

BENNETT RATHNAYAKE
v.
THE SRI LANKA RUPAVAHINI CORPORATION AND OTHERS

SUPREME COURT
FERNANDO, J.,
WADUGODAPITIYA, J. AND
GUNAWARDANA, J.
S.C. APPLICATION NO. (FR) 867/96
FEBRUARY 18, 25 AND MAY 26 1998

Fundamental rights – Rejection of telefilm offered for telecasting – Absence of fair and objective procedure for selecting films – Article 12 (1) of the Constitution.

The petitioner produced a Sinhala telefilm entitled "Makara Vijithaya" at a cost, he said, of Rs. 2.3 million. The 1st respondent Corporation refused to telecast the petitioner's telefilm during "prime time" for telefilms of that type, viz between 8.30 pm and 9.00 pm on Mondays, Tuesdays and Thursdays. The telefilm was reviewed on three occasions by different boards. On each occasion the decision was adverse to the petitioner. But he was not told who the members of the board were, how they had been appointed, what procedure they would follow, what criteria they would apply, what their views were about the film and the reasons for the decision.

Held:

The statutory powers which the 1st respondent has are not absolute, unfettered, or unreviewable; they are held in trust for the benefit of the public, and they cannot be exercised arbitrarily or capriciously or unreasonably. The airwaves are public property and the State is under an obligation to ensure that they are used for the benefit of the public, for which purpose the 1st respondent was obliged to establish and implement a fair and objective procedure to determine whether a telefilm submitted to it was suitable for screening, and if so the time of screening. This obligation has been violated in breach of the petitioner's fundamental rights under Article 12 (1) of the Constitution.

Cases referred to:

1. *Red Lion Broadcasting Co. v. FCC* (1969) 395 US 367.
2. *Secretary, Ministry of Information v. Cricket Association of Bengal AIR 1995 SC 1236, 1282, 1306.*

3. *Fernando v. SLBC* (1996) 1 Sri L.R. 157.

APPLICATION for relief for infringement of fundamental rights.

Sanjeewa Jayawardena for petitioner.

Kolitha Dharmawardena, DSG with *N. Pulle*, SC for respondent.

Cur. adv. vult.

June 11, 1998.

FERNANDO, J.

The petitioner produced a Sinhala telefilm entitled "Makara Vijithaya", consisting of 22 episodes, at a cost, he says, of Rs. 2.3 million. He complains that the refusal by the 1st respondent, the Sri Lanka Rupavahini Corporation, to telecast his telefilm during "prime time" for telefilms of that type (which is between 8.30 pm and 9.00 pm on Mondays, Tuesdays, and Thursdays) was in violation of his fundamental rights under Articles 12 (1) and 14 (1) (a).

The relief which the petitioner asked for in his petition included declarations that the refusal of prime time for his telefilm was a nullity, and that the Board of the 1st respondent had no right to decide on its suitability for telecast during prime time, as well as a direction that it be telecast on prime time. However, learned counsel for the petitioner, in the course of his oral submissions, acknowledged that this would require the Court to determine, on the merits, whether the telefilm was suitable for telecast during prime time: that is not the function of this Court. He asked, instead, for a declaration that the procedure leading up to the refusal of prime time was in violation of Article 12 (1), for want of a fair and objective selection procedure, including criteria announced in advance, for compensation, and for directions to the 1st respondent to prescribe and publish the criteria for selection of teledramas for telecast during prime time, and to set up an independent and competent review panel to determine whether telefilms (including "Makara Vijithaya") met those criteria.

It is not in dispute that the petitioner had been producing telefilms since 1985; that the 1st respondent had accepted and telecast five telefilms produced by him between 1986 and 1995, two of which had over fifteen episodes; that he had the backing of a suitable sponsor for "Makara Vijithaya", who would meet the 1st respondent's fees and charges for telecast during prime time; and that on 3.1.96 the petitioner had duly submitted that telefilm for review, paying the 1st respondent the required review fee of Rs. 500 per episode.

The telefilm was first reviewed on or about 16.1.96, by three persons ("the preview board"). According to the affidavit dated 26.8.97 of the 2nd respondent, the Director-General of the 1st respondent, the "preview board" for a teledrama consists of three persons, and is appointed by the Board of Directors of the 1st respondent, "from among University lecturers, artists, dramatists, and musicians, etc."; he did not say who selected the three persons who constituted the preview board for "Makara Vijithaya": whether it was the Board or some one else. The petitioner was not officially informed of the result; and he says that on 23.1.96 he asked the 13th respondent, the Director (Programs), who then called for the file; and it transpired that the telefilm had been rejected for telecast unless edited.

The petitioner submitted an appeal to the 13th respondent the very same day. The telefilm was thereupon submitted for review to "the appeal board", consisting of another three persons, who should have been named, according to the 2nd respondent, by the Director-General. Here again he did not say who had named them. By letter dated 29.1.96, the 13th respondent informed the petitioner that it had been approved for telecast outside prime time.

By letter dated 31.1.96 the petitioner again appealed, this time to the 2nd respondent, the Director-General. Not having received a reply, he complained to the Telemakers' Guild – an association of telefilm producers formed in December, 1993. Eighteen out of the twenty-one members of the executive committee viewed the telefilm, and agreed that there was no reason to disallow it. By letter dated 25.2.96 the Guild protested to the 8th respondent, the Chairman, stating that after two long discussions (obviously, those of 30.8.95 and 18.9.95, to which

I will refer later) agreement had been reached as to the basis on which the suitability of a telefilm should be determined, and that the rejection of "Makara Vijithaya" was unjust and unreasonable. After several phone calls to the 13th respondent, says the petitioner, the 13th respondent told him, on 20.3.96, that the telefilm had not yet been submitted for review to a higher body. He then met the 2nd respondent, who said he had no time to speak to the petitioner, whereupon the petitioner immediately wrote him a letter dated 20.3.96 complaining of shabby treatment. By letter P21 dated 22.3.96, the 13th respondent informed the petitioner that "the higher appeal board" had approved the telefilm for telecast outside prime time. It is the respondents' case that a panel of two persons, consisting of the 5th respondent, a director of the 1st respondent, and the 6th respondent, Mr. EMG Edirisinghe, had viewed the telefilm on or about 9.3.96, but the 2nd respondent did not say who had appointed them.

In all three instances, the petitioner had not been told who the members of the board were, how they had been appointed, what procedure they would follow, what criteria they would apply, what their views were about "Makara Vijithaya", and the reasons for their decision.

When he received P21 of 22.3.96, the petitioner wrote three letters, all dated 25.3.96. The first was P24 to the Minister of Media and Tourism complaining that he had been unfairly treated by the 1st respondent. He said that about one week thereafter – probably after the 2nd respondent had become aware that he had complained to the Minister – the 2nd respondent sent him P25 dated 26.3.96, claiming that the usual procedure was for a three-tiered process of review: review (preview?) board, appeal board, and higher appeal board; that *the Telemakers' Guild had agreed to this*; and that *persons nominated by the Guild had also been appointed to those boards*. The Secretary to the Ministry by letter dated 30.4.96 called for a full report from the 8th respondent. No report was sent.

The second was P22 to the 2nd respondent asking for the reasons for refusing prime time for "Makara Vijithaya". It was only six weeks later – after the Secretary to the Ministry had called for a full report – that the petitioner received a belated reply from the 2nd

respondent giving reasons. The petitioner's averment that that reply had been antedated to 8.4.96 and was received only on 15.5.96 (in an envelope postmarked 13.5.96), was not denied by the 2nd respondent in his affidavit.

The third was P23 to the 13th respondent asking him to specify the time-belt allotted for telecast of "Makara Vijithaya". That was never done, despite a reminder on 6.5.96.

In support of his affidavit, the 2nd respondent produced a memorandum (2R2) dated 4.9.95 from the Secretary of the 1st respondent Board to the Deputy Director-General, General Programs (DDG (GP)), which reproduced the following extract from the minutes of the Board meeting of 18.8.95:

" . . . It is stated [in the DDG (GP)'s memorandum] that at present these teledramas are previewed by a panel of three members from the preview board in the first instance, and if rejected the producer can appeal . . . It is then previewed by a separate panel of three members. It has been reported that . . . [if again rejected] some producers thereafter seek . . . to bring pressure on the SLRC officials to accept the teledrama for telecast . . . the DDG (GP) has proposed appointing a Supreme Appeal Board to make a final decision.

The Corporation . . . decided that each teledrama brought by outside producers should be previewed as follows:

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|--|--|
| In the first instance: | A panel of three members from the Preview Board, nominated by the DDG (GP) |
| If an appeal is made by the producer: | A further panel of three members from the Preview Board, <i>nominated by the DG</i> |
| If a further appeal is made by the producer: | The Members of Corporation reserve the right to appoint a third panel for a final decision if it feels necessary only. |

Members for this panel *will be appointed by the Corporation* and include a Member of the Corporation."

There is a handwritten minute on 2R2 the significance of which became clear only later:

"DDG (GP)

This decision has to be reviewed according to the discussions we had with 'TELENISA'."

"TELE NI SA" is the English transliteration of the acronym for the name of the Guild in Sinhala.

The 2nd respondent did not produce the Board minute and "the DDG (GP)'s memorandum".

As already noted, no report was sent to the Secretary. The Telemakers' Guild then wrote to the Minister on 7.6.96, whereupon, the petitioner says, "a certain Mrs. Sumana Perera telephoned him and asked [for] another copy of Makara Vijithaya to be viewed by Ministry officials designated by the Hon. Minister"; he complied. The petitioner sent a letter of demand to the 1st respondent which, he says, he withdrew when the Secretary informed him that it was an impediment to the Ministry taking action. Thereafter, the Secretary informed him that:

"the Hon. Minister had named three officers to view MAKARA VIJITHAYA and to forward their recommendations. This the Rupavahini authorities had however objected to.

The Hon. Minister had then named 10 persons and had requested the Rupavahini authorities to select three from among themselves and allow them to view MAKARA VIJITHAYA and make their recommendations. This too had been resisted by the Rupavahini authorities and it had counter-offered to have the film viewed by its Board of Directors to which suggestion the Hon. Minister had finally agreed and conveyed his agreement on 16.8.96 [by P29]."

In his affidavit the 2nd respondent denied those averments. He made no mention of any Ministerial proposals, and did not produce the relevant correspondence. He only produced the 8th respondent's letter dated 9.8.96 to the Secretary, which said that it was better if the final decision was taken by the Board of the 1st respondent. However, that letter made reference to the "additional names suggested by the Minister", and thus supported the petitioner's version.

But even the Minister's letter of 16.8.96 did not result in prompt action. The petitioner again complained to the Minister on 1.10.96; that complaint was forwarded to the 8th respondent, the Chairman, on 9.10.96. It was only then that the Chairman submitted a report dated 12.10.96 stating that the telefilm had been viewed by five out of the seven members of the Board, who were unanimously of the view that "Makara Vijithaya" was *not suitable* for telecast *at any time* whatsoever. That was not copied to the petitioner, and was only produced in these proceedings.

By letter dated 1.11.96 the Secretary informed the petitioner that after viewing the telefilm the Board of Directors had submitted a report to the Minister that the telefilm *was suitable* for telecast *outside prime time*.

No explanation has been offered for this discrepancy between the report and the Secretary's letter.

Another curious circumstance is that the 5th respondent, who had previously concluded (as a member of the higher appeal board) that the telefilm could be telecast *outside* prime time, changed his mind when he viewed it in the company of his fellow-Board members. For that he has offered no explanation up to now.

During the initial stages of the hearing, the learned Deputy Solicitor-General submitted that although the Telemakers' Guild had *proposed* (in the course of the two discussions held on 30.8.95 and 18.9.95) that their nominees should be appointed to one or another of the review boards, yet the 1st respondent had not *agreed*. Accordingly, he submitted, their nominees had not been appointed to any of the three review boards.

In the course of the hearing on the second day (24.2.98), it appeared that there were serious inconsistencies, if not contradictions, in the respondents' position, as to several issues:

1. Whether there had been any agreement with the Telemakers' Guild as to the procedure for review of telefilms, and particularly as to Guild representation on any review body; and, if so, whether such agreement had been approved by the Board of the 1st respondent;
2. The review procedure established by the 1st respondent;
3. Whether there had been any breach of such agreement (if any) and/or of such established procedure, in relation to 'Makara Vijithaya';
4. Whether the Minister had made proposals as alleged by the petitioner, and if so whether the Board had considered them.

It appeared to us that the 1st respondent, its Chairman and Directors, and the 2nd respondent had not made a full and accurate disclosure of the facts and the documents relevant to those issues. Accordingly, on 9.3.98 the registrar communicated our order to the 1st respondent to produce the following documents:

- (i) All Board minutes and Board papers pertaining to (a) the applications and appeals made by the petitioner for the selection of the telefilm "Makara Vijithaya" for telecast, (b) the appointment of panels for review of that telefilm, and (c) the decisions taken by those panels.
- (ii) All letters of appointment issued to (a) the members of the "Preview Board" referred to in the Board minute of 18.8.95, and (b) to the members of the three panels which reviewed "Makara Vijithaya".
- (iii) All Board minutes and Board papers pertaining to (a) the discussions held on 30.8.95 and 18.9.95 between the SLRC

and the Telemakers' Guild as to the procedure for the review and selection of telefilms for telecast, and (b) the procedures laid down for the selection of telefilms for telecast. (This should include Memorandum of DDG (GP), and Board minute of 18.8.95.)

- (iv) The minutes of the discussion held on held on 18.9.95.
- (v) All Board minutes and Board papers pertaining to (a), the correspondence with the Minister of Media & Tourism regarding the telecast of that telefilm, and (b) the decision that it should be viewed by all the members of the Board, as well as the decision of the Board taken after such viewing.
- (vi) All correspondence with the Ministry of Media and Tourism regarding the said telefilm during the period March to November, 1996 (Ministry reference MTA/M/RC and MTA/M/RC/52).

The respondents' registered Attorney-at-law, by motion dated 26.3.98, tendered the "available documents". Only two Board minutes were furnished: Minute No. 528.03.01 of 13.9.96 (which recorded that the 8th respondent informed the Corporation that he had been *directed* by the Minister that the members of the Corporation should preview the telefilm, and that the members had decided to accede to the request made by the Ministry), and Minute No. 529.06.06 (fixing the date for such preview). Three letters from the Ministry (two dated June, 1996 and one dated 31.7.96) were produced. It is clear from the third that there was another letter of the same date: but that was withheld. The Ministry letters refer to certain proposals made by the Minister, substantially as averred by the petitioner (although he was mistaken as to minor details). They show that the 2nd respondent's denial in that respect was false. Further, no Board minute or Board paper was produced to show that the Minister's proposals were ever put to the Board; they have been rejected by the 8th respondent, whose position (as stated in his letter dated 9.8.96) was that the final decision should be by the Board. In his reply dated 16.8.96 the Secretary merely informed the 8th respondent that the Minister *approved* that course

of action. The 8th respondent's statement to the Board that he had been *directed* by the Minister that the Board should preview the telefilm is therefore in the teeth of the documentary evidence.

The motion went on to state:

"We are unable to forward the following documents . . . as such documents [have] never been in existence . . ."

Among the documents listed as non-existent were Board minutes and Board papers pertaining to (a) the applications and appeals made by the petitioner for the selection of the telefilm "Makara Vijithaya" for telecast, (b) the appointment of panels for review of that telefilm, and (c) the discussions held on 30.8.95 and 18.9.95 between the SLRC and the Telemakers' Guild as to the procedure for the review and selection of telefilms for telecast.

Further, despite specific mention in 2R2 of "the DDG (GP)'s memorandum" and the Board minute of 18.8.95, no excuse was offered for the failure to produce them. The respondents seemed to want the Court to believe that they too were non-existent.

The motion purported to explain that the practice in appointing review panels was "contacting the members of the panel on telephone in order to schedule a date and a time convenient to members"; it was not explained *who* determined which members to contact, and in which order; and, in particular, which members to summon if perchance more than three were available. Time was requested to forward the letters of appointment issued to members of the preview board referred to in the Board minute of 18.8.95. The suggestion appeared to be that a pool of members was appointed by the Board, but panels were constituted most informally, leaving no trace of their appointment. Despite the lapse of two months before the next date of hearing, all that was forthcoming were two letters of appointment to the "supreme appeal board", issued on 2.8.96 and 1.11.96 – which were plainly irrelevant as they were issued *after* the dates material to this case.

At the resumed hearing on 26.5.98 we drew the attention of the learned Deputy Solicitor-General to the available evidence as to the agreed procedure for appointing panels: the 1st respondent's minutes of a discussion (held on 14.12.94) between the 8th respondent (and other officials) and the Telemakers' Guild, recorded an agreement that the three-member review board *would include one member from among four nominees of the Guild*; a letter dated 9.3.95 from the 13th respondent to the petitioner, conveying the decision of the review board regarding another telefilm, stated that it was an *independent* board; and the minutes of further discussions between the 8th respondent (and other officials) and the Telemakers' Guild, on 30.8.95 and 18.9.95 showed that the Guild had proposed that *instead of nominating representatives to the review board, it would nominate to the appeal board*. It is true that the Guild's minutes recorded agreement, while the 1st respondent's minutes showed only a proposal, but nevertheless both sets of minutes proceed on the basis that there had previously been agreement as to Guild representation on the review board. Both sets of minutes recorded the five names proposed by the Guild. We pointed out that since the 2nd respondent's letter P25 of 26.3.96 stated that persons nominated by the Guild had been on all the boards, the truth appeared to be that the two discussions did result in an agreement.

The learned Deputy Solicitor-General, who was obviously labouring under the disadvantage of incomplete instructions, made inconsistent submissions on that issue. First he tried to maintain that there was *no agreement* about nomination, but only a *proposal*. Faced with the agreement of 14.12.94 and the letter P25 of 26.3.96, he then argued that the statements and agreements by the Chairman and the Director-General did not reflect actual Corporation policy, and stated that in fact no Guild nominees were appointed to any of the boards. Later he argued that the agreement was to nominate to a *pool* from which the 1st respondent would appoint the *panels*, there being no assurance that a Guild nominee would be included in every panel. We pointed out that the "DDG (GP)'s memorandum" and the Board minute of 18.8.95 (both referred to in 2R2) would have resolved the issue beyond doubt. Finally, he submitted that even if a Guild nominee had been included in a panel of three, that would have made no difference as

the other two would have constituted a majority. That was tantamount to an admission that if there was no unanimity, those two would invariably agree with each other, and disagree with the Guild nominee! Comment as to a procedure whose result can be thus predicted is superfluous.

During the morning session on 26.5.98, the learned Deputy Solicitor-General requested a further opportunity to trace the missing documents, and to produce them during the afternoon session. At about 2.30 pm copies of two memoranda and several Board minutes were tendered. Those documents reveal the falsity of the respondents' position, but they also explain why they were suppressed.

The "DDG (GP)'s memorandum" was dated 17.8.95. It stated:

". . . we suggest that a supreme appeal board should be named consisting of one Corporation Board Member, *one member from TV Producers' Association*, and one member from SLRC Preview Panel . . ."

When the DDG (GP) received 2R2 of 4.9.95, the endorsement which I have quoted earlier was made. The further memorandum dated 15.9.95 which he then submitted was produced. That sought approval to appoint a "supreme appeal board", and *listed the same five names which the Telemakers' Guild had suggested on 30.8.95.*

The Board minutes of 17.11.95 were produced. The 5th, 7th, 8th, 9th, 10th and 12th respondents, and one other director who is not a respondent, were present. The following decision was taken in respect of the "supreme appeal board" :

". . . the list of names forwarded by the Tele-makers' Guild was tabled. Members nominated Prof. J. B. Dissanayake too as a panel member, and it was decided that for each teledrama that is forwarded to the supreme appeal board for a decision, *such appeal board will comprise two members from the following panel and one Member of the Corporation . . .* "

The five Guild nominees and Prof. J. B. Dissanayake were approved.

According to the Board minutes of 27.2.96, the Board purported to add four more names, without reference to the Guild; Mr. EMG Edirisinghe was one. Those minutes were confirmed on 8.3.96. The respondents did not produce any Board decision constituting the two-member panel for the "supreme appeal board" which dealt with "Makara Vijithaya"; however, on 9.3.96 Mr. EMG Edirisinghe participated as a member of that board. When asked who nominated that board, the learned Deputy Solicitor-General, after inquiring from Corporation officers present in Court, stated that it was a Deputy Director-General. If the petitioner's appeal of 31.1.96 had been taken up promptly, the board would have included two from the panel approved on 17.11.95. It is unfortunate, to put it mildly, that delaying consideration of the appeal until after 8.3.96, resulted in the exclusion of all six nominees approved on 17.11.95, and in the inclusion of another whose appointment was confirmed just the day before. The usurpation by an official of the Board's power of appointing the "supreme appeal board", and the resulting inclusion of someone put on the panel long after the appeal was filed, undermines the fairness and impartiality of the process.

The Board minutes of 18.8.95, 1.9.95 and 15.9.95 were also produced. These showed that the discussions with the Guild were considered by the Board with a view to implementation, and that DDG (GP) had submitted a memorandum containing the names proposed for the preview board – although the motion dated 26.3.98 stated that Board minutes pertaining to those subjects were non-existent. They also showed that prescribing criteria for selection was a matter under consideration by the Board, and have presumably been finalised by now.

No Board minute was produced to establish that the 8th respondent's report dated 12.10.96 was ever considered by the Board.

It has been necessary to refer to the facts in some detail as the 1st respondent and its directors and officials have throughout failed

to disclose the facts fully and accurately, in relation to the review of the petitioner's telefilm, the Ministerial proposals, the respondents' pleadings, and the order of this Court for the production of documents; and they persisted in misrepresenting facts and suppressing documents until it became clear that the Court would draw the appropriate presumptions. Their conduct resulted in the length and expense of these proceedings being increased. The question also arises whether the respondents' registered Attorney-at-law exercised due care and diligence – as, for instance, by calling for and checking at least the Minute books – before making the sweeping statement, likely to mislead the Court, that many of the documents called for had never been in existence.

I hold that there had been an agreement with the Telemakers' Guild; that had been considered and given effect to by the Board; that in terms of that agreement and the procedure established by the Board the "supreme appeal board" had to consist of three persons nominated by the Board; that two had to be from the panel approved on 17.11.95; that even assuming the expansion of the panel on 27.2.96 was proper, the spirit of the agreement with the Guild was that at least one had to be from among its nominees; that the Board could not secretly resile from that agreement; and that in any event the two-member panel was not duly constituted as it was nominated by someone other than the Board. The respondents have also failed to show that the members of the preview board and the appeal board had been duly appointed. All the procedural safeguards have thus been disregarded. Further, despite having participated in the decision of 17.11.95, the 8th respondent (Chairman) and the 5th, 7th, 9th and 12th respondents not only acquiesced in the violation of their own established procedure, but they purported to review the telefilm themselves, thereby usurping the functions of the independent "supreme appeal board". And in addition to those violations of their own rules, there are unexplained circumstances, which taint the Board's proceedings: the 5th respondent changed his mind, thereby falling in line with his colleagues, without explanation, and the Board's decision as conveyed to the petitioner by the Secretary was different to that communicated in the 8th respondent's report dated 12.10.96.

The question in this case is whether Article 12 (1) entitles the petitioner to the protection of a fair and objective procedure for selection of telefilms for telecast, according to clear and specific guidelines and criteria prescribed in advance. Looked at purely from a financial angle, persons who spend money on producing films risk serious loss if their films are not telecast. Apart from that, the refusal to telecast films which – considered from a cultural or artistic point of view – deserve to be telecast, prejudices both producers and viewers. Uncertainty as to procedure and criteria tends to result in a denial of the equal protection of the law.

The statutory powers which the 1st respondent has are, like most statutory powers, not absolute, unfettered, or unreviewable; they are held in trust for the benefit of the public; and they cannot be exercised arbitrarily, or capriciously, or unreasonably. The powers which a statutory body, such as the 1st respondent, has in respect of television and broadcasting are much greater than in the case of other media, such as the print media – because the frequencies available for television and broadcasting are so limited that only a handful of persons can be allowed the privilege of operating on them, and those who have that privilege are subject to a correspondingly greater obligation to be sensitive to the rights and interests of the public. The airwaves are public property and the State is under an obligation to ensure that they are used for the benefit of the public (cf. *Red Lion Broadcasting Co. v. FCC*⁽¹⁾ and *Secretary, Ministry of Information v. Cricket Association of Bengal*⁽²⁾ both of which I cited in *Fernando v. SLBC*⁽³⁾). In the *Cricket Association of Bengal* case, the Supreme Court of India directed the Central Government to take "immediate steps to establish an independent autonomous public authority representative of all sections and interests in society to control and regulate the use of the airwaves".

I hold that the powers conferred on the 1st respondent (and its directors and officials) in respect of telecasting on the airwaves were held in trust for the public, and had to be exercised for the benefit of the public, for which purpose it was obliged to establish and implement a fair and objective procedure to determine whether a telefilm submitted to it was suitable for screening, and if so the time of screening. That obligation has been seriously violated.

I, therefore, grant the petitioner a declaration that his fundamental right under Article 12 (1) has been infringed by the 1st, 2nd, 5th, 7th, 8th, 9th. and 12th respondents; I quash the decision of the Board of the 1st respondent in respect of "Makara Vijithaya"; and I direct the 1st respondent to submit that telefilm for final review – after specifying the applicable criteria – by the "supreme appeal board" constituted in accordance with the Board decision of 18.8.95, as amended by the Board decision of 17.11.95 (which were the decisions in force at the time of the petitioner's appeal), within one month from today, without any further fee being levied from the petitioner.

The petitioner has alleged the infringement of Article 14 (1) (a) as well. The order we make today makes it unnecessary to consider that plea. In any event, the petitioner could have sought to have his telefilm telecast on one of the other television channels, and the refusal by the 1st respondent of prime time for one telefilm does not mean that future telefilms will be similarly treated.

I have given anxious consideration to the question of other relief. (a) Clearly, the petitioner has suffered considerable financial loss – having borrowed Rs. 2,145,000 from the People's Bank on which interest continues to accrue at 24% p.a., according to the Bank's letter dated 14.10.96. That loss was aggravated by the delay of the respondents to deal with his appeals, and to consider the Minister's proposals, expeditiously; as well as their unsatisfactory pleadings and evasive response to the order of this Court for production of documents. Thus a final decision which he should have got in February, 1996, he will not get until about 28 months later, in July, 1998. At the same time, the petitioner took over six months, time to amend his pleadings. I think it fair to hold the respondents responsible for 20 months, delay. (b) At the same time, the petitioner could have mitigated his loss if the telefilm had been telecast outside prime time – but the respondents denied him that opportunity by not replying to his query as to the available time-belt. (c) Further, the conduct of the respondents, as noted above, shows that the infringement was not unintentional. Despite ample time for consideration, they acted deliberately in cavalier disregard of their own rules. That calls for enhancement of compensation. (d) On the other hand, we cannot

assume that the telefilm, properly reviewed, would definitely, or even probably, have been approved for prime time telecast: that is nothing more than a mere possibility. However, the petitioner's right to the equal protection of the law, by means of a fair procedure, has been infringed. (e) Learned counsel for the petitioner stated that the telefilm is still in good condition available for telecast, and has not become out of date; I, therefore, do not think that the cost of producing the telefilm should be taken into account, although accruing interest must.

Taking all that into consideration, I award the petitioner equitable compensation in a sum of Rs. 1,000,000, payable by the 1st respondent on or before 30.6.98, with further interest calculated at the rate of 24% p.a. in the event of delay.

As for costs, it was the conduct of the 2nd, 5th, 7th, 8th, 9th and 12th respondents which resulted in the infringement, and contributed to increasing the expense and the delay in this case. The 2nd and the 8th respondents were more to blame than the others. I, therefore, order the 2nd and 8th respondents personally to pay a sum of Rs. 7,500 each, and the 5th, 7th, 9th and 12th respondents personally to pay a sum of Rs. 2,500 each, as costs to the petitioner. The petitioner will thus receive in all a sum of Rs. 25,000 as costs.

I further direct the 1st respondent to give publicity, in all three languages on its own television channel, to the procedure and criteria for the selection of telefilms for telecast during prime time and outside, distinguishing as necessary between different types of telefilms: it shall telecast full particulars at a convenient time between 7.00 pm and 9.00 pm at least once every month from July to December, 1998, and thereafter whenever the procedure or criteria are amended.

WADUGODAPITIYA, J. – I agree.

GUNAWARDANA, J. – I agree.

Relief granted.