited to sharing of the world feed which it receives from the event organizer/owner on as as-is-where-is basis without advertisements of the television broadcaster, and that the appellant is not obliged to remove any On-Screen Credits inserted by the event organizer. The appellant contested the stand of Prasar Bharati (respondent No. 1) that it is the duty of the appellant to ensure that the sponsor logos/On-Screen Credits

present ion the world feed, which ios created by or at the instance of the organizer of the event, have to also be removed by the appellant.

5) By the impugned judgment, the High Court has found favour with the contention raised by Prasar Bharati and this view of the High Court is the subject matter of challenge in the instant appeal. The *lis* has travelled to this Court in following factual background.

6) The appellant (formerly ESPN Software India Private Limited) is the sole and exclusive distributor of some sports channels in India. These include ESPN, Star Sports, Star Sports 2 and Star Cricket. These channels telecast various sporting events such as ICC Cricket, BCCI Cricket, Formula 1, Barclays Premier League Football, ICC Cricket World Cup and Wimbledon etc. for telecasting these events, the appellant enters into a contract with the sporting events organizers. These broadcasting rights have also been acquired from International Cricket Council (ICC) to broadcast cricket events organised by ICC for the Indian territory.

7) Keeping in mind the mandate of Section 3 of the Sports Act, the appellant informed respondent no. 1, i.e., Prasar Bharati on March 07, 2013 that it would be sharing the live signals with

Prasar Bharati of cricket matches organised by the ICC. It was followed by another letter dated March 14, 2013 wherein the appellant stated that such live signals, which the appellant would be sharing with Prasar Bharati, shall contain certain added features comprising of commercial elements. Prasar Bharati replied vide letter dated April 06, 2013 informing the appellant that under the law, appellant's obligations is to share the signals without any commercials. The appellant responded by stating that under the contract with the sporting event organizers, the appellant was receiving the feed containing certain advertisements by the organizer of the sporting events and, therefore, the signals were transmitted as it is, including those advertisements which were not the advertisements booked by the appellant. It was also stated that as per Section 3 of the Sports Act, appellant was to share the live broadcast signal as it is, i.e., the manner in which it was received by it from the copyright owner of the broadcast (the sporting event organizer) and, therefore, it did not amount to any violation of Section 3 of the Sports Act. It was also contended that the appellant had no control over the live signals so received. Since both the parties remain adamant about their respective position, the appellant approached the High Court of Delhi by way of writ petition filed under Article 226 of the

Constitution, seeking following declarations and reliefs:

> "(a) a declaration that under the provisions of the Act and the Rules framed thereunder, the appellant shall offer to simultaneously share with the respondent no. 1 the same live broadcasting signals of sporting events of national importance as provided by the appellant to other broadcast network service providers in India, without insertion of the appellant's commercial advertisements;
>
> (b) a declaration that the live broadcasting signals of sporting events of national importance shared by the appellant with the respondent no. 1 under Section 3 of the Act shall be the best feed as received from site with all features inclusive of any commercials of the event owner and without insertion of any commercial advertisements by the appellant.
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> (c) a writ of certiorari to quash and set-aside the communication dated 06th April, 2013 issued by the respondent no. 1;
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> (d) hold and declare Rule 5 of the Sports Rules in violative of Section 3 of the Act and ultra-vires Article 14 of the Constitution;
>
> (e) Hold and declare that upon the appellant offering to share t he world feed of the relevant matches of the Champions Trophy 2013 without its commercial advertisement with the respondent, it has discharged its obligation under Section 3 of the Act; and
>
> (f) Such other writ, order or direction as the court may deem fit in the interest of justice."

8) Insofar as vires of Rule 5 of the Rules, 2007 is concerned, the High Court repelled the contention of the said Rule being ultra

vires the provisions of Section 3 of the Sports Act with the reason that this Rule simply obliges the content right owner or the holder or a broadcast service provider to comply with the statutory provisions of the Act, which in any case was the obligation of the broadcaster even if Rule 5 was not to exist. Thereafter, the High Court came to the fulcrum of the dispute and noted that insofar as plain language of Section 3 of the Sports Act is concerned, it categorically casts an obligation on the broadcaster to share the life broadcasting signals without its advertisements, with Prasar Bharati. We would produce the text of Section 3 at this juncture:

> "3. Mandatory sharing of certain sports broadcasting signals – (1) No content rights owner or holder and no television or radio broadcasting service provider shall carry a live television broadcast on any cable or Direct-top-Home network or radio commentary broadcast in India of sporting events of national importance, unless it simultaneously shares the live broadcasting signal, without its advertisements, with the Prasar Bharati to enable them to re-transmit the same on its terrestrial networks and Direct-to-Home networks in such manner and on such terms and conditions as may be specified.
>
> (2) The terms and conditions under sub-section (1) shall also provide that the advertisement revenue sharing between the content rights owner or holder and the Prasar Bharati shall be in the ratio of not less than 75:25 in case of television coverage and 50:50 in case of radio coverage.
>
> (3) The Central Government may specify a percentage of the revenue received by the Prasar Bharati under sub-section (2), which shall be utilised by the Prasar Bharati for broadcasting other

sporting events."

The High Court noted that the arguments of the appellant was that the contents were to be shared 'without ***its***_ advertisements' which meant no advertisements of the Broadcaster and, therefore, this expression did not include advertisements inserted in the feed by the event organizer. This argument is, however, rejected in the following manner:

> "The expression 'unless it simultaneously shares the live broadcasting signal, without its advertisements, with the Prasar Bharati....' with reference to the two words 'its advertisements' in the phrase, admits of the phrase having only one meaning and not admitting two. The only one meaning that the live broadcast signals have to be without any advertisements for the reason the rules of English grammar guide us that the subject of (the single sentence) sub-section (1) of Section 3, is 'the content right owner or holder or radio broadcasting service provider' and the three words 'without its advertisements' are a sub-clause constituting a condition and since the three words immediately follow the words 'live broadcasting signal' they have to be, plainly read, as a condition concerning the live broadcast service provider; meaning thereby, whosoever airs a live television broadcast of sporting events of national importance must share the same without any advertisements inserted with Prasar Bharati."

9) The submission of the appellants that it had no control over the live signals which included the advertisements of the event organizer was also dismissed with following observations:

> "We need not discuss the effect of the petitioner

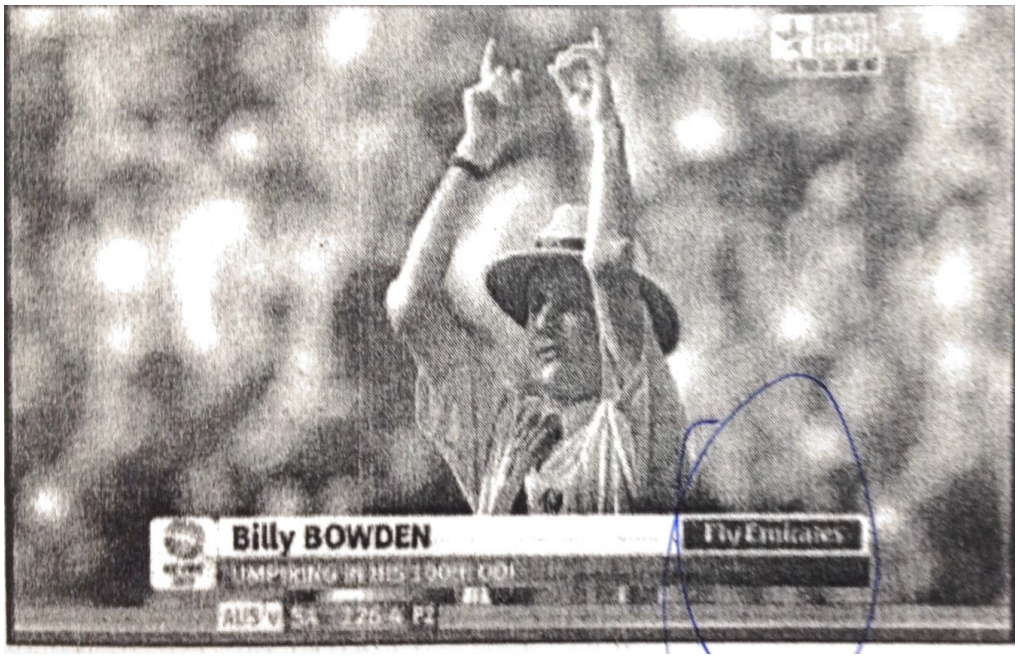
> having no control over the live signals and the effect of the legislative provision i.e. Section 3(1), casting an obligation upon the petitioner which is impossible of being performed by the petitioner or obliges the petitioner to violate its contractual obligations with the copyright owner of the broadcast, for the reason the same would relate to the vires of Section 3(1) of the Act; and we highlight once again that the vires of Section 3(1) of the Act has not been challenged."

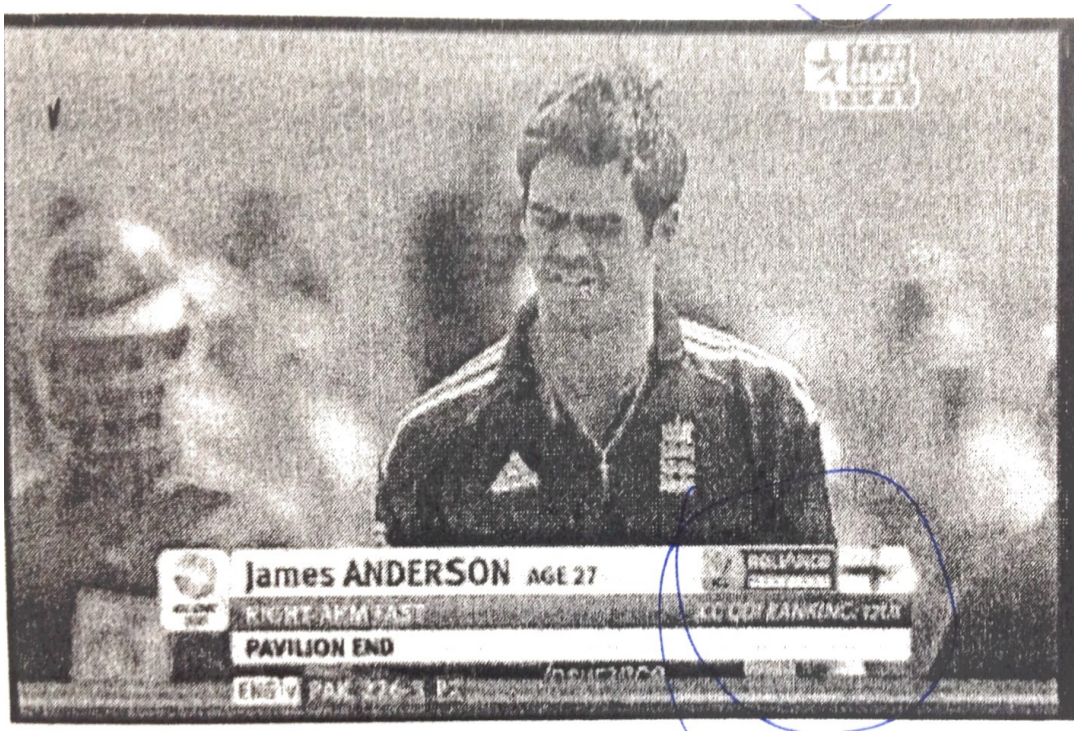
The aforesaid is the central theme of the impugned judgment of the High Court. Though, in addition, the High Court has touched upon certain other peripheral aspects as well, but that need not be mentioned at this stage.

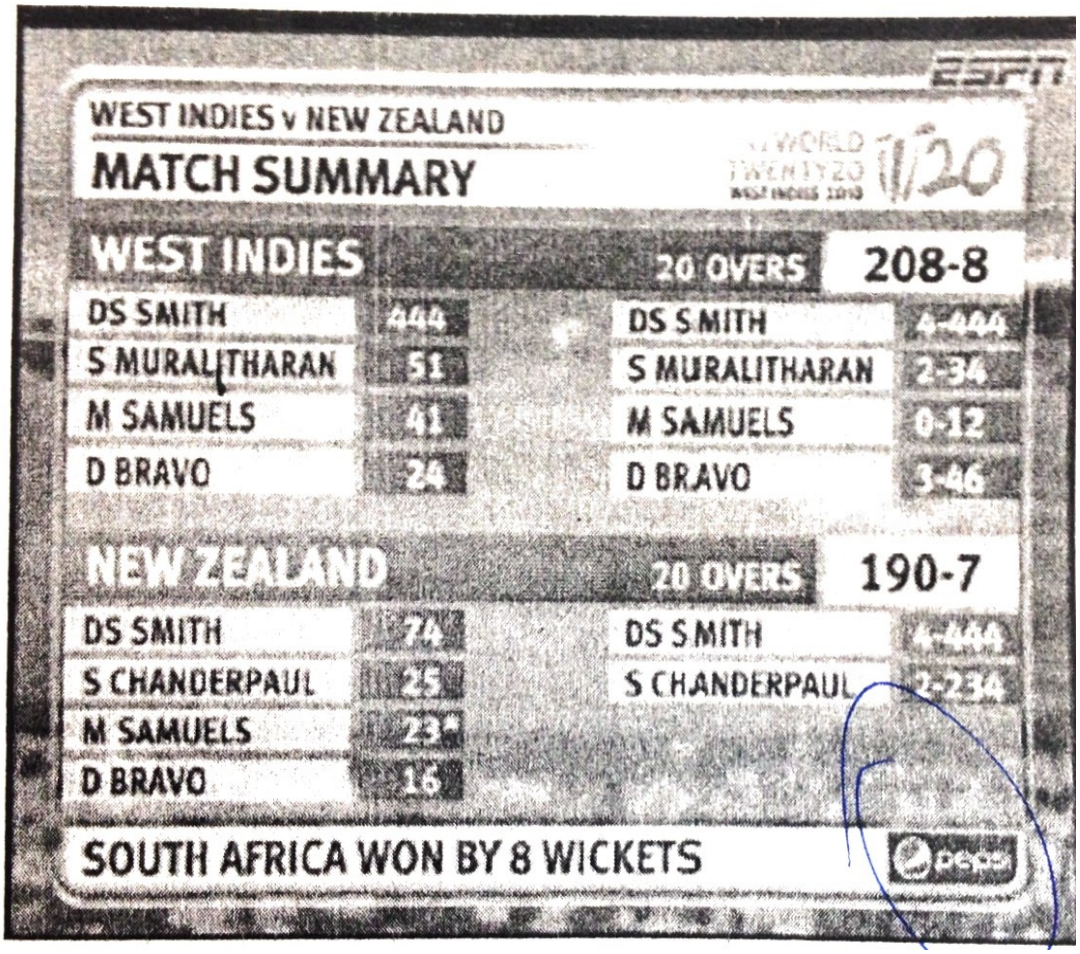
10) The arguments which were advanced by Dr. A.M. Singhvi, learned senior counsel appearing for the appellant are stated in summarised form hereinbelow:

(I) In the first instance, it was argued that 'On-Screen Credits' put in by the event organizers themselves cannot be treated as advertisements at all. As these features were the integral part of the feeds that the appellant was receiving from the organizers for the purpose of broadcasting. These credits were logos of the event sponsors which were appearing on the screen as per the agreement between the event sponsors and the event organizers. Following examples are given by the appellants:


BOPARA
V
M MORKEL
M MORKEL TO BOPARA - BEEHIVE
LG
WICKETS


Billy BOWDEN
Fly Emirates


James ANDERSON AGE 27
RIGHT-ARM FAST
PAVILION END


ESPN
WEST INDIES v NEW ZEALAND
MATCH SUMMARY
WORLD TWENTY20
WEST INDIES 2010
WEST INDIES 20 OVERS 208-8
DS SMITH 44
S MURALITHARAN 51
M SAMUELS 41
D BRAVO 24
DS SMITH 4-44
S MURALITHARAN 2-34
M SAMUELS 0-12
D BRAVO 3-46
NEW ZEALAND 20 OVERS 190-7
DS SMITH 74
S CHANDERPAUL 25
M SAMUELS 23*
D BRAVO 16
DS SMITH 4-44
S CHANDERPAUL 2-234
SOUTH AFRICA WON BY 8 WICKETS
Pepsi

In the aforesaid photographs LG, Fly Emirates, Reliance and Pepsi are the logos of the event sponsors which are embedded in the feeds that are received.

(II) Taking the aforesaid argument further, it was submitted that in any case the appellant gets those logos embedded as it is and has not control over the same. It was argued that while sharing the signals with Prasar Bharati, there was no mechanism or methodology to remove these logos.

(III) It was submitted that in the aforesaid context, the said logos could not be treated as commercial advertisements and the purpose of Section 3 of the Sports Act was not to share only those kinds of advertisements which were commercial in nature, i.e., book by the Broadcaster/appellant from which the appellant had received the revenue and generated income. In other words, it was argued that having regard to purposive interpretation which was to be given to the expression 'without its advertisements' the aforesaid logos would not come within the mischief of the aforesaid expression. It is in the same hue, the argument of Dr. Singhvi was that not only those advertisements which were inserted at the instance of the broadcasting organisation carrying live signal in India, were required to be removed as per Section 3 of the Sports Act, it was emphatically emphasised that

broadcasting organizations, like appellants, are only authorised by respective event owners, as also under law, to insert advertisements during normal and routine breaks in the live play of an event/match, such as end of overs, fall of wicket(s), lunch break, drinks break, injury, rain etc.

11) It was also argued that there is a distinction between the event/match as played and the event/match as broadcast. The broadcast of an event/match contains not only the live event/match as played on the field but also certain enhancement in the form of features. These features aid the viewer in better understanding and appreciating the game and as such enhance the viewership experience. These features/On-Screen Credits are as much a part of the broadcast of an event as the play of the event itself. As per the appellant, the obligation under Section 3 is to simultaneously share the live 'broadcasting signals' which are received by an entity carrying the television broadcast in India and not just the live 'event' itself. However, as a result of the impugned judgment, the appellant will be compelled to share the live 'event' and not the live 'broadcast signal' of the event. The appellant submits that it is not practically feasible for a broadcaster to remove the on-screen credits inserted by the event organizer in

the live signals and simultaneously share the same signals (as provided to other service providers such as cable and private DTH networks) with Prasar Bharati. In the past when the appellant was compelled to provide a clean feed, the appellant was constrained to procure a separate feed at a considerable cost as it was not practically feasible for the appellant to remove the insertions of the event organizer while simultaneously sharing the same feed with Prasar Bharati. The appellant submits that the mandate of the Act is simultaneous sharing and not procuring and providing a separate live feed to Prasar Bharati.

12) Dr. Singhvi laid emphasis on the words 'simultaneously shares the live broadcasting signals' and submitted that since the obligation was to share it 'simultaneously' i.e., 'as it is' the sharing of the signals with logos coming from the organizers were not supposed to be removed. Another submission of Dr. Singhvi was that Section 3 was expropriate in nature, i.e. *contra proferantem*. In order to buttress this argument, the learned senior counsel argued that the purport of sharing the signals without advertisement was that if the advertisements are also included along with the other contents, the Broadcaster becomes the beneficiary of having much larger audience and viewers and,

therefore, in such cases Prasar Bharati wanted its share in such advertisement. In the instant case when the appellant had not earned any income from these advertisements as these were not booked by the appellant, there was no question of sharing alleged income. Reference was made to the judgment of this Court in ***Executive Engineer, Southern Electricity Supply Company of Orissa Limited (Southco) and Another*** Vs. ***Sri Seetaram Rice Mill***[1] wherein rule of purposive interpretation was explained in the following manner:

> "46. "Purposive construction" is certainly a cardinal principle of interpretation. Equally true is that no rule of interpretation should either be overstated or overextended. Without being overextended or overstated, this rule of interpretation can be applied to the present case. It points to the conclusion that an interpretation which would attain the object and purpose of the Act has to be given precedence over any other interpretation which may not further the cause of the statute. The development of law is particularly liberated both from literal and blinkered interpretation, though to a limited extent.
>
> 47. The precepts of interpretation of contractual documents have also undergone a wide-ranged variation in the recent times. The result has been subject to one important exception to assimilate the way in which such documents are interpreted by Judges on the common sense principle by which any serious utterance would be interpreted by ordinary life. In other words, the common sense view relating to the implication and impact of provisions is the relevant consideration for interpreting a term of document so as to achieve temporal proximity of the end result.

1 (2012) 2 SCC 108

> 48. Another similar rule is the rule of practical interpretation. This test can be effectually applied to the provisions of a statute of the present kind. It must be understood that an interpretation which upon application of the provisions at the ground reality, would frustrate the very law should not be accepted against the common sense view which will further such application.
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> 49. Once the court decides that it has to take a purposive construction as opposed to textual construction, then the legislative purpose sought to be achieved by such an interpretation has to be kept in mind. We have already indicated that keeping in view the legislative scheme and the provisions of the 2003 Act, it will be appropriate to adopt the approach of purposive construction on the facts of this case. We have also indicated above that the provisions of Section 126 of the 2003 Act are intended to cover the cases over and above the cases which would be specifically covered under the provisions of Section 135 of the 2003 Act."

13) In support of this submission, reliance was placed on the judgment of this case in ***Davis*** Vs. ***Sebastian***[2], wherein it was held as under:

> "8. Now, what is the meaning of the expression "personal use" in sub-section (8) It is a well-settled principle of interpretation that words in a statute shall be given their natural, ordinary meaning; nothing should be added to them nor should any word be treated as otiose. Two comprehensive expressions "additional accommodation" and "personal use" are employed in sub-section (8). The expression "additional accommodation" takes in both residential as well as non-residential buildings. "Personal use" is also an expression of wide amplitude. There is nothing in the sub-section which restricts the import of that expression. The said requirement of sub-section (8) will be complied

2 (1999) 6 SCC 604

> with on the satisfaction of the Controller about bona fide need of the additional accommodation for personal use of the landlord. To what use the additional accommodation should be put, is the choice of the landlord. In the case of a non-residential building whether a new business should be set up in the additional accommodation or whether it should be used for expansion of the existing business, is left entirely to the option of the landlord. This, being the intendment of the legislature, the court cannot impose any restriction with regard to the use of the additional accommodation from which the eviction of the tenant is sought."

14) It was next contended that the word 'its' occurring in the expression 'without its advertisements' was referable to the Broadcaster and, therefore, on the application of the rule of literal construction, those logos which were embedded by the event organizers could not be treated as the advertisements of the appellant. Dr. Singhvi also endeavored to take solace from ***V.B. Raju*** Vs. ***Union of India and Others***[3] in support of his contention that otherwise the word 'its' would be rendered otiose, if the aforesaid interpretation as suggested by the appellant is not made applicable.

15) The aforesaid submissions of the learned senior counsel for the appellant were countered by Mr. Mukul Rohatgi, learned Attorney General for India. At the outset, he drew our attention to the

3 1980 (Supp) SCC 513

prayers made in the writ petition and, in particular, prayers (a) and (b) and submitted that these involve disputed question of facts, viz., whether the appellant, by sharing the signals/world feed was simultaneously passing advertisements therein as well? And whether under the given circumstances, such advertisements were of commercial nature and were offensive of Section 3 of the Act and the Rules framed thereunder? He submitted that the appellant was trivializing the issue by giving it the nomenclature of 'logo' but the fact remains that those logos were of the advertisers/sponsors who had given it purely for commercial purposes. The learned Attorney General referred to the counter affidavit which was filed in the High Court wherein a specific stand was taken by Prasar Bharati that it is the appellant who is inserting commercials in the feed and not ICC, as is clear from the following averments made in the counter affidavit:

> "Without prejudice to what has been stated above, it is submitted that ion fact it is the appellant who is inserting commercials in the feed and not ICC. The answering respondent understands that it is the appellant who is producing the feed for and on behalf of ICC from the ground. The feed as is generated from the ground is free of all commercials. It is thereafter that the commercials are inserted. It is another matter that the insertion of commercials takes hardly a second but the assertion of the appellant that it has not control over the insertion is clearly incorrect."

He then referred to para 26 of the rejoinder affidavit wherein the aforesaid assertion of the respondent was denied by the appellant. He, thus, argued that these are the disputed questions of facts which could not be gone in a writ petition, and as a consequence in the present appeal, his submission was that if the appellant wanted to raise pure legal question it had to be decided on the premise that the appellant had inserted those advertisements and insofar as Prasar Bharati is concerned, it had received the feeds with the said advertisements and that was the only basis on which the issue at hand could be decided by applying the legal provisions.

16) Mr. Rohtagi then referred to the preamble to the Sports Act, 2007 highlighting the object with which the said Act was enacted and submitted that it is that spirit and objective which has to be kept in mind while construing the provisions of Section 3 of the Sports Act.

17) Insofar as interpretation that is to be given to the word 'its' occurring in the expression 'without its advertisements', he submitted that Section 3 mentions three categories, namely, (a) content right owner; (b) holder; and (c) service provider. According

to him, the word 'its' was relatable to any of the aforesaid three categories and, therefore, even if it is presumed that the logos/advertisements in the world feed are inserted by the event organizers, that also falls within the mischief of the aforesaid provision. Basic idea, according to him, was that the feed generated has to be free of ads.

18) Mr. Rohtagi also referred to the provisions of sub-section (2) of Section 3 of the Act to highlight the purpose of sharing the revenue which was in the ratio of 75:25, i.e., 75% for the Broadcaster and 25% revenue was to be given to Prasar Bharati. His submission that the statutory provision was enacted to compensate Prasar Bharati for showing the advertisements which were booked by the Broadcaster or even event sponsors who had earned money therefrom.

19) Mr. Rohtagi also took aid of Rule 2(b) of the Rules for interpreting Section 3 appropriately and submitted that the words 'content rights owner or holder' clearly meant all the three aforesaid categories. In view of Rule 5 of the Rules, he argued that it was the responsibility of the appellant to take care of ICC even if it is presumed that ICC as event organizer had given world feed in that manner.

20) Proceeding therefrom, the next argument of the learned Attorney General was that such a provision cannot be treated as expropriately, as the revenue was shared between the parties.

21) Concluding his submissions, Mr. Rohtagi referred to the judgment of this Court in ***Secretary, Ministry of Information & Broadcasting, Govt. of India and Others*** Vs. ***Cricket Association of Bengal and Other***[4] wherein it was held that airwaves are public property. He submitted that paragraph 78 which was relied upon by the appellant had to be read in conjunction with paragraph 79. Both these paras read as under:

> "78. There is no doubt that since the airwaves/frequencies are a public property and are also limited, they have to be used in the best interest of the society and this can be done either by a central authority by establishing its own broadcasting network or regulating the grant of licences to other agencies, including the private agencies. What is further, the electronic media is the most powerful media both because of its audio-visual impact and its widest reach covering the section of the society where the print media does not reach. The right to use the airwaves and the content of the programmes, therefore, needs regulation for balancing it and as well as to prevent monopoly of information and views relayed, which is a potential danger flowing from the concentration of the right to broadcast/telecast in the hands either of a central agency or of few private affluent broadcasters. That is why the need to have a central agency representative of all sections of the

4 (1995) 2 SCC 161

society free from control both of the Government and the dominant influential sections of the society. This is not disputed. But to contend that on that account the restrictions to be imposed on the right under Article 19(1)(*a*) should be in addition to those permissible under Article 19(2) and dictated by the use of public resources in the best interests of the society at large, is to misconceive both the content of the freedom of speech and expression and the problems posed by the element of public property in, and the alleged scarcity of, the frequencies as well as by the wider reach of the media. If the right to freedom of speech and expression includes the right to disseminate information to as wide a section of the population as is possible, the access which enables the right to be so exercised is also an integral part of the said right. The wider range of circulation of information or its greater impact cannot restrict the content of the right nor can it justify its denial. The virtues of the electronic media cannot become its enemies. It may warrant a greater regulation over licensing and control and vigilance on the content of the programme telecast. However, this control can only be exercised within the framework of Article 19(2) and the dictates of public interests. To plead for other grounds is to plead for unconstitutional measures. It is further difficult to appreciate such contention on the part of the Government in this country when they have a complete control over the frequencies and the content of the programme to be telecast. They control the sole agency of telecasting. They are also armed with the provisions of Article 19(2) and the powers of pre-censorship under the Cinematograph Act and Rules. The only limitation on the said right is, therefore, the limitation of resources and the need to use them for the benefit of all. When, however, there are surplus or unlimited resources and the public interests so demand or in any case do not prevent telecasting, the validity of the argument based on limitation of resources disappears. It is true that to own a frequency for the purposes of broadcasting is a costly affair and even when there are surplus or unlimited frequencies, only the affluent few will own them and will be in a position to use it to subserve

> their own interest by manipulating news and views. That also poses a danger to the freedom of speech and expression of the have-nots by denying them the truthful information on all sides of an issue which is so necessary to form a sound view on any subject. That is why the doctrine of fairness has been evolved in the US in the context of the private broadcasters licensed to share the limited frequencies with the central agency like the FCC to regulate the programming. But this phenomenon occurs even in the case of the print media of all the countries. Hence the body like the Press Council of India which is empowered to enforce, however imperfectly, the right to reply. The print media further enjoys as in our country, freedom from pre-censorship unlike the electronic media.
>
> 79. As stated earlier, we are not concerned in the present case with the right of the private broadcasters, but only with the limited right for telecasting particular cricket matches for particular hours of the day and for a particular period. It is not suggested that the said right is objectionable on any of the grounds mentioned in Article 19(2) or is against the proper use of the public resources. The only objection taken against the refusal to grant the said right is that of the limited resources. That objection is completely misplaced in the present case since the claim is not made on any of the frequencies owned, controlled and utilised by Doordarshan. The right claimed is for uplinking the signal generated by the BCCI/CAB to a satellite owned by another agency. The objection, therefore, is devoid of any merit and untenable in law. It also displays a deliberate obdurate approach."

22) We have given our due, deep and pervasive consideration to the submissions of counsel for both the parties, which they deserve. It is clear from the contents of the arguments that the contentions are virtually the same which were projected before the High Court; the only difference could be that the arguing counsel have

projected a melange of much more clarity, deftness and dexterity in their pellucid arguments.

23) At the outset it needs to be remarked that vires of the provisions of Section 3 of the Sports Act are not questioned. It is only interpretation that has to be placed on the said provision, on which the parties have joined issue. Therefore, we have to ascertain the true meaning and scope of Section 3 of the Act and on attaining this task, answer to the issue would become available.

24) We may also mention that though the provisions of Rule 5 of the Rules were challenged on the ground that these are ultra vires Section 3 of the Act, after the High Court has negatived this challenge, this argument was not persisted in this Court. Therefore, we have also to proceed in the matter, keeping in view the provisions of Rule 5 of the Rules. We may, however, hasten to add the reason given by the High Court in repelling the argument that Rule 5 of the Rules is ultra vires Section 3 is well founded even otherwise. With the aforesaid preliminary remarks, we proceed to analyse the arguments and discuss the issue involved.

25) Provisions of Section 3 of the Act have already been taken note of. We would like to quote hereunder, the text of Section 2(b) which defines 'broadcasting' along with Section 2(d) and Section 2(h) which provide definitions of 'broadcasting networks service' 'content' as well as Rules 2(b), 3 and 5.

> "(b) "broadcasting" means assembling and programming any form of communication content, like signs, signals, writing, pictures, images and sounds, and either placing it in the electronic form on electro-magnetic waves on specifie frequencies and transmitting it through space or cables to make it continuously available on the carrier waves, or continuously streaming it in digital data form on the computer networks, so as to be accessible to single or multiple users through receiving devices either directly or indirectly; and all its grammatical variations and cognate expressions;
>
> (d) "broadcasting networks service" means a service, which provides a network of infrastructure of cables or transmitting devices for carrying broadcasting content in electronic form on specified frequencies by means of guided or unguided electro-magnetic waves to multiple users, and includes the management and operation of any of the following:
> (i) Teleport/Hub/Earth Station,
> (ii) Direct-to-Home (DTH) Broadcasting Network,
> (iii) Multisystem Cable Television Network,
> (iv) Local Cable Television Network,
> (v) Satellite Radio Broadcasting Network,
> (vi) any other network service as may be prescribed by the Central Government;
>
> (h) "content" means any sound, text, data, picture (still or moving), other audio-visual representation, signal or intelligence of any nature or any combination thereof which is capable of being created, processed, stored, retrieved or communicated electronically;

5. The Central Government shall take all such measures, as it deems fit or expedient, by way of issuing Guidelines for mandatory sharing of broadcasting signals with Prasar Bharati relating to sporting events of national importance:

Provided that the Guidelines issued before the promulgation of the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Ordinance, 2007(Order 4 of 2007), shall be deemed to have been issued validly under the provisions of this section.

Rule 2(b) 'content rights owner or holder' shall mean a person for the time being having or holding the broadcasting rights in respect of a sporting event of national importance within the territory of India;

Rule 3 3 Sharing of Sports Broadcasting Signals with Prasar Bharati. (1) Every content rights owner or holder and television or radio broadcasting service provider intending to carry a live television broadcast on any cable television network or Direct-to-Home network or intending to make a radio commentary broadcast in India, of a sporting event of national importance shall at least forty- five days prior to the proposed date of telecast or broadcast, inform the Prasar Bharati about the same and offer to share the live signals in the manner and on such terms and conditions as are hereunder specified.

(2) The content rights owner or holder and television or radio broadcasting service provider shall provide the live signals to the Prasar Bharati at the Master Control Room of Doordarshan or as the case may be, the Master Control Room of All India Radio, at its own cost.

(3) The signals to be shared with the Prasar Bharati by the content rights owner or holder, shall be the best feed with all features as that of provided to a broadcast service provider in India, free from commercial advertisements.

(4) The signals referred to in sub-rules (2) and (3) shall include signals of the pre-live event and the post-live event coverage.

(5) The Prasar Bharati shall not be under any obligation to carry the logo of any channel available in India.

(6) The Prasar Bharati shall have all the rights to generate, pre, post and intermission programming.

(7) The Prasar Bharati shall have the right to retransmit the signals on its terrestrial and Direct-to-Home networks including the AM and FM Channels of the All India Radio.

Rule. 5 - Responsibility of a television or radio channel broadcasting the sporting event. If the television or radio broadcasting service provider is different from the content rights owner or holder, it shall be its duty to ensure that adequate arrangements for compliance with the provisions of the Act and the rules are made, at the time of acquisition of the rights from the content rights owner or holder."

26) It is a common case of the parties that the "world feeds" which the appellant shares with Prasar Bharati is covered by the definition of 'broadcasting' under Section 2(b) of the Act and in that sense the appellant provides broadcasting network service as defined in Section 2(d) of the Act. Further, the 'world feed' would amount to 'content' under Section 2(h) of the Act. It is these contents which are to be mandatorily shared by the appellant with Prasar Bharati. However, at the same time such contents have to be 'without its advertisements'.

27) First thing which we need to deliberate upon is as to whether the logos of the advertisers contained in the 'world feed' shared by the appellant with Prasar Bharati amounts to 'advertisement'. As noted above, the plea of the appellant in this behalf is that since the broadcast signal of the sporting event provided by the event organiser (ICC in the instant case) includes these logos and the appellant is supposed to share the same as it is with Prasar Bharati, it would not be treated as advertisements. It is also argued that these are not commercial advertisements as the appellant is not getting any revenue from the sponsors. To our mind, this is a specious argument to ward off the situation with which the appellant is confronted with. It is not denied by the appellant that these logos are of the event sponsors, known as 'On-Screen Credits' in industry parlance. The appellant has itself shown the photographs thereof which have been reproduced by us above. No doubt, such logos or On-Screen Credits may appear at the time of featuring replays like ball delivery speed and when a player gets out either when he is bowled, run out or caught or they are shown while depicting player statistics, scoreboard, match summary, graphs, etc. Nonetheless, these are the advertisements the sponsors like Pepsi, LG, Fly Emirates,

Reliance, etc. These sponsors have entered into arrangement for showing their logo on the occasions referred to above. It is also not in dispute that these sponsors pay for such On-Screen Credits. Insofar as such sponsors are concerned, their motive in giving these logos to be shown on Television is crystal clear, viz. it is intended to advertise their company names for commercial motives in mind. These are, thus, commercials of the sponsors which would clearly be treated as not only advertisements but commercial advertisements. Once we hold that what is shown are advertisements, the question as to whether these advertisements are shown because of some arrangement between the organisers of the tournament and the sponsors or as a result of arrangement between the broadcasters, i.e. the appellant, and the sponsors is immaterial. Section 3 of the Sports Act does not make any distinction between the aforesaid two kinds of advertisements. What is prescribed, in no uncertain terms, is that sharing of the live broadcasting signal has to be without advertisements.

28) On a plain reading of Section 3 of the Sports Act, we are inclined to agree with the submission of Mr. Rohatgi that the obligation to share such sports broadcasting signals is upon the following

persons: (i) content rights owner; (ii) content holder; and (iii) television or radio broadcasting service provider. Any of these above categories of persons are not allowed to carry a live television broadcast on:

(i) any cable or direct-to-home network;

(ii) radio commentary broadcast in India,

if

such television broadcast

or

radio commentary broadcast

happens to be of sporting events which is of national importance

unless

such content rights owner or content holder or broadcasting service provider simultaneously shares the live broadcasting signals with Prasar Bharati

to enable Prasar Bharati to re-transmit the same on its terrestrial networks and DTH networks

in such manner and on such terms and conditions as may be specified.

29) The guidance for laying down the terms and conditions that can be specified on which sharing of the broadcasting signals has to take place with Prasar Bharati, is mentioned in sub-section (2) of

Section 3, which specifically mentions that such terms and conditions shall also provide that advertisement revenue sharing between the content rights owner or holder and Prasar Bharati shall be in the ratio of 75:25 in the case of television coverage; and 50:50 in the case of radio coverage. Section 4 of the Sports Act, 2007 provides for penalties in case of any violations of the terms and conditions as may be specified under Section 3 subject to the condition that amount of a pecuniary penalty shall not exceed ₹1 crore.

30) The preamble of the Act which gives an idea of the purpose behind enacting this statute reads as under:

> "An Act to provide access to the largest number of listeners and viewers, on a free to air basis, of sporting events of national importance through mandatory sharing of sports broadcasting signals with Prasar Bharati and for matters connected therewith or incidental thereto. "

31) It becomes apparent from the aforesaid reading of the Preamble that purpose is to provide access to the largest number of listeners and viewers, on a free to air basis, of sporting events of national importance. This task is given to Prasar Bharati. Notwithstanding more popularity which the private channels have gained over a period of time, coverage of Prasar Bharati is far more reaching insofar as Indian population is concerned as it

reaches almost every nook and corner of the country. Further the radio as well as television broadcasting of Prasar Bharat is free of cost. It is for this reason that the law in the form of Sports Act is enacted in order to ensure that such sporting events of national importance are made available to every citizen of this country, irrespective of his/her financial conditions.

32) Section 3, thus, aims to achieve two purposes:

(a) to provide access to largest number of listeners and viewers on a free to air basis. The principle of purposive interpretation, in this context, meant that Prasar Bharati was supposed to telecast these matches for the benefit of general masses spread through out India, who otherwise do not receive signals of private channels like the appellant or are not having financial capacity to pay for these channels. Thus, it was a larger public interest which was sought to be served and noble objective was kept in mind while enacting the statute;

(b) insofar as income that is generated from advertisements is concerned, which are shown on television or broadcasted on radio, the revenue thereof is to be shared between the Broadcaster and Prasar Bharati. The purpose is obvious. It is the broadcasting service provider who is supposed to share the live

broadcasting signal with Prasar Bharati, which has the arrangements with the advertisers and, thus, takes money from those who book their advertisements to be broadcasted on television or radio. However, when the signals are shared with Prasar Bharati enabling it to simultaneously retransmit the same on its terrestrial networks or DTH networks, the viewership/ audience gets multiplied as the reach is to much larger section of citizenry through Prasar Bharati. Therefore, Section 3(1), in the first instance, mandates that the sharing of live broadcasting signals with Prasar Bharati has to be 'without its advertisements'. Exception is, however, made in sub-section (2) of Section 3 which enables the broadcasting service provider to even share the contents along with advertisements, but subject to the condition that there has to be a sharing of revenue in the proportion prescribed in sub-section (2) of Section 3. As aforesaid, when live broadcasting signal is shared containing advertisements, those advertisements have much larger viewership because of its telecast/broadcast on Prasar Bharati. The benefit of advertisement in such a case would accrue to those who have booked the advertisements and the service provider, in such an eventuality would definitely be in a position to charge much more from the advertisers. It is a matter of common knowledge that

rates of advertisement go up when circulation thereof is enhanced. When we keep in mind the aforesaid twin objectives of the Act, the answer to the issue raised becomes obvious. The application of rule of purposive interpretation would go against the appellant and in favour of the respondent.

33) With this, we advert to the next question, namely, whether the word 'its' refers to the advertisements that are booked only by the broadcasters, namely, the appellant in the instant case? Let us now understand the meaning of the word 'its' occurring in the obligation cast upon the broadcasting service provider to share the live broadcasting signals 'without its advertisements'. From our aforesaid discussion, it becomes clear that the sharing of the signals has to be without any advertisements and if the advertisements are also to be included in the signals, there has to be sharing of the revenue. The learned Attorney General has rightly argued that the word 'its' cannot be given limited meaning by confining it to advertisements only of broadcasting service provider. Section 3 which starts with negative covenant very expressly puts an embargo to all the three categories mentioned therein, viz., content rights owner, (ii) contents holder as well as (iii) television or radio broadcasting service provider not to have

television broadcast either through cable or DTH and not to have any radio commentary broadcast unless live broadcasting signal is shared simultaneously with Prasar Bharati. Examined in this hue, it becomes clear that the words 'without its advertisements' which follow immediately after the words 'unless it simultaneously shares the live broadcasting signal' has to be given a meaning that such broadcasting signals are to be without advertisements, whether it is of the content rights owner, content holder or that of television or radio broadcasting service provider. It is made crystal clear by providing the definition of 'content rights owner' or 'holder' in Rule 2(b) of the Rules, 2007. Rule 3(3) takes the issue beyond any pale of doubt when it mentions that the signals to be shared with Prasar Bharati by the content rights owner or holder are to be the best feed that is provided to broadcast service provider in India and has to be 'free from commercial advertisements'. Thus, even if it is ICC which has included those advertisements/logos, the feeds have to be without those logos/advertisements inasmuch as nobody can dispute that the content rights owner are content holder, i.e, ICC in the instant case has included those logos/advertisements from purely commercial angle. Thus, the arrangement between the ICC and the appellant, is totally inconsequential.

34) The upshot of the aforesaid discussion would be to conclude that there is no merit in the instant appeal which is, accordingly, dismissed with costs.

.....J.
(A.K. SIKRI)

.....J.
(PRAFULLA .C. PANT)

NEW DELHI;
MAY 27, 2016.