Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 253 OF 2024

Phonographic Performance Limited
Crescent Towers, 7th Floor
B/68 Veera Estate,
Off New Link Road, Andheri (West)
Mumbai – 400063
Email: legal@pplindia.org
Through its authorised Representative
Mr Ranjan Ojha,
Son of late Shri Krishna Ojha,
Aged 59 years ... Petitioner

Versus

1 State of Goa
Department of Home
through Under-Secretary (Home – I)
Mr Vivek K. Naik
Secretariat, Porvorim Goa.

2 The Office of the DGP
Goa Police Headquarters,
Near Azad Maidan,
Panaji Goa, India – 403 001

3 Department of Tourism
Through its Director,
Paryatan Bhavan Patto
Panaji Goa 403 001

4 Department of Art and Culture
Through its Director
Sanskruti Bhavan,
Central Library,
Patto, Patto Centre,
Panaji Goa 403 001

5 Novex Communications
Private Limited
B 301, Remi Biz Court,
Plot No.9, Shah Industrial Estate,
Veera Desai Road Andheri (West)
Mumbai 400058. ... Respondents

Mr Nitin Sardessai, Senior Advocate with Mr Pulkit Bandodkar, Mr Ankur Sangal, Ms Sucheta Roy, Mr Tarun Rebello, Mr S. Sardessai, and Mr Ankit Arvind, Advocates for the Petitioner.

Mr Deep Shirodkar, Additional Government Advocate for respondent Nos.1 to 4.

Mr Y. V. Nadkarni, Mr Shailesh Redkar and Ms S. Khadilkar, Advocates for respondent No.5.

WITH
WRIT PETITION NO. 254 OF 2024

Sonotek Cassettes Company
633, 3rd Floor, 19A
Ansari Road, Daryaganj
New Delhi – 110002
Email:sonotekaudio@gmail.com
Through its authorized
Representative/POA holder
Mr Dinesh Velip,
Son of Sagun Velip
Aged 44 years ...Petitioner

Versus

1 State of Goa
Department of Home
Through under-Secretary (Home-I),
Mr Vivek K. Naik
Secretariat, Porvorim Goa.

2 The Office of the DGP
Goa Police Headquarters,
Near Azad Maidan,
Panaji Goa, India – 403001.

3 Department of Tourism
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Paryatan Bhavan Patto
Panaji Goa 403001

4 Department of Art and Culture,
Through its Director
Sanskruti Bhavan,
Central Library,
Patto, Patto Centre,
Panaji Goa 403 001

... Respondents

Mr S. S. Kantak, Senior Advocate with Mr Pulkit Bandodkar, Mr Ankur Sangal, Ms Saicha Dessai, Mr Simoes Kher, Advocates for the petitioner.

Mr Deep Shirodkar, Additional Government Advocate for respondent Nos.1 to 4.

CORAM: M. S. KARNIK &
VALMIKI MENEZES, JJ.

Reserved on: 8th AUGUST 2024
Pronounced on: 13th AUGUST 2024

JUDGMENT (*Per M. S. Karnik, J.*)

1. The issues raised in the petitions are decided by a common judgment. We refer to the facts in Writ Petition No.253 of 2024.

2. The petitioner Phonographic Performance Limited in this petition under Article 226 of the Constitution of India seeks quashing and setting aside the impugned Circular dated 30.01.2024 issued by respondent No.1.

3. The petitioner is a company registered under the Companies Act, 1956. The petitioner is one of the foremost organisations in the world which provides a '*single window*' for consumers to get access to the petitioner's voluminous repertoire and was originally known as the Indian Phonographic Industry (IPI). The petitioner owns and/or controls the public performance rights of 400+ music labels, with more than 40 lakh international and domestic sound recordings. The petitioner is the copyright owner of the public performance rights in the sound recordings in its repertoire on the basis of assignment of the relevant copyrights in its favour by music labels who have assigned/licensed the said right. These assignors of the petitioner have executed an assignment deed under Section 18 of the Copyright Act, 1957 (Copyright Act for short) in respect of its sound recordings with the petitioner wherein they have assigned the public performance rights of the sound recordings to the petitioner and in view of the same, the petitioner is the owner/controller of the sound recordings to the extent of public performance of the same and therefore is exclusively entitled to grant licenses for communication to the public/public performance of its repertoire of sound recordings. The list of sound

recordings in which the petitioner has copyright is available on petitioner's website (petitioner's copyrighted works), which provides express notice of petitioner's rights in the sound recordings to any user.

4. Between 07.05.1996 and 21.06.2014 the petitioner's company was a registered copyright society under Section 33 of the Copyright Act and thereafter in 2014, due to the amendment brought in the Copyright Act, the petitioner surrendered its registration as there was a statutory requirement for all the registered Copyright Societies to re-register themselves. Since 2014, the petitioner has been assigned the right of public performance of sound recordings by various music labels and issuing license in respect of the same as an owner.

5. The petitioner issues licenses under Section 30 of the Copyright Act for communication/public performance of its vast repertoire of sound recordings. The petitioner grants licenses authorizing the use of its entire repertoire, on an as-is-where basis to its licensees. The petitioner's right to grant licenses for sound recordings in its repertoire has been recognized by various courts in India including Delhi High Court and Bombay High Court.

6. The petitioner serves a useful public utility of acting as a '*single window*' to various parties seeking to take a license for authorized use of sound recordings and brings together the copyright owners and users across various parts of India, for better convenience in licensing. Any communication to the public/public performance of sound recordings forming a part of the petitioner's repertoire without an appropriate licence would amount to an infringement of copyright under Section 51 of the Copyright Act. The petitioner also actively prosecutes the violators of its copyright in civil as well as criminal Courts as per the remedies available under the Copyright Act.

7. The cause for filing these petitions is a Circular dated 30.01.2024 issued by respondent No.1-State of Goa, addressed to the office of the DGP, Panaji Goa. By a legal notice dated 27.02.2024, the petitioner called upon the respondent No.1 to withdraw the impugned Circular within two days and if not withdrawn, informed that the petitioner would be compelled to take appropriate legal action. There was no response received to the legal notice.

8. Learned Senior Advocates Mr Nitin Sardessai and Mr S. S. Kantak argued in favour of the Petitioners. Mr Y. V. Nadkarni argued on behalf of respondent No.5 in Writ Petition No.253 of 2024 in support of the petitioners' case. The submissions on behalf of the petitioner and respondent No.5 are as under:

> (i) Respondent No.1 being the Home Ministry of Goa, does not have jurisdiction to interpret law, as the impugned Circular demonstrates, respondent No.1, as an executive arm of the Government cannot assume legislative functions and interpret the law. Respondent No.1 by way of the Circular has expanded the scope of Section 52(1)(za) of the Copyright Act and hence overridden the statutory provision which is not permissible in law. The impugned Circular does not disclose under what statutory authority it has been issued. The decision of the Punjab & Haryana in ***Novex Communications Private Limited Vs Union of India***, reported in ***2022 SCC OnLine P&H 1105***, holds that the Registrar of Copyrights had no authority under the law to clarify or interpret the applicability of the law and had also held that a public

notice cannot impact the statutory right of a copyright owner under Section 55 of the Copyright Act;

(ii) The impugned Circular impinges on the petitioner's right to initiate civil/criminal proceedings for infringement of its copyright. By sending the impugned Circular to the police and encouraging them to take action against the legitimate collection of royalties by the Petitioner, the Respondents are hampering the statutory right of the petitioner to take criminal action against infringers. Section 52(1)(za) of the Copyright Act has to be read in terms of the other exceptions to be limited to only bona fide religious ceremonies with non-commercial use of copyrighted works. The words "*Social festivities associated with marriage*" have to be read with the words "*bona fide religious ceremony*". Explanation to Section 52(1)(za) cannot expand the meaning of the main provision. The High Court of Punjab & Haryana in ***Phonographic Performance Limited Vs State of Punjab through Secretary, Department of Home Affairs and Justice*** has held that a sound reproduction by a DJ performing at an event does not amount to conducting a marriage. The question whether certain acts would fall under Section 52(1)(za) would have to be seen on a case-by-case basis. A general interpretation cannot be given to the same.

9. Mr Shirodkar, learned Additional Government Advocate on the other hand, in support of the impugned Circular submitted as under: -

(i) The said Circular has been issued by the State Government in exercise of its executive powers under Article 162 of the Constitution of India. The Circular has been issued for the purpose of guidance of the officers of the State to prevent any abuse of the police machinery for acts which the said Act itself has intentionally kept out of the scope of infringement of copyright and also to provide information and create awareness among the public about the statutory provision. The Circular has been issued in public interest taking note of the Public Notice dated 24.07.2023 issued by the Central Government and the complaints received from stakeholders. The Public Notice dated 24.07.2023 issued by the Central Government is similar in nature. It refers to complaints received, refers to the exception under Section 52(1)(za) for marriage procession and other social festivities associated with marriage, directs copyright societies to strictly refrain from acting in contravention of the provision and cautions the general public not to accede to uncalled demands which are in violation of the provision. The said Public Notice dated 24.07.2023 has not been challenged by the Petitioner. In the absence of such challenge, the petitioner cannot have a standalone challenge to the said Circular which has referred to the Public Notice and has stated that all concerned are to act in terms of the same;

(ii) Any Circular or executive instructions can be challenged only when any statutory right is taken away. When the Circular or instructions do not take away any right but only provide for safeguards to prevent abuse or arbitrary exercise of powers, the same will not be interfered with.

Following decisions of the Supreme Court in ***Joint Action Committee of Air Line Pilots' Association of India Vs DG of Civil Aviation reported in (2011) 5 SCC 435***. Reliance is also placed on the decision of ***Suhas H. Popale Vs Oriental Insurance Co. Ltd., reported in (2014) 4 SCC 657*** and in ***Veerendra Kumar Dubey Vs Chief of Army Staff reported in (2016) 2 SCC 627*** support the State's case***;***

(iii) The Circular has been issued by the State Government in exercise of its executive powers under Article 162 of the Constitution of India. The executive instructions provide guidance for the officers in order to ensure that there is no abuse of powers by the officers in relation to acts/events which the statute has specifically kept out from the purview of infringement of copyright. Unlike the Notice dated 27.08.2019 which was issued by the Registrar of Copyright, who is a creature of the statute and cannot act beyond the role attributed to him under the statute, the said Circular is issued by the State Government in the exercise of powers under Article 162. The executive has not interpreted the provisions of law inasmuch as the Circular refers to the statutory provision itself and the Public Notice issued by the Central Government;

(iv) Section 52(1)(za) *inter alia* provides that playing of a sound recording in the course of any bona fide religious ceremony which includes a marriage procession and other social festivities associated with a marriage shall not constitute an infringement of copyright. The Circular states the legal provision and refers to the Circular of the Central

Government and requires that the police staff be sensitized about the provision to prevent undue harassment to the public. The Circular also provides that action has to be taken in cases of illegal demands of royalties/fees in relation to the exception provided in Section 52(1)(za). It is well settled that when the statutory language is plain and admits of only one meaning, no question of interpretation arises as the Act speaks for itself. Reliance is placed on the decision in ***Bhuwalka Steel Industries Ltd., Vs Bombay Iron & Steel Labour Board*** reported in (2010) 2 SCC 273;

(v) The Circular does not take away either civil or criminal remedies. Firstly, the provisions of Sections 55, 63 and 64 come into play only in case of infringement of copyright. Section 52(1)(za) states that the events in question do not constitute infringement of copyright. In any event, the Circular does not affect the petitioner's right to avail the civil and criminal remedies in accordance with law. In the event the police does not register an FIR for the reason that any event does not constitute an infringement of copyright, the petitioner can take recourse to the legal provisions and approach the Court and satisfy the Court as to whether a cognizable offence is made out. The submission that civil or criminal remedies are taken away is wholly misconceived. As regards the contention that the Circular requires strict action to be taken against illegal demands and other illegal acts, the action by the police referred to therein is obviously action in accordance with law. If any complaint is received about commission of any cognizable offence, it is the duty of the police to take action;

(vi) The exception under Section 52(1)(za) is not restricted to non-commercial use. The same relates to bona fide religious ceremony which includes a marriage procession and other social festivities associated with a marriage. The Parliament has not qualified the provision by providing for the words 'non-commercial use'. Accepting the submission of the petitioner would result in reading words into the statute, which exercise is impermissible;

(vii) The intention of the Parliament is that when it comes to a marriage procession and other social festivities associated with a marriage, the same will not constitute infringement of copyright. The Statement of Objects and Reasons of the Amendment Bill 1992, where the provision was first introduced, states that the events specified in clause (za) are inappropriate to be subject to copyright. The intention of the Parliament is therefore clear. Reliance is placed on the decision of the Supreme Court in ***Hiralal Ratanlal Vs State of UP reported in (1973) 1 SCC 216.*** Reliance is also placed on the report of the expert appointed by the Delhi High Court under Rule 31 of the Delhi High Court Intellectual Rights Division Rules, 2021, more particularly 7 to 11, which reflect the summary of submissions, paras 41 to 43 which discuss the facts leading to the passing of the Amendment Act, 1994. Paras 52 to 58 thereof which relate to unwarranted police interventions and Para 89 analyses the data which shows that in relation to such events, the impact is hardly 4% of the revenues of the industry;

(viii) Assuming that the Respondents have interpreted the provision while issuing the Circular, unless this Court comes to a conclusion that the interpretation is arbitrary and perverse, this Court will not interfere if the interpretation adopted by the respondent is consistent with the law. Reliance is placed on the decision of the Supreme Court in ***Kendriya Karamchari Sehkari Grah Nirman Samiti Ltd., Vs State of UP reported in (2009) 1 SCC 754.*** Even assuming without admitting that the submissions of the petitioner are accepted vis-à-vis some part of the Circular being an interpretation, only the offending part will be affected. The doctrine of severability would come into play and the entire Circular will not be quashed as it is otherwise informative in nature as it creates awareness about the legal provision and the Public Notice issued by the Central Government. In terms of the Act, as regards the events mentioned in Section 52(1)(za), the same do not constitute infringement of copyright and no fees/royalties can be charged by the copyright societies. Even assuming that the petitioner's submission is correct that the Circular ventures into interpretation of the provision, this Court will still not interfere in the exercise of writ jurisdiction, as any interference will revive or perpetuate an illegality (charging fees for events which the Act has excluded from the purview of copyright infringement);

(ix) If it is the case of the petitioner that they are entitled to charge the fees/royalties, nothing prevents the petitioner from filing a suit in terms of Section 55 to recover the same, or to take recourse to appropriate remedies for

criminal prosecution. On the other hand, if the petitioner is permitted to use the police machinery for events which the statute itself excludes from the purview of infringement of copyright, the same will be against the statutory mandate and will be against the public interest.

10. Heard learned counsel for the parties. The rival contentions fall for our determination. At the outset, the Public Notice dated 24.07.2023 issued by the Central Government which forms the basis for issuance of the impugned Circular by respondent No.1 needs to be extracted which reads thus: -

"No. P-24029/56/2023-IPR-VII
Government of India
Ministry of Commerce & Industry
Department of Promotion of Industry and Internal Trade
(Copyright & Design Section)

24th July, 2023

PUBLIC NOTICE

Department of Promotion of Industry and Internal Trade (DPIIT) has received several complaints, representations, grievances from the general public as well as other stakeholders about alleged collection of royalties by the Copyright Societies for performance of musical work, communication to the public of sound recording etc. in marriage functions in contravention to letter and spirit of Section 52 (1) (za) of Copyright Act 1957.

2. It is well known that Section 52 of Copyright Act 1957 enumerates certain acts which shall not constitute an infringement of Copyright. Section 52 (1) (za) specifically mentions the performance of a literary, dramatic, or musical work or the communication to the public of such work or of a sound recording in the course of any bonafide religious ceremony or an official ceremony held by the Central Government or the State Government or any local authority, as not constituting infringement of Copyright.

Religious Ceremony (for the purpose of the aforementioned clause) includes a ***marriage procession and other social festivities associated with marriage.***

3. In view of above, Copyright Societies are directed to strictly refrain from entering into acts which are in contravention to Section 52 (1) (za) of Copyright Act 1957, in order to avoid any legal action. Also, the General Public is hereby cautioned to not to accede to any uncalled demands from any individual/organization/copyright society which are in violation of Section 52 (1) (za) of Copyright Act 1957.

Sd/- 24.07.2023
(Naveen Kumar)
Under Secretary to
Government of India
Tel: 011-23038988"

11. It is then pertinent to extract the impugned Circular dated 30.01.2024 issued by respondent No.1 which reads thus: -

"Government of Goa
Department of Home (General)
Secretariat, Porvorim-Goa

Tel. No.(0832)-2419450 *Email:usgen-home.goa@nic.in*

No. 10/02/2024-HD(G) *Date:- 30/01/2024*

CIRCULAR

Several complaints have been received stating that in respect of religious ceremonies including marriage/wedding festivities there is an insistence by certain organization/hotels to get permission from copyright societies for performance of musical work, communication to the public sound recording, etc. In this regard, the Public Notice of Government of India dated 24.07.2023 issued by the Ministry of Commerce and Industry is very clear which states that such performance of musical works, etc, at religious ceremonies, including weddings does not amount to violation of the Copyright Act 1957.

Insistence upon such permission/NOCs from the copyright societies is in violation of section 52(1)(za) of Copyright Act 1957 and is adversely affecting not only the citizens but also the economic/tourism activities in the state.

It is therefore clarified that no hotel or any Copyright Society shall insist upon any permission/NOCs for performance of musical works or other musical recordings for religious ceremonies/festivals including wedding/marriage events and other social festivities associated with marriage. All concerned have to act in terms of the Public Notice of Government of India dated 24/07/2023 issued by the Ministry of Commerce and Industry.

The police staff has to be therefore sensitized about the above said provision of law so that no undue harassment is caused to the general public.

Also the field units have to be instructed to take strict action against any hotel or copyright society raising such illegal demands of royalties/any fees for performance of musical works or other musical recordings at religious ceremonies/festivals, including weddings/marriage events and other social festivities associated with marriage.

This is issued with the approval of the Competent Authority.

Sd/- 30/01/2024
(Vivek K. Naik)
Under Secretary (Home-1)

To,

1) *The Office of DGP, Panaji Goa.*

Copy to: For information

1) *The Director, Department of Tourism, Patto, Panaji Goa.*
2) *The Director, Department of Art & Culture, Panaji Goa."*

12. Some of the provisions of the Copyright Act which need to be kept in mind in the context of the present case are thus: -

> *Section 2(q) defines "performance" to be in relation to performer's right, means any visual or acoustic presentation made live by one or more performers;*

Section 2(qq) provides for the definition of "performer" as includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance;

Section 2(t) defines "plate" includes any stereotype or other plate, stone, block, mould, matrix, transfer, negative, [duplicating equipment] or other device used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliance by which [sound recording] for the acoustic presentation of the work are or are intended to be made;

Section 2(xx) defines "sound recording" to mean recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced.

13. Chapter III contains the provisions relating to Copyright. Section 13(1) provides that subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say, —

(a) original literary, dramatic, musical and artistic works;

(b) cinematograph films; and

(c) [sound recording].

14. Section 14(1) stipulates that for the purposes of this Act, "*copyright*" means the exclusive right, subject to the provisions of this

Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely: —

(a) in the case of a literary, dramatic or musical work, not being a computer programme;

(i).....

(ii) .....

(iii) to perform the work in public, or communicate it to the public;

(iv).....

Section 14(1)(e) provides that in the case of a sound recording, —

(i).....

(ii).....

(iii) to communicate the sound recording to the public.

Section 18 provides for the assignment of copyright. The mode of assignment is prescribed by Section 19.

15. Chapter VI deals with licences. Section 30 thereunder says that the owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the right by licence in [writing by him] or by his duly authorised agent. Section 31-D is the provision for statutory licence for broadcasting of literary and musical works and sound recording.

Chapter VII of the Copyright Act contains provisions relating to copyright societies and registration of copyright society is prescribed under Section 33.

16. Chapter XI of the Copyright Act are provisions relating to infringement of the Copyright. Section 51 provides when copyright is infringed. Section 51 reads thus: -

> ***51. When copyright infringed.***— *Copyright in a work shall be deemed to be infringed— (a) when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act—*
> *(i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or*
> *[(ii) permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or]*
> *(b) when any person—*
> *(i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or (ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or*
> *(iii) by way of trade exhibits in public, or*
> *(iv) imports [***] into India, any infringing copies of the work:*

[Provided that nothing in sub-clause (iv) shall apply to the import of one copy of any work for the private and domestic use of the importer.]
Explanation. — For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an "infringing copy".

17. Section 52 provides certain acts not to be infringement of copyright. The bone of contention in the present petition is sub-section (za) of Section 52(1) which reads thus: -

(za) the performance of a literary, dramatic or musical work or the communication to the public of such work or of a sound recording in the course of any bona fide religious ceremony or an official ceremony held by the Central Government or the State Government or any local authority.
Explanation.— For the purpose of this clause, religious ceremony including a marriage procession and other social festivities associated with a marriage;]"

18. Civil remedies for infringement of copyright are provided in Chapter XII. Section 55(1) provides that where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right.

19. It is also important to bear in mind Section 60 which provides that where any person claiming to be the owner of copyright in any work, by circulars, advertisements or otherwise, threatens, any other person with any legal proceedings or liability in respect of an alleged infringement of the copyright, any person aggrieved thereby may, notwithstanding anything contained [in section 34 of the Specific Relief Act, 1963 (47 of 1963)], institute a declaratory suit that the alleged infringement to which the threats related was not in fact an infringement of any legal rights of the person making such threats and may in any such suit—

(a) obtain an injunction against the continuance of such threats; and

(b) recover such damages, if any, as he has sustained by reason of such threats.

The Proviso to this Section says that Section 60 will not apply if the person making such threats, with due diligence, commences and prosecutes an action for infringement of the copyright claimed by him.

20. Chapter XIII contains provisions relating to offences under the Copyright Act. Section 63 deals with the offence of infringement of copyright or other rights conferred by this Act. Section 64 contains the provisions dealing with the power of police to seize infringing copies. Relevant to the controversy is Section 68 which stipulates that any person who,—

(a) with a view to deceiving any authority or officer in the execution of the provisions of this Act, or

> (b) with a view to procuring or influencing the doing or omission of anything in relation to this Act or any matter thereunder, makes a false statement or representation knowing the same to be false, shall be punishable with imprisonment which may extend to one year, or with fine, or with both.

Section 70 ordains that no Court inferior to that of [a Metropolitan Magistrate or a Judicial Magistrate of the first class] shall try any offence under this Act. Chapter XIV provides for appeals against certain orders.

21. We must bear in mind the observations of the Supreme Court in ***Eastern Book Company & Ors. V/s D.B. Modak & Anr.***[1] before proceeding further. The copyright protection finds its justification in fair play. When a person produces something with his skill and labour, it normally belongs to him and the other person would not be permitted to make a profit out of the skill and labour of the original author and it is for this reason the Copyright Act, 1957 gives to the authors certain exclusive rights in relation to the certain work referred in the Act. The object of the Act is to protect the author of the copyright work from an unlawful reproduction or exploitation of his work by others. Copyright is a right to stop others from exploiting the work without the consent or assent of the owner of the copyright. A copyright law presents a balance between the interests and rights of the author and that of the public in protecting the public domain, or to claim the copyright and protect it under the copyright statute. One of the key requirements is that of originality which contributes, and has a direct nexus, in maintaining the interests of the author as well as that of public in protecting the matters in public domain. It is a well-accepted

[1] (2008) 1 SCC 1

principle of copyright law that there is no copyright in the facts per se, as the facts are not created nor have they originated with the author of any work which embodies these facts. The issue of copyright is closely connected to that of commercial viability, and commercial consequences and implications.

22. Bearing the aforesaid principles in mind, it is pertinent to note that for infringement of copyright, civil remedies are provided in Section 55 of Chapter XII of the Copyright Act. The owner of the copyright is entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right. The proviso to Section 55 says that if the defendant proves that at the date of the infringement, he was not aware and had no reasonable ground for believing that copyright subsisted in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the Court may in the circumstances deem reasonable.

23. Section 56 provides for the protection of separate rights whereas Section 57 are Author's special rights independently of the author's copyright and even after the assignment either wholly or partially of the said copyright. Under Section 57, the author of the work shall have the right (a) to claim authorship of the work; and (b) to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation. These special rights are of course subject to the proviso to Section 57. Section 58 provides for the rights of the owner against persons possessing or dealing with infringing copies.

24. The word "work" is defined in Section 2(y) of the Copyright Act which reads thus:

> *"2(y) "work" means any of the following works, namely: -*
>
> *(i) a literary, dramatic, musical or artistic work;*
>
> *(ii) a cinematograph film;*
>
> *(iii) a sound recording"*

25. Section 62 provides for the jurisdiction of the Court over matters arising under Chapter XII. Chapter XIII of the Copyright Act are provisions for dealing with copyright offences. Section 64 stipulates the power of police to seize infringing copies.

Sub-section (1) of Section 64 provides that any police officer, not below the rank of a sub-inspector, may, if he is satisfied that an offence under Section 63 in respect of the infringement of copyright in any work has been, is being, or is likely to be, committed, seize without warrant, all copies of the work, and all plates used for the purpose of making infringing copies of the work, wherever found, and all copies and plates so seized shall, as soon as practicable, be produced before a Magistrate.

Sub-section (2) of Section 64 says that any person having an interest in any copies of a work or plates seized under sub-section (1) may, within fifteen days of such seizure, make an application to the Magistrate for such copies or plates being restored to him and the Magistrate, after hearing the applicant and the complainant and making such further inquiry as may be necessary, shall make such order on the application as he may deem fit.

Though not relevant to the contextual facts, a reference to Section 65-A which was inserted with effect from 21.06.2012 is necessary as it contains provisions for protection of technological measures making any person who circumvents an effective technological measure applied for the purpose of protecting any of the rights conferred by this Act, with the intention of infringing such rights liable for the punishment prescribed.

26. Section 68 of the Act stipulates that any person who (a) with a view to deceiving any authority or officer in the execution of the provisions of this Act, or (b) with a view to procuring or influencing the doing or omission of anything in relation to this Act or any matter thereunder, makes a false statement or representation knowing the same to be false, shall be punishable with imprisonment which may extend to one year, or with fine or with both.

27. Section 68-A provides for penalty for contravention of Section 52-A. Section 68-A says that any person who publishes a sound recording or a video film in contravention of the provisions of Section 52-A shall be punishable with imprisonment which may extend to three years and shall also be liable to fine. The definition of "*sound recording*" in Section 2(xx) is significant. It means recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced. Section 3 stipulates that for the purpose of this Act, "*publication*" means making a work available to the public by issue of copies or by communicating the work to the public.

28. Thus a careful perusal of the relevant provisions of the Copyright Act indicates that for infringement of the copyright or for violation of

the rights under the Copyright Act, there are remedies provided apart from the safeguards prescribed for the protection of the rights of the copyright owners. The Act provides for civil remedies and makes the violations offence punishable under the Act. The consequences of breach are provided. The object of the Act is to protect the author of the copyright work from an unlawful reproduction or exploitation of his work by others. The whole essence of a copyright is a right to stop others from exploiting the work without the consent or assent of the owner of the copyright. Then there are adequate provisions in the Act safeguarding the interest of the defendants against whom the action may be initiated by the copyright owner which we have referred to above. Thus, as observed by Their Lordships, the copyright law presents a balance between the interests and rights of the author and that of the public in protecting the public domain, or to claim the copyright and protect it under the copyright statute. It is important to bear in mind that the issue of copyright is closely connected to that of commercial viability, commercial consequences and implications.

29. Now let us turn to the impugned Circular dated 30.01.2024. The circular relies upon a public notice dated 24.07.2023 issued by the Ministry of Commerce and Industry. The public notice dated 24.07.2023 after referring to Section 52(1)(za) directs the Copyright Society to refrain from entering into acts which are in contravention to Section 52(1)(za) in order to avoid any legal action. Also, the general public is thereby cautioned not to accede to any uncalled demands from any individual/organization/copyright society which are in violation of Section 52(1)(za) of Copyright Act 1957. We refrain from expressing any opinion on public notice dated 24.07.2023 as the same is not the subject matter of challenge in this petition.

30. Section 52 contains provisions making certain acts not to be infringement of copyright. Reading of Section 52(1)(za) does reveal that it may pose interpretative challenges. We are concerned with the expression '*bonafide religious ceremony'*. The explanation to Section 52(1)(za) provides that for the purpose of clause (za) religious ceremony includes a marriage procession and other social festivities associated with a marriage. Therefore, if a sound recording is communicated to the public in the course of any bonafide religious ceremony and as the words "*religious ceremony*" as per the explanation clause includes a marriage procession and other social activities related with a marriage, a dispute may arise as to what is a '*bonafide religious ceremony*' and/or the other social festivities associated with a marriage. Thus, as per Section 52(1)(za), the communication to the public of a sound recording of musical work or of a sound recording in the course of any bonafide religious ceremony including a marriage procession and other social festivities associated with a marriage cannot be construed to be an act infringing the copyright.

31. As indicated earlier, the provisions of the Copyright Act contain a complete mechanism providing for civil remedies as well as prescribing criminal remedies and the nature of reliefs which could be granted for infringement of the copyright or violation of any rights under the Act. The disputes are thus to be resolved by a mechanism provided under the Act. The remedy in the case of groundless threat of legal proceedings of the person claiming that the Act is not an infringement of the copyright is provided under the Copyright Act as can be seen from Sections 60 and 68 of the Copyright Act. Thus, there are adequate provisions in the Copyright Act which present a balance between the

interest of the rights of the author and that of the public in protecting the public domain.

32. The impugned Circular after referring to the Public Notice of Government of India dated 24.07.2023 says that insisting upon such permission/NOCs from the copyright societies is in violation of Section 52(1)(za) of the Copyright Act adversely affecting not only the citizens but also the economic/tourism activities in the State. It goes to clarify that no hotel or any copyright society shall insist upon any permission/NOCs for performance of musical works or other musical recordings for religious ceremonies/festivals including wedding/marriage events and other social festivities associated with marriage. The Circular says that the police staff has to be therefore sensitized about the aforesaid provision of law so that no undue harassment is caused to the general public. It further goes to provide that the field units have to be instructed to take strict action against any hotel or copyright society raising such illegal demands of royalties or any fees for performance of musical works or other musical recordings at religious ceremonies/festivals, including weddings/marriage events and other social festivities associated with marriage. The circular in expanding the scope of Section 52(1)(za) is bound to have consequences disturbing the balance which the Copyright Act seeks to achieve between the interest of the rights of the author/owner of the copyright and those claiming protection of Section 52(1)(za). As to what shall not constitute infringement of copyright is provided by Section 52(1)(za). We are afraid that the circular, though claimed to be informatory in nature to make the citizens aware about the provisions of Section 52(1)(za), according to us, such information has the effect of distorting the provisions of Section 52(1)(za).

33. In our opinion, the impugned Circular is much beyond the scope of Section 52(1)(za). The requirement of Section 52(1)(za) says that the performance of musical work or the communication to the public of a sound recording in the course of any bonafide religious ceremony would not be an act constituting an infringement of copyright. The Explanation to Section 52(1)(za) says that for the purpose of clause (za), religious ceremony including marriage procession and other social festivities associated with a marriage. If the Circular is perused, the same covers religious ceremonies/festivals including weddings/marriage events and other social festivities associated with marriage. No doubt, reading of the Circular shows that the same is issued to prevent undue harassment to the general public. However, in the process, the respondents have undertaken an interpretative exercise of adding words in the circular which are not part of Section 52(1)(za). For instance, the Section uses the term '*marriage'* whereas the Circular uses the word '*wedding'* in addition to the *'marriage'* and that too in the context of an event. Again the question is whether the term '*marriage'* in Section 52(1)(za) has the same meaning as the term '*wedding'*. The impugned circular uses the term '*wedding'*. The purport of Section 52(1)(za) appears to be that the act in respect of which it is claimed that there is no infringement of copyright Act must be strictly within the umbrella of the expression '*bonafide religious ceremony*'. We hasten to add that we do not express any opinion on the interpretation of Section 52(1)(za), for our endeavour is only to test the case of the State whether the circular is expanding the scope of Section 52(1)(za) on the pretext of informing the public at large about its possible misuse. There is a difference between informing the public at large the provisions of Section 52(1)(za) as it stands to safeguard their interests; with that of informing the public by distorting the provisions of Section 52(1)(za).

34. The learned Additional Government Advocate was at pains to point out that what the Circular does is only inform the general public about the provisions of Section 52(1)(za) and nothing more. He further submitted that the police staff has to be sensitized about the provisions so that no undue harassment is caused to the general public. We find that the Circular does much more than just informing the public the provision of Section 52(1)(za). The field units have been instructed to take strict action against any hotel or copyright society raising illegal demands of royalties or any fees for performance of musical works or other musical recordings at religious ceremonies/festivals including weddings/marriage events and other social festivities associated with marriage.

35. The intent of the State to issue such Circular may have been bonafide. We do appreciate the submissions of Mr Shirodkar that the provisions should not be subject to misuse causing harassment to the public. However the circular cannot overreach the provisions of Section 52(1)(za) and the Copyright Act itself. The Copyright Act provides for a complete mechanism to redress the grievance of the copyright owner/author of the copyright as also those who say that the act complained is not an infringement of the copyright. The enforcement mechanism is also prescribed by the Copyright Act.

36. There is one more reason why the impugned circular cannot be sustained. As discussed earlier, the object of the Act is to protect the author of the copyright work from an unlawful reproduction or exploitation of his work by others. The whole essence of a copyright is a right to stop others from exploiting the work without the consent or assent of the owner of the copyright. Thus, the issue of copyright is closely connected to that of commercial viability, commercial

consequences and implications. If such is the nature of the right conferred on the author/owner, then, according to us, the question as to what act is not an infringement of a copyright is best left for adjudication by the competent forum which accords with the mechanism provided under the Act. Hence the question whether the act does not constitute an infringement of copyright needs to be decided on a case to case basis. Rival claims may arise for determination whether the act which is claimed to be not infringement of a copyright may have to be dealt with the claim of the author/copyright owner who contends that the act is closely connected to that of commercial viability, commercial consequences and implications impinging upon the rights of the author/copyright owner.

37. As to what is bonafide religious ceremony is a question of fact. Then again what constitutes "*other social festivities associated with marriage*" will depend upon the facts of each case. Instructing field units to take strict action against any hotel or copyright society raising such illegal demands of royalties or any fees for the performance of musical works, in our opinion, tends to interfere with the enforcement mechanism provided in the Act. Clarifying that no hotel or copyright society shall insist upon any permission/NOCs for performance of musical works or other musical recordings for the events mentioned in the Circular is in the teeth of the provisions of the Copyright Act.

38. What is provided by Section 52(1)(za) are certain acts which are not to be infringement of copyright. The provisions of Section 52 are in the nature of an exception to the claim of the author/copyright owner contending infringement of the copyright. The claim whether the act is not an infringement of copyright within the meaning of Section

52(1)(za) is a question of fact which will depend upon the facts and circumstances of each case.

39. According to us, the Circular puts fetters on the copyright societies from exercising their rights under the Copyright Act. The Circular saying that insistence by certain organizations, hotels for getting permission from the copyright society for performance of musical works, communication to the public sound recording is in violation of Section 52 (1)(za), according to us, interferes with the mechanism provided under the Act for exercise or enforcing rights of copyright societies under the Copyright Act.

40. We have gone through the affidavit in reply filed on behalf of respondent No.1. The respondents have taken a stand that public notice is not an interpretation of law nor does it amounts to executive overreach into the legislative domain. The respondent says that the public notice is an informational document aimed at keeping the public informed of their rights. The affidavit in reply says that several complaints/representations were received by the Government from M/s Crosscraft Private Ltd., Pataka event, DRQ Hospitality Services, M/s Buzz events etc., concerning the conduct of the copyright societies and/or persons purporting to be acting under such societies, who would forcibly enter a marriage function and demand that the sound recording being played at such functions be immediately stopped unless their demand for royalties or tariff was acceded to. It is then stated that copyright societies and/or persons acting under them would often proceed under Chapter XIII of the said Act which provides for offences under the said Act and abrupt a marriage function and/or its related events using police force. It is further stated that to prevent such abruption and undue violation of Section 52(1)(za) of the said Act,

the Circular dated 30.01.2024 has been issued to sensitize and inform the police the marriage venue owners and the copyright societies, the applicability of Section 52(1)(za). The stand that Circular dated 30.01.2024 has been issued keeping with the same spirit with which the Public Notice dated 24.07.2023 has been issued by the Union Department.

(emphasis supplied)

41. On perusal of the impugned Circular and also the Public Notice dated 24.07.2023 of the Government of India, we find that the stand of the respondents that 'the impugned Circular has been issued keeping with the same spirit as the one issued by the Union Department,' is untenable. It would be pertinent to reproduce Paras 13 and 14 of the affidavit in reply filed on behalf of the Respondents which read thus:-

> *"13. I say that the said Circular dated 30.01.2024 does not in any manner curtail the civil or criminal remedies of the copyright societies or owner of the copyright to institute proceedings under Section 55 or Chapter XIII of the said Act, against such persons or entities that commercially gain from using the copyrighted works of such societies. I say that a comparative illustration of the same would be that of a DJ playing copyrighted sound recordings at a ceremony as his primary source of service for commercial gain, this would amount to copyright infringement. On the other hand, copyrighted sound material being played on a speaker provided at the venue where such marriage ceremonies and related events take*

place would be an integral part of the ceremony since in the Indian context music is an integral part of any wedding or marriage ceremony.

14. I say that the Circular dated 30.01.2024 in no manner abridges the powers of the copyright societies or copyright owners to prosecute copyright infringers. I say that the copyright societies or copyright owners may seek recourse under the provisions of the said Act and prosecute those who they claim have infringed their copyright by establishing the same by process of law. I say that Circular dated 30.01.2024 seeks to prevent unfettered interference by the authorities or venue providers, on the behest of copyright owners, which may disrupt ceremonies covered under Section 52(1)(za) and hold such ceremonies hostage."

42. Reading of the stand taken by the Respondents leaves us in no manner of doubt that the Circular is not an informational document aimed at keeping the public informed of their rights as contended by the Respondents. Reading of Para 13 of the affidavit in reply makes it obvious that the Respondents have entered into the realm of interpretation of Section 52(1)(za) which is the domain of the competent Court to determine in the facts and circumstances of each case. The event Management companies/organisations are not before us, hence we refrain from expressing any opinion on the contention of learned counsel for the petitioners that the circular is at the instance of event management companies/organisers to secure their interests rather than that of the general public. We also did not go into the

contention of the respondents as regards the circular being issued by the State in the exercise of its executive powers under Article 162 of the Constitution. We have tested the stand of the respondents on the basis of the respondents' submissions that the circular is in the nature of information to the general public about Section 52(1)(za).

43. The principles laid down in the decisions relied upon by Mr Deep Shirodkar in *Joint Action Committee of Air Line Pilots' Association of India and others Vs Director General of Civil Aviation and others* [(2011) 5 SCC 435] (Para 18 to 22), *Suhas H. Pophale Vs Oriental Insurance Company Limited and its Estate Officer* [(2014) 4 SCC 657] (Para 56 and 58), *Veerendra Kumar Dubey Vs Chief of Army Staff and others* [(2016) 2 SCC 627] (Para 15 and 16), *Kendriya Karamchari Sehkari Grah Nirman Samiti Limited Vs State of UP and another* [(2009) 1 SCC 754] (Paras 40, 42, 46), *M/s Hiralal Rattanlal Vs State of UP and another* [(1973) 1 SCC 216] (Paras 22, 25, 26), are well-settled principles of law binding us. However, in the contextual facts of the present case and the provisions of the Copyright Act, we are inclined to hold that the impugned Circular, for the reasons aforesaid, is illegal and bad in law.

44. It is not possible for us to accept the submission of the learned Additional Government Advocate that the Circular to the extent the same is in consonance with the provisions of Section 52(1)(za) be saved. The Circular in our opinion will have to be read as a whole considering the overall tenor. The Circular warrants interference in the exercise of writ jurisdiction of this Court under Article 226 of the Constitution of India.

45. We therefore have no hesitation in holding that the impugned Circular is in the teeth of the provisions of the Copyright Act and therefore, the petitions must succeed. The impugned Circular dated 30.01.2024 issued by respondent No.1 is quashed and set aside. No order as to costs.

VALMIKI MENEZES, J. **M. S. KARNIK, J.**

Signed by: AMRUT NAGESH TARI
Designation: Personal Assistant
Date: 20/08/2024 16:32:39