

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**W. P. (C) 5422/2008 & CM APPL 10648/2010**

Reserved on: April 25, 2011

Decision on: May 25, 2011

EVENT AND ENTERTAINMENT  
MANAGEMENT ASSOCIATION

..... Petitioner

Through: Mr. S.K. Bansal with  
Mr. Santosh Kumar and Mr. Vikas Khera, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Sumeet Pushkarna with  
Mr. Jitendra Kumar, Advocates for R-1 and R-2.  
Mr. Sudhir Chandra, Senior Advocate with  
Mr. Jagdish Sagar, Advocate for R-3.  
Mr. Ameet Datta, Advocate for R-4.

**CORAM: JUSTICE S. MURALIDHAR**

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|--------------------------------------------------------------------------|-----|
| 1. Whether Reporters of local papers may be allowed to see the judgment? | No  |
| 2. To be referred to the Reporter or not?                                | Yes |
| 3. Whether the judgment should be reported in Digest?                    | Yes |

**JUDGMENT**  
**25.05.2011**

***Introduction***

1. The prayer in this writ petition is for a direction to the Union of India, Ministry of Human Resource Development ('HRD') to frame appropriate and objective standards towards the determination and levying of royalties of various copyrighted works administered by Phonographic Performance Limited ('PPL'), Respondent No. 3, and the Indian Performing Right Society Limited ('IPRSL'), Respondent No. 4, or any other society that may be so created by it, and the mode of enforcing and administering such royalties when so fixed. A further direction is for investigation of the books of account of PPL and IPRSL to ascertain whether they have paid their dues to the owners/authors of copyrights.

### ***Case of the Petitioner***

2. The Petitioner, Event and Entertainment Management Association ('EEMA'), is a society registered under the Societies Registration Act, 1860. It comprises of members from all over India who are engaged in the business of organizing events, functions and entertainment shows like road shows, music concerts/shows, brand promotion, dealers meet and other social events like marriages and get-togethers etc. Individual members of EEMA are stated to provide their services for organization of events and entertainment "wherein they themselves are neither hosts nor guests but act merely as service providers". It is stated that during the aforesaid events and shows, the members of EEMA, as per the instructions of their clients, host or arrange or make arrangements for playing music recorded on tapes, compact discs, DVDs and other storage devices legally available in the markets. They also arrange for performance of live music, instrumental as well as singing of literary works in the form of songs by known as well as not so known artists/performers. It is further stated that in all three categories of events, i.e. social functions, brand promotion events and purely commercial events, live or recorded music is played or performed.

3. Respondent No. 1 has registered PPL and IPRS as copyright societies in terms of Section 33 of the Copyright Act, 1957 ('CR Act'). While PPL is registered as a copyright society for sound recordings, IPRS is for musical and literary works. The exploitation of a sound recording implies exploitation of the underlying literary or musical work as well. One important function of the PPL and IPRS is the business of granting licence in respect of the works wherein copyright exists and to charge royalties towards the same. Accordingly, the licence fee for the sound recordings on the one hand and the literary and musical works on the other have to be paid for separately by the users thereof to PPL and IPRS respectively on behalf of their members who hold the relevant copyrights thereto. By a letter dated 15<sup>th</sup> October 1997, the HRD Ministry clarified that since the public performance of music involves mechanical rights in sound recording as well as rights of composers, performers etc. licences from both PPL and IPRS have to be obtained for playing recorded music whose copyright administration vests in these two societies. EEMA contends that Respondent No.1 has failed to exercise its jurisdiction under Section 33 CR Act to set down any objective standards and criteria for charging of royalties by PPL and IPRS. It is stated that both the PPL and IPRS are acting arbitrarily in fixing tariffs with no objective standards and have assumed the role of the

legislature in fixing the amount of royalties at their sole discretion, the role of a law enforcer in enforcing the collection of such royalties and in taking coercive action against the members of EEMA. It is stated that demanding of royalties for playing music at social functions and events is a violation of Section 52 CR Act. It is submitted that inasmuch as Respondent No. 1 has a constitutional obligation under Article 14 of the Constitution of India not to act arbitrarily or unreasonably the same applies to copyright societies like PPL and IPRSL, constituted under Section 33 CR Act. It is further submitted that the valuable rights of the members of EEMA to carry on their trade under Article 19 (1) (g) of the Constitution of India cannot be violated by the PPL and IPRSL.

***Stand of Respondent No. 3 PPL***

4. In its counter affidavit PPL contended that by the amendments brought about by the Copyright (Amendment) Act, 1994 ('Amendment Act 1994'), the erstwhile provisions of Chapter VII of the CR Act relating to performing right societies were replaced. The new Chapter VII contains elaborate provisions regarding the conduct, self-governance and accountability of the management of all copyright societies. The contention is that under the amended provisions "copyright societies are made strictly accountable to their owners, do not enjoy any monopoly, and their licence fees are subject to market forces". It is submitted that the amended provisions of Chapter VII of the CR Act reflect the current legislative policy, encompassing economic policy. It is submitted that the writ jurisdiction cannot be invoked to intervene in such policy. It is further submitted that EEMA has not supplied any data which could justify its apprehension that the licence fees as determined by PPL are unreasonable. It is submitted that members of EEMA who are themselves organizers of events costing lakhs and crores of rupees cannot plead their inability to pay the modest licence fees charged by the copyright societies. It is pointed out that in relation to every kind of dispute regarding the subsistence of copyright or liability for infringement there are civil remedies provided under Chapter XII of the CR Act. In many cases many of the members of EEMA have been paying licence fees to PPL and other owners of copyright for their live events. It is submitted that the present petition has been filed only with a view to avoid payment of licence fees. It is further submitted that the Memorandum of Association of EEMA does not contain a clause whereby EEMA may sue or be sued. There is no authorization by the governing body of EEMA for filing the present petition.

5. Explaining the importance and utility of copyright societies, PPL states that the amended provisions of the CR Act in a sense acknowledge the difficulties of the members of the copyright societies in individually enforcing their copyrights. Individual members of copyright societies cannot also be expected to identify and chase broadcasting organizations, shops, ships, aircrafts, departmental stores, showrooms, emporiums, restaurants, hotels, clubs, offices, organizers of live concerts etc. all over the world where the copyrighted works may be used or commercially exploited. Copyright societies collect royalties after deduction of administrative expenses as prescribed under Rule 14H of the Copyright Rules, 1958 ('CR Rules') which are distributed amongst the members of the copyright societies in proportion to the actual use of the works of such members subject to the scheme which are approved by the members. It is asserted that the fee structure fixed by PPL is collectively decided by the members of the PPL in an Annual General Meeting ('AGM'). PPL is required to fix tariffs at a level "which balances affordability of music to users and at the same time ensures fair returns". It is submitted that the fee structures fixed by PPL are reasonable and in fact work out "only to a negligible and insignificant percentage of the turnover of, for example, shops, departmental stores, showrooms, emporiums, hotels, pubs and restaurants, or of the cost of high profile events such as those organized by the members" of EEMA.

6. Copies of the Gazette Notification dated 18<sup>th</sup> May 2002 giving a complete list of the types of licence and the corresponding fees to be paid, as partially modified and published in the Gazette Notification dated 10<sup>th</sup> September 2005, have been enclosed with the counter affidavit of PPL. The licences issued by the PPL can broadly be classified into two separate categories: annual licenses granted to various establishments for playing the sound recordings administered by PPL as piped music or background music etc. in their respective establishments ('annual licence') and, individual licences granted to an establishment for playing sound records belonging to PPL's repertoire during an event/show organized by the establishments on special occasions like New Year's eve ('event licence'). Most of the hotels have obtained both annual and event licences keeping in view the separate sets of rights flowing from the particular licences. It is stated that by paying an annual fee to PPL, an establishment obtains automatic and blanket permission to play music from the vast collection of millions of songs, both Indian and foreign. No time and cost is lost in either travelling or in entering into any other form of negotiations with the right holders. Further, uniform rates are charged,

eliminating the difficulty that a user may face from some particular, unreasonable copyright owner. Further, the emphasis of the whole system is to provide a single window clearance through which a user gets quick, automatic permission without any cost of travel or negotiation for all works. A list of countries in which such systems are prevalent has been enclosed with PPL's counter affidavit.

***Stand of Respondent No. 4 IPRSL***

7. Respondent No. 4, IPRSL, in its counter affidavit raises more or less the same preliminary objection as the PPL. It is stated that IPRSL is affiliated to 200 world societies of authors and composers, which are included within its Federation, i.e. CISAC, Paris (established under the auspicious of UNESCO and WIPO Charter). IPRSL is also a member of the Copyright Enforcement Advisory Council ('CEAC') set up by the Government of India to advise the government regarding measures for improving the enforcement of the CR Act. The members of IPRSL comprising of authors, composers and publishers of Indian literary and musical works have executed deeds of assignment, assigning their public performing rights and communication to the public rights in respect of their literary and/or musical works including such literary and musical works which they may own in the future, in favour of IPRSL. It is asserted that for IPRSL, this is the most efficacious way of enforcing the rights of its members as this allows IPRSL to act more efficiently. Since the membership is for a limited set of rights and subsists during the membership of IPRSL, the interests of individual members are also protected. The membership of the Board of the Governing Council of IPRSL, comprises lyricists, music composers, music publishers (comprising of music companies/film & other audio-visual producers). It is pointed out that the CR Act recognizes lyrics writers and music composers created works as 'literary' and 'musical works' and they belong to a number of categories like musical compositions and performances. The owner of the copyright in the literary or musical works enjoys a number of rights exclusively, which are set out in Section 14 (a) of the CR Act.

8. The counter affidavit of IPRSL illustrates the advantages enjoyed by the Copyright Board or the members of IPRSL. It also illustrates the advantages to those like the Petitioner who obtained licences for use of such copyright work from IPRSL. It is stated that royalty rates fixed by IPRSL are relative to the value of the music to the establishment concerned. It is stated that the object, therefore, while fixing tariffs, is to

ensure affordability and at the same time ensure just rewards to the creators of music. The counter affidavit of IPRS L refers to the CR Rules which provided for an exhaustive procedure for application and conditions for grant of permission to carry on the copyright business. It is further stated that the conditions set out under the CR Rules, 1958 are tailored to satisfy the registering authority of the collective nature of the applicant.

9. It is stated that working of the copyright societies continues to be monitored and guided by the CR Act. A copyright society is expected to submit a report of returns under Rule 14M CR Rules. Rule 14P CR Rules requires IPRS L to submit annual returns which would contain various details such as audited accounts of the society, tariff scheme, distribution scheme, and a declaration from the governing body of IPRS L as regards all its activities. It is submitted that the tariff fixed by IPRS L may be called into question before the CB under Section 31 CR Act. Inasmuch as the tariff in the present case has been fixed by IPRS L diligently and after collective decision of the members of IPRS L taken in an AGM it cannot be said to be arbitrary, unreasonable or violative of any provision of any law. It is stated that there are adequate safeguards provided within the CR Act to check the consequences of any perceived excessive delegation inasmuch as Section 33 (4) CR Act provides that the central government may, if it is satisfied that a copyright society is being managed in a manner detrimental to the interest of the owners of the copyrights, cancel the registration of such society after such inquiry, as may be prescribed. Under Section 36 CR Act, the central government can also call for any report or any record of any copyright society for the purpose of satisfying itself that the fees collected by the society in respect of rights administered by it are being utilized or distributed in accordance with the provisions of the CR Act.

***Stand of Respondent No. 1 UOI***

10. The counter affidavit filed by Respondent No. 1, UOI, on 14<sup>th</sup> July 2009, did not deal with the contention raised by the Petitioner that monopoly rights are being created in favour of societies without any regulatory mechanism to deal with arbitrary price fixation. Consequently, by an order dated 16<sup>th</sup> July 2009, this Court directed the UOI to file an additional affidavit. On 22<sup>nd</sup> October 2009 four weeks were further granted to file the said additional affidavit. After costs were imposed by an order dated 19<sup>th</sup> February 2010, the UOI filed the said additional affidavit on 30<sup>th</sup> April 2010. It is pointed

out by the UOI that the disputes involving royalty/licence fee are *sub judice*, at the instance of some of the members of EEMA before the Copyright Board (CB). It is contended that since an efficacious remedy is available to EEMA before the CB, the present writ petition ought not to be entertained. The affidavit of UOI also sets out the chronology of the litigation and the record of evidence before the CB in the various petitions relating to fixation of royalty and licence fee for various copyright works in which some of the members of the Petitioner Association are involved. The list of writ petitions and the issues pending in this Court have also been set out.

***EEMA's stand in rejoinder***

11. EEMA has, in response to the additional affidavit, filed a reply on 16<sup>th</sup> July 2010 pointing out that the said additional affidavit does not answer the contention of the Petitioners that the copyright societies have deliberately created a monopoly in the fixation of tariff and royalty and that they have acted in an arbitrary and unjust manner. It is pointed out that in its order dated 19<sup>th</sup> November 2002 in the case of ***Music Broadcast Private Limited v. Phonographic Performance Limited 2003 (26) PTC 70*** the CB has noticed that there are no reasonable standards or data available on the basis of which the CB can determine royalty rates and that they have to act only on the basis of a best judgment assessment which is open to the arbitrariness, uncertainty, modifications and alterations. EEMA has also filed copies of the tariff schedule of PPL, the extracts of the audited accounts IPRSL, a sampling of the agreements entered into between the owners of copyright and IPRSL

12. This Court has heard the submissions of Mr. S.K. Bansal, learned counsel appearing for the Petitioner, Mr. Sumeet Pushkarna, learned counsel for the UOI, Mr. Sudhir Chandra, learned Senior counsel and Mr. Jagdish Sagar learned counsel for PPL and Mr. Amit Dutta, learned counsel on behalf of IPRSL.

***The statutory scheme under the CR Act***

13. The relevant provisions of the CR Act and CR Rules may be referred to first. Section 33 CR Act prior to its amendment provided for a performing rights society ('PRS') under Chapter VII. Under Section 33 (1) of the unamended CR Act, every PRS was to furnish to the Registrar of Copyrights ('Registrar') a statement of all fees, charges or royalties which it proposed to collect for the grant of licences for performance in public of works

in respect of which it had authority to grant such licences. Failure to do so disentitled the PRS from initiating action in relation to performing that work “except with the consent of the Registrar”. Under Section 34 of the unamended CR Act, “any person having any objections to any fees, charges or royalties or other particulars included in any statement referred to in Section 33 may at any time lodge such objections in writing at the Copyright Office.” Both objections were to be decided under Section 35 of the CR Act. The Amendment Act, 1994 introduces the concept of the copyright societies under Section 33 of the CR Act, which as amended in 1994 reads as under:

**“33. Registration of copyright society –** (1) No person or association of person shall, after coming into force of the Copyright (Amendment) Act, 1994 commence or, carry on the business of issuing or granting licences in respect of any work in which copyright subsists or in respect of any other rights conferred by this Act except under or in accordance with the registration granted under sub-section (3);

Provided that an owner of copyright shall, in his individual capacity, continue to have the right to grant licences in respect of his own works consistent with his obligations as a member of the registered copyright society.

Provided further that a performing rights society functioning in accordance with the provisions of Section 33 on the date immediately before the coming into force of the Copyright (Amendment) Act, 1994 shall be deemed to be a copyright society for the purposes of this Chapter and every such society shall get itself registered within a period of one year from the date of commencement of the Copyright (Amendment) Act, 1994.

(2) Any association of persons who fulfils such conditions as may be prescribed may apply for permission to do the business specified in such-section (1) to the Registrar of Copyrights who shall submit the application to the Central government.

(3) The Central may, having regard to the interests of the authors and other owners of rights under this Act, the interest and convenience of the public and in particular of the groups of persons who are most likely to seek licences in respect of the applicants, register such association of persons as a copyright society subject to such conditions as may be prescribed:

Provided that the Central government shall not ordinarily register more than one copyright society to do business in respect of the same class of works.

(4) the Central government may, if it is satisfied that a copyright society is being managed in a manner detrimental to the interests of the owners of rights concerned, cancel the registration of such society after such inquiry as may be prescribed.

(5) If the Central government is of the opinion that in the interest of the owners of rights concerned, it is necessary so do to it may, by order suspend the registration

of such society pending inquiry for such period not exceeding one year as may be specified in such order under sub-section (4) and that Government shall appoint an administrator to discharge the functions of the copyright society.”

14. PPL and the IPRL are both registered under Section 33 (3) CR Act. Under Section 33 (5) CR Act, the central government can, in the interests of the owners of copyrights, suspend the registration of a copyright society pending inquiry for such period not exceeding one year. Under Section 33 (4) CR Act the central government can cancel the registration of a copyright society after inquiry “if it is satisfied that the copyright society is being managed in a manner detrimental to the interests of the owners of rights concerned”. Further, the administration of rights of owners by a copyright society is provided in Section 34 of the CR Act, which reads as under:

**“34. Administration of rights of owner by copyright society –** (1) Subject to such conditions as may be prescribed –

(a) a copyright society may accept from an owner of rights exclusive authorization to administer any right in any work in any work by issue of licences or collection of licence fees or both; and

(b) an owner of rights shall have the right to withdraw such authorization without prejudice to the rights of the copyright society under any contract.

(2) It shall be competent for a copyright society to enter into agreement with any foreign society or organization administering rights corresponding to rights under this Act, to entrust to such foreign society or organization the administering in any foreign country of rights administered by the said copyright society in India, or for administering in India the rights administered in a foreign country by such foreign society or organization:

Provided that no such society or organization shall permit any discrimination in regard to the terms of licence or the distribution of fees collected between rights in Indian and other works.

(3) Subject to such conditions as may be prescribed, a copyright society may –

(i) issue licences under Section 30 in respect of any rights under this Act;

(ii) collect fees in pursuance of such licences;

(iii) distribute such fees among owners of rights after making deductions for its own expenses;

(iv) perform any other functions consistent with the provisions of section 35.”

15. Further, under Section 34-A CR Act special rights can be conferred on a copyright

society in respect of certain classes of works. Section 34 A reads as under:

**“34A. Payment of remunerations by copyright society –** (1) If the Central government is of the opinion that a copyright society for a class of work is generally administering the rights of the owners of rights in such work throughout India, it shall appoint the society for the purposes of this section.

(2) The copyright society shall, subject to such rules as may be made in this behalf, frame a scheme for determining the quantum of remuneration payable to individual copyright owners having regard to the number of copies of the work in circulation.

Provided that such scheme shall restrict payment to the owners of rights whose works have attained a level of circulation which the copyright society considers reasonable.”

16. The control over the copyright society by the owner of rights is specified under Section 35 reads as under:

**“35. Control over the copyright society by the owner of rights –** (1) Every copyright society shall be subject to the collective control of the owners of rights under this Act whose rights it administers (not being owners of rights under this Act administered by a foreign society or organization referred to in sub-section (2) of Section 34) and shall, in such manner as may be prescribed, -

(a) obtain the approval of such owners of rights for its procedures of collection and distribution of fees;

(b) obtain their approval for the utilisation of any amounts collected as fees for any purpose other than distribution to the owner of rights and,

(c) provide to such owners regular, full and detailed information concerning all its activities, in relation to the administration of their rights.

(2) All fees distributed among the owners of rights shall, as far as may be, be distributed in proportion to the actual use of their works.”

17. There is an obligation of the copyright society to submit returns and reports under Section 36 CR Act which reads as under:

**“36. Submission of returns and reports –** (1) Every copyright society shall submit to the Registrar of Copyrights such returns as may be prescribed.

(2) Any officer duly authorized by the Central government in this behalf may call for any report and also call for any records of any copyright society for the purpose of satisfying himself that the fees collected by the society in respect of rights administered by it are being utilized or distributed in accordance with the provisions of this Act.”

18. This has to be read along with Rule 14 MCR which reads as under:

**“14M Accounts and audit –** (1) Every copyright society shall maintain proper accounts of the fees and royalties collected in a financial year, payments made out of such collections to the owners of rights and other expenditure incurred for meeting administrative expenses and related matters with the approval of the owners of rights:

Provided that a copyright society shall not spend more than fifteen per cent of its collection towards its administrative expenses.

(2) Every copyright society shall get its accounts audited by a Chartered Accountant annually.”

19. The above provisions make it clear that in their functioning the copyright societies are controlled by and are accountable to the owners of the copyrights. There is also an overall supervisory control by the central government. As regards the power to fix tariffs, the earlier scheme under the unamended CR Act has been consciously departed from by the legislature. There are checks put in place in terms of Section 33 (3) at the time of registration of a copyright society. The central government has to account for the interests of authors and other owners of rights as well as the interests and convenience of the public and in particular of the groups of persons who are most likely to seek licences. Once a copyright society is registered, the control that can be exercised over it by the central government and by the owners of the copyrights is as given in Section 35 CR Act. Instead of the central government itself controlling the fixation of royalty tariff, the legislature has required the copyright society to fix tariffs subject to obtaining approval of the owners of rights. This is as regards the procedure of collection and distribution of fees as well as for the “utilization of any amounts collected as fees for any purpose other than distribution to the owner of rights”. The copyright society will “provide to such owners regular, full and detailed information concerning all its activities in relation to the administration of their rights.” The above statutory provisions have been supplemented by Rules 12, 14, 14A, 14B, 14F, 14G, 14H, 14I, 14J and 14K CR Rules. In addition Rule 14L CR Rules provides for meeting of copyright societies, 14M provides for accounts and proper audit. Under Rule 14L, as soon as the Tariff Scheme and the Distribution Scheme are prepared, the copyright society is to call a general meeting of the owners of rights whose names are recorded in the Register of Owners to approve the same. Under Rule 14N, within a period of twelve months from the holding of a meeting, an AGM is to be held of the owners of rights. The documents to be presented in the annual general

meeting of owners of rights are listed out under Rule 14O. Under Rule 14P, returns are to be filed by the copyright societies with the Registrar of Copyrights. In other words, under Chapter V of the CR Rules, a very detailed procedure has been laid out to regulate the working of copyright societies. This has to be further understood in the context of Section 18 CR Act which provides for assignment of copyright. Such assignment is a pre-condition to becoming a member of IPRS or any other copyright society. As a result of such assignment the copyright society becomes the exclusive owner of the public performing rights of its members. Under Section 14 (a) CR Act, the bundle of rights constituting the rights in a 'literary, dramatic or musical work, not being a computer programme' has been set out. Section 14 (c) CR Act specifies the rights in an 'artistic work' and Section 14 (e) the rights in a sound recording. Performing rights would include the right to perform the work, the right to communicate the work to the public by making any cinematograph film or sound recording in respect of the work. Section 2 (c) which defines 'artistic work', Section 2 (d) which defines 'author', Section 2 (ffa) which defines 'composer', Section 2 (qq) which defines 'performer' and Section 2 (uu) which defines 'producer', acknowledge the entire range of persons who may have rights in a 'musical work', an 'artistic work', a 'literary work' or a 'performance', each of which have also been defined.

20. The entire bundle of rights which are acknowledged and protected in terms of Section 14 (a) of the CR Act which also sets out the meaning of 'copyright'. That there is extensive use of musical and artistic works and sound recordings by event organizers is acknowledged by the Amendment Act 1994. The interests of both the copyright owners and the users have been sufficiently addressed in these amendments. Copyright societies were given the powers to fix the tariff but only with the approval of the owners of copyrights who are its members. Learned counsel for PPL and IPRS have rightly pointed out that their clients not only serve the interests of their members but the community of users as well. Once the users of work obtain a licence from the copyright societies in respect of a copyrighted work, their user of such work becomes 'legal'. The payment of the tariff as demanded by the copyright societies ensures that they will have no individual dispute between the user of the copyright and the owner of the copyright or members of the copyright societies.

### ***Functioning of copyright societies in other jurisdictions***

21. The system of having copyright societies to fix and administer royalties and tariffs in copyright work is not unique to India. There are Collective Management Organizations ('CMOs') that have been prevalent in France since the 1970s. The government there has, therefore, introduced a system of extensive monitoring and control of such CMOs. A Committee constituted is empowered to access all documents, data and software used by a CMO and also to question the CMO's auditors, wherein confidentiality obligation of such auditor would be suspended. Moreover, members are given the right to obtain specific information from their CMO. The Administration of Copyright and Neighbouring Rights Act, 1963 in Germany mandates publication of tariffs. It requires that in establishing tariffs and in collecting the remuneration, "collecting societies shall have due regard to religion, cultural and social interests of the persons liable to pay the remuneration." In the United Kingdom, the copyright collecting societies have emerged as a prominent private mechanism to monitor infringement and for management of copyrights. The tariff is fixed by negotiating with the association of users. There is no role assigned to the Copyright Tribunal in the U.K. to regulate the relationship between the societies and users. In the United States there are performing rights societies which are entrusted with the task of enforcing copyrights on behalf of the owners of the copyright. For the purposes of compulsory licensing, copyright offices can establish Copyright Arbitration Royalty Panels to determine "reasonable terms and rates of royalty payments". The European Community Law lays down certain principles for the functioning of the cooperative societies:

- "1. Societies may not discriminate on grounds of nationality and must permit other nationals from EU to join the society.
2. Rules of collecting societies shall ensure that no group of members obtains preferential treatment in revenue distribution.
3. Abuse would occur if a society imposed obligations on members which were not absolutely necessary for the attainment of the society's objectives and which would encroach unfairly on member's rights and;
4. Societies are not permitted to impose unduly lengthy notice periods."

22. What is relevant is that each country has its system of state regulation of the functioning of copyright and performing rights societies. The practice and legislative policy of one country cannot *ipso facto* be adopted in another. What is reasonable and

permissible within the legal and constitutional framework has to be examined with reference to the position in our country. As far as India is concerned the CR Act and CR Rules provide for a complete scheme. Given that the constitutional validity of the relevant provisions concerning copyright societies has been upheld, those provisions have to be given full effect to.

23. Mr. Bansal relied upon the passages from *Intellectual Property Law* by Lionel Bently and Brad Sherman, Oxford 2001, in which it is stated that having a single body “solely responsible for administering rights” of copyright owners posed problems for both members and users. It is stated that “problems with members typically occur because a copyright owner has little alternative to joining the society, which can thus impose restrictive terms.” The authors point out that a second set of problems arises from the relations with users, who similarly have little alternative but to take a licence from the collecting society on whatever terms it chooses. Due to these problems, collecting societies have been described (in terms similar to the atom bomb) as “at once the most ingenious and the worst invention of mankind”. While the above problems might still occur as far as the PPL and IRPSL are concerned, Sections 33 (4) and 33 (5) and Section 35 read with Section 34 CR Act provide adequate safeguards. It is not as if the copyright societies under the CR Act have a free run as regards the fixation of tariffs and royalties in copyright works.

***Tariffs fixed by PPL and IRPSL not an arbitrary exercise of power***

24. The contention on behalf of EEMA that by delegating all the powers in relation to fixation of tariffs to the copyright societies, the central government has abdicated its essential function under the CR Act, overlooks the fact that the legislature has made a conscious shift from the statutory scheme whereby central government retained a regulatory power over the fixation of tariffs. This petition is not concerned with the validity of the amended provisions. A Division Bench of this Court has, in a judgment recently passed on 7<sup>th</sup> April 2011 in W.P. (C) No. 452 of 1999 (*The Federation of Hotels & Restaurants Association of India v. Union of India*) upheld the constitutional validity of Sections 33 (3) and 34 (3) of the CR Act as amended read with Section 2 (xx) and Section 13 thereof. This Court negatived the prayer made in that petition by the users of copyrighted works for a direction against PPL for charging fees for ‘special events licence’ and the rates notified by PPL for the year 2005 for the special events. This Court

upheld the preliminary objection raised by the IPRSL and the PPL that the Petitioners in that case ought to have approached the Registrar if they had a grievance about the quantum of charges demanded by PPL and IPRSL for grant of compulsory licence in respect of copyrighted works. It was further observed by this Court that the user should first take up the grievance with the government and persuade it to exercise the powers under Section 33 CR Act if the user was aggrieved by the manner of functioning of the copyright societies. Answering in the negative the specific question that “are any of the provisions of the Copyright Act 1957 or the Copyright Rules 1958 framed thereunder ultra vires the constitution”, this Court relied upon the judgment in *Indian Performing Right Society v. Eastern Indian Motion Pictures Association (1977) 2 SCC 820* as well as the observations in *Entertainment Network (India) Limited v. Super Cassette Industries Limited (2008) 13 SCC 30*. In para 16 of the judgment the Division Bench of this Court observed as under:

“16. Suffice it to say that the amendments carried out in the Copyright Act, 1957 are calculated to guarantee a fair return to the authors, composers or lyricist or sound recorders, as the case may be. There is no absolute, untrammelled or unbridled right existing or granted to the public at large to enjoy fruits of right creation without any payment in recompense or for payments which the public may be willing to give. The initial burden or duty of harmonizing these competing interests and rights has been laid at the door of the Copyright Board in the case of price fixation/tariff and in other cases with the Registrar of Copyrights. We must traverse that very path as was laid down in *Entertainment Network (India) Limited* wherein their Lordships had endorsed the matter back to the Copyright Board for determination. So far as any challenge to according registration of multiple societies is concerned, it is the Central government which must take a decision. We must not succumb to indiscipline by entering into a detailed discussion on the legitimacy or reasonableness of the tariff for the simple reason that this question must be voiced and the verdict given by the authorities created under the Copyright Act. Thereafter, the aggrieved party can avail of the rights to file an appeal, as has been provided by the Act, or if it is the decision of the Central government which is sought to be assailed, possibly by invoking the extraordinary powers preserved by Article 226 of the Constitution of India.”

25. Bound as it is by the judgment of the Division Bench, which in turn relied upon the judgments of the Supreme Court, this Court declines to further examine the issue of unreasonableness of the tariffs fixed by PPL or IPRSL or the scope of their powers in that regard under Section 33 CR Act read with the CR Rules. Mr. Bansal referred to the tariff schedule of the PPL and certain extracts of the statement of accounts of the IPRSL to urge that the money collected by them as royalties was not being defrayed for appropriate purposes. The question whether the copyright societies have discharged their functions in accordance with the CR Act must be examined in the first instance by the central government in which adequate powers have been vested under Section 33 (4) read with Section 35 (3) CR Act. The owners of the copyright too have adequate supervisory control over the functioning of the copyright societies of which they are members. Nothing has been shown to indicate that the procedure outlined by the CR Rules has not been followed by the copyright societies in the fixation of tariffs. What should be the appropriate tariff for a copyrighted work, how the royalties and fees collected should be distributed amongst the owners of different rights are issues which are required to be left to be determined by the copyright societies working under the control of the copyright owners. In any event, this Court is not equipped to entertain a disputed question of fact in relation to the fixation of tariffs in a writ petition under Article 226 of the Constitution. This Court is therefore not persuaded to hold that the PPL or IPRSL have acted arbitrarily or unreasonably in fixing tariffs for copyrighted works.

***Not a case of excessive delegation of legislative powers***

26. It was then urged by Mr. Bansal that under Section 78 (2) (c), (ce), (cf), (d) (da) and (db), it is for the central government to make rules and not for the copyright societies to take over from the central government the functions of “collection and distribution of fees, approval for utilization of any amount collected as fees”, the manner of payment of royalties and maintenance of accounts. Mr. Bansal relied upon the judgments concerning excessive delegation including *Hamdard Dawakhana v. Union of India AIR 1960 SC 554*, *Dai-ichi Karkaria Limited v. Union of India (2000) SCC 57*, *Mansukh Lal Chauhan v. State of Gujarat AIR 1997 SC 3400* and *Chandrakant Muljibhai Parikh v. State of Gujarat AIR 2001 Gujarat 234*. He sought to make a distinction between conditional legislation and delegated legislation and urged that tariff fixation itself was a legislative activity which was delegated to the central government by the Parliament and

which could not have been further delegated to the copyright societies.

27. This Court is unable to agree with the above submission of Mr. Bansal. Rules have been framed by the central government under Section 78 CR Act. Chapter V of the CR Rules concerns copyright societies. The rules thereunder are relatable to Section 78 (2) (c), (ca) and 78 (2) (d), (da) and (db) CR Act. The central government has laid down the procedure to be followed by copyright societies in obtaining approval of the owners of rights for collection and distribution of fees. It details the procedure for copyright societies to draw up the Tariff Scheme and the Distribution Scheme which are defined under Rule 14J and 14K of the CR Rules respectively. Rules 14J and 14K read as under:

**“14J. Tariff Scheme -** As soon as may be, but in no case later than three months from the date on which a copyright society has become entitled to commence its copyright business. It shall frame a scheme of tariff to be called the “Tariff Scheme” setting out the nature and quantum of fees or royalties which it proposes to collect in respect of such copyright or other rights administered by it.

**14K. Distribution Scheme –** (1) As soon as may be, but in no case later than three months from the date on which a copyright society has become entitled to commence its copyright business, it shall frame a scheme to be called the “Distribution Scheme” setting out the procedure for collection and distribution of the fees or royalties specified in the Tariff Scheme among the owners of copyright or other rights whose names are borne on its Register of Owners [maintained under clause (1) of rule 14I] for the approval of such owners.  
(2) Any distribution under the Distribution Scheme shall, as far as possible, be in proportion to the income of the copyright society from actual use of the work or works of each owner of rights.”

28. A detailed procedure has been laid down for holding meetings of the copyright societies, including the AGM, for approval of the Tariff Scheme and the Distribution Scheme. This is followed by filing of the returns with the Registrar of Copyrights. Given the scope of Section 33 (3) the legislative intent is to give the copyright societies the power to fix the tariff but in consultation with the approval of the owners of copyrights. The role of the government under the CR Act is that of oversight of the functioning of the copyright societies under Section 33 (3), (4) and (5) CR Act. Section 36 (2) authorizes the central government to call for any report and also call for any records of the copyright society. The central government’s power of rule making under Section 78 (2) is only with regard to the ‘conditions subject to which a copyright society may issue licences, collect fees and distribute such fees amongst owners of rights’ [(Section 78 (2) (ce)], ‘manner of determining any royalties payable’ [(Section 78 (2) (d)], the manner of payment of

royalty [(Section 78 (2) (da)] and obtaining approval of owners of copyright to utilization of the fees collected and distributed [(Section 78 (2) (cf)]. The relevant CR Rules referred to hereinbefore adequately deal with each of the above areas. There is no ambiguity. It is not as if there is no legislative guidance or norms that can be discerned from these provisions. They constitute sufficient safeguards to ensure that the exercise of these powers by the copyright societies is not arbitrary or unreasonable. This Court is, therefore, unable to agree with the learned counsel for the Petitioner that this is a case of excessive delegation of legislative powers by the central government to the copyright societies.

29. In *Entertainment Network (India) Limited*, the Supreme Court discussed the provisions of the CR Act in detail. It has spelt out the scope of the powers of the copyright societies. It pointed out that the CR Act itself maintained a balance between the interests of the owner of copyright in protecting his work on the one hand and the interest of the public in having access to such work on the other. This Court is not persuaded to hold that the fixation of tariff or royalties by PPL and IPRSL in exercise of their powers under the CR Act is *per se* arbitrary or unreasonable.

30. Having said that, it must be emphasized that any challenge to an instance of tariff fixation by PPL or IPRSL can be raised before the CB. In fact, this has already been done. The case sent on remand to the Copyright Board following the judgment of the Supreme Court in *Entertainment Network (India) Limited* has already been adjudicated by the CB. It is not, therefore, as if there is no remedy available to the user of the copyright who is aggrieved by the fixation of tariff by a copyright society.

### ***Conclusion***

31. For all the aforesaid reasons, this Court is not inclined to grant any of the reliefs as prayed for. The writ petition is dismissed with no order as to costs. The pending application is disposed of.

**S. MURALIDHAR, J**

**MAY 25, 2011**

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