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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.03.2022

DELIVERED ON : 20.04.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.NO.15860 OF 2021

1. Next Radio Limited,
Rep. by Ramesh Menon,
A Company incorporated under
the Companies Act, 1956,
and having its Registered office
at Unit 701 A, 7th Floor, Tower 2,
Indiabulls Finance Centre,
Senapati Bapat Marg,
Elphinstone Road, Mumbai,
Maharashtra, India - 400 013.

Also at: No.110,
Uthamar Gandhi Salai,
Prakash Presidium, 2nd Floor,
Nungambakkam High Road
Chennai - 600 034.

2. The Association of Radio Operators for India,
Rep. by Uday Chawla,
A Society Registered under the
Societies Registration Act, 1860,
Having its Registered Office at 304,
Competent House,
F-14, Connaught Place,
New Delhi - 110 001.

3. Ramesh Menon
R/o.22/262/1, A10, Ocean Park,
Near N I O, Nio Dona Paula,
North Goa, Goa - 403 004.

Also at: No.110, Uthamar Gandhi Salai,
Prakash Presidium, 2nd Floor,
Nungambakkam High Road
Chennai - 600 034.

... Petitioners



.Vs.

1. The Union of India,
Through the Secretary,
The Department for Promotion of
Industry and Internal Trade,
Udyog Bhavan,
New Delhi - 110 001.
2. Saregama India Limited,
Rep. by Rashna Pochkhanawala,
Having its Registered office
at 33, Jessore Road Dum,
Kolkata - 700 028 and at
Door No.2, 3, 4 and 5
3rd Floor, Kasi Arcade,
No.116, Thyagaraya Road,
T.Nagar, Chennai - 600 017.
3. Phonographic Performance Limited India,
Rep. by Shailesh Kripal,
Crescent Towers, 7th Floor,
B-68, Veera Estate,
Off New Link Road,
Andheri (West),
Mumbai - 400 053 and at:

F1, 1st Floor, Jai Park Castle,
New No.4, Old No.8, Turnbulls Road,
Nandanam Extension, Nandanam,
Chennai - 600 035,
Tamil Nadu.
4. M/s.Sony Music Entertainment Private Limited,
Rep. by its Managing Director,
No.92, Main Avenue,
Santacruz (West),
Mumbai - 600 054.

(R4 impleaded vide order dated 23.11.2021
made in W.M.P.No.22780 of 2021)

... Respondents

PRAYER:-

Petition filed under Article 226 of the Constitution of India praying for a writ of declaration (a) declaring Rule 29(4) of the Copyright Rules 2013 non est, void, unconstitutional and ultra vires; (b) strike down the Rule 29(4) of the Copyright



Rules, 2013 as unconstitutional being contrary to Article 19(1) (a) of the Constitution of India; (c) in the alternative to prayer (a) above, that on a true and correct interpretation of Rule 29(4), this Court be please to interpret Rule 29(4) as directory and not mandatory such that its requirements would be satisfied and treated as sufficient compliance upon submission of the logs containing details by radio broadcasters such as the petitioner at the end of the month.

For the Petitioners : Mr.Arvind Pandian
Senior Counsel
Mr.Abhishek Malhotra
For Mr.M.S.Bharath
Mr.V.S.Krishna

For the Respondents : Mr.R.Sankaranarayanan
Additional Solicitor General
Assisted by
Mr.V.Chandrasekaran
Special Panel Counsel
For 1st Respondent

: Mr.Satish Parasaran
Senior Counsel and
Mr.R.Parthasarathy
M/s.Arva Merchant,
Ankur Sangal, Sucheta Roy
Solaiappan.O and Trishai Nag
For 2nd Respondent

: Mr.P.R.Raman
For Mr.Adithya Reddy
For 3rd Respondent

: Mr.Vijay Narayan
Senior Counsel
For M/s.Abishek Jenasenan
For 4th respondent

ORDER

THE CHIEF JUSTICE

The writ petition has been filed to challenge the constitutional validity of Rule 29(4) of the Copyright Rules, 2013 [for brevity, "the Rules of 2013"]. It is not only in



4. Section 31-D of the Act of 1957, accordingly, recognised the vesting of statutory rights in all broadcasting organisations, to broadcast works that have been published. The only aspect that is to be ascertained/determined prior to exercise of such right is the quantum of license fee. For this purpose, the Intellectual Property Appellate Board (IPAB) was vested with the jurisdiction to hear the interested parties and decide upon the quantum/rate of a statutory licence fee. The jurisdiction for it has now been vested with the Commercial Courts by the notification of the Tribunal Reforms (Rationalisation and Conditions of Service) Ordinance, 2021.



5. It is submitted that as per Section 31-D of the Act of 1957, a broadcasting organisation needs to give a 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 the rights in such work royalties in the manner and at the rate fixed by the Commercial Courts. By virtue of the aforesaid provision, the broadcasting company can seek a statutory licence by giving prior notice indicating the duration of the broadcast and its territorial coverage. However, Rule 29(4) of the Rules of 2013 was enacted going beyond the scope of Section 31-D of the Act of 1957. While giving the notice, as per Rule 29(4) of the Rules of 2013, the information to be furnished goes beyond the requirement under Section 31-D of the Act of 1957, as amended, and thereby the constitutional validity of Rule 29(4) of the Rules of 2013 has been challenged.

6. Referring to Rule 29(4) of the Rules of 2013, it is submitted that the notice to be given should not only contain particulars qua the name of the channel; the territorial coverage; and, the duration, but also the details necessary to identify the work which is proposed to be communicated to public by way of radio broadcast; the details of year of publication of such work; name, address and nationality of the owner of the copyright in such works; and, also the names of authors and principal performers of such works, etc.

7. It is submitted that Rule 29(4) of the Rules of 2013 requires information which is not stipulated under Section 31-D of the Act of 1957 and, therefore, to the extent Rule 29(4) of the Rules of 2013 goes beyond the scope of Section 31-D of the Act of 1957 it is to be declared unconstitutional or be ignored and the notice be limited to cover the requirements under Section 31-D of the Act of 1957. It is mainly on the ground that a Rule cannot be made in conflict or beyond the scope of the statutory provision. A Rule in conflict with the Act deserves to be struck down.

8. Learned counsel for the petitioners further submit that Rule 29(4) of the Rules of 2013 is otherwise violative of Article 19(1)(a) and (g) of the Constitution of India. It is for the reason that despite the compliance of the provisions of Section 31-D of the Act of 1957 by giving the required information in the prior notice, a contingency may occur to play a work on demand in the programme and the information as required under sub-clauses (c), (d), (e), (f) and (j) to Rule 29 (4) of the Rules of 2013 may not be supplied and, in that eventuality, the broadcasting companies are made liable for prosecution.



9. Giving an illustration to explain the aforesaid, learned counsel submitted that while Section 31-D of the Act of 1957 requires prior notice showing intention to broadcast the work stating the duration and territorial coverage of the broadcast, as per Rule 29(4) of the Rules of 2013, a broadcasting company is required to give the details necessary to identify the work which is proposed to be communicated to the public, along with the year of publication of such work and so on. The prior notice indicating all such information as per the Rules of 2013 may not be possible at times when a copyright is to be published on a demand of the viewer during the course of publication. To elaborate, it is stated that while a programme is conceived, the songs may be played on demand of the viewer, for which a prior notice giving the description of the work with all required details may not be possible, and, in the absence of it, the petitioners are dragged to face the prosecution. The notice is to be given five days' prior to the day of broadcast and, therefore, Section 31-D of the Act of 1957 was well-conceived limiting the information to the extent of duration and territorial coverage of the work, but the Rules of 2013 require information beyond the statutory prerequisites.

10. It is submitted that the rights of the petitioners guaranteed under Articles 19(1)(a) and (g) of the Constitution of India are infringed, inasmuch as they are unable to run their business despite compliance of all required formalities as given under the Act of 1957. It is not only while running the radio broadcast, but even on the performances, where a song may be performed on demand of the public participating therein. Thus, giving a practical illustration of the issue, it is submitted that if Rule 29(4) of the Rules of 2013 is not struck down completely, it should be struck down to the extent of sub-clauses (c), (d), (e), (f) and (j) to Rule 29(4) of the Rules of 2013.

11. The other issue raised by learned counsel for the petitioners is about the disclosure of time slot, duration and period of programme in which the works are to be included. It is submitted that the rates for the performance work have been given referring to the time slot. If a work is performed between 8 am and 10 am, the rates are higher, while in other time slots, it may be 50% of the rates and, at times, it may even be 25%. The broadcasting companies, while performing the work, may not be able to mention the time slot of publication of the copyright work because songs may be played on demand during the course of the programme. It is more so in regard to those programmes which are not preconceived, but designed to be on the demand of the viewers, i.e., play of the copyright work on popular demand. It cannot be presumed that a song on demand would be played in a particular time slot, so as to indicate in the prior notice.



Therefore, the requirement aforesaid pursuant to Rule 29(4)(j) of the Rules of 2013 is infringing the right of the petitioners and, otherwise, it is unnecessary.

12. Referring to the mechanism of working and settling the rate, it is submitted that at the end of the month, the complete details about the performance of works is given to the respondent companies so as to determine the rate by the commercial courts. It is not that even if a performance is being taken up suddenly it would go unaccounted, rather at the end of the month, the necessary disclosure about the work goes to the respondent companies and otherwise a complete log is prepared of the performances. Thus, even there is no purpose sought to be achieved in bringing Rule 29(4) of the Rules of 2013 to disclose certain information going beyond the provisions of Section 31-D of the Act of 1957. It is only a mechanism to put the broadcasting companies under threat of prosecution for no reason and thereby affecting their rights to do their business.

13. Learned Senior Counsel for the petitioners referred to Section 78 of the Act of 1957 to invite the attention of the court regarding the power to make rules. Section 78(2) of the Act of 1957 gives power to the Central Government to make rules to provide for all or any of the matters enumerated therein. It is to canvass an argument that Rule 29(4) of the Rules of 2013 does not come within the framework of rule-making power and, therefore, referring to Section 78(2)(cD) of the Act of 1957, it is stated that the Rules could have been framed within the framework of sub-section (2) of Section 31-D alone and not going beyond it.

14. The other argument raised by learned counsel for the petitioners is to declare Rule 29(4) of the Rules of 2013 to be directory in nature. The alternative argument is in reference to the word "shall" in the provision, taking it to be not conclusive and decisive and for that mandatory in nature. Taking it from the real intention of the legislature, the court should consider the nature and design of the statute and the consequences which would follow from construing it one way or the other. The word "shall" used in the provision can be taken as "may" so as to make the provision to be directory instead of treating it to be mandatory. It would otherwise defeat and frustrate the object of the legislation to bring Section 31-D of the Act of 1957.

15. A reference of the judgment in the case of Atlas Cycle Industries Ltd v. State of Haryana, (1979) 2 SCC 196, has been given by learned counsel for the petitioners to state that neither the Act of 1957 nor the Rules of 2013 provide for any penalty or consequence for non-compliance with the provisions of



Rule 29(4) of the Rules of 2013 and the respondents have even failed to substantiate the necessity for advance intimation of the details sought under Rule 29(4) of the Rules of 2013 and, therefore, the provision be treated as directory in nature.

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16. In reference to all the facts given above and the legal provisions, a prayer was made to declare Rule 29(4) of the Rules of 2013 to be unconstitutional as it not only infringes the constitutional rights of the petitioners, but offends Section 31-D of the Act of 1957, as amended.

17. Mr.R.Sankaranarayanan, learned Additional Solicitor General, appearing for the Union of India, submits that the argument for challenge to Rule 29(4) of the Rules of 2013 has been made restricting it in reference to Section 31-D(2) of the Act of 1957, ignoring the other part of the said statutory provision. It is submitted that Section 31-D(5) of the Act of 1957 requires disclosure of the names of the authors and principal performers of the work in case of radio and television programme. It has been ignored by the petitioners. Rule 29(4) of the Rules of 2013 is not offending Section 31-D of the Act of 1957, rather it is in consonance with it. A rule can be brought to supplement the statutory provisions, though it cannot be to supplant it. In the instant case, Rule 29(4) of the Rules of 2013 is supplementing Section 31-D of the Act of 1957 and, therefore, the same is constitutionally valid.

18. Unfolding the background of the amendment brought by the Copyright (Amendment) Act of 2012, it was submitted that prior to the introduction of Section 31-D(2) of the Act of 1957, the provision was providing for compulsory license only, where the rate for the publication of the work is to remain in the hands of the copyright holder. To balance the rights between the copyright holder and the broadcaster, Section 31-D of the Act of 1957 was brought so that the rate of publication of the work may be determined by the Appellate Tribunal, now the commercial courts. If the petitioners are facing difficulty in getting the statutory licence on the grounds narrated by them, they can very well perform the work under the compulsory licence where they are not required to give prior notice. However, if they want to come within the ambit of Section 31-D of the Act of 1957, the required information is to be given. The prior notice containing the required information to be given under Rule 29(4) of the Rules of 2013 is not otherwise offending Article 19(1)(a) and (g) of the Constitution of India.

19. Covering the factual aspect, it is stated that if the broadcasting company is to publish a work on the demand of the viewers during the course of the programme, they can do so giving required information within 24 hours of such



communication of the work. It is in view of the second proviso to Rule 29(1) of the Rules of 2013. It takes care of unforeseen circumstances. Therefore, the excuse taken by the petitioners in reference to unforeseen circumstances to publish the work on demand, cannot be countenanced. The petitioners are allowed to publish the work on demand and comply the second proviso to Rule 29(1) of the Rules of 2013 which provides for a notice to be given within 24 hours of publication/communication of the work. In view of the above, the lame excuse taken by the petitioners for challenge to Rule 29(4) of the Rules of 2013 is not tenable.

20. Learned Additional Solicitor General further submits that furnishing the details of time slot, duration and period of programme in the prior notice cannot be an issue inasmuch as, largely, the programmes are preconceived. Therefore, five days' prior notice should contain the required information as given under Rule 29(4) of the Rules of 2013. When a broadcaster gives prior notice as per Section 31-D of the Act of 1957 in the manner prescribed under the Rules of 2013, it would be after giving the duration and territorial coverage of the broadcast with the names of the authors and principal performer of the work. In the absence of the details of the work, if a prior notice is given, it would be an empty formality giving no information of the work to be performed. A prior notice containing the aforesaid information is required for determination of the rate and payment of 25% of amount in advance and for that reason only Rule 29(4) of the Rules of 2013 was designed to cover the required aspects to avoid any dispute between the broadcasting company and the copyright holder.

21. If the arguments of learned counsel for the petitioners are considered in reference to the details of information to be given under Section 31-D of the Act of 1957, then unless they would be knowing about the publication of the work so as to give the names of the authors of the work, apart from the principal performer, a prior notice cannot be considered to be in consonance with Section 31-D of the Act of 1957 and once the broadcaster would know about the names of the authors and the principal performer of the work, all the required information is consequential. In view of the above, even on facts, there is no infringement of the fundamental rights.

22. Learned Additional Solicitor General has further made a reference of the judgment of the Division Bench of the Madras High Court in the case of South Indian Music Companies Association v. Union of India and another, 2016 2 LW 887, where the constitutional validity of Section 31-D of the Act of 1957 was addressed. The challenge to the constitutional validity of Section 31-D of the Act of 1957 was made by the broadcasting company, but was not accepted almost on the grounds, as taken



here in reference to violation of Article 19(1)(g) of the Constitution of India. When the broadcaster lost in the challenge to Section 31-D of the Act of 1957, they have challenged Rule 29(4) of the Rules of 2013 indirectly to frustrate the requirement of the statutory licence in giving prior notice.

23. It is submitted that rule-making power given under Section 78 of the Act of 1957 authorises the Central Government to make rules for carrying out the purposes of this Act. Sub-section (2) to Section 78 of the Act of 1957 was referred by the petitioners in isolation without realising that it is without prejudice to the generality of the powers under sub-section (1) of Section 78 of the Act of 1957. Thus, sub-section (2) of Section 78 of the Act of 1957 cannot limit the powers of the Central Government, as otherwise vested under Section 78(1) of the Act of 1957 so as to bring amendment in reference to Section 31-D(2) of the Act of 1957.

24. The argument of learned counsel for the petitioners that the provision should be treated as directory instead of taking it to be mandatory has been contested by learned Additional Solicitor General. It is submitted that Section 31-D of the Act of 1957 is an enabling provision and it unequivocally states that the benefit of the provision shall only be available upon strict compliance of all the conditions. Since Section 31-D of the Act of 1957 is mandatory and all the information sought under Rule 29(4) of the Rules of 2013 are flowing from the said statutory provision, Rule 29(4) of the Rules of 2013 cannot be treated to be directory and otherwise it would lose its sanctity. The object of the enactment was to evolve a mechanism to balance the rights between the copyright holder and the broadcasting company and such object would be frustrated if Rule 29(4) of the Rules of 2013 is treated to be directory in nature.

25. A prayer was accordingly made to dismiss the writ petition. It is even for the reason that for challenge to the constitutional validity, one is required to make a case of the following nature: (a) lack of legislative competence; (b) violation of fundamental rights; (c) violation of any provision of the Constitution of India; (d) failure to conform to the statutory provision or exceeding the limits of authority confirmed by the enabling Act; (e) repugnancy to the laws of the land; and, (f) manifest arbitrariness/unreasonableness. It is submitted that none of the grounds aforesaid is made out in the case on hand and, therefore, a prayer was made to dismiss the writ petition.



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26. Mr. Vijay Narayan, learned Senior Counsel appearing for the fourth respondent, Mr. Satish Parasaran, learned Senior Counsel appearing for the second respondent and Mr. P. R. Raman, learned counsel appearing for the third respondent, submitted that challenge to the Rule 29(4) of the Rules is nothing but an attempt to indirectly attack Section 31-D of the Act of 1957, as amended in 2012. At the first instance, the validity of Section 31-D of the Act of 1957 was challenged before this court. However, having remained unsuccessful in the case of South Indian Music Companies Association v. Union of India and another, *supra*, the broadcasters have made a challenge to Rule 29(4) of the Rules of 2013 so as to frustrate the compliance required for prior notice.

27. Learned Senior Counsel appearing for the private respondents further submitted that though the petitioners have given illustration of the practical difficulties in furnishing the required information in the prior notice, in fact, it was furnishing the required information in the prior notice. At times, the difficulty was shown by the broadcasting company to know certain details of the performance work, but on their request, it was furnished by the respondent companies. It is not that the required information has not been furnished to the petitioners, but are otherwise available.

28. Learned senior counsel for the private respondents gave reference of the letter of the petitioners and reply thereupon by the music company to indicate that the required details not only of particular songs, but all the songs for which they possessed copyright, were given to the petitioners. Thus, it is incorrect to state that the petitioners may not be knowing about the details required to be furnished in compliance with Rule 29 (4) of the Rules, rather it is available pursuant to the information furnished by the petitioners and lies in the public domain.

29. So far as the other practical difficulty of giving prior notice of a work to be performed on demand of the public or viewer during the course of the programme is concerned, learned senior counsel appearing for the private respondents submit that care has been taken by inserting second proviso to Rule 29(1) of the Rules of 2013 under challenge. If, for any reason, a prior notice could not be given for performance of the work, it can be furnished by the broadcasting company within 24 hours of the work. Thus, the practical difficulty shown by the petitioners to give the required information in the prior notice does not sustain.



30. The case of the respondents is further that if challenge to Rule 29 of the Rules of 2013 sustains, then there would hardly be any difference between the compulsory licence and statutory licence. The statutory licence has been brought by Section 31-D of the Act of 1957 to balance the equities, but it has to be on compliance of the required conditions given therein. The prior notice giving all details is required for the reason that the broadcasting companies are required to pay 25% of the rate of the work in advance and it cannot be worked out without giving the information of the prior notice. The requirement to pay 25% of the amount on the rates is to satisfy the requirement for grant of statutory licence.

31. Referring to the case and argument of learned Senior Counsel for the petitioners, it is submitted that if in the prior notice the petitioners would indicate only the duration and the territorial coverage of the broadcast, it could not be clarified as to how they would be fetching 25% of the amount towards the broadcast, because final rate is to be determined by the commercial courts now. The determination of the amount can be made only when they would be in possession of the required information to be supplied in advance, i.e., in prior notice. Therefore, Rule 29(4) of the Rules of 2013 is well conceived taking into consideration all the aspects required for the statutory licence which otherwise is not in conflict with Section 31-D of the Act of 1957 and is not infringing any of the fundamental rights of the petitioners. The prayer is, accordingly, to dismiss the writ petition.

32. We have considered the rival submission of the parties and scanned the matter carefully.

33. A challenge to Rule 29(4) of the Rules of 2013 has been made. Thus, it would be gainful to refer to the said provision hereunder:

" 29. Notice for Communication to the Public of literary and musical works and sound recordings.—

(1) Any broadcasting organization desirous of communicating to the public by way of broadcast or by way of performance of a published literary or musical work and sound recording under sub-section (1) of section 31D shall give a notice of its intention to the owner of the copyright and to the Registrar of Copyrights before a period of five days in advance of such communication to the public and shall pay to the owner of the copyright, in the literary or musical work or sound recording or any combination thereof, the amount of royalties due at



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the rate fixed by the Board in this regard:
Provided that in case of communication to the public by way of broadcast or by way of performance of a newly published literary or musical work or sound recording or any combination thereof, which has been published within the said period of five days of such communication and which do not form part of the scheduled programmes, the notice shall, be given before such communication to the public:

Provided further that in case of communication to the public by way of broadcast or by way of performance of any published literary or musical work and sound recording or any combination thereof, in unforeseen circumstances, the notice shall, be given within twenty-four hours of such communication to the public:

Provided also that any broadcasting organization shall give a notice under this Chapter only after the royalty to be paid is determined by the Board under rule 31 and published in the Official Gazette and in the website of the Copyright Office and the Board.

(2) Every such notice shall be in respect of works belonging to one owner only.

(3) Separate notices shall be given for communication to the public by way of radio broadcast or television broadcast or by way of performance of a literary or musical work and sound recording which has already been published.

(4) The notice under sub-rule (1) shall contain the following particulars, namely:—

(a) Name of the channel;

(b) Territorial coverage where communication to public by way of radio broadcast, television broadcast or performance under sub-rule (3) is to be made;

(c) Details necessary to identify the work which is proposed to be communicated to the public by way of radio broadcast, television broadcast or performance under sub-rule (3);



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(d) Year of publication of such work, if any;

(e) Name, address and nationality of the owner of the copyright in such works;

(f) Names of authors and principal performers of such works;

(g) alterations, if any, which are proposed to be made for the communication to the public by way of radio broadcast, television broadcast or performance of the works, reasons thereof, and the evidence of consent of the owners of rights, if required, for making such alteration;

(h) Mode of the proposed communication to the public, i.e. radio, television or performance;

(i) Name, if any, of the programme in which the works are to be included;

(j) Details of time slots, duration and period of the programme in which the works are to be included;

(k) Details of the payment of royalties at the rates fixed by the Board; and

(l) Address of the place where the records and books of account are to be maintained for inspection by the owner of rights."

[emphasis supplied]

34. Challenge to the Rule quoted above is mainly in reference to Section 31-D of the Act of 1957, as amended. It is on the ground that Rule 29(4) of the Rules of 2013 goes beyond the scope of Section 31-D of the Act of 1957 or it is in conflict with it and, therefore, cannot stand. Rather, to the extent of conflict, it has to be ignored or struck down. Therefore, it would be necessary to quote Section 31-D of the Act of 1957 hereunder:

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



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(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 Commercial Court.

(3) The rates of royalties for radio broadcasting shall be different from television broadcasting and the Commercial Court 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 Commercial Court 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."

[emphasis supplied]

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35. Since the first ground of challenge is conflict between the subordinate legislation and the statutory provision, we need to consider the scope of Section 31-D of the Act of 1957, brought for issuance of the statutory licence for broadcasting of literary and musical works and sound recording. The provision allows the broadcasting organisation desirous of communicating to the public by way of broadcast or performance of a literary or musical work to do so, provided it gives a prior notice to the owner of the rights in such work in the manner prescribed containing duration or territorial coverage of the broadcast. The names of authors and the principal performers of the work, other than in case of the broadcasting organisation communicating such work by way of performance, be announced with the broadcast. Thus, the prior notice with required information under Section 31-D of the Act of 1957 is provided to seek a statutory licence.

36. Section 31-D(2) of the Act of 1957 requires the broadcasting organisation to give a prior notice in such manner as may be prescribed. The manner has been left open and, accordingly, it has been prescribed by the respondent authorities now. It is, thus, evident that the Rules of 2013 have been made in pursuance of the provisions of Section 31-D(2) of the Act of 1957 to prescribe the manner of giving the notice. The respondent authorities have, accordingly, prescribed the manner and, therefore, it cannot be accepted that Rule 29(4) of the Rules of 2013 has been framed without authority and it transgresses the statutory provision of Section 31-D of the Act of 1957.

37. Now, we need to analyze Rule 29(4) of the Rules of 2013 to find out whether it is in conflict or beyond the scope of Section 31-D of the Act of 1957. Rule 29(4) of the Rules of 2013 provides the details to be furnished in the notice for the broadcasting of the work and a serious objection to sub-clauses (c), (d), (e), (f) and (j) to Rule 29(4) of the Rules of 2013 has been made. To examine the argument, we would be taking sub-clauses of Rule 29(4) of the Rules of 2013 to find out whether anyone of the sub-clauses is in conflict with the statutory provision.

38. Rule 29(4)(c) of the Rules of 2013 requires furnishing of details to identify the work proposed to be communicated to the public. The aforesaid cannot be considered to be in



derogation of Section 31-D of the Act of 1957, rather while making compliance of Section 31-D(5) of the Act of 1957, the aforesaid disclosures are to be made and otherwise if details necessary to identify the work are not furnished, the question would be how the amount of 25% would be determined for advance payment. When prior notice has to be given, it presupposes basic information of the work which is going to be performed. Therefore, we do not find Rule 29(4)(c) of the Rules of 2013 to be offending the statutory provision. It is covered by Section 31-D(5) of the Act of 1957.

39. Section 31-D(5) of the Act of 1957 has been referred in specific terms by learned Additional Solicitor General to show the requirement of the names of the authors and the principal performers of the work to be announced with the broadcast. It is submitted that the broadcasting companies are under a statutory obligation to give such information and the same can be given only when the broadcasting company would know about the names of the authors and the principal performers and once they would be knowing about it, all other information is consequential and, therefore, Rule 29(4) of the Rules of 2013 has been framed within the four corners of Section 31-D of the Act of 1957. The petitioners have lost sight of Section 31-D(5) of the Act of 1957 while raising the issue in reference to Rule 29(4)(c) of the Rules of 2013.

40. Rule 29(4)(d) of the Rules of 2013 requires the year of publication of the work, while Rule 29(4)(e) of the Rules of 2013 requires the name, address and nationality of the owner of the copyright in such works and Rule 29(4)(f) of the Rules of 2013 requires names of the authors and principal performers of such work. When the broadcasting company is required to furnish the names of the authors and the principal performers of the work under Section 31-D(5) of the Act of 1957, it can be with information of the year of publication of such work and is not otherwise an issue which can be said to be an information in conflict with the statutory provision. Rather, furnishing the details of the author and the principal performer is in consonance with Section 31-D of the Act of 1957. Any of the information required under sub-clauses (d), (e) and (f) to Rule 29(4) of the Rules of 2013 is not such which can be said to be in conflict with the Act of 1957 and, otherwise, if the documents on record are looked into, the petitioners are furnishing such details in the prior notice under Section 31-D of the Act.

41. The discussion made above is to be analyzed further in reference to Section 31-D(2) and (5) of the Act of 1957. Section 31-D(2) of the Act of 1957 mandates that the broadcasting company shall give prior notice indicating its



intention to broadcast the work stating the duration and territorial coverage of the broadcast. The details of duration and territorial coverage of the broadcast intended to be broadcast can be given only when the broadcasting company would be in the know of the work to be broadcast and otherwise if Section 31-D(5) of the Act of 1957 is looked into, it requires even the names of the authors and principal performers of the work. The petitioners are under an obligation to give the names of the authors and it can be complied only when they would be in the know of the work to be performed. It is the same in the case of principal performers of the work. Thus, the said information is required to be given as per Section 31-D of the Act and once such an information is given, we find all other information required under Rule 29(4) of the Rules of 2013 to be consequential. The other information to be furnished under sub-clauses (d), (e) and (f) to Rule 29(4) of the Rules of 2013, i.e., year of publication of such work; the name, address and nationality of the owner of the copyrights in such works; and, the names of authors and principal performers of such works, flows from Section 31-D of the Act of 1957 and are all consequential.

42. It is settled law that a subordinate legislation can be brought to supplement the main statutory provision, though with a rider that it should not supplant it. In the instant case, we do not find that Rule 29(4) is supplanting the statutory provision, rather it is supplementing it. Once as per Section 31-D(5) of the Act of 1957 the petitioners would be required to furnish the names of the authors and principal performers, they would be furnishing it based on the work selected for performance and not otherwise. Thus, we do not find Rule 29(4) of the Rules of 2013 to be offending the main provision of Section 31-D of the Act of 1957, rather it is all consequential and has to be read in harmony.

43. The aforesaid view of ours is fortified by the decision of the Apex Court in *St. Johns Teachers Training Institute v. Regional Director, NCTE*, (2003) 3 SCC 321, wherein it is held as under:

"10. A regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and regulations are all comprised in delegated legislations. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but



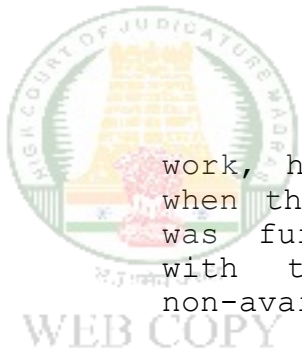
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to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details. The legislature may, after laying down the legislative policy confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of policy. The need for delegated legislation is that they are framed with care and minuteness when the statutory authority making the rule, after coming into force of the Act, is in a better position to adapt the Act to special circumstances. Delegated legislation permits utilisation of experience and consultation with interests affected by the practical operation of statutes. Rules and regulations made by reason of the specific power conferred by the statutes to make rules and regulations establish the pattern of conduct to be followed. Regulations are in aid of enforcement of the provisions of the statute. The process of legislation by departmental regulations saves time and is intended to deal with local variations and the power to legislate by statutory instrument in the form of rules and regulations is conferred by Parliament. The main justification for delegated legislation is that the legislature being overburdened and the needs of the modern-day society being complex, it cannot possibly foresee every administrative difficulty that may arise after the statute has begun to operate. Delegated legislation fills those needs. The regulations made under power conferred by the statute are supporting legislation and have the force and effect, if validly made, as an Act passed by the competent legislature. (See *Sukhdev Singh v. Bhagatram Sardar Singh Raghuwanshi* [(1975) 1 SCC 421])."

[emphasis supplied]

44. In view of the finding rendered above that Rule 29(4) of the Rules of 2013 is not in any way offending the main provision of Section 31-D of the Act of 1957 or transgresses the statutory provision, we are of the opinion that the the prescription under Section 29(4) is mandatory and not directory and, accordingly, the decision in *Atlas Cycle Industries Ltd v. State of Haryana*, has no application to the facts of this case.

45. Though at one stage, an argument was raised that the petitioners may not be having the detailed information about the



work, however, going through the documents, it comes out that when the required details were demanded by the petitioners, it was furnished by the private respondents and is available with the petitioners. Thus, the lame excuse about the non-availability of the details of the work cannot be accepted.

46. The issue that now remains is in reference to Rule 29(4) (j) of the Rules of 2013. It requires the details of the time slots, duration and period of the programmes. According to the petitioners, it cannot be given for all the work to be performed by the broadcasting company because many works are taken for broadcasting instantly on the demand of the viewers. Therefore, the details about the slot, when it is going to be played cannot be given. The issue aforesaid has been addressed by the respondents by stating that the statutory licence presupposes the payment of the rates to the extent of 25% to be in advance. It cannot be analysed or determined unless the broadcasting company so as the copyright holder would know the details of the performance of the work in the public and for that the slot. In view of the above, the requirement of details is mandatory under Rule 29(4) of the Rules of 2013 for the object sought to be achieved and to give effect to Section 31-D of the Act of 1957 and further if second proviso to Rule 29(1) of the Rules of 2013 is looked into, it takes care of the contingencies shown by the petitioners for broadcasting the work on demand in the course of programme itself and in that circumstances, the company can furnish the notice about the said work within 24 hours. Thus, it is not that Rule 29(4) is to be seen in a straitjacket formula as given by the petitioners, but is to be looked into in totality which takes care of even the practical difficulties that arise during the course of broadcasting of the work, which includes the time slot. Thus, we do not find any good ground to hold that Rule 29(4) of the Rules of 2013 offends Section 31-D of the Act of 1957.

47. The scope of Section 31-D of the Act was analyzed by the Division Bench in the case of South Indian Music Companies Association v. Union of India and another, supra, where the validity of Section 31-D of the Act of 1957 was questioned. It was on the ground of infringement of the right of equality and fundamental rights guaranteed under Article 19(1)(g) of the Constitution of India. Paragraphs 22 and 24 to 27 are quoted hereunder for ready reference:

"22. Coming to the challenge made on the ground of violation of Articles 14 and 19(1)(g) to a piece of legislation qua the power of judicial review available to this Court, the Courts are required to take a practical view and avoid absolute and



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inflexible concept. The grounds of challenge are also limited. A useful reference can be had to the decision of a Division Bench of this Court Anti Corruption Movement v. The Chief Secretary to Government of Tamil Nadu, (2015-2-L.W. 97), in which one of us (Sanjay Kishan Kaul, Chief Justice) is a member, wherein, it was held as under:

“35. On appreciation of the submissions and the judicial pronouncements referred to aforesaid, we are of the view that the test to be applied for determining the constitutional validity has been correctly set out by the learned senior counsel on behalf of private respondents 5 to 9. The dual test in this behalf is, (1) legislative competence and (2) violation of Fundamental Rights guaranteed under Part-III of the Constitution of India.

36. As far as legislative competence is concerned, there is really no quibble that the State Legislature actually had the competence to carry out the amendment in view of the matter falling under Entry 42 of List-III of the VII Schedule, being the Concurrent List. It is difficult to accept the submission of the learned counsel for the petitioner that since the subject matter of the Entry deals with acquisition and requisition of property, re-conveyance of property would not fall within the parameters of the Entry. Such acquisition in terms includes vesting as well as divesting of acquired land. This is also apparent from the fact that often, the land which is acquired for public purpose, is placed at the disposal of the authority for whose benefit the acquisition has been made. In fact, in V. Chandrasekarans case (2012-5-L.W. 724 : (2005) 2 CTC 721), while dealing with Section 48 of the said Act, it was observed that the land owner cannot seek de-vesting of land, but only has the right to receive compensation. The State was also held not to have requisite power to re-convey the land unless there is some statutory amendment to this effect. Section 48-B is this statutory amendment.

37. The judgments referred to in support of the pith and substance doctrine to be applied while examining issues of legislative



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competence have been set out in the various judicial pronouncements in *Subrahmanyam Chettiar v. Muthuswamy Goundan* ((1941) 59 L.W. 61 : A.I.R. 1941 F.C. 47), *A.S. Krishna v. State of Madras* (1957 Cri.L.J. 409) and *Greater Bombay case* ((2007) 6 SCC 236).

38. In the catena of judgments referred to by the learned senior counsel appearing for private respondents 5 to 9, the discussion proceeds on the basis that the compensation in India qua challenge to the constitutional validity of a provision of an enactment is similar to the United States of America, and apart from the two aspects referred to aforesaid, there is no third ground available. It is in this context, it has been observed that no enactment can be struck down by just saying that it is arbitrary or unreasonable, and the endeavour should not be to somehow or the other find a constitutional infirmity to invalidate on it. In fact, an enactment cannot be struck down on the ground that Court thinks it unjustified. The Parliament and the Legislatures, being the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The Court is not supposed to sit in judgment over their wisdom"-vide *State of A.P v. McDowell's case* ((1996) 3 SCC 709). Those views have been approved by the Constitution Bench of the Supreme Court in *R. Gandhi, President, Madras Bar Association* ((2010) 11 SCC 1).

39. The presumption in favour of constitutionality and the burden being on the person who attacks it to show that there has been transgression of the constitutional principles is thus founded on the number of judicial pronouncements discussed above as well as in *Greater Bombay Co-op. Bank Ltd. case* ((2007) 6 SCC 236) as the Courts would be justified in giving a liberal interpretation in order to avoid constitutional invalidity. Even if very wide and expansive powers are given to an authority, they can be in conformity with legislative intent of exercise of power within the constitutional limitations. It is also the view in *State of Bihar v. Bihar Distillery Ltd.*



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case ((1997) 2 SCC 453) and State of Madhya Pradesh v. Rakesh Kohli ((2012) 6 SCC 312), the beginning of the principle of legislative competence being traced out in Subramanyan Chettiar v. Muttuswamy Goundan case (AIR 1941 F.C. 47).

40. The challenge laid by the petitioner based on the plea of arbitrariness and unreasonableness on the touchstone of Articles 14 and 19 of the Constitution of India, on the first blush, appeared to be attractive over the possibilities of how the provision may be used, but once the touchstone of constitutional validity in terms of the aforesaid principle is applied, it is difficult to accept the contention of the learned counsel for the petitioner.

41. The legislative wisdom cannot be gone into or sat in judgment over and thus, even what is perceived to be an erroneous legislation cannot be quashed unless it fails to satisfy the dual test of intelligible classification and rationality."

24. Similarly, when a challenge is made to Section 31D, being violative of Article 19(1)(g), it has to be demonstrated with clarity that the restrictions are not reasonable. Such a right is subject to implied limitations made explicit by Article 19(2) to 19(6) of the Constitution.

25. As discussed above, Section 31 and 31D provides for a mechanism to deal with the public interest vis-a-vis the private interest. It has been introduced by way of a public policy. It has got an in-built mechanism to take care of the interest of the owner. Guidelines have been provided for the purpose of fixing royalty under Rule 31(7) and (8). The owner would be given reasonable opportunity of being heard. There has to be satisfaction that the refusal is not reasonable. Section 31D was introduced taking note of Article 11(2) and 13 of Berne Convention and Article 15(2) of the Rome Convention (for sound recordings) and Article 9(1) of the TRIPS Agreement. It was meant to support the development and growth of private radio broadcasting. The object is also to strike at the monopoly to the detriment of the general public.



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While doing so, the provisions also take care of the interest of the owner. Though there was no direct challenge, the issues sought to be raised in this writ petition were raised and discussed before the Apex Court in *Entertainment Network (India) Limited v. Super Cassette Industries Limited*, ((2008) 13 SCC 30). The following paragraphs of the said judgment would be apposite:

"87. The Act seeks to maintain a balance between the interest of the owner of the copyright in protecting his works on the one hand and the interest of the public to have access to the works, on the other.

.....

90. The freedom to contract is the foundation of economic activity and an essential aspect of several Constitutional rights including the freedom to carry on trade or business guaranteed under Article 19(1)(g) and the right to property under Article 300A of the Constitution of India. But the said right is not absolute. It is subject to reasonable restrictions.

.....

93. The owner of a copyright has full freedom to enjoy the fruits of his work by earning an agreed fee or royalty through the issue of licenses. But, this right, to repeat, is not absolute. It is subject to right of others to obtain compulsory licence as also the terms on which such licence can be granted.

...

109. When the owner of a copyright or the copyright society exercises monopoly in it, then the bargaining power of an owner of a copyright and the proposed licensee may not be same. When an offer is made by an owner of a copyright for grant of license, the same may not have anything to do with any term or condition which is wholly alien or foreign therefor. An unreasonable demand if acceded to, becomes an unconstitutional contract which for all intent and purport may amount to refusal to allow communication to the public work recorded in sound recording. A de jure offer may not be a de facto offer.



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...

124. The right to property, therefore, is not dealt with its subject to restrict when a right to property creates a monopoly to which public must have access, withholding the same from public may amount to unfair trade practice. In our constitutional Scheme of statute monopoly is not encouraged. Knowledge must be allowed to be disseminated. An artistic work if made public should be made available subject of course to reasonable terms and grant of reasonable compensation to the public at large."

26. In *Super Cassettes Industries Limited v. Music Broadcast Private Limited*, (2012-5-L.W. 753 : (2012) 5 SCC 488 : AIR 2012 SC 2144), it has been held as follows:

"81. However, Section 31 of the Copyright Act creates an exception to the above mentioned principle of the right of the owner of the copyright. In substance, the section deprives the "owner" of the "copyright" against his volition. In other words, by Section 31, the State is authorised, by its coercive powers, to deprive the owner of his copyright in a work, which is his property and the right to enjoy such property in the manner as the owner of the property pleases. Necessarily, in view of the constitutional mandate under Article 300-A, such a deprivation can only be by the authority of law and it is too well entrenched a principle in the constitutional law that such a law could be only for a public purpose.

....

85. The power under Section 31 to grant a compulsory licence meant for avoiding the withholding of the republication or refuse to allow the performance in public of some "work" is, essentially, for the benefit of the public. Commercial benefit to "publisher" is incidental....."

27. Thus, the Apex Court has taken note of the various factors by adopting principles governing



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the interpretation of statutes including the doctrine of purposive construction, reading down and contextual interpretation. There is no legislative arbitrariness involved and the classification, being reasonable, has nexus to the object sought to be achieved. Hence we do not find any reason to hold that the provisions contained in Section 31 and 31D of the Copyright Act as unconstitutional."

[emphasis supplied]

48. The Division Bench while addressing the challenge to Section 31-D of the Act of 1957 discussed the issue of public interest vis-a-vis the private interest and held that Sections 31 and 31-D of the Act of 1957 have been introduced by way of public policy. It is to bring in an in-built mechanism to take care of the interest of the owner as well as the broadcaster. After remaining unsuccessful in a challenge to Section 31-D of the Act of 1957, Rule 29(4) of the Rules of 2013 has been challenged.

49. At this juncture, it would be appropriate to note that prior to the Copyright (Amendment) Act of 2012, compulsory licensing was only available under Sections 31, 31-A and 31-B of the Act of 1957 in respect of works unreasonably withheld from the public, or where the author is dead or unknown, or the licence is for the benefit of disabled. The Copyright (Amendment) Act, 2012 evolved a new methodology for granting statutory license in India in respect of television and radio broadcasting of a literary and musical work and sound recordings under Section 31-D Act of 1957. Therefore, there are three types of licences in vogue now. While voluntary licenses are issued based on consensus between the owner and the licensee under Section 30 of the Act, compulsory licenses are granted by the Commercial Court based on the refusal by the owner to accept the terms offered by the proposed licensee/complainant under Section 31(1)(b) of the Act; and, statutory licenses are granted to any broadcasting organisation desirous of communicating to the public by way of broadcast or by way of performance of a literary or musical work under Section 31-D of the Act.

50. The legislative intent behind the introduction of Section 31-D of the Act of 1957 is to strike a balance between the copyright owners and the public by imposing reasonable restrictions. While introducing a new methodology of statutory licensing under Section 31-D of the Act of 1957, the legislature thought it fit to retain the provisions for granting compulsory license. However, Section 31-D of the Act of 1957 was introduced



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to take care of procedural hurdles and to provide a smooth mechanism and not intended to dilute the copyright of the owner in its work. Therefore, the formalities as required under Section 31-D of the Act of 1957 are to be complied for grant of statutory license.

51. In view of the above, the purpose of Section 31-D of the Act of 1957 was to balance the equities and, therefore, the broadcaster may require to pay the rate lesser than provided for compulsory licence, but by applying the method given under Section 31-D of the Act.

52. Considering the case from any angle, we do not find that Rule 29(4) of the Rules of 2013 is offending Section 31-D of the Act of 1957. Accordingly, we are unable to accept the first argument raised by learned senior counsel for the petitioners.

53. So far as the infringement of fundamental rights of the petitioners is concerned, it is not a case where the broadcaster is denied right to play the work, rather it is after making compliance of the provisions of the Act of 1957 and the Rules of 2013 framed thereunder. Rule 29(4) of the Rules of 2013 does not impose such a restriction which may be said to be violative of Article 19(1)(a) or (g) of the Constitution of India. The compliance of Rule 29(4) of the Rules of 2013 is not such where the petitioners are unable to give prior notice with all required information. Analyzing the facts, it is clear that none of the information required to be given under Rule 29(4) of the Rules of 2013 can be said to be unavailable, rather it is available with the petitioners and is being complied with while giving the prior notice, as referred by learned senior counsel for the respondents. When the petitioners themselves called for the information from the respondent music companies to furnish required details of the copyright work and was even furnished and is otherwise available in the public domain, it cannot be said that information so required under Rule 29(4) of the Rules of 2013 could not have been furnished by the petitioners so as to avail the benefit of statutory licence offending their fundamental rights, rather the information is available with the petitioners in reference to their letters sent and replied by the respondents. Therefore, we are even unable to accept the challenge in reference to Article 19(1)(a) and (g) of the Constitution of India.

54. The challenge to the provisions of the law otherwise requires to be on the grounds set out by learned Additional Solicitor General and we do not find that the provisions under challenge lack legislative competence and it is not otherwise the case of the petitioners. The alleged violation of the fundamental rights has been addressed by this court so also the



issue in reference to the failure of the subordinate legislation to conform to the statute. It is not even the case of the manifest arbitrariness or unreasonableness in bringing in Rule 29(4) of the Rules of 2013 so as to make out a case for grant of relief.

55. To examine the argument in reference to Section 78 of the Act of 1957, the provision aforesaid is reproduced hereunder:

"78. Power to make rules.—

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the Central Government may make rules to provide for all or any of the following matters, namely:—

[***]

(b) the form of complaints and applications to be made, and the licences to be granted, under this Act;

(c) the procedure to be followed in connection with any proceeding before the Registrar of Copyrights;

...

(cB) the manner in which a person making sound recording may give prior notice of his intention to make sound recording under sub-section (2) of section 31C;

(cC) the register and books of account and the details of existing stock which a person making sound recording may maintain under sub-section (5) of section 31C;

(cD) the manner in which prior notice may be given by a broadcasting organisation under sub-section (2) of section 31D;

(cE) the reports and accounts which may be maintained under clause (a), and the inspection of records and books of account which may be made under clause (b) or sub-section (7) of section 31D;



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(ca) the conditions for submission of application under sub-section (2) of section 33;

(cb) the conditions subject to which a copyright society may be registered under sub-section (3) of section 33;

(cc) the inquiry for cancellation of registration under sub-section (4) of section 33;

(ccA) the manner in which a copyright society may publish its Tariff Scheme under sub-section (1) of section 33A;

...

(ccC) the form of application for renewal of registration of a copyright society and the fee which may accompany such application under sub-section (3A) of section 33;

(cd) the conditions subject to which the copyright society may accept authorisation under clause (a) of sub-section (1) of section 34 and the conditions subject to which owners or rights have right to withdraw such authorisation under clause (d) of that sub-section;

(ce) the conditions subject to which a copyright society may issue licences, collect fees and distribute such fees amongst owners of rights under sub-section (3) of section 34;

(cf) the manner in which the approval of the owners of rights regarding collection and distribution of fees, approval for utilisation of any amount collected as fees and to provide to such owners information concerning activities in relation to the administration of their rights under sub-section (1) of section 35;

(cg) the returns to be filed by copyright societies to the Registrar of Copyrights under sub-section (1) of section 36;

(d) the manner of determining any royalties payable under this Act, and the



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security to be taken for the payment of such royalties;

(da) the manner of payment of royalty under clause (j) of sub-section (1) of section 52;

[***]

(e) the form of Register of Copyrights to be kept under this Act and the particulars to be entered therein;

(f) the matters in respect of which the Registrar of Copyrights shall have powers of a civil court;

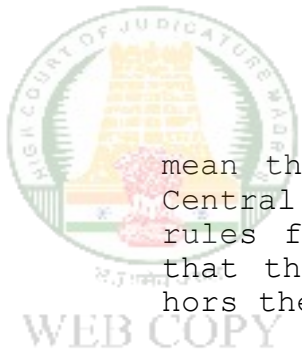
(g) the fees which may be payable under this Act;

(h) the regulation of business of the Copyright Office and of all things by this Act placed under the direction or control of the Registrar of Copyrights.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

[emphasis supplied]

56. Sub-section (1) to Section 78 of the Act gives power to the Central Government to make rules for the purpose of carrying out the purposes of this Act. Sub-section (2) is giving power in particular, but without prejudice to the generality of the power given under sub-section (1) and, therefore, while sub-section (2) may govern the particular subject, it does not



mean that other than the particular subjects given therein the Central Government was not having authority to come out with the rules for the purpose of carrying out the Act. We do not find that the Rules brought by the respondents are in any manner dehors the powers conferred under Section 78 of the Act of 1957.

57. The finding aforesaid is arrived at after analysing the issue in reference to every sub-clause of Rule 29(4) of the Rules of 2013 under challenge and, that too, after taking into consideration the difficulties projected by the petitioners in furnishing the required information in the manner prescribed under Rule 29(4) of the Rules of 2013 in reference to Section 31-D(2) and (5) of the Act of 1957.

58. In the result, the writ petition is dismissed. There will be no order as to costs. Consequently, W.M.P.Nos.16749 and 16752 of 2021 are closed.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

sasi

To

The Secretary,
The Union of India,
The Department for Promotion of
Industry and Internal Trade,
Udyog Bhavan,
New Delhi - 110 001.

+2ccs to Mr.M.S.Bharath, Advocate, S.R.No.26706

+2ccs to M/s.Abishek Jenasenan, Advocate, S.R.No.26700

+1cc to M/s.Arva Merchant, Advocate, S.R.No.27101 (03/06/2022)

+1cc to the Government Pleader, S.R.No.27702 (10/06/2022)

W.P.NO.15860 OF 2021

BR(CO)
PBS/27/04/2022