

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.22068 of 2017

Date of Decision: 27th September, 2017

M/s Khanna Music, 673, Phase VIII, Focal Point, Ludhiana

. . . . Petitioner

Vs.

Union of India and others

. . . . Respondents

CORAM: - HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr.Mansur Ali, Advocate, and
Ms.Gitika Sharma, Advocate,
for the petitioner.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioner has challenged the impugned interim statutory license issued to respondent No.3 dated 10.4.2017 and also seeking a restraint order against respondent No.3 from using petitioner's work/repertoire.

In brief, respondent No.3 filed a writ in this Court bearing *CWP No.21945 of 2016* titled as *Interjit Singh and another Vs. Union of India* in which he sought a mandamus to the respondents therein for re-constitution of the Board, contemplated under the Indian Copyright Act, 1957 as amended by Copyright (Amendment) Act, 2012. The said petition was disposed of by this Court by issuing direction to the Registrar of Copyright Office that if the petitioner therein/respondent No.3 approach him by moving an appropriate representation within a period of four weeks then the same shall be considered and decided in accordance with law. After the order was passed on 21.10.2016 in the aforesaid writ petition, respondent No.3 had allegedly made various representations for compliance of the order and since the aforesaid order was not complied with, therefore, he filed COCP No.622 of 2017 and on 30.5.2017, the said contempt petition was disposed of because the contemnor therein

complied the order. As a result thereof, respondent No.2 i.e. Registrar of Ministry of Commerce and Industry, issued interim statutory license under Section 31D(1) of the Copyright Act, 1957 [for short 'the Act'] to respondent No.3. The petitioner has challenged the interim statutory license issued to respondent No.3, *inter alia*, on the ground that respondent No.3 is misusing the license as he is not depositing money with respondent No.2 under the Act for the purpose of using the work of the petitioner. Consequently, the present petition has been filed to challenge the interim statutory license issued in favour of respondent No.3 and also sought restraint order.

Learned counsel for the petitioner has vehemently argued that the license issued to respondent No.3 is patently illegal and is liable to be set aside. In this regard, he has referred to Section 31D(2) of the Act to contend that notice has to be given to the petitioner.

I have heard learned counsel for the petitioner and after examining the record, am of the considered opinion that there is no merit in the present petition.

In order to appreciate the arguments of the petitioner, it would be relevant to refer to Section 31D of the Act, which read as under: -

***31D. Statutory licence for broadcasting of
literary and musical works and sound
recording -***

*(1) Any broadcasting organisation desirous
of communicating to the public by way of a
broadcast or by way of performance of a
literary or musical work and sound
recording which has already been published*

may do so subject to the provisions of this section.

(2) The broadcasting organisation shall give prior notice, in such manner as may be prescribed, of its intention to broadcast the work stating the duration and territorial coverage of the broadcast, and shall pay to the owner of rights in each work royalties in the manner and at the rate fixed by the Copyright Board.

(3) The rates of royalty for radio broadcasting shall be different from television broadcasting and the Copyright Board shall fix separate rates for radio broadcasting and television broadcasting.

(4) In fixing the manner and the rate of royalty under sub-section (2), the Copyright Board may require the broadcasting organisation to pay an advance to the owners of rights.

(5) The names of the authors and the principal performers of the work shall, except in case of the broadcasting organisation communicating such work by way of performance, be announced with the broadcast.

(6) No fresh alteration to any literary or musical work, which is not technically necessary for the purpose of broadcasting, other than shortening the work for convenience of broadcast, shall be made without the consent of the owners of rights.

(7) The broadcasting organisation shall –

(a) maintain such records and books of account, and render to the owners of rights such reports and accounts; and

(b) allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such broadcast,

in such manner as may be prescribed.

(8) Nothing in this section shall affect the operation of any licence issued or any agreement entered into before the commencement of the Copyright (Amendment) Act, 2012.]

After going through the provisions of Section 31D of the Act, I am of the considered opinion that insofar as Section 31D(2) of the Act is concerned, the broadcasting organization have to give prior notice, in such manner as may be prescribed, of its intention to broadcast the work stating the duration and territorial coverage of the broadcast and shall pay to the owner of

rights in each work royalties in the manner and at the rate fixed by the Copyright Board.

There is no dispute that the petitioner is entitled to a notice if respondent No.3 is using his work for the purpose of broadcast. However, the very fact that respondent No.3, as alleged, has not taken permission of the petitioner and is also not paying any kind of royalty, which is determined by the petitioner, the license issued to respondent No.3 by respondent No.2 in terms of Section 31D(1) of the Act cannot be held to be illegal. The petitioner, however, shall have a remedy of filing suit for declaration and permanent injunction in case he asks for a relief for seeking a restraint order against respondent No.3 from using his work because it is a matter of evidence as to whether respondent No.3 has been using his work or not.

With these observations, the present petition is hereby disposed of.

27th SEPTEMBER, 2017
Vivek

(RAKESH KUMAR JAIN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>