

IN THE HIGH COURT OF DELHI AT NEW DELHI**33****W.P.(C) 6255/2010****SUPER CASSETTES INDUSTRIES LIMITED Petitioner****Through Mr. Amit Sibal with Mr. Neel Mason and Mr. Rahul Ajatshatru and Mr. Sankalp Dalal, Advocates****versus****UNION OF INDIA and ORS****Respondents****Through Ms. Maneesha Dhir with Ms. Jayashree Shukla, Ms. Preeti Dalal and Ms. Sapna Chauhan, Advocates for R-1.****Ms. Pratibha M. Singh, Advocate with Mr. Deepak Gogia, Advocate for R-2.****Mr. Sudhir Chandra Agarwal, Senior Advocate with Mr. Pravin Anand, Mr. Sagar Chandra and Ms. Ishani Chandra, Advocates for R-3.****Mr. Tarun Gulati with Mr. Neil Hilderth, Advocate for R-4.****Mr. Rajiv Nayar, Senior Advocate with Mr. K. Datta and Mr. Diggaj Pathak, Advocate for R-5****Mr. A.K. Matta, Senior Advocate with Mr. Ameet Datta and Mr. Himanshu Bagai, Advocate for R-8****CORAM: JUSTICE S. MURALIDHAR****ORDER****15.09.2010****CM APPL Nos. 12374 and 12375/2010****Exemptions allowed subject to all just exceptions.****Applications are disposed of.****WP (Civil) No. 6255/2010 and CM APPL No. 12373/2010 (for stay)**

1. The challenge is to an order of the Copyright Board which cannot, therefore, be made a party. The name of Respondent No. 2 Copyright Board is struck off from the array of the parties. Now Respondents 3 to 9 will be renumbered as Respondents 2 to 8. Amended memo of parties be filed within one week.

2. Notice. Ms. Maneesha Dhir, Ms. Pratibha M. Singh, Mr. Pravin Anand, Mr. Tarun Gulati, Mr. K. Datta and Mr. Ameet Datta, learned counsels accept notice on behalf of Respondents 1, 2, 3, 4, 5 and 8. Reply be filed within four weeks. Rejoinder thereto, if any, be filed within two weeks thereafter.

3. Issue notice to Respondents 6 and 7, returnable on 6th December 2010.

4. Learned counsel for the parties have been heard.

5. The impugned order dated 25th August 2010 passed by the Copyright Board itself acknowledges that the Petitioner was not a party to the proceedings before it. The judgment of the Supreme Court in Entertainment Network (India) Limited v. Super Cassette Industries Limited (2008) 13 SCC 30 remanded the matter to the Copyright Board for a decision on two aspects concerning the complaints made against the Petitioner, by Respondent No. 2 herein, i.e. Entertainment Network (India) Limited (?ENIL?). The first aspect was whether the Petitioner had unreasonably refused licence to ENIL. Second, if such refusal was held to be unjustified, the payment that should be made for grant of such licence. There were two set of cases before the Supreme Court in which the above common judgment was delivered. The other set pertained to matters arising out of the judgment of the Bombay High Court. The Supreme Court concurred with the view expressed by the Bombay High Court and remanded those matters, concerning the Phonographic Performance Limited (?PPL?) for redetermination of the compensation and other terms and conditions for the grant of compulsory licence.

6. It appears that as far as the Petitioner was concerned, the only complaint against it was made by ENIL and that was registered as a separate case and delinked by the Copyright Board from the batch of cases in which the impugned order has come to be passed. It is stated that the said case is being heard separately by the Copyright Board.

7. It was sought to be contended by Mr. Sudhir Chandra, learned Senior counsel appearing for Respondent No. 3 Music Broadcast Private Limited and Ms. Pratibha M. Singh learned counsel appearing for ENIL that the broad principles by which the rates applicable where compulsory licences are granted to radio stations have been settled by the Copyright Board in the impugned order. It would therefore apply to the Petitioner as well notwithstanding that the Petitioner was not heard by the Copyright Board.

8. It appears to this Court that Section 31 (1) of the Copyright Act, 1957 (?Act?) mandates that the owner of the copyright should be given a reasonable opportunity of being heard before deciding on whether refusal by such owner to grant licence to the complainant was unreasonable and if held unreasonable, determining the compensation to be paid to such owner. This procedure which encapsulates the principles of natural justice is non-negotiable. Since admittedly, the Petitioner was not a party to the proceedings in which the impugned order came to be passed, prima facie it appears that the impugned order cannot be relied upon by any of the Respondents herein or any other to insist on the issuance of the compulsory licence vis-?-vis the copyrighted works of the

Petitioner or to even rely upon the impugned order as regards the rates fixed for the purpose of grant of compulsory licence.

9. It was contended by learned counsel for the Respondents that the Petitioner was ?watching? the whole proceedings by being present before the Copyright Board

throughout and, therefore, the Petitioner was aware of the consequences of the impugned order. This Court is unable to accept the above submissions being an answer to the requirement of Section 31 (1) of the Act of giving the owner of the copyright an opportunity of being heard.

10. In the circumstances, this Court is of the view that the Petitioner has made out a prima facie case for grant of interim relief.

11. The Petitioner has referred to certain communications received from some of the radio stations citing the impugned order and stating that they would pay to the Petitioner only the rates as determined by the Copyright Board in the impugned order. It appears to this Court that the balance of convenience in granting interim relief is in favour of the Petitioner.

12. This Court directs that till the next date of hearing, the impugned order dated 25th August 2010 passed by the Copyright Board will not be relied upon by any of the Respondents or any other party to insist on the issuance of compulsory licence vis-a-vis the copyrighted works of the Petitioner and for the purpose of payment to the Petitioner based on the rates as determined in the impugned order. It is clarified that individual complaints made to the Copyright Board against the Petitioner about its unreasonable refusal to grant licence will be dealt with independently on merits by the Copyright Board.

13. List on 6th December 2010.

14. Order be given dasti.

S.MURALIDHAR, J
SEPTEMBER 15, 2010
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