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

+ **W.P.(C) 5893/2018 & C.M. No. 22982/2018, 32754/2018**

RADIO NEXT WEBCASTION PVT. LTD. Petitioner

Through Mr.Sagar Chandra, Adv.

versus

UNION OF INDIA AND ANR. Respondents

Through Ms.Shiva Lakshmi, CGSC with
Mr.Siddharth Singh & Mr.Ruchir
Ranjan Rai, Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **27.09.2018**

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning an Administrative Order dated 16.05.2018 (impugned order) passed by the Registry of Intellectual Property Appellate Board (hereafter 'the Appellate Board') declining to place the petitioner's application filed under Section 31D of the Copyright Act, 1957 (hereafter 'the Copyright Act') before the Appellate Board. The impugned order indicates that the petitioner's application is declined on the ground that there is no technical member (copyright) to place the application before the Appellate Board and, therefore, till such time that a technical member (copyright) is appointed, the matters relating to Copyright Act would not be listed before the Appellate Board.

2. Ms.Shiva Lakshmi, counsel appearing for the respondents states that steps are being taken for appointing a technical member (copyright) in terms of Rule 3 of the Copyright Rules, 2013 and states that advertisement for such posts have been issued and is it expected that such appointment would be made shortly.

3. Although, a technical member (copyright) has not been appointed as yet, it is not disputed that the Appellate Board is functional and is hearing the matters with regard to the Trademarks Act, 1999 as well as the Patent Act, 1970.

4. The only question that falls for consideration of this Court is whether the Appellate Board, as presently constituted, has the jurisdiction to examine matters relating to the Copyright Act

5. Section 11 of the Copyright Act 1957, as existed prior to 26.05.2017, read as under:

“11. Copyright Board. (1) As soon as may be after the commencement of this Act, the Central Government shall constitute a Board to be called the Copyright Board which shall consist of a Chairman and two other members.

(2) The salaries and allowances payable to and the other terms and conditions of service of the Chairman and other members of the Copyright Board shall be such as may be prescribed: Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairman or any other member shall be varied to his disadvantage after appointment.

(3) The Chairman of the Copyright Board shall be a

person who is, or has been, a Judge of a High Court or is qualified for appointment as a Judge of a High Court.

(4) The Central Government may after consultation with the Chairman of the Copyrights Board, appoint a Secretary to the Copyright Board and such other officers and employees as may be considered necessary for the efficient discharge of the functions of the Copyright Board.”

6. Copyright Rules, 2013, which came into effect on 14.03.2013, also expressly contained rules for constitution of the Copyright Board. Rule 3(1) of the said Rules is set out below:

“3. Terms and conditions of the office of the Chairman or members of the Board.— (1) The Chairman and other members of the Board shall be appointed for such period not exceeding five years as the Central Government may in each case deems fit:

Provided that the Chairman and the other member shall not hold office as such after he has attained,-

- (a) In the case of Chairman, the age of sixty-five years; and
- (b) In the case of any other Member, the age of sixty-two years.”

7. However, by virtue of the Finance Act, 2017, Section 11 of the Copyright Act was amended and provisions for constitution of a Copyright Board were substituted. Therefore, with effect from 26.05.2017, there was no statutory provision for constitution of a Copyright Board. Section 11 of the Copyright Act, as substituted with effect from 26.05.2017, reads as under:

“11. Appellate Board.—The Appellate Board established under section 83 of the Trade Marks Act, 1999 shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Appellate Board for the purposes of this Act and the said Appellate Board shall exercise the jurisdiction, powers and authority conferred on it by or under this Act.”

8. It is apparent from the above that with the introduction of the said statutory amendment, there is now no requirement for constitution of a Copyright Board. However, the Copyright Rules, 2013 – which came into force with effect from 14.03.2013 – were not amended to incorporate a corresponding change necessary as a consequence of the amendment in the Copyright Act. The said Rules were framed by the Central Government in exercise of powers conferred under Section 78 of the Copyright Act, which enables the Central Government to frame rules *“for carrying out the purposes of the Act”*. Clearly, the said Rules, insofar as they provide for composition of a Copyright Board, serve no purpose of Copyright Act. Rule 3 of the said rules is superfluous since the Copyright Act, itself, does no longer provide for constitution of a Copyright Board.

9. Section 83 of the Trade Marks Act, 1999 (hereafter ‘the Trade Marks Act’) provides for establishment of an Appellate Board. Section 84 of the Trade Marks Act provides for composition of the Appellate Board. The said Sections are set out below:

“83. Establishment of Appellate Board.—

The Central Government shall, by notification in the Official Gazette, establish an Appellate Board to be known

as the Intellectual Property Appellate Board to exercise the jurisdiction, powers and authority conferred on it by or under this Act.

84. Composition of Appellate Board.—

(1) The Appellate Board shall consist of a Chairman, Vice-Chairman and such number of other Members, as the Central Government may, deem fit and, subject to the other provisions of this Act, the jurisdiction, powers and authority of the Appellate Board may be exercised by Benches thereof.

(2) Subject to the other provisions of this Act, a Bench shall consist of one Judicial Member and one Technical Member and shall sit at such place as the Central Government may, by notification in the Official Gazette, specify.

(3) Notwithstanding anything contained in sub-section (2), the Chairman—

(a) may, in addition to discharging the functions of the Judicial Member or Technical Member of the Bench to which he is appointed, discharge the functions of the Judicial Member or, as the case may be, the Technical Member, of any other Bench;

(b) may transfer a Member from one Bench to another Bench;

(c) may authorise the Vice-Chairman, the Judicial Member or the Technical Member appointed to one Bench to discharge also the functions of the Judicial Member or the Technical Member, as the case may be, of another Bench.

(4) Where any Benches are constituted, the Central Government may, from time to time, by notification, make provisions as to the distribution of the business of the

Appellate Board amongst the Benches and specify the matters which may be dealt with by each Bench.

(5) If any question arises as to whether any matter falls within the purview of the business allocated to a Bench, the decision of the Chairman shall be final.

Explanation.—For the removal of doubts, it is hereby declared that the expression “matter” includes an appeal under section 91.

(6) If the Members of a Bench differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it.”

10. Having stated the above, it may be apposite for the respondent to also appoint a member technical (copyright), however, a vacancy in this regard does not in any manner impinge upon the jurisdiction of the Appellate Board as constituted under Section 83 of the Trade Marks Act.

11. A conjoint reading of Section 11 of the Copyright Act and Section 83 of the Trade Marks Act clearly indicates that the Appellate Board as constituted under Section 83 of the Trade Marks Act would also have the jurisdiction to perform the functions under the Copyright Act as well. There is no dispute that an Appellate Board has been validly constituted in terms of Section 84 of the Trade Marks Act and is now functional. Thus, it is also required to “*exercise the jurisdiction, powers and authority conferred on it by or under this Act [the Copyright Act]*”.

12. In the aforesaid view, the impugned order is unsustainable and is, accordingly, set aside. It is directed that the petitioner's application be placed before the Appellate Board as is currently constituted. The Appellate Board shall examine the same in accordance with law.

13. The petition is disposed of in the above terms. All pending applications stand disposed of.

SEPTEMBER 27, 2018
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VIBHU BAKHRU, J



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