

Supreme Court allows appeal of Entertainment Network (India) Ltd. “Radio Mirchi” and refers matter back to Copyright Board for compulsory license

M/s Entertainment Network (India) owner of FM Radia “Radio Mirchi” Ltd filed an appeal in the Supreme Court against M/s Super Cassette Industries Ltd owner of “T-Series” brand.

The matter involved interpretation of Section 31 of the Copyright Act, 1957.

On applications of various Radio Stations for grant of compulsory license to all the radio stations, the Copyright Board at Hyderabad in terms of Section 31(1)(b) of Copyright Act, the Board vide its judgement dated 19.11.2002 fixed the standard rate of payment for a period of two years. Super Cassettes was not a party therein. The Board fixed royalties initially for a period of two years. An appeal there against was preferred before Bombay High Court.

Meanwhile on 28.1.2003, the appellant filed an application before the Copyright Board at Delhi for grant of compulsory licence in terms of Section 31(1)(b) of the Act against Super Cassettes i.e. respondents. The respondents filed an objection contending that as the suit for infringement was pending before the Delhi High Court, no application for compulsory license could be entertained. The High Court, on an application filed by the appellant, clarified that the respondent was free to canvas its submissions before the Copyright Board that the person infringing the Copyright should not be granted compulsory license. The Board directed the parties to come with their respective witnesses. However, when respondent intended to present oral evidence, it was declined and application was allowed granting a compulsory license to Appellant.

Appellant filed an appeal against the said order before the Bombay High Court questioning the rates of compensation only and was tagged with various other appeals filed against the order dated 19.11.2002 passed by the Copyright Board at Hyderabad. Bombay High Court opined that in terms of Section 31 of the Act, grant of compulsory license on reasonable remuneration is permissible

Respondents preferred two-fold appeals before the Delhi High Court and by judgment dated 30.6.2004, the respondent's appeal was allowed remitting the

matter back to the Copyright Board to reconsider the application of the appellant for grant of compulsory license under Section 31 of the Act after giving adequate opportunity to the parties to adduce evidence and to dispose of the same by a reasoned order. The High Court furthermore directed that the appellant must file an undertaking that it would not broadcast the sound recordings of the respondent. Against said order the present appeal was filed before the Supreme Court of India.

The supreme Court has to deal with two judgments one from the Bombay High Court and another from the Delhi High Court. Whereas the Bombay High Court opined that in terms of Section 31 of the Act, grant of compulsory license on reasonable remuneration is permissible; the Delhi High Court held otherwise.

The Supreme Court vide its judgement dated May 16, 2008 held that as it was a case of abuse, the Board had the jurisdiction to entertain any application for grant of compulsory licence. How far and to what extent appellant has infringed the right of the respondent is a matter which may be taken into consideration by the Board. A suit was filed and injunction was granted. Apart from the fact that the appellant offered to take a license held negotiations with the respondents in the suit as soon as it came to know that Super Cassettes is not a member of PPL, it gave an undertaking. Each case must be considered on its own facts. However, we do not approve the manner in which the Board has dealt with the matter. It has refused to examine the witnesses. It took up the matter on a day for hearing which was fixed for production of witnesses. Supreme Court was of the opinion that the order of the Board should be set aside and the matter be remitted to the Board again for the consideration of the matter afresh on merit and on those terms appeal was allowed.

The matter is being heard in the Copyright Board on day to day basis. Meanwhile appointment of Dr. Raghbir Singh as Chairman of Copyright Board, who is hearing the present matter is under controversy.

As per the Copyright Act qualification for post of Chairman he is not qualified to be a High Court judge. The post of judge of High Court is a constitutional post and as per Article 217 (2) of the Constitution: "A person shall not be qualified for appointment as a Judge of a High Court unless he is a a citizen of India and- (a) has for at least ten years held a judicial office in the territory of India; OR

(b) has for at least ten years been an advocate of a High Court or of two or more such Courts in succession;" and from the qualification and work experience it appears that he has never held a "judicial office" as per the provisions of Article 217(2) of the constitution. It is to be noted that any judgments passed by him, may be challenged in the Courts later and might be required to be heard de novo again.