

**Adwave Vs. Union of India and Others**

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**Court :** Delhi

**Decided On :** Jan-28-2000

**Reported in :** 2000IIIAD(Delhi)154; 84(2000)DLT638; 2000(53)DRJ262

**Judge :** C.M. Nayar, J.

**Acts :** [Constitution of India](#) - Article 226

**Appeal No. :** C.W.P. No. 5548/1997

**Appellant :** Adwave

**Respondent :** Union of India and Others

**Advocate for Def. :** Mr. N.K. Kaul, ; Mr. V. Shekhar, ; Mr. G. Ganesh and ;

**Advocate for Pet/Ap. :** Ms. Komal,; G.B. Singh,; Managing Partner,;

**Judgement :**

ORDER

**C.M. Nayar, J.**

1. This petition has been filed for issuance of a writ of certiorari for quashing the selection of respondent No. 3 as Executive Producer for the sponsored programme 'APNE ADHIKAR' by respondents 1 and 2.

2. The petitioner had submitted scripts which were stated to be duly approved by respondents 1 and 2 but before the same could be given effect and implemented the respondents stopped the Radio programme in the end of 1995 for the reasons unknown to the petitioner. Prior to the stoppage of radio programme in 1995 the petitioner had exclusively produced about 180 episodes of the programme which had further converted into 11 different regional languages. This exclusive production assignment for the Radio programme was successfully handled by the petitioner for more than 3 years. Respondent No., 1 in 1991 and 1994-95 had adopted a procedure under which the scripts and the audio recordings of the producers were considered and studied by the Committee constituted by the said respondent. In 1991 such Committee included two senior officers of All India Radio besides the officials of respondent No. 1. Similarly in 1994-95, the Committee which considered the scripts of the Procedure had Mrs. Sathi Nair, the then Joint Secretary of respondent No. 1 as its Chairperson with two consumer activists and one representative of Directorate of Advertising & Visual Publicity ( for short DAVP), respondent No. 2 as its members. It is next submitted that idea of forming the Committee has been to ensure that the scripts are considered by the persons having special knowledge in the field of consumer awareness and the production work of the Radio programme is to be given to those producers who are competent, experienced and can provide quality production work. The relevant facts which arise for consideration are stated in paragraph 5 of the writ petition which reads as below :

'(a) The petitioner has been in the field of Audio and Video Programme production for almost two decades and during this period has successfully undertaken various audio and visual assignments for reputed Government and private undertakings such as India Trade Promotion Organisation, Indian Air Force, Northern Railways, Ministry of Information and Broadcasting, Citi Bank. A list naming some of the reputed clients of the petitioner for whom the petitioner had handled audio and visual assignments is annexed hereto as Annexure P-2. In 1996 the petitioner was awarded the work of production of 13 episodes Seriall for Doordarshan III titled 'The Power of You' on consumer awareness. The petitioner has also produced more than 90 Radio Programmes of social welfare involving respondent No. 1 and Ministry of Welfare.

It may be mentioned that the managing partner of the petitioner Ms. Komal G.B. Singh has over 20 years of experience in the field of Electronic Media including production and presentation of innumerable audio and video programmes. She has produced documentaries on handicapped children, anti smoking and women approved by Doordarshan and Films Division. Besides, she has diverse experience of Doordarshan and All India Radio in her personal capacity as News reader for over 12 years, as commentator and compare of National, International and Historic events. A copy of Curriculum Vitae of Ms. Komal G.B. Singh showing her achievements and experience in the field of electronic media is being annexed hereto as Annexure P-3 (Collectively).

(b) That in 1991 respondent No. 2 decided to resume a 10 minutes weekly Radio Sponsored Programme 'Apne Adhikar' (Radio Programme) in a new format on different themes of consumer protection and awareness. The petitioner being one of the reputed producers already on the panel of Respondent No. 2 since 1978 was asked by respondent No. 1 vide letter dated 24.9.1991 to submit a new format for the programme, a true copy whereof is annexed hereto as Annexure P-4.

The petitioner in response to the aforesaid letter of respondent No. 1 submitted their script and recording to respondent No. 1. It may be stated here that 6/7 other producers were also invited by the respondent No. 1 for giving their respective scripts and recordings for the programme.

(c) That vide letter dated 24.4.1992 from respondent No. 2 the petitioner was awarded the assignment for production of the programme. Copy of the aforesaid letter dated 24.4.1992 is annexed hereto as Annexure P-5.

(d) That the petitioner successfully undertook the production of the programme and with the vast experience of its Managing Partner Ms. Komal G.B. Singh in the field of Audio and Visual Assignments and full dedication and hard work, the programme started getting overwhelming response from all corners of the country particularly from the rural and interior parts of the country through letters from the listeners and consumers appreciating the programme which made them to know and understand their rights as consumers as well as about the remedies available to them in case of violation of any such rights. In this respect, during 1994-95

about 40,000 such letters were received by the respondents and the petitioner from different listeners and consumers. The success and popularity of the programme was acknowledged by the respondents themselves which is evident from the correspondence received by the petitioner from respondent 2. Copies of some such letters received by the petitioner from respondent No. 1 are being annexed hereto as Annexure P-6 (Collectively).

That in the month of October, 1993 respondent Nos. 1 and 2 decided to have a new format for the sponsored programme and for this the petitioner along with 5/6 other producers were asked to submit their new format and recordings based on any new ideas.

(e) That the petitioner in December, 1993 submitted scripts of new format and recording to respondents No. 2 which was based on real life incidents. True copy of letter dated 17th December, 1993 from the petitioner to respondent No. 2 is annexed hereto as Annexure P-7. It may be stated here that the petitioner, keeping in view the arbitrariness and favouritism prevailing in the office of respondent No. 1, was not sure that the format submitted by the petitioner would be at all forwarded to respondent No. 2. It was for this reason that the petitioner submitted the new format directly to respondent No. 2. However, subsequently, on being asked by respondent No. 2 to submit the format to respondent No. 1, the petitioner submitted the same to respondent No. 1 vide letter dated 18.1.1994 true copy whereof is annexed hereto as Annexure P-8.

(f) That vide letters dated 5.4.1995 and 9.5.1995 received from respondent No. 2 and 1 respectively, the petitioner was informed about the approval of their new format to be adopted for the programme. True copies of the above two letters are annexed hereto as Annexure P-9 (collectively).

(g) That pursuant to the approval of the petitioner's new format of the programme, it was decided by respondent No. 1 to broadcast the programme on new format with effect from August, 1995. The petitioner understands that the respondent Nos. 1 and 2 exchanged correspondence on the broadcasting schedule of new format of the programme. Petitioner also understands that the respondent No. 1 sometimes in August, 1995 reminded respondent No. 2 to give personal attention

in the matter and advice the concerned department to expedite the broadcasting of new format of the programme.

(h) That in August, 1995 the petitioner came to know from the reliable sources that there was a move on the part of some officials of respondent No. 1 and 2 to stop the programme. Regarding this mala fide move of the respondents, the petitioner apprised the then Secretary of respondent No. 2 vide her letter dated 31.8.1995 copy whereof is annexed hereto as Annexure P-10.

(i) That the petitioner's doubt about the abrupt stoppage of the programme came true as in September, 1995 respondent Nos. 1 and 2 decided to stop the programme as soon as possible. As per this abrupt and sudden decision, the Radio Programme was stopped in December, 1995. It may be stated that up to December, 1995 the broadcast of the Radio Programme continued on the basis of old format as the new approved format was not given effect by the respondent Nos. 1 and 2 despite approving the same. It is pertinent to mention here that till the last moment before the above arbitrary decision to discontinue the Radio Programme was taken, respondent Nos. 1 and 2 themselves were going ahead to start the programme on the new formats based on real life incidence. Copies of letters dated 20.6.1995, 17.7.1995 and 23.8.1995 written by respondent No. 1 are annexed hereto as Annexure P-11 (collectively). From the facts narrated herein after it would be clear that the above abrupt stoppage of the Radio programme was effected with the intention to award the production work of the Radio programme to some one else at a later stage.

(j). That the petitioner represented against the arbitrary decision of respondents Nos. 1 and 2 by writing letters dated 19.9.1995 and 21.11.1995 true copies whereof are annexed hereto as Annexure P-12 (collectively).

(k) That the petitioner wrote various letters to respondent Nos. 1 and 2 for reviving the programme in new format which was approved in 1995, but not given effect by the said respondents for unknown reasons. Copies of some of the letters written by petitioner are annexed hereto as Annexure P-13 (collectively).

(l) That on receiving request for revival of Radio programme respondent No. 1 in the month of May, 1996 asked respondent No. 2 to give their comments before any decision is taken to resume the programme. Accordingly respondent No. 2 in July, 1996 sent its comments to respondent No. 1 stating that the programme was proving very popular which was evident from thousand of letters received by petitioner as the Executive Producer.

(m) That in September, 1996 in response to the request of the petitioner to resume the programme, respondent No. 2 vide its letter dated 4.9.1996 informed the petitioner that respondent No. 2 would be ready to produce the programme and AIR will have no difficulty in allotting the broadcast time if the client department i.e. respondent No. 1 approaches respondent No. 2 with funds and job order to restart the programme. A true copy of the said letter is annexed hereto as Annexure P-14.

(n) That the petitioner vide their letters dated 2.7.1997 and 22.7.1997 addressed to respondent No. 1 asked that in all fairness and professionalism the programme be awarded to the petitioner as the facts regarding selection of the petitioner as Executive Producer in 1991 and later on the acceptance of their new format in 1995 could not be ignored.

(o) That the petitioner was doubtful about the fair play and treatment by respondent Nos. 1 and 2 specially where the officials tried to favor their own person at the cost of quality work and other competitors who have more experience and expertise in the relevant field.

3. The petitioner, it is alleged, came to know in the end of August, 1997 that seven producers were called by respondents 1 and 2 and were briefed regarding the scripts to be submitted by them for taking final decision in the matter of selection of the script for Radio programme on its resumption. The petitioner was not called along with other producers and she protested vide letter dated September 2, 1997 addressed to respondents 1 and 2 and represented against their alleged arbitrary and illegal action. Consequently, the petitioner also approached this Court by filling Civil Writ Petition No. 3784/1997 which was disposed of by Arun Kumar, J. on September 30, 1997 and the Court gave the direction that respondents shall consider the petitioner for the programme in question along with other parties

under consideration. The petitioner was thereafter invited for submission of scripts and recordings and Ms. Komal G.B. Singh, Managing partner of the petitioner attended the briefing on November 18, 1997 in the office of respondent No. 2. The petitioner on November 28, 1997 further submitted two scripts and audio recordings to respondent No. 2. along with the letter of the same date. The petitioner came to know on December 12, 1997 that respondents 1 and 2 have approved the scripts of respondent No. 3 for the Radio Sponsored programme and rejected the scripts of the petitioner including the one which was duly approved by the said respondents in 1995. The petitioner presently is aggrieved and has challenged the action of respondents 1 and 2 as it is contended that respondent No. 3 is professionally incompetent for the assignment in question and lacks knowledge in the field of consumer awareness. The averments in this regard are contained in paragraphs 14 & 15 of the writ petition which read as below :

'14. That in the facts and circumstances narrated above, the petitioner submits that in the event of a committee of independent and competent subject experts, if constituted by respondent No. 1 for selecting the best script, respondent No. 3's script would never have been approved by such committee and at the same time the petitioner's script would have had every chance of approval by such committee. It seems that this has not been done this time so as to favor respondent No. 3 and keep the petitioner away.

Further, the Respondents Nos. 1 and 2 for the first time have given the production assignment to a producer whose operations including studio are based outside Delhi i.e. in Mumbai. It is submitted that keeping in view the nature of the work involved in the production of episodes of the programme and the frequency of interaction with the Respondent No. 1 in respect of the modifications and changes, if any, required in the episodes it is logistically convenient and viable for respondent Nos. 1 and 2 to have the producer having their studio in Delhi. For last so many years, the producers of the programmes have always been those who had their respective studios in Delhi only. In view of the circumstances in which the scripts of respondent No. 3 have been extraneous reasons chosen producer whose main operations as well as studios are located in Mumbai.

15. That apart from what has been stated above, the petitioner has also learnt that respondent No. 2 while forwarding the 8 scripts gave their own ranking according to which the script of respondent No. 3 was placed at No. 1, whereas the petitioner's script was placed at No. 6. In view of the above referred flaws and errors in the scripts of respondent No. 3, ranking done by respondent No. 2 is arbitrary and amounts to favouritism and biased assessment. Not, only this, three of the scripts which, according to the information available with the petitioner, were ranked above the petitioner's script had their title other than 'APNE ADHIKAR' and as such were liable to be rejected on this ground alone because right from inception i.e. from the time when Respondent No. 1 communicated its decision to respondent No. 2 to restart the programme, its title has been mentioned as 'APNE ADHIKAR'.

4. Counter affidavit has been filed on behalf of respondent No. 2 wherein it is stated in the preliminary submissions as below :

'The petitioner filed a CWP No. 3784 of 1997 against the answering respondents for not considering the petitioner while selecting the Executive Producers of the Radio Programme on Rights of a Consumer called 'Apne Adhikar'.

The respondent vide their counter affidavit stated that the petitioner was selected as executive Producer for the programmed in 1992 and continued to be a producer till 1995. The respondent 2, on an intimation by Respondent 1 on 7.9.1995 of their decision to discontinue the programme informed the petitioner accordingly. In 1997, Respondent 1 decided to re-launch the programme and accordingly 5-7 Producers were short listed for the purpose. The petitioners filed the above said writ challenging the same. This Hon'ble Court was pleased to dispose of the writ petition on 30.9.1997 with a direction to the respondents to consider the petitioner Along with other Producers.

The petitioner on being asked by respondent 2, submitted its format and recording after about 1 month from the date of the judgment. The Petitioner submitted the very format which was submitted by it in January, 1994. The Petitioner was considered Along with 7 other contenders for the said programme.

The petitioner was asked to attend briefing for the sponsored programme on 13.11.1997 as per the directions of Hon'ble High Court. However, it did not do so. The Petitioner was again given a chance to attend a briefing on 17.11.1997 which was postponed till 18.11.1997 on its request. The petitioner asked for 10 more days to submit the format. In this whole process, the selection procedure was delayed by more than two weeks. After causing this inordinate delay, the petitioner, chose to submit the old format it had submitted in January, 1994 for which it would have actually taken no time to produce.

A six Member Committee, consisting of 5 Members from Directorate of Advertising & Visual Publicity and one from All India Radio (AIR), which included four Joint Directors (i.e. of the rank of Deputy Secretary and above) evaluated thirteen formats (5 Producers submitted 2 formats each while 3 producers one format each). These formats were evaluated on the basis of various criteria like technical quality, quality of the language used, capacity to hold attention & contents of the programme. Each member simultaneously marked each format on a scale of 40. These marks were then tabulated and gradings done. In all 8 formats were considered i.e. the best format of each of 8 producers in the competition. The format of the petitioner was ranked 6th out of the 8 formats considered.

All Eight formats in their order of grading/merit were then forwarded to Respondent 1 for final approval. Format of Super Ads, i.e. Respondent 3 in the present case, was selected by Respondent 1 also.

Accordingly Super Ads. was given the job order for producing 14 episodes for the current financial year by Respondent No. 2 on 22.12.1997.

Production of seven episodes out of 14 is already complete, of which Four were broadcast on 27.12.1997, 3.1.1998, 10.1.1998 & 17.1.1998 respectively. The scripts of remaining 7 episodes are in process of approval. Respondent 1 has executed a contract with AIR for booking time every Saturday afternoon for broadcast of the programme from 27.12.1997 onwards. Payment to the tune of nearly 6 lakhs has already been made to AIR as per terms & condition of the said contract.

Moreover job orders for productions of 14 episodes for the current financial year have been issued by the answering respondent to Respondent 3 (Super Ads.). The answering respondents are thereby committed to pay the production charges to the tune of Rs. 11 lakhs to Super Ads.

The formats having been evaluated on the basis of various criteria like quality of the language used, technical quality, capacity to hold attention and contents. The petitioner was placed on 6th position whereas Super Ads was selected as the most deserving most and was finally successful in being selected as the executive producer of the said programme.

5. Counter affidavit has also been filed by respondent No. 1 wherein it is reiterated that the scripts of the petitioner were duly considered in terms of the directions as contained in the judgment of this Court in CWP No. 3784/97. The following facts are stated in the affidavit :

'DAVP, the respondent No. 2 sent the scripts and the cassettes of formats of programme to the answering respondent without disclosing the name of the producers along with their gradings. Only script numbers were given on them. The Joint Secretary, the Dy. Secretary and the Under Secretary of the answering Ministry dealing with the consumer protection work listened and evaluated all the eight formats and observed that the gradings given by the DAVP were appropriate and in order. The format No. 13 which had been graded No. 1 by DAVP was simple, attractive and the subject was interestingly dealt with. The competent authority i.e. Secretary, Department of Consumer Affairs also listened to the formats and approved format No. 13 of Super Ads.

The approval of the answering respondent for format No.13 was conveyed to DAVP vide a letter on 12.12.1997 with a request to direct the producer to see the officer concerned in the Department so that the programme can be prepared and sent to the All India Radio, Mumbai in time as the time had already been booked from 27th December, 1997 onwards for broadcasting.

Here it may be mentioned that the format of the programme was not changed at all. However, after editing the script, the producer was asked to make few changes

like change in the voice in the script to make it more effective. The answering respondent is competent and well within its rights to edit the scripts and to make required changes in them to make a programme interesting. This practice was followed earlier also when the petitioner was the producer during 1992-95'.

6. The charge of deliberately leaving out the petitioner was denied and it was stated that a conscious decision was taken to involve DAVP to scrutinise the formats keeping in view their expertise. As such no separate committee was considered necessary to consider the formats again. However, all the formats were gone through by the concerned officials of respondent No. 1 and gradings given by DAVP were found to be appropriate and in order.

7. The learned counsel for the petitioner has contended that the procedure adopted by respondent Nos. 1 and 2 for selecting the Executive Producer is clearly arbitrary and discriminatory and is a clear departure from the earlier procedure adopted in 1991 and 1994 respectively. There is no procedure which is laid down as to how and on what basis the procedures are to be invited/short listed by DAVP and the selection and short-listing is left at the sole discretion of officials of DAVP without any guide-lines to be followed for doing any shortlisting. It is next submitted that no Committee of Experts/persons having knowledge in the relevant fields/subjects was formed by the Ministry of Civil Supplies for evaluating the scripts submitted by various producers including the petitioner whereas in 1991 and 1994 the said Ministry constituted a Committee of such Experts and of persons having competence and requisite knowledge in the relevant subject. The decision of the respondents is, therefore, arbitrary, discriminatory and it is open for this Court to exercise power of judicial review. Reference is made to the judgments reported as A.K. Kraipak and others Vs . Union of India and others : [1970]1SCR457 ; M/s Motilal Padampat Sugar Mills Co. Ltd. Vs . The State of Uttar Pradesh and others : [1979]118ITR326(SC) ; Fasih Chaudhary Vs . Director General, Doordarshan and others : AIR 1989 SC157 ; Dr. Triloki Nath Singh Vs . Dr. Bhagwan Din Misra and others : [1990]3SCR727 ; Tata Cellular Vs . Union of India : AIR 1996 SC11 and TVL Sundaram GranitesVs. Imperial Granites Ltd. & Ors. : AIR 1999 SC3835 .

8. Paragraph 14 of the judgment as reported in A.K. Kraipak and others (supra) may be reproduced as under :

'14. The Court of Appeal of New Zealand has held that the power to make a zoning order under Dairy Factory Supply Regulation 1936 has to be exercised judicially, see *New Zealand and Dairy Board v. Okita Cooperative Dairy Co. Ltd.* 1953 NZLR 366. This Court in *Purtabpore Co. Ltd. v. Cane Commissioner of Bihar*, Civil Appeal No. 1464 of 1968, D/ 21.11.1968 (SC) held that the power to alter the area reserved under the Sugar-Cane (Control) Order, 1966 is a quasi-judicial power. With the increase of the power of the administrative bodies it has become necessary to provide guidelines for the just exercise of their power. To prevent the abuse of that power and to see that it does not become a new despotism, Courts are gradually evolving the principles to be observed while exercising such powers. In matters like these public good is not advanced by a rigid adherence to precedents. New problems call for new solutions. It is neither possible nor desirable to fix the limits of a quasi-judicial power. But for the purpose of the present case we shall assume that the power exercised by the selection board was an administrative power and test the validity of the impugned selections on that basis.'

9. In *Fasih Chaudhary* (supra) paragraphs 5 and 6 read as under :

'5. It is well-settled that there should be fair play in action in a situation like the present one, as was observed by this Court in *Ram and Shyam Co. Vs . State of Haryana*, : AIR 1985 SC1147 . It is also wellsettled that the authorities like the Doordarshan should act fairly and their action should be legitimate and fair and transaction should be without any aversion, malice or affection. Nothing should be done which gives the impression of favouritism or nepotism. See the observations of this Court in *Haji T.M. Hassan Rawther Vs . Kerala Financial Corpn.* : [1988]1SCR1079 .

6. While, as mentioned herein-before, fair play in action in matters like the present one is an essential requirement, similarly, however, 'free-play in the joints, is also a necessary concomitant for an administrative body functioning in an administrative sphere or quasi administrative sphere as the present one. Judged from that stand-

point of view, though all the proposals might not have been considered strictly in accordance with order of precedence, it appears that these were considered fairly, reasonably, objectively and without any malice or ill-will.'

In *Tata Cellular (supra)* the principles as enunciated in paragraphs 70, 71, 74 and 75 read as below :

'70. It cannot be denied that the principles of judicial review would apply to the exercises of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitation in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.'

71. Judicial quest in administrative matters has been to find the right balance, between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy; thus they are not essentially justiciable and the need to remedy any unfairness. Such an unfairness is set right by judicial review.

74. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself.

75. In *Chief Constable of the North Wales Police v. Evans* Lord Brightman said:

'Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.'

Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power.'

In the same case Lord Hailsham commented on the purpose of the remedy by way of judicial review under RSC, Ord. 53 in the following terms :

'This remedy, vastly increased in extent, and rendered, over a long period in recent years, of infinitely more convenient access than that provided by the old prerogative writs and actions for a declaration, is intended to protect the individual against the abuse of power by a wide range of authorities, judicial, quasijudicial, and, as would originally have been thought when I first practiced at the Bar, administrative. It is not intended to take away from those authorities the powers and discretions properly vested in them by law and to substitute the courts as the bodies making the decisions. It is intended to see that the relevant authorities use their powers in a proper manner (p. 1160).'

In R.V. Panel on Take-over and Mergers, ex. P Datafin plc, Sir John Donaldson, M.R. commented ;

'An application for judicial review is not an appeal'

In *Longhorn plc v. Secretary of State for Trade and Industry*, Lord Keith said :

'Judicial review is a protection and not a weapon.'

It is thus different from an appeal. When hearing an appeal the Court is concerned with the merits of the decision under appeal. In *Amin, Re*, Lord Fraser observed that :

'Judicial review is concerned not with the merits of a decision but with the manner in which the decision was made..... Judicial review is entirely different from an ordinary appeal. It is made effective by the court quashing the administrative decision without substituting its own decision, and is to be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for

that of the administrative officer.'

10. Similarly the following passage from the judgment of the Supreme Court as reported in TVL Sundaram Granites (supra) may be referred to as below :

'7. The position is well settled by a catena of decisions of this Court that while grant of largess is at the discretion of the State Government, its action should be open, fair, honest and completely above board. In the impugned judgment the High Court has directed the State Government to consider the matter of grant of lease for quarrying granite in the area in question afresh after inviting fresh applications. As such no serious prejudice has been caused to the appellant by such direction. therefore, we are not persuaded to interfere with the impugned judgment in exercise of jurisdiction under Article 136 of the Constitution.'

11. The learned counsel for the respondents has, however, contended that the decision taken in the matter is fair and open. The script of the petitioner was duly considered at two levels by the Committee formulated by DAVP as well as by the Government and there has been proper application of mind in compliance with the judgment of this Court in CWP No. 3784/1997 as well as on the basis of the settled law. The methodology of consideration by the Committee is explained by the respondents in the following manner :

(a) DAVP constitutes an internal committee comprising of 6-7 officials and in certain cases an additional member from All India Radio is called. This Committee goes into various aspects of production including technical quality, ability to hold attention, quality of opening and closing jingles, quality of language used and contents etc. Thus, the script is not the only criteria which determines the quality of an audio sponsored programme. In the present case also a six member Committee was constituted consisting of 5 members from DAVP and one from AIR, which included four Joint Directors (i.e. of the rank of Deputy Secretary and above). This Committee evaluated 13 formats (5 producers submitted 2 formats each and 3 producers one format each) on the basis of the above mentioned factors. Each member of the Committee marked each format on a scale of 40. These marks were then tabulated and grading done. In all 8 formats were considered i.e. the best format of each of the 8 producers in the competition. The

format of the petitioner ranked 6th out of the 8 formats considered;

(b) The aforesaid gradings of the DAVP which are in a tabulated form are then sent to the client Ministry. These gradings are only recommendatory in nature and are subject to the final approval of the client Ministry and are not binding on it. The content part of the programme can also be modified at a later stage by the client Ministry who are also the subject experts. Thus factual inaccuracies, if any, are taken care of and corrected accordingly by the client Ministry before the script is finalised for broadcast. Moreover, the Ministry in absence of any guidelines or any laid down procedure is not bound to form a committee of outside experts. The Ministry itself consists of those very people who have the expertise to lay down policies for others to follow. In the present case also all the eight formats in their order of grading/merit were then forwarded to respondent No.1 for final approval without disclosing the name of the procedures. Only script was given to them and the names of the producers were not disclosed. The Joint Secretary, the Deputy Secretary and the Under Secretary of the answering Ministry dealing with the Consumer Protection work finalised and evaluated all the eight formats and observed that the gradings given by DAVP were appropriate and in order. The Competent Authority i.e. the Secretary, Department of Consumer Affairs also listened to the formats and approved format No. 13 of Super Ads (respondent No.3) which had been graded no.1 by the DAVP.

12. In the judgment reported as Home Communication Network Ltd. and another v. Union of India and others 1993 3 AD (Del) 1013 the Division Bench of this Court has examined the questions which are relevant for resolving the present controversy between the parties and paragraph 49 of this judgment may be reproduced as under :

'49. We do not think the petitioners are right when they contend that there should be an eligibility criteria or the credential of the applicant should be based on his proven track record. As Dr. Gupta described electronic media is under going a process of explosion. The respondents are right in their submission that it is difficult to lay down parameters of a track record. It is a new experiment. Guidelines have been laid. There are checks and controls. We also do not find

much difference between pre-selection and proven track record. The conditions in the present scheme are quite tough and respondents say only the best will be able to match any service. This is how the respondents put in :-

'An applicant is required to submit a substantial bank guarantee. He is required to make advance payments every week. The responsibility of exploitation of commercial time is entirely his own. He will have to attract sponsors and advertisers to cover his costs and the fees. A low grade or mediocre production will almost necessarily have poor viewership and will not be able to exploit the commercial time. Thus only attractive viewer acceptable programmes will survive. The Scheme will ensure good quality viewer acceptable programmes. The viewer and viewer alone will be the ultimate judge. The method of selection is, it is respectfully submitted, reasonable.'

In short, the respondents contend it is a case of survival of the fittest with over 100 satellite channels crowding the Indian Kies in very near future. Respondents are right when they say that howsoever chosen, a tremendous amount of flexibility should be available to a licensee. The programmes need not be based on the personal artistic talents of the licensee. The licensee can engage director, actors, actresses and programme presenters. Such persons are not likely to be permanent employees of any person or organisation. He can engage another person to make the programme for him or acquire broadcasting rights over productions made by others in the country or abroad. The contents of the programmes can be widely different such as cartoons, Serials, quiz programmes and competitions, magic shows, circus events, fashion shows, interviews, games and so on. The possibilities are limitless and imagination is the only limit. It may be pointless to speak about past experience of the licensee in this context. It does not need a doctor to set up a hospital a teacher to set up a school or an engineer to set up an industry. It is very difficult in this situations to apply any objective test to determine an acceptable applicant and eliminate one who is not. Serious differences of opinion are likely and any choice made by any person is vulnerable to allegations of favour. Perceptions of what is good entertainment is subjective and each of us have our own views. Any choice at the threshold on the basis of past performance has the tendency to create monopolies and to inhibit new

entrants in the field. Stand of the respondents is correct that to pre-view, understand and decide the quality of programme would be a gigantic task and difficult to perform.'

13. This Court in *Raghuvar (India) Ltd., v. Union of India* 1997 4 AD (Del) 425 has held that when a conscious decision has been taken after due application of mind which is not based on extraneous consideration, it cannot be termed as arbitrary, discriminatory and violative of the principles as enshrined in Article 14 of the [Constitution of India](#).

14. The Petitioner was duly considered by the Committee as formulated by DAVP along with other eligible producers. The formation of the Committee cannot be challenged as it will not be open for this Court to assess the merits of each and every member of the Committee. Thereafter, the Ministry re-examined the matter and observed that grading and assessment of DAVP were appropriate and as a consequence approved the findings. The petitioner has not placed any material on record to show that the findings so recorded were based on extraneous consideration or the petitioner was excluded on arbitrary and discriminatory grounds. The law on the subject has been discussed and only in cases where the decision is arbitrary, irrational and violative of rules of natural justice that this Court can interfere in exercise of powers under Article 226 of the [Constitution of India](#). The record has also been produced in Court which does not indicate that the decision of DAVP as upheld by the Ministry is based on procedural impropriety or is an excess of powers as vested in the Authorities.

15. The present petition is, therefore, devoid of merit and is dismissed. There will be no order as to costs.