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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 5683/2014 CM Nos. 14050/2014, 36493/2016, 36503/2016**
& 33943/2017

M/S. PVR BLUO ENTERTAINMENT
LIMITED LTD.

..... Petitioner

Through: Mr. Jayant Bhushan, Senior Advocate
with Mr. Tanuj Khurana and Mr. Sahil
Gupta, Advocates

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Sanjeev Narula, CGSC with Ms.
Anumita Chandra, Advocate for UOI
Mr. N.B. Joshi with Mr. Neeraj
K. Gupta, Advocates for R-2
Ms. Rukmini Bobde, with Ms.
Raveen Rani, Mr. Abhiram Naik and
Ms. Mohona Thakur, Advocates for
R-6

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **31.10.2017**

1. The petitioner has filed the present petition, *inter alia*, praying as
under:-

“a) issue a writ of mandamus in favour of the petitioner and
against respondent no.1, thereby directing respondent no.1
to consider the representation dated 27.12.2013 and other
letters and representations so written by the petitioner
pointing out the failure(s) on the part of respondent no.2
society, as to adhere to the mandate of law and to take
necessary action(s) in terms of law against respondent no.2;

b) issue a writ of mandamus in favour of the petitioner and against the respondent no. 1, thereby directing respondent no. 1 to hold an inquiry by an officer duly appointed by respondent no. 1 into the affairs of respondent no. 2 for managing its affairs detrimental to the interests of the consumers and upon its failure to comply with the mandate of Section 33A of the Act and to take all such consequential action(s) in terms of law as deemed fit and appropriate;

c) issue a writ of mandamus in favour of the petitioner and against the respondent thereby directing the respondent no. 2 to comply with the mandate of Section 33A read with Rules 56 and 66 of the Copyright Rules 2013 and to publish its tariff scheme in terms of the Rules and accept the license fee from the petitioner in terms of the published tariff; and”

2. The petitioner claims to be “one of its kind entertainment concept in India with a core idea to provide one stop entertainment destination to all with a view to promote the sport of bowling in India.” The petitioner claims that the game of Bowling coupled with a restaurant and music provides customers with an unique experience. In the petition, it is claimed that the petitioner is currently running five Bowling alleys; these are PVR Blu-O at Elante Chandigarh, PVR Blu-O Gurgaon, PVR Blu-O Bangalore, PVR Blu-O Market City Pune and PVR Blu-O Delhi. The principal dispute between the petitioner and Phonographic Performance Limited (hereafter 'PPL'), as it appears from the pleading, is regarding whether the petitioner is liable to pay licence fee for music played by the petitioner at the Bowling alleys at the rates specified for a pub and restaurant. It is the petitioner’s case that it should be charged licence fee as specified by PPL for a bowling alley and not at the rates specified for a pub or a restaurant.

3. The petition is premised on the basis that respondent no.2 (PPL) is a

copyright society registered under the Copyright Act, 1957 (hereafter 'the Act'). This is plainly evident from the averments made in the petition. Some of the relevant averments made in the petition are set out below:-

“7. That the respondent No. 2 i.e. a Copyright Society registered under Section 33 (3) of the Copyright Act, 1957 (for the sake of brevity, hereinafter referred to as the Act) and upon registration have been so authorized by the Central Government to carry on the copyright business is sound recording works of sound recording of the members who have so entrusted their copyright in various sound recordings unto the society.

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11. That the members of the respondent no. 2 on account of having executed agreements in its favour thereby exclusively authorizing the respondent to administer copyright in the sound recordings to the respondent in terms of Section 30, have so empowered the respondent no. 2 to collect license fee from the members of the public who are communicating the “sound recordings” to the public.

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15. That the royalties collected by the respondent no. 2 thereafter are disbursed to the owners of the Copyright in the said sound recordings. The respondent no. 2 is therefore, charging and collecting license fees from users on behalf of its member companies who hold rights to sound recordings, which are played and communicated to the public. The rates of royalty/license fees are decided collectively by the members of the respondent society.

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18. That the respondent, on account of being a registered Copyright Society, more than 250 owners of the sound recording works in respect of the recorded music are the members of the respondent no. 2 and have granted the respondent exclusive authorization to administer their

rights in more than 5 lakh Indian songs (both film and non-film, in Hindi and other languages) and additional 10 lakh International songs, copyrights of which are exclusively owned and/or controlled by its members.”

4. PPL had also filed two suits against the petitioner and was not issuing licence for purposes of the copyright works. It is in this backdrop that the petitioner had made certain representations to respondent no.1 and, therefore, it sought the reliefs as noted above.

5. The petition is premised on the basis that the petitioner is a copyright society registered under Section 33 of the Act and was thus obliged to publish a tariff scheme under Section 33A of the Act, which was amenable to review before the Copyright Board in terms of Section 33A (2) of the Act. It is the petitioner’s case that the respondent was practicing monopolistic and restrictive trade practices and attempting to recover licence fee in excess of its published tariff.

6. PPL has filed a counter affidavit unequivocally stating that it is no longer a copyright society registered under Section 33 of the Act. It is PPL’s case that it is the owner of sound recordings and is seeking to recover licence fee for the copyright vested with it and not as a copyright society.

7. In view of the aforesaid, the fundamental premise on which the petitioner has rested its petition no longer holds good. It is also clear that the dispute is purely a private dispute between the petitioner and PPL and no direction to the Central Government can be issued to hold an enquiry into the affairs of the PPL under Section 33 of the Act.

8. It is seen that the petitioner has enjoyed an interim order in its favour and is continuing to play the music at its bowling alleys (which includes a pub and a restaurant)without making any payment of licence fee. This Court

considers it apposite to balance the equities before relegating the parties to agitate their disputes before the appropriate forum.

9. In this regard, it is relevant to refer to certain orders passed by this Court. The present petition was moved on 02.09.2014 and on that date this Court, *inter alia*, passed the following order:-

“In the meantime, the respondents are restrained from taking any coercive action against the petitioner in respect of their demand for licence fees. However, this is subject to the petitioner depositing a sum of ₹2 lacs with the Registry of this Court within a period of two weeks from today. The Registry shall place the said amount in a Fixed Deposit Receipt initially for a period of six months to be renewed from time to time.
Order dasti.”

10. On 08.12.2014, this Court directed that a further sum of ₹ one lakh be deposited with the Registry of this Court to be kept in a fixed deposit. The relevant extract of the said order reads as under:-

“Learned counsel for the respondent states that, usually, at the end of the year events are held in various restaurants and the petitioner is also likely to hold such events for which specific licences are required. He submits that the amount deposited by the petitioner would be wholly inadequate to cover the licence fees of those events.

In the circumstances, it is directed that the petitioner shall deposit a further sum of Rs.1 lakh with the Registry to be kept in fixed deposit along with the initial deposit made by the petitioner.

It is further directed that the petitioner shall also permit the representative of the respondent No.2 to visit the bowling alley and the restaurants for the purpose of verifying the music being played during the events, if any. However, the respondent shall ensure that its representative acts in an

unobtrusive manner and does not cause any disturbance or inconvenience to the petitioner's customers."

11. On 18.05.2015, the learned counsel for the parties agreed to certain directions and the following order was passed :-

"1. After some arguments, the learned counsel for the parties are agreed that the matter could move forward on the following lines:-

(i). The petitioner gives its consent for release of the sum of Rs.2 Lakh, deposited in court pursuant to an order dated 02.09.2014 and another sum of Rs.1 Lakh deposited pursuant to order dated 08.12.2014, in the form of FDRs, along with accrued interest, if any.

(ii). The petitioner will give details of music played by the DJs as also the total capacity of its various outlets across the country. The said details will be given within six weeks.

(iii). On the details, referred to in clause (ii) above, being furnished in six weeks, respondent no.2 shall indicate the license fee that is required to be paid by the petitioner.

2. List on 18.09.2015.

3. It is made clear that the respondents will not disturb or inconvenience the customers of the petitioners, as indicated in the previous orders of this court."

12. In compliance with the order dated 18.05.2015, the petitioner filed an affidavit, *inter alia*, affirming as under:-

"4. That in compliance of this Hon'ble Court's order so passed on 18.05.2015, the details of the music played by the DJs as also the total capacity of the outlets across the country is set out herein under in the form of the table for the sake of convenience:

CENTRE NAME	SEATING CAPACITY	DJ MUSIC	NATURE OF WORK
Blu O Ambience, Gurgaon	200	Recorded Only	Part time DJ, No Dance Floor
Blu O Orion, Bangalore	200	Recorded Only	Part time DJ, No Dance Floor
Blu O Market City, Bangalore	150	Recorded Only	Part time DJ, No Dance Floor
Blu O Market City, Pune	150	Recorded Only	Part time DJ, No Dance Floor
Blu O Elante, Chandigarh	150	Recorded Only	Part time DJ, No Dance Floor
Blu O Pavilion Ludhiana	150	Recorded Only	Part time DJ, No Dance Floor

”

13. In compliance with the order dated 18.05.2015, respondent no.2 also filed an affidavit indicating the amount of licence fee payable by the petitioner computed on the basis of the details as submitted by the petitioner. In terms of the said affidavit dated 22.08.2016, the petitioner was liable to pay licence fee of ₹30,72,570/- (inclusive of service tax of ₹4,00,770/-).

14. The affidavit filed on behalf of the petitioner does not disclose the details of music played as was directed by this Court but merely states that recorded music was played. In the circumstances, it cannot be readily ascertained whether petitioner had played music, the copyright of which vests with PPL. However, a plain reading of the petition indicates that the petitioner had acknowledged that PPL issues licence in respect of “5 lakh Indian songs (both film and non-film, in Hindi and other languages) and additional 10 lakh International songs”, albeit, as a copyright society.

15. The learned counsel for PPL submits that the amount of licence fee now payable as per the tariffs disclosed by it aggregates to ₹61,45,140/- (licence fee for FY 2014-2015 and 2015-2016).

16. At a hearing held on 01.09.2017, the learned counsel appearing for the petitioner stated that he had no instructions in the matter as the project itself may have been sold by the petitioner and sought time to take instructions.

17. On 12.10.2017, the learned counsel for the petitioner sought liberty to withdraw the present petition to institute appropriate proceedings. However, the said prayer was not granted as this Court was of the view that a reasonable sum was required to be paid by the petitioner to PPL considering that it had enjoyed an interim stay for almost three years. Accordingly, this Court directed the petitioner to pay a further sum of ₹10 lakhs with the Registry of this Court. The learned counsel for the petitioner states that the amount has since been deposited.

18. Mr Jayant Bhushan, learned Senior counsel appearing for the petitioner now states that the petitioner wishes to press the petition and the petitioner is no longer interested in withdraw the petition. He advanced contentions on two fronts. First, he submitted that PPL was acting contrary to the provisions of the Act inasmuch as it was seeking to function as a copyright society without being registered as such under Section 33 of the Act. He submitted that the respondent no.1 was required to take appropriate action as the same constituted an offence under Section 63 of the Act. Next he submitted that by virtue of the Second proviso to Section 33(1) of the Act, the business of issuing or granting licences in respect of literary, dramatic, musical or artistic works incorporated in a cinematograph films or sound recordings required to be carried out only through a copyright society and PPL was functioning in violation of the said provisions.

19. The contention that provisions of Section 63 of the Act are applicable is unpersuasive. Section 63 of the Act provides that any person who

knowingly infringes or abets the infringement of (a) copyright in a work, or (b) any other right conferred by this Act, would be punishable with imprisonment. In the present case, there is no allegation that PPL has violated copyright in a work or has infringed any right conferred under the Act.

20. Insofar as the contention that the PPL cannot carry on the business of issuing or granting licences is concerned; it is relevant to state that in terms of Section 33 (1) of the Act, no person is entitled to 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 subsection (3). The Second proviso also provides that the business of issuing or granting license in respect of certain works would be carried out only through a copyright society duly registered under the Act. In the present case PPL contends that it is not carrying on the business of issuing licences or granting licences but is merely exercising its right as an owner of a copyright. According to PPL, this would not infringe the prohibition under Section 33(1) of the Act.

21. This Court is not inclined to examine this controversy in the present petition and it would be open for the petitioner as well as PPL to agitate this issue in an appropriate proceedings. As stated earlier the dispute between the parties is essentially a private one. Having stated the above, this Court also cannot lose sight of the fact that the petitioner has continued to play sound recordings at its outlet without paying any significant licence fee and PPL had been restrained to pursue its remedies for what it considered violation of its rights, by virtue of the orders passed by this Court. It is also material to

note that the purpose of the order dated 18.05.2015 was to put in place an interim measure where PPL could recover a reasonable licence fee pending the consideration of the disputes. As stated above, PPL claims that over ₹61 lakhs payable as licence fee for FY 2014-15 and 2015-16. In the circumstances, this Court considers it apposite to direct that the amount of ₹10 lakhs deposited by the petitioner with the Registry of this Court be released to PPL forthwith. It is clarified that this is without prejudice to all rights and contentions of the petitioner as well as PPL. It would be open for the PPL to institute appropriate proceedings for recovery of the amounts released to PPL as licence fee. It would be equally open for PPL to institute such proceedings as advised including for seeking further fees as claimed by it.

22. Insofar as the present petition is concerned, as noticed above, it is clearly not sustainable as it rests on a fundamentally erroneous premise that the PPL is a copyright society.

23. The petition and the pending applications are, accordingly disposed of leaving it open for the petitioner and for the concerned parties to institute such appropriate proceedings as may be advised.

VIBHU BAKHRU, J

OCTOBER 31, 2017

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