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

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Reserved on: 1st March, 2018
Date of Decision: 28th May, 2018

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W.P. (C) No. 3143/2013 & C.M. No.5958/2013

ANAND BHUSHAN & ORS. Petitioners
Through Mr.Jagdish Sagar, Advocate

versus

UNION OF INDIA Respondent
Through Mr.Sanjeev Narula, CGSC with
Mr.Abhishek Ghai, Advocate for
UOI.
Mr.Sagar Chandra, Ms.Ishani
Chandra & Mr.Ankit Rastogi,
Advocates for Intervener/ Music
Broadcast Pvt. Ltd.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.

The petitioners, by way of the present writ petition under Article 226 relying upon violation of Articles 14, 19(1)(c) & 19(1)(g) of the Constitution of India, have prayed for striking down Sections 11(2), 12(2), 31, and 33A(2) of the Copyright Act, 1957, as amended by the Copyright (Amendment) Act, 2012 ("Act", for short) and Rules 3, 47(1), 56(3), 56(4), 56(5), 56(6), 57, 59(7) and 61(5) of the Copyright Rules, 2013 ("Rules", for short). Further, a prayer is also made to pass an order prohibiting the

respondent from making any appointment to the Copyright Board in terms of the impugned provisions.

2. By order dated 22.08.2013, C.M.No.10983/2013 for amendment of the petition was allowed and the amended writ petition was taken on record. It is stated in the amended writ petition that the first petitioner, namely, Anand Bhushan, is a shareholder and Joint Managing Director of M/s Pitambar Publishing Co. Pvt. Ltd., petitioner No.2 herein. Hence, the grievances raised by the petitioner No.2 are *ipso facto* the grievances of the petitioner No.1.

3. Petitioner No.2 is a Company registered under the Companies Act, 1956. Petitioner No.3, the Indian Reprographic Rights Organization (“IRRO”), is a registered Society under the Societies (Registration) Act, 1860 having its head office in Delhi, whereas petitioner No.4, the Federation of Indian Publishers (“FIP”), is also a registered Society which is an apex body representing the Indian Publishing Industry and engaged in promoting and representing the interests of the said industry. It is submitted that the petitioners’ publishing business and commercial activities extend to the whole country and beyond, specifically Delhi, which is a major centre of publishing activities.

4. It is further submitted by the petitioners that their constitutional rights are affected by the impugned provisions of the Rules, and in some cases the Act, in particular, with regard to – (i) constitution of the Copyright Board; (ii) certain provisions pertaining to the tariffs of Copyright Societies like IRRO; (iii) certain provisions pertaining to the continuation of existing Copyright Societies like IRRO; (iv) certain provisions affecting the

management of Copyright Societies like IRRO; and (v) certain compulsory licensing provisions, the details of which are given as under:-

(a) Constitution of the Copyright Board: The petitioners including all the members of IRRO and the FIP have a legitimate interest that the appointments to the Copyright Board should be made transparently in a constitutional manner; the members of the Copyright Board should be appropriately qualified; and the Copyright Board should perform its functions independently and are aggrieved by the provisions of the Act and Rules which militate against the same. The legislative intent was only to provide an efficacious quick remedy through the Copyright Board and not to draw upon any technical expertise which is readily inferable from sub-Section (3) of Section 19A of the Act. The petitioners also submitted that the Board is a Tribunal, i.e. a quasi-judicial body exercising powers of a judicial character, save for its existence, would be exercised by the Courts. The Copyright Board is entrusted with important judicial powers, viz. referred to in Section 19A, for the purpose of speedy remedy. The contention of the petitioners is that Sections 11(2) & 12(2) of the Act suffers from the vice of excessive delegation and further, Rule 3 of the Rules is violative of Article 14 of the Constitution, being contrary to the principles for appointment of Tribunals like the Copyright Board laid down by the Supreme Court.

(b) Provisions pertaining to the tariffs of the Copyright Societies like IRRO: The petitioners submitted that the amendment gives the Copyright Board a limited corrective or provisional power in respect of the tariffs of Copyright Societies. Rules 56(3), 56(4), 56(5), 56(6) & 57 of the Act

effectively give the Copyright Board roving powers to regulate and interferes *suo moto* with every aspect of the tariff fixation. The petitioners also submit that the Copyright Society is wholly competent to fix its own tariff under section 35 of the Act. They also claim that the Board's powers under Section 33A to remove unreasonable elements in the tariff do not empower it to review the tariff as a whole.

(c) Provisions pertaining to the continuance of the existing Copyright Societies like IRRO: The petitioners submitted that the Rules having come into force on 14.03.2013 the period for re-registration under Section 33(3A) expires on 13.05.2013 under Rule 47(1) which is ultra vires Section 33(3A) of the Act that allows one year from the commencement of the 2012 Amending Act which itself came into force on 21.06.2012, hence, under the Act, the petitioner No.3 and other pre-existing Copyright Societies have to apply for registration until 20.06.2012.

(d) Provisions affecting the management of Copyright Societies like IRRO: Before and after the recent amendments, the different provisions of Chapter VII of the Act seek to ensure control over Copyright Societies by the owners of rights administered by the Society. The provision under Rule 59(7) that membership of the Governing Council of a Copyright Society should remain perpetually in compulsory biennial rotation is bound to create confusion and discontinuity in the management of Copyright Societies and there is no basis for it under the Act.

(e) Certain compulsory licensing provisions: Petitioners No.1, 2 & 4 are aggrieved by the provisions of Section 31 of the Act as recently amended which subjects them to an arbitrary and excessive compulsory licensing

regime. They challenge clause (a) of the Section. The Statute provides that once a work has been published then in the circumstances described in Section 31(a) the Copyright Board after due hearing and inquiry may grant a compulsory license to an applicant who claims that the work in question has been withheld from the public after having once been published. But under the amended Section 31, once the Copyright Board has granted such compulsory license to one applicant, then it may without any further hearing direct the granting of such compulsory licenses to any number of further persons who may not even have sought them which is arbitrary and contrary to the principles of natural justice.

5. Per contra, the respondent has claimed that the decision of the Copyright Board as per Sections 6, 19A, 31, 31A, 31B, 31C, 31D, 32A, 50 and 72(1) of the Act cannot be considered as wide and unlimited as the final orders of the Copyright Board can be challenged before the High Court. They also added that under Section 11 of the Act with regard to the terms and conditions of appointment of the Board, while Rule 3 of the Rules has been made as powers of delegated legislation derived from Section 78(2)(a) of the Act, Section 11 of the Act gives flexibility to the Government to appoint a Chairman and two Members of the Board. It is not specified in Section 11 that the Member should be judicial or technical. Therefore, the relevant Rule 3 of the Rules has been drafted keeping in view of this flexibility.

6. The respondent further submitted that Section 33A of the Act provides for tariff scheme for Copyright Societies, which introduces a system of transparency in fixing prices by Copyright Societies and it governs or

regulates the system of fixation, collection and distribution of royalty. The objective of this proposal is to allow scrutiny of tariff scheme of Copyright Societies by the Copyright Board on receipt of appeals from any aggrieved party to make the user of works to continue to pay royalties, pending the appeal before the Copyright Board. The Copyright Board is empowered to fix interim tariff, pending appeal on the tariff scheme. The Copyright Society has to revise its tariff scheme based on the orders of the Copyright Board, but the Board will not suggest a new tariff scheme as per the section 33A or relevant Rules.

7. With regard to the elements, the respondent submitted, 'unreasonable element', 'anomaly' or 'inconsistency' will be determined by the Board, based on the evidence of unreasonable pricing or abuse of rights and monopoly position by the Copyright Society. Section 33A introduces a system of transparency in fixing process by Copyright Societies and it governs or regulates the system of fixation, collection and distribution of royalty. Fixing of rates or royalties by Courts or Tribunals is not uncommon all over the world. Copyright Board does not take away the right of right holders to fix royalties, but removes any unreasonable element, anomaly or inconsistency therein. They submitted that Rule 47(1) is not *ultra vires* of section 33(3A) of the Act, which directs the Copyright Society to re-register itself within one year from coming into force of the Copyright Act, 2012. The Rules came into force in March, 2013. As per Rule 47(1), the application for re-registration has to be filed within two months of coming into force of the Rules i.e. by 13.05.2013, so that the administrative process of re-registration will be completed by 20.06.2013 i.e. within one year of the Act coming into force.

8. So far as the compulsory license is concerned, the respondent submitted that Section 31 of the Act provides for compulsory license in case of abuse of rights, such as, refusal of license by right owner or unreasonable pricing by him. The compulsory license is a limitation on the exclusive right, while deciding the matter, the Copyright Board only after giving a reasonable opportunity of being heard to the owner of the copyright in the work and after holding such inquiry, as it may deem necessary and if it is satisfied that the grounds for such refusal are not reasonable, it directs the Registrar of copyrights to grant to the complainant a compulsory license as per the rates fixed by the Board.

9. It is also submitted by the respondent that Rule 56 introduces a system of transparency in fixing prices by the Copyright Societies and it governs and regulates the system of fixation, collection and distribution of royalties. Further, Rules 59(6), 59(7) and 61(5) are in harmony with the legislative intent of Section 35(3), which provides for equal membership of authors and owners. Therefore, these Rules are not, in any way, violative of Articles 19(1)(c) & (g) of the Constitution.

10. We may note that the petitioners have given up their challenge to Sections 11(2), 12(2) and 31 of the Act and also Rules 3 & 47(1) of the Rules. Learned counsel for the petitioners submitted that the said challenge has become infructuous. In respect of Section 31 of the Act, it is stated that the provision is being interpreted by the Madras High Court. By order dated 22.02.2018, it was clarified that though the petitioners have given up the challenge to the *vires* of Section 31 of the Act, but the said statement made

by the learned counsel for the petitioners would not be construed as constructive *res judicata* or an opinion of this Court on merits.

11. Rules 56(3), 56(4), 56(5) & 56(6) read as under:-

“56.(3) The Tariff Scheme Shall indicate the separate rates for-

(a) different categories of users;

(b) different media of exploitation, such as telephone, broadcast or internet;

(c) different types of exploitation whether by an individual or by groups or whether single or multiple use or for advertising;

(d) different durations of use and territory; and

(e) any other differentiation factor indicated by the society, as it may deem fit.

(4) While fixing the tariff the copyright society shall follow the guidelines issue by any court or the Board, if any, and may consult the user groups.

(5) The copyright society shall collect the royalties from a licensee in advance where the Tariff Scheme provides for lump sum payment of royalties. In cases where the Tariff Scheme provides for payments in installments, each installment shall be collected in advance. However, in cases where the Tariff Scheme provides for the payment of royalties based on actual use, the copyright society may collect an advance at the time of issue of licence and settle the final payment based on actual use at the end of the period for which the licence is issue or granted.

Provided that the copyright society shall not receive any payment in the nature of minimum guarantee from a licensee whose royalty payments are based on actual use which are to be settled with the society at the end of the licence period except where, any exceptional circumstances are specifically included in the Tariff Scheme and the individual case has been approved by the Governing Council.

(6) The copyright society may revise the Tariff Scheme periodically but not earlier than a period of twelve months by following the rules. It shall publish the date of coming into of the revised Tariff Scheme at least before two months in advance and the same shall be posted on its website.”

12. The submission of the petitioners is that the aforesaid Rules impose unreasonable, unjustified and fatuous restrictions on the Copyright Society registered under Section 33 (3) of the Act, without any rationale. The petitioners further submitted that the said Rules limit the frequency of tariff revisions (whether upward or downward), which is beyond any rule-making power conferred by the Act. Reliance is placed upon the judgment of the Supreme Court in ***Kunj Behari Lal Butail and Ors. v. State of Himachal Pradesh &Ors.***, AIR 2000 SC 1069. Relevant paragraph of the said judgment relied upon by the petitioners reads as under:-

“14. A delegated power to legislate by making rules ‘for carrying out the purposes of the Act’ is a general delegation without laying down any guidelines; it cannot be exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself.”

Reliance is also placed on Section 33A of the Act and it is urged that these Rules are in conflict with the statutory mandate of Section 33A of the Act and violate the same. The petitioners further submitted that alternatively, if the said Rules are held to be *intra vires* the Act, then Section 33A(2) is itself *ultra vires* the Act.

13. In order to examine the veracity of the aforesaid contention, we would like to reproduce Section 33A of the Act, which reads:-

“33A. Tariff Scheme by copyright societies.—

(1) Every copyright society shall publish its tariff scheme in such manner as may be prescribed.

(2) Any person who is aggrieved by the tariff scheme may appeal to the Copyright Board and the Board may, if satisfied after holding such inquiry as it may consider necessary, make such orders as may be required to remove any unreasonable element, anomaly or inconsistency therein:

Provided that the aggrieved person shall pay to the copyright society any fee as may be prescribed that has fallen due before making an appeal to the Copyright Board and shall continue to pay such fee until the appeal is decided, and the Board shall not issue any order staying the collection of such fee pending disposal of the appeal:

Provided further that the Copyright Board may after hearing the parties fix an interim tariff and direct the aggrieved parties to make the payment accordingly pending disposal of the appeal.”

Sub-section (1) to Section 33A of the Act states that every Copyright Society shall publish its tariff scheme in the manner as may be prescribed. Section 33A of the Act, therefore, accepts and recognizes that the Rules can prescribe the manner in which the tariff scheme is required to be published. Sub-Section (2) to Section 33A of the Act states that any person, who is aggrieved by the tariff scheme, may file an appeal before the Copyright Board, which is empowered to make orders as may be required to remove any unreasonable element, anomaly or inconsistency therein. Copyright Board for this purpose is entitled to hold an inquiry as it may consider necessary. The Copyright Board, therefore, has been given the power to modify the tariff scheme provided it comes to the conclusion that the tariff fixed has an unreasonable element or suffers from an anomaly or inconsistency and requires removal of any such unreasonable element,

anomaly or inconsistency. The contention of the petitioners is that the expression 'unreasonable element' should be read as by applying the doctrine of '*noscitur a sociis*', meaning thereby, the expression 'unreasonable' appearing in Section 33A(2) of the Act must take its colour and meaning from the words 'anomaly and inconsistency' in the tariff scheme.

14. The rule of construction of '*noscitur a sociis*' holds that the meaning of a word is to be judged by the company it keeps. It is a rule wider than the rule of '*ejusdem generis*'; rather the latter rule is only an application of the former. This doctrine applies when two or more words, which are susceptible of analogous meaning, are coupled together. They are understood to be used in the cognate sense, for associated words take their meaning from one another. Philosophy behind the doctrine is that the meaning of the doubtful word may be ascertained by reference to meaning of words associated with it. The more general is restricted to a sense analogous to a less general. The word 'anomaly' would refer to any ambiguity or doubt. Inconsistency normally refers to incomparability and variation that is unacceptable. Expression 'unreasonable element' has its own contours and relevance. 'Unreasonable element' would refer to unreasonable fixation of tariff or any of the clauses of the tariff scheme. Three expressions therefore refer to different situations and it must be borne in mind that *noscitur a sociis* is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. The object and purpose behind Sub-section (2) of Section 33A of the Act is to confer power to the Copyright Board to make enquiry as may be

necessary and to decide whether the tariff fixed by the Copyright Society has an unreasonable element, anomaly or inconsistency therein. We would not like to curtail or water down the scope and ambit of language employed and adopted, given the importance to the Copyright Board for the said purpose. Sub-section (1) to Section 33A empowers and authorizes the Copyright Society to publish tariff and while publishing the tariff they have to keep in mind that the tariff is reasonable and also does not suffer from any anomaly or inconsistency.

15. In ***State of Bombay and Others v. The Hospital Mazdoor Sabha and Others***, (1960) 2 SCR 866, the Supreme Court was faced with the question whether the Industrial Disputes Act, 1947 was applicable to a group of hospitals. It was observed that the answer to the said question would depend on the interpretation of the definition of “industry” prescribed by Section 2(j) of the Industrial Disputes Act, 1947. The Supreme Court refused to apply the rule of *noscitur a sociis* in order to give a narrow interpretation to the relevant words in the definition of “industry” in Section 2(j). Relevant paragraph of the said decision reads as under:-

“9.The argument is that certain essential features or attributes are invariably associated with the words “business and trade” as understood in the popular and conventional sense, and it is the colour of these attributes which is taken by the other words used in the definition though their normal import may be much wider. We are not impressed by this argument. It must be borne in mind that noscitur a sociis is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the legislature in associating wider words with words of narrower

significance is doubtful, or otherwise not clear that the present rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful; but, where the object of the legislature in using wider words is clear and free of ambiguity, the rule of construction in question cannot be pressed into service. As has been observed by Earl of Halsbury, L.C., in Corporation of Glasgow v. Glasgow Tramway and Omnibus Co. Ltd. [(1898) AC 631 at p. 634] in dealing with the wider words used in Section 6 of Valuation of Lands (Scotland) Act, 1854, “the words ‘free from all expenses whatever in connection with the said tramways’ appear to me to be so wide in their application that I should have thought it impossible to qualify or cut them down by their being associated with other words on the principle of their being ejusdem generis with the previous words enumerated”. If the object and scope of the statute are considered there would be no difficulty in holding that the relevant words of wide import have been deliberately used by the legislature in defining “industry” in Section 2(j). The object of the Act was to make provision for the investigation and settlement of industrial disputes, and the extent and scope of its provisions would be realised if we bear in mind the definition of “industrial dispute” given by Section 2(k), of “wages” by Section 2(rr), “workman” by Section 2(s), and of “employer” by Section 2(g). Besides, the definition of public utility service prescribed by Section 2(m) is very significant. One has merely to glance at the six categories of public utility service mentioned by Section 2(m) to realise that the rule of construction on which the appellants relies is inapplicable in interpreting the definition prescribed by Section 2(j).”

16. In ***Municipal Corporation of Greater Bombay v. Bharat Petroleum Corporation Ltd.***, (2002) 4 SCC 219, the Supreme Court in regard to the rule of *noscitur a sociis* and *ejusdem generis* observed as under:-

“7. The learned counsel appearing on either side invited our attention, at considerable length, to the judgments of the High

Court wherein the dictionary meaning of the words required to be construed came to be adverted to from Encyclopaedia Britannica and Words and Phrases, Permanent Edn. of West Publishing Company and it is unnecessary to repeat them once again, herein. Reference has also been made to the portions of the judgments where observations came to be made about the principles underlying the doctrine of ejusdem generis and noscitur a sociis and their relevance and application to the case on hand. The principle underlying noscitur a sociis is that, two or more words which are susceptible of analogous meaning when are coupled together are to be understood as used in their cognate sense, taking, as it were, their colour from each other, that is, the more general is to be restricted to a sense analogous to the less general. The principle underlying ejusdem generis is applied when the statutory provision concerned contains an enumeration of specific words, the subject of the enumeration thereby constituting a class or category but which class or category is not exhausted at the same time by the enumeration and the general term follows the enumeration with no specific indication of any different legislative intention. This rule which normally envisages words of general nature following specific and particular words to be construed as limited to things which are of the same nature as those specified, also requires to be applied with great caution and not pushed too far so as to unduly or unnecessarily limit general and comprehensive words to dwarf size. Dehors the doctrine or maxim concerned useful in the matter of construction of a statute or its provisions the intent of the legislature cannot altogether be ignored and a construction which really subserves the purpose of the enactment must only be adopted than one which will defeat it and thereby ensure in the process that no part of the provision is rendered surplus or otiose.”

17. In *Shriram Vinyl & Chemical Industries vs. Commissioner of Customs, Mumbai*, (2001) 4 SCC 286, the benefit of a notification recommending grant of lower rate of duty was denied to the appellants. The

Supreme Court disagreeing with the narrow interpretation given by the Tribunal to the relevant words in the notification, held as under:-

“3. The main ground on which the benefit of the aforesaid notification has been denied to the appellants is that serviceable parts out of the dismantled furnace were used besides some indigenous parts along with the imported parts and, therefore, a new furnace had not come into existence. The contention of learned counsel for the appellants is that the notification does not require that a new article must come into existence. We agree. The three expressions “initial setting up”, “assembly” and “manufacture” cannot be construed to mean the same thing. It is evident from the notification that the expression “assembly” has been separated from the expression “initial setting up”. These expressions are intended to cover different situations. We are unable to accept the contention of learned Attorney General that the expression “assembly” is to take colour from the expression “initial setting up” and, therefore, without a new article coming into existence, the question of claiming benefit under the notification would not arise. The language of the notification is clear and plain. The notification is to be construed reasonably and rationally and not in a manner which deprives the benefit thereof. The expression “assembly” in the context and setting in which it has been used cannot be construed to mean bringing into (sic existence) of a new article. This expression cannot be equated with the expression “manufacture”. If the construction as placed by the Tribunal is accepted, it would render the expression “assembly” in the notification redundant. The expression “assembly” has been used as opposed to dismantle. The notification does not contemplate denial of its benefit on the ground of reuse of certain parts and/or use of some indigenous parts with the imported parts. Thus, the appellants are clearly entitled to the benefit of the notification.”

18. We do not think that the aforesaid interpretation, in any way, runs counter and is contrary to the ratio in ***Entertainment Network (India) Ltd.***

v. Super Cassette Industries Ltd., 2008(13) SCC 30. Relevant paragraphs of the said judgment relied upon by the petitioners read as under:-

“66. It may, however, be necessary to consider that unlike other countries the broadcasting rights by themselves were introduced in India for the first time by inserting Section 37 in the year 1994. It is true that the rights of free-to-air broadcasters have not been dealt with in a specific legislation unlike some other jurisdiction. It may, however, be of some importance to note that Chapter VII deals with copyright society, the concept whereof was incorporated in the Act so as to enable an author to commercially exploit his intellectual property by a widespread dispersal in a regulated manner. It for all intent and purport steps into the shoes of the author. The society grants licence on behalf of the author, it files litigation on his behalf, both for the purpose of enforcement as also protection of the enforcement of his right. It not only pays royalty to the author but is entitled to distribute the amount collected by it amongst its members. Section 34 providing for administration of rights of owners by a copyright society for all intent and purport creates a virtual agency so as to enable the society to act on behalf of the owner. The civil remedies for infringement of copyright as envisaged under Section 55 of the Act can also be enforced by the society. The scheme of the statute governing the field in other countries is vast and wide. The jurisdiction of the Tribunal is indisputably very wide. No such legislative changes have been made in India presumably because until recent times, the copyright in musical work was owned by cooperative societies, namely, IPRS and PPL.”

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“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. The extent to which the owner is entitled to protection in regard to his work for which he has obtained copyright and the interest of the public is a matter which would depend upon the statutory provisions.

88. *Whereas the Act provides for exclusive rights in favour of owners of the copyright, there are provisions where it has been recognised that public has also substantial interest in the availability of the works. The provisions relating to grant of compulsory licence must be viewed having regard to the aforementioned competing rights wherefor an appropriate balance has to be struck. For the said purpose, we may notice the broad features of the Act.*”

Reference was also made to the ***Federation of Hotels & Restaurants Association of India v. UOI and Ors.***, 2011 (46) PTC 169 (Del), relevant paragraph of which reads as under:-

“6. The owners of Copyright are fully entitled to reap the rewards for their creativity and genius. In the present regime, Parliament has seen fit to place few restraints on the enjoyment of the owners' rights. However, since a party can invoke Section 31 for obtaining a compulsory license from the Registrar of Copyrights by approaching the Copyright Board, competing interests have been duly balanced by Parliament.”

19. It is equally well settled that in exercise of power of judicial review, this Court is not to examine merits of delegated legislation. A writ petition for judicial review of the Rules would lie only on certain well defined grounds. Courts cannot always go into the merits or demerits of a policy reflected in the substratum of the Rules. The parameters of judicial review of subordinate legislation have been succinctly stated in various decisions of the Supreme Court. In ***Cellular Operators Association of India and Others v. Telecom Regulatory Authority of India and Others***, (2016) 7 SCC 703, it was held as under:-

“34. In State of T.N. v. P. Krishnamurthy [State of T.N. v. P. Krishnamurthy, (2006) 4 SCC 517] , this Court after adverting

to the relevant case law on the subject, laid down the parameters of judicial review of subordinate legislation generally thus: (SCC pp. 528-29, paras 15-16)

“15. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds:

(a) Lack of legislative competence to make the subordinate legislation.

(b) Violation of fundamental rights guaranteed under the Constitution of India.

(c) Violation of any provision of the Constitution of India.

(d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

(e) Repugnancy to the laws of the land, that is, any enactment.

(f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules).

16. The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity

of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity.”

20. In ***Union of India and Another v. Azadi Bachao Andolan and Another***, (2004) 10 SCC 1, the Supreme Court held as under:-

“52. The question whether a particular delegated legislation is in excess of the power of the supporting legislation conferred on the delegate, has to be determined with regard not only to specific provisions contained in the relevant statute conferring the power to make rules or regulations, but also the object and purpose of the Act as can be gathered from the various provisions of the enactment. It would be wholly wrong for the court to substitute its own opinion as to what principle or policy would best serve the objects and purposes of the Act; nor is it open to the court to sit in judgment over the wisdom, the effectiveness or otherwise of the policy, so as to declare a regulation ultra vires merely on the ground that, in the view of the court, the impugned provision will not help to carry through the object and purposes of the Act...”

21. The scope of judicial review of the impugned Rules is not agape and a power to substitute. A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition, it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. The proposition finds support from the decision of the Supreme Court in ***Indian Express Newspapers (Bombay)***

Private Ltd. and Others v. Union Of India and Others, (1985) 1 SCC 641,
the relevant extract is reproduced hereunder:-

*“75. A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary. In England, the Judges would say “Parliament never intended authority to make such rules. They are unreasonable and ultra vires”. The present position of law bearing on the above point is stated by Diplock, L.J. in *Mixnam's Properties Ltd. v. Chertsey Urban District Council* [(1964) 1 QB 214 : (1963) 2 All ER 787 : (1963) 3 WLR 38 (CA)] thus:*

“The various special grounds on which subordinate legislation has sometimes been said to be void ... can, I think, today be properly regarded as being particular applications of the general rule that subordinate legislation, to be valid, must be shown to be within the powers conferred by the statute. Thus, the kind of unreasonableness which invalidates a bye-law is not the antonym of ‘reasonableness’ in the sense in which that expression is used in the common law, but such manifest arbitrariness, injustice or partiality that a court would say: ‘Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires’...if the courts can declare subordinate legislation to be invalid for ‘uncertainty’ as distinct from unenforceable...this must be because Parliament is to be presumed not to have intended to authorise the subordinate legislative

authority to make changes in the existing law which are uncertain.”

78. *That subordinate legislation cannot be questioned on the ground of violation of principles of natural justice on which administrative action may be questioned has been held by this Court in Tulsipur Sugar Co. Ltd. v. Notified Area Committee, Tulsipur [AIR 1980 SC 882 : (1980) 2 SCR 1111 : (1980) 2 SCC 295] , Rameshchandra Kachardas Porwal v. State of Maharashtra [(1981) 2 SCC 722 : AIR 1981 SC 1127 : (1981) 2 SCR 866] and in Bates v. Lord Hailsham of St. Marylebone [(1972) 1 WLR 1373 : (1972) 1 All ER 1019 (Ch D)] . A distinction must be made between delegation of a legislative function in the case of which the question of reasonableness cannot be enquired into and the investment by statute to exercise particular discretionary powers. In the latter case the question may be considered on all grounds on which administrative action may be questioned, such as, non-application of mind, taking irrelevant matters into consideration, failure to take relevant matters into consideration, etc, etc. On the facts and circumstances of a case, a subordinate legislation may be struck down as arbitrary or contrary to statute if it fails to take into account very vital facts which either expressly or by necessary implication are required to be taken into consideration by the statute or, say, the Constitution. This can only be done on the ground that it does not conform to the statutory or constitutional requirements or that it offends Article 14 or Article 19(1)(a) of the Constitution. It cannot, no doubt, be done merely on the ground that it is not reasonable or that it has not taken into account relevant circumstances which the Court considers relevant.*

22. ***Maharashtra State Board Of Secondary And Higher Secondary Education and Another v. Paritosh Bhupeshkumar Sheth and Others***, (1984) 4 SCC 27, was cited with approval in the case of ***Union Of India and Another v. Azadi Bachao Andolan*** (*supra*), wherein, the Supreme Court observed the question whether a particular piece of delegated legislation,

whether a rule or regulation or other type of statutory instrument, is in excess of the power of subordinate legislation conferred on the delegate has to be determined with reference only to the specific provisions contained in the relevant statute conferring the power to make the rule, regulation, etc. and also the object and purpose of the Act as can be gathered from the various provisions of the enactment. It was further held that it would be wholly wrong for the Court to sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the regulation-making body and declare a regulation to be *ultra vires*, merely on the ground that in the view of the Court, the impugned provisions will not help to serve the object and purpose of the Act. So long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the statute, the court should not concern itself with the wisdom or efficaciousness of such rules or regulations. It is exclusively within the province of the Legislature and its delegate to determine, as a matter of policy, how the provisions of the statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. The Court further set out the well settled legal position pertaining to bye-laws and held as under:-

“21. The legal position is now well-established that even a bye-law cannot be struck down by the Court on the ground of unreasonableness merely because the Court thinks that it goes further than “is necessary” or that it does not incorporate certain provisions which, in the opinion of the Court, would have been fair and wholesome. The Court cannot say that a

bye-law is unreasonable merely because the Judges do not approve of it. Unless it can be said that a bye-law is manifestly unjust, capricious, inequitable, or partial in its operation, it cannot be invalidated by the Court on the ground of unreasonableness. The responsible representative body entrusted with the power to make bye-laws must ordinarily be presumed to know what is necessary, reasonable, just and fair. In this connection we may usefully extract the following oft-quoted observations of Lord Russel of Killowen in Kruse v. Johnson [(1898) 2 QB 91, 98, 99 : 78 LT 647 : 46 WR 630 (DC)] (quoted in Trustees of the Port of Madras v. Aminchand Pyarelal [(1976) 3 SCC 167, 178 : AIR 1975 SC 1935 : (1976) 1 SCR 721, 733]) (SCC p. 178, para 23):

“When the Court is called upon to consider the bye-laws of public representative bodies clothed with the ample authority which I have described, accompanied by the checks and safeguards which I have mentioned, I think the consideration of such bye-laws ought to be approached from a different standpoint. They ought to be supported if possible. They ought to be, as has been said, ‘benevolently interpreted’, and credit ought to be given to those who have to administer them that they will be reasonably administered.

The learned Chief Justice said further that there may be cases in which it would be the duty of the court to condemn bye-laws made under such authority as these were made (by a county council) as invalid because unreasonable. But unreasonable in what sense? If, for instance, they were found to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the court might well say, ‘Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires’.

But it is in this and in this sense only, as I conceive, that the question of reasonableness or unreasonableness can properly be regarded. A bye-law is not unreasonable merely because particular Judges may think that it goes further than is prudent or necessary or convenient, or because it is not accompanied by an exception which some Judges may think ought to be there.”

*We may also refer with advantage to the well-known decision of the Privy Council in *Slattery v. Naylor* [(1888) 13 AC 446 : 59 LT 41 : 36 WR 897 (PC)] where it has been laid down that when considering whether a bye-law is reasonable or not, the Court would need a strong case to be made against it and would decline to determine whether it would have been wiser or more prudent to make the bye-law less absolute or will it hold the bye-law to be unreasonable because considerations which the Court would itself have regarded in framing such a bye-law have been overlooked or rejected by its framers. The principles laid down as aforesaid in *Kruse v. Johnson* [(1898) 2 QB 91, 98, 99: 78 LT 647: 46 WR 630 (DC)] and *Slattery v. Naylor* [(1888) 13 AC 446: 59 LT 41 : 36 WR 897 (PC)] have been cited with approval and applied by this Court in *Trustees of the Port of Madras v. Aminchand Pyarelal* [(1976) 3 SCC 167, 178: AIR 1975 SC 1935: (1976) 1 SCR 721, 733].”*

23. In ***Kunj Behari Lal Butail and Ors. v. State of H.P. & Ors.*** (supra), the Legislative Assembly of Himachal Pradesh enacted Himachal Pradesh Ceiling on Land Holdings Act, 1972, to consolidate and amend laws relating to ceilings on landholdings in the State. As per sub-Section (1) to Section 26 of the said Act the State Government was empowered, by notification to make rules to carry out the purposes of the Act. In exercise of the powers conferred by the Act, the State Government framed Himachal Pradesh Ceiling on Land Holdings Rules, 1973. As per amendment to Rule 3 of the

said Rules, the State Government restricted certain landowners from alienating their land. The Court was of the opinion that the prohibition imposed by the said Rules did not advance the object of the Act. It was further held that it is very common for the legislature to provide for a general rule making power to carry out the purpose of the Act. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the test of having been so framed as to fall within the scope of such general power confirmed. If the rule making power is not expressed in such a usual general form, then it shall have to be seen if the rules made are protected by the limits prescribed by the parent Act.

24. In our opinion, the aforesaid case relied upon by the petitioners stands on a different footing and can be clearly distinguished and discerned from, in view of the principle enactment and Section 33A of the Act. The Statement of objects and reasons, in the introductory part of the Act, clearly provides the object of the enactment. The Legislation provides rule-making power to carry out the purpose of the Act. The Rules framed satisfy the test of having so framed as to fall within the scope of such general power confirmed and the Rules framed are protected by the limits prescribed by the parent Act.

25. The contention is that the Copyright Society must have been given very wide powers to fix the tariffs which should not be unnecessarily and unreasonably interfered. The Statement of objects and reasons of the Act stated that the existing law relating to copyright was contained in the Copyright Act, 1911 of the United Kingdom as modified by the Indian

Copyright Act, 1914. Indian parliament could enact independent self-contained law on the subject of copyright in the light of growing public consciousness of the rights and obligations of authors and in the light of experience gained in the working of the existing law during the preceding years. New and advanced means also call for certain amendments in the existing law. Adequate provisions were needed for fulfillment of international obligations in the field of copyright. A complete revision of law of copyright, therefore, seemed inevitable, and the Bill attempted such a revision. Keeping the above objects in mind the Copyright Bill was passed by both the Houses of Parliament and received the assent of the President on 4th June, 1957. We are of the opinion that the Rules do not negate the principal enactment and it cannot be said that they are repugnant to or in derogation of the object and purpose, the principal enactment seeks to achieve.

26. In the present case, sub-section (2) to Section 33A of the Act is not in challenge before us. The expression “unreasonable element”, would have to be interpreted and examined by the Copyright Board in facts of the given case. The power of the interference is to be exercised within the confines of expressions ‘unreasonable element’, ‘anomaly’ or ‘inconsistency’ in the tariff.

27. We have quoted above the sub-rule (3) to (6) of Rule 56. Sub-clauses (a) to (e) to Rule 56(3) stipulates that the tariff scheme shall indicate the separate rates for different categories of users; different media, such as telephone, broadcast or internet; different types whether by an individual or by groups or whether single or multiple use or for advertising; different

durations of use and territory and any other differentiation factor indicated by the Society, as it may deem fit.

28. We do not think that the aforesaid stipulation, in any way runs counter to or defeats the right of the Copyright Society to fix and claim reasonable tariff. Sub-Section (1) to Section 33A of the Act gives power to every Copyright Society to publish the tariff scheme in such manner as may be prescribed. Sub-rule (3) to Rule 56 precisely prescribes the manner in which tariff is to be published. By stipulating the mandatory fields in Clauses (a) to (d) and Clause (e) it leaves it open to the Copyright Society to fix any other differentiation factor indicated by the Society, as it may deem fit. It stipulates and gives the parameters and divergent aspects that must be kept in mind while fixing the tariff. The object and the purpose behind Clauses (a) to (d) is to ensure that different Copyright Societies should publish tariffs which have some form of uniformity and consistency for the users to be able to understand and appreciate them. It is a regulatory exercise and not an exercise which curtails freedom and discretion of Copyright Societies to fix tariff. It is also to be ensured that the tariffs fixed are uniformly applied to the users and not the pick and choose policy followed. There cannot be any doubt that sub-rule (3) to Rule 56 of the Rules has a salutary purpose and object behind it, which does not in any manner curtail and infringe the right of the Copyright Societies. We also do not think that it is correct to hold that the sub-rule (2) to Rule 56 would, in any manner, curtail or restrict the power of the Government to frame rules as to the manner in which the tariff scheme is to be published. Reference in this regard can be made to Section 78 of the Act. We may note that the petitioners have not challenged the power of the Government to prescribe a manner in which the copyright

scheme is to be published under sub-section (1) of Section 33A. Section 78 of the Act authorizes the Central Government to publish rules in the Official Gazette. Sub-section (2) to Section 78 of the Act states that in particular, and without prejudice to the generality of the foregoing power, the Central Government can make rules to provide for all or any of the matters stipulated in Clauses (a) to (h). Clause (CCA) of sub-section (2) to Section 78 of the Act reads as under:-

“(CCA) the manner in which a copyright society may publish its Tariff Scheme under sub-section (1) of section 33A.”

Sub-rule (3) to Rule 56 of the Rules has been enacted pursuant to the power given under Clause (CCA) to sub-section (2) to Section 78 of the Act read with Section 33 A (1) of the Act. Thus, it passes the test of being a valid subordinate legislation as it does not exceed the limits prescribed by the parent act.

29. Sub-rule (4) to Rule 56 stipulates that while fixing the tariffs, the Copyright Society shall follow the guidelines issued by any Court or the Board, if any, and may consult the users groups. This sub-rule, we do not think, in any way curtails or unreasonably restricts power of the Copyright Society to fix the tariff. In case the Board has issued any guideline, which is asserted to be unreasonable and contrary to law, the same can be challenged in accordance with law. With reference to the guidelines by the Board, we would observe that this power follows and flows as the Board is an Appellate Authority under sub-Section (2) to Section 33A. Powers to issue guidelines by the Board would be exercised when necessary and justified.

30. Sub-rule (5) to Rule 56 stipulates that the Copyright Society shall collect the royalties from the licensee in advance where the tariff scheme provides for *lump sum* payment of royalties. In cases, where the tariff scheme provides for payments in installments, each installment shall be collected in advance. To this extent, the petitioners have no grievance and do not challenge the sub-rule (5) to Rule 56. The grievance is raised against the latter portion of sub-rule (5) which stipulates that where the tariff scheme provides for the payment of royalties based on actual use, the Copyright Society may collect an advance at the time of issue of licence and settle the final payment based upon actual use at the end of the period for which the licence was issued or granted. The said stipulation is also just and fair and, in fact, there is no specific challenge. The grievance of the petitioners is primarily to the proviso to sub-rule (5). The said proviso states that minimum guarantee would normally not be imposed on the licensee where royalty has to be paid on the basis of actual use at the end of the licence period. However, at the same time, it stipulates that in exceptional circumstances the tariff scheme can provide minimum guarantee and the individual case has to be approved by the Governing Council. It is not referred to any governing authority or third person but the Governing Council of the Copyright Society itself.

31. We again do not think that the proviso itself is unreasonable or contrary to law or Section 33A (2) of the Act. The sub-rule (5) to Rule 56 is again enacted in terms of power conferred under sub-section (1) to Section 33A of the Act which empowers the Government to prescribe the manner in which tariff would be published. It ensures that the Copyright Society shall not receive any payment in the nature of minimum guarantee

from a licensee whose royalty payments are based on actual use, which are to be settled with the Society at the end of the licence period, unless they have an exception which is specified and so stated in the tariff scheme. Therefore, where a Copyright Society deems it necessary and appropriate, it can so spell in any individual case with the approval of their Governing Council. The proviso again ensures that the tariff schemes by different Copyright Societies have a uniform structure and the licensees are not left with any doubt or debate as to the amount paid. Wherever Copyright Societies for special reasons feel that an individual should pay minimum guarantee for actual user licensee, they are entitled to impose the said condition. In case, the condition has an unreasonable element or suffers from any anomaly or inconsistency, it can be interfered by the Copyright Board. Sub-rule (6) to Rule 56 states that the Copyright Society may revise the tariff scheme periodically but not earlier than a period of 12 months by following the Rules. It also stipulates that the date of revised tariff scheme should be published at least two months in advance and it shall be posted on the website. This Rule ensures that the tariffs do not change every now and then and there is consistency and severity in the tariff so published. We do not think that the said stipulation is repugnant to Section 33A (1) of the Act. The aforesaid sub-rule has been made within the power of Section 33A(1) of the Act read with Clause (CCA) to sub-section (2) to Section 78 of the Act. It is obvious that in case, tariff keeps on changing and/or altering, licensee would face difficulties and problems. It also ensures that the Copyright Societies do not indulge in unnecessarily slashing or increase their rate every now and then and which would not be in the interest of the licensee and fair

and just competition. Normally, frequent changes would not take place in case there is an effective and true competition.

32. Rule 57 of the Act reads as under:-

“57. Appeal to the Board on Tariff Scheme –

- (1) Any person aggrieved by the Tariff Scheme may appeal to the Board under section 33 A along with the fee specified in the Second Schedule.*
- (2) The Board, if satisfied with the grounds of the appeal, shall*
 - (a) serve a copy of the appeal to the copyright society; and*
 - (b) give an opportunity to the appellant and also, to the copyright society, to be heard and may take such evidence in respect of the appeal, as it may deem fit.*
- (3) The appellant shall pay to the copyright society any interim tariff fixed by the Board that has fallen due before filing an appeal to the Board.*
- (4) The Board may after hearing the parties fix an interim tariff and direct the appellant to make the payment accordingly pending disposal of the appeal.*
- (5) The Board shall determine the Tariff Scheme of the copyright society under section 33A after taking into consideration.*
 - (a) the prevailing standards of royalties in regard to such commercial exploitation of works; and*
 - (b) such other matters as may be considered relevant by the Board.*
- (6) The Board shall dispose of the appeal within a period of three months from the date of its filing.”*

33. Learned counsel for the petitioners submitted that he would restrict his challenge to sub-rule (5) to Rule 57 which states that the Board shall

determine the tariff scheme of the Copyright Society under Section 33A of the Act after taking into consideration, the prevailing standards of royalties in regard to such commercial exploitation of works and such other matters, as may be considered relevant by the Board.

34. As discussed earlier, the Board under sub-section (2) to Section 33A of the Act while deciding the appeal of any person, is entitled to conduct enquiry as may be necessary and required, thereafter it can pass orders so required to remove any unreasonable element, anomaly or inconsistency therein. We have already interpreted “unreasonable element”, where we have held that it is not to be read as meaning the same as “anomaly” and “inconsistency.” Sub-rule (5) to Rule 57 ensures that the Board while examining the question whether the tariff was unreasonable can examine the prevailing standards of royalties to such commercial exploitation of works. This, we do not think, is an unreasonable or illegal stipulation which the Board must take into consideration while deciding the appeal. If an appeal is filed, the Board can issue general directions on whether the tariff is unreasonable and suffers inherent inconsistency.

35. Clause (b) sub-rule (5) to Rule 57 hardly requires any challenge. The Board can, however, take into consideration, all such matters which are relevant. Thus, wide discretion and power has been given to the Board to examine Section 33A of the Act. The power to enact the said Rule can be traced to Clause (CCB) to sub-section (2) to Section 78 which reads as under:-

“(CCB). The fee which is to be paid before filing an appeal to the Copyright Board under sub-section (2) of the Section 33A.”

In fact, other sub-clauses which are relevant are (CB), (CD) and (CE) under the said clause. The Central Government by the Rules may impose conditions subject to which the Copyright Society may be registered under sub-Section (3) to Section 33 of the Act. Therefore, the power to enact the sub-rule (7) to Rule 59 is apparent and cannot be questioned.

36. Sub-rule (7) ensures that the Copyright Society is democratic and represents the Chairman and the other members of the Governing Council who are elected in every two years. It is important here to note that the special Governing Council has been postulated in Clause (b) to Rule 59 (1), which stipulates that every Copyright Society shall have a Governing Council with a Chairman and a minimum of six other members. The powers have been given to the Governing Council to fix the tariff.

37. We may clarify that in the present case, the petitioners have not raised the question of conflict between the Act, i.e., Copyright Act or the Rules i.e. the Copyright Rules, 2013 with any other statutory enactment, like the Companies Act or Cooperative Societies Act or Societies Act. We have not examined and commented on the said aspect and if any issue arises, the same may be considered and decided by the Court in accordance with law.

38. Lastly, the challenge is made to sub-rule (5) to Rule 61 which reads as under:-

“(5). Every member of the society shall have equal voting rights in the General Body meetings.”

39. The aforesaid Rule incorporates principle of equal suffrage, i.e., each vote would carry the same weight and value. Learned counsel for the

petitioners submitted that the said Rule would be contrary to and violate Section 35(3). Section 35 of the Act reads as under:-

“35. Control over the copyright society by the author and other owners of right.—

(1) Every copyright society shall be subject to the collective control of the author and other owners of right under this Act whose rights it administers (not being [authors and other owners of right] under this Act administered by a foreign society or organisation referred to in sub-section (2) of section 34) and shall, in such manner as may be prescribed,—

(a) obtain the approval of such authors and other owners of right] for its procedures of collection and distribution of fees;

(b) obtain their approval for the utilisation of any amounts collected as fees for any purpose other than distribution to the author and other owners of right; and

(c) provide to such owners regular, full and detailed information concerning all its activities, in relation to the administration of their rights.

(2) All fees distributed among the author and other owners of right shall, as far as may be, be distributed in proportion to the actual use of their works.

(3) Every copyright society shall have a governing body with such number of persons elected from among the members of the society consisting of equal number of authors and owners of work for the purpose of the administration of the society as may be specified.

(4) All members of copyrights society shall enjoy equal membership rights and there shall be no discrimination between authors and owners of right in the distribution of royalties.”

We would record that sub-section (4) to Section 35 provides that all members of the Copyright Society shall enjoy equal membership rights and there shall be no discrimination between authors and owners of right in the distribution of royalties. However, our attention is drawn to sub Section (2) to Section 35 which states that the fees distributed among the authors and other owners of right as far as may be in proportion to usage of their works. This, in no way, conflicts with universal and equal voting right envisaged and provided under sub-rule (5) to Rule 61. Sub-rule (5) to Rule 61 stipulates that every member of the Society shall have equal voting rights in the General Body meetings. The said sub-rule does not state that the fee distributed and paid amongst the authors shall not be proportionate to actual usage of their works. It only applies to General Body meetings and voting either for the election by the General Body to the Governing Council. Each member of the Copyright Society has equal voting rights. This is clearly the mandate and is so postulated in Section 35 of the Act. In a way sub-rule (6) to Rule 61 is a reflection and concords with sub-section (4) to Section 35 of the Act.

40. Learned counsel for the petitioners has urged that some of the members of the Copyright Societies cannot be treated as legitimate or righteous members under the Act. It is also stated that new members enrolled by the Governing Body would carry and have equal vote. This argument, according to us carries no weight for enrollment of new members is with the Copyright Society and enrollment has to be made in terms of the rules framed for the said purpose. This argument is hypothetical and based on assumption that a wrong or ineligible person would be enrolled as a member of the Copyright Society, but we would not decide this writ petition

on any such assumption. In case a wrong or ineligible person is enrolled, he can always be removed from the Copyright Society by following the procedure in accordance with law.

41. We are of the opinion that the petitioners have failed to point out that the impugned Rules have not been made for carrying out and in accord with the purpose and object of the Act. Impugned Rules do not bring into existence or create substantive rights or obligation not contemplated and beyond what is envisaged and postulated by the provisions of the Act itself.

42. In view of the aforesaid discussions, we have no hesitation to hold that the prayers made in the petition are untenable in law, since the impugned Rules are in consonance with the objects and reasons and in consonance with the main enactment, i.e., the Copyright Act, 1957. There is no anomaly or absurdity in the Rules under challenge rather they are in the interest of public at large in addition to the statutory mandate. The writ petition is accordingly dismissed. Pending application also stands disposed of. Parties are left to bear their own costs.

CHANDER SHEKHAR, J

SANJIV KHANNA, J

MAY 28, 2018/B