REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos 5985-5987 of 2021
(Arising out of SLP (Civil) Nos 14972-14974 of 2021)

Saregama India Limited **.... Appellant(s)**

Versus

Next Radio Limited & Ors **....Respondent(s)**

WITH

Civil Appeal Nos 5988-5990 of 2021
(Arising out of SLP (Civil) Nos 15108-15110 of 2021)

J U D G M E N T

Dr. Dhananjaya Y. Chandrachud, J

1 Leave granted.

2 These appeals arise from an interim order dated 2 August 2021 of a Division Bench of the High Court of Judicature at Madras in a batch of petitions. The writ petitions have been instituted before the High Court under Article 226 of the Constitution to challenge the validity of Rule 29(4) of the Copyright Rules 2013[1]. The High Court has, by its interim order, directed that:

Signature Not Verified
Digitally signed by Sanjay Kumar
Date: 2021.09.28 19:02:53 IST
Reason:

1"Rules"

(i) No copyrighted work may be broadcast in terms of Rule 29 without issuing a prior notice;

(ii) Details pertaining to the broadcast, particularly the duration, time slots and the like, including the quantum of royalty payable may be furnished within fifteen days of the broadcast or performance;

(iii) Compliance be effected with a modified regime of post facto, as opposed to prior compliance mandated by Rule 29(4) and the statutory mandate of a twenty four hour prior notice shall be substituted by a provision for compliance within fifteen days after the broadcast; and

(iii) The interim order will be confined to the petitioners before the High Court and the copyrighted works of the second and third respondents which are sought to be exploited.

3 The primary submission which has been urged on behalf of the appellants is that the interim order of the High Court has the effect of re-writing Rule 29(4) of the Rules framed in pursuance of the provisions of Section 31D and Section 78(2)(cD) of the Copyright Act 1957[2].

4 Mr Mukul Rohatgi and Mr Akhil Sibal, learned Senior Counsel, have appeared on behalf of the appellants. Mr Navroz Seervai and Mr Neeraj Kishan Kaul, learned Senior Counsel, have appeared on behalf of the contesting respondents, who are the original petitioners before the High Court.

5 Since the interim direction has been issued in the writ petitions moved before the High Court and the petitioners before the High Court are represented in these

2"Act"

proceedings through counsel, on caveat, we are disposing of the appeals at this stage.

6 The batch of writ petitions before the High Court is listed for final disposal on 4 October 2021. A grievance has been made on behalf of the contesting respondents that the appellants have not filed counter affidavits in response to the petitions. The learned counsel appearing on behalf of the appellants assured the Court that they would do so expeditiously, well before the next date of listing so as to facilitate the final disposal of the writ petitions.

7 The facts, insofar as they are necessary for the disposal of the present appeals, which arise from the interim order of the High Court, can be briefly visited.

8 By the Copyright Amendment Act 2012, Parliament incorporated the provisions of Section 31D which were brought into force on 21 June 2012. Section 31D is in the following terms:

> "31D. Statutory licence for broadcasting of literary and musical works and sound recording.--(1) Any broadcasting organisation desirous of communicating to the public by way of a broadcast or by way of performance of a literary or musical work and sound recording which has already been published may do so subject to the provisions of this section.
>
> (2) The broadcasting organisation shall give prior notice, in such manner as may be prescribed, of its intention to broadcast the work stating the duration and territorial coverage of the broadcast, and shall pay to the owner of rights in each work royalties in the manner and at the rate fixed by the Commercial Court.
>
> (3) The rates of royalties for radio broadcasting shall be different from television broadcasting and the Commercial Court shall fix separate rates for radio broadcasting and television broadcasting.

(4) In fixing the manner and the rate of royalty under sub-section (2), the Commercial Court may require the broadcasting organisation to pay an advance to the owners of rights.

(5) The names of the authors of the principal performers of the work shall, except in case of the broadcasting organisation communicating such work by way of performance, be announced with the broadcast.

(6) No fresh alteration to any literary or musical work, which is not technically necessary for the purpose of broadcasting, other than shortening the work for convenience of broadcast, shall be made without the consent of the owners of rights.

(7) The broadcasting organisation shall--

(a) maintain such records and books of account, and render to the owners of rights such reports and accounts; and

(b) allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such broadcast, in such manner as may be prescribed.

(8) Nothing in this section shall affect the operation of any licence issued or any agreement entered into before the commencement of the Copyright (Amendment) Act, 2012."

9 Under sub-section (1) of Section 31D, a broadcasting organization which is desirous of communicating to the public by way of a broadcast or performance of a literary or musical work and sound recording which has already been published, may do so subject to compliance with the provisions of the Section. Sub-Section (2) incorporates five requirements, namely: (i) a prior notice; (ii) in the manner prescribed; (iii) of the intention to broadcast the work; (iv) stating the duration and territorial coverage of the broadcast; and (v) payment to the owner of rights in each work royalties in the manner and at the rate fixed by the Appellate Board.

10 Applications were filed by several broadcasters before the Intellectual Property Appellate Board[3] seeking the determination of the rates for the purpose of a statutory license under Section 31D (together with the provisions of Rules 29 to 31 of the Rules), for the communication of sound recordings to the public by way of broadcast through FM radio. For several years, the Copyright Board was not duly constituted. In 2017, the Copyright Board merged with the IPAB as a result of a statutory amendment. By an order dated 31 December 2020, the IPAB determined the rates of royalty and payment mechanism for the communication of sound recordings by way of FM radio broadcasts, under Section 31D. The order of the Copyright Board, insofar as it is material, contains the following directions:

> "215. We hereby direct that the above mentioned royalty rates set out in para 149 for broadcasting sound recordings payable respectively for the sound recording and for the underlying literary and musical works as envisaged under Section 31D with effect from 1st October 2020 to 30th September 2021. We further direct that:
>
> a. The above royalty rates shall be published in the IPAB Website and Copyright Office website.
>
> b. The new royalty rates comes into effect from 01.10.2020.
>
> c. The radio broadcasters have to pay the arrears of royalty to the music companies on or before 10.02.2021 for the period of 01.10.2020 to 31.01.2021. As far as royalty fixed by us for underlying works of sound recording is concerned, the same shall be distributed as per the amended provision of proviso 3 & 4 of Section 18 and 19 of the Act. With regard to receipt of royalty from the broadcasters pertaining to sound recording which has been

3 "IPAB"

fixed by us, the broadcasters shall pay the same to PPL on behalf of their members, rest of the same shall be paid directly to the respective parties. Similarly, the share of author and composer fixed by us for underlying works shall be fixed by IPRS on behalf of the authors and composers being members to be paid. The non-members of the IPRS shall be entitled to receive the royalty directly from the broadcasters.

d. **The radio broadcasters have to comply with Rule 29 of the Copyright Rules, 2013 to obtain statutory license from the music companies, by giving advance notice to the owner of the copyright along with an advance payment as per the above royalty calculation with effect from 01.02.2021. The same notice copy has to be sent to the Registrar of Copyrights for records.**

e. In case, the respondents would insist for advance payments as mentioned in the Rules, we are of the view that since COVID 19 pandemic is an unusual thing to happen in the year 2020. The lockdown to tackle the Covid crisis had not only affected the radio industry, but every other industry in the country. Considering the peculiar circumstances till 30.09.2021, we direct all the broadcasters to deposit 25% (twenty five percent) as advance amount under the compliance of Rule 29, subject to adjustment of amount every calendar month.

f. As far as regional songs and small broadcasters having one or two radio stations having total gross income of less than 10 crores, they are free to negotiate with the music companies under Section-30 of the Act as per earlier practise either to play in lumpsum or as per terms and conditions decided by them.

g. The royalty rates shall be reviewed by the Board as per Rule 31(9) at the end of the said period either suo motto or on the application by any interested person.

h. The rate determined under these proceedings will act as a base for future revision/change in the rates, where this entire process need not

> be replicated, except taking into considerations, change in the financial details, paying capacity of the Radio Broadcasters, the effect of pandemic and all other relevant factors etc. which have been given due consideration.
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> i. All the Petitions are allowed in terms of the royalty determined hereinabove.
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> j. Indian Performing Rights Society/Authors (lyricists & music composers) are also entitled to claim their share of royalty from the assignee.
>
> k. No costs."
>
> (emphasis supplied)

11 The order of the IPAB is stated to have been challenged by the copyright owners, on the one hand. On the other hand, suits are pending before the High Court of Delhi and the High Court of Judicature at Bombay. This is not the bone of contention in the present case.

12 Rule 29 of the Rules, insofar as it is material, contains the following requirements:

> "29. Notice to owner for communication to the public of literary and musical works and sound recordings.—(1) Any broadcasting organisation desirous of communicating to the public by way of broadcast or by way of performance of a published literary or musical work and sound recording under sub-section (1) of Section 31-D shall give a notice of its intention to the owner of the copyright and to the Registrar of Copyrights before a period of five days in advance of such communication to the public and shall pay to the owner of the copyright, in the literary or musical work or sound recording or any combination thereof, the amount of royalties due at the rate fixed by the Board in this regard:
>
> Provided that in case of communication to the public by way of broadcast or by way of performance of a newly published literary or musical work or sound

recording or any combination thereof, which has been published within the said period of five days of such communication and which do not form part of the scheduled programmes, the notice shall, be given before such communication to the public:

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

Provided also that any broadcasting organisation shall give a notice under this chapter only after the royalty to be paid is determined by the Board under Rule 31 and published in the journal and in the website of the Copyright Office and the Board.

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

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

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

(*a*) Name of the channel;

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

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

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

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

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

(*g*) Alterations, if any, which are proposed to be made for the communication to the public by way of radio broadcast, television broadcast or performance

> of the works, reasons thereof, and the evidence of consent of the owners of rights, if required, for making such alteration;
>
> (*h*) Mode of the proposed communication to public, i.e. radio, television or performance;
>
> (*i*) Name, if any, of the programme in which the works are to be included;
>
> (*j*) Details of time slots, duration and period of the programme in which the works are to be included;
>
> (*k*) Details of the payment of royalties at the rates fixed by the Board; and
>
> (*l*) Address of the place where the records and books of accounts are to be maintained for inspection by the owner of rights."

13 Rule 29(4) has been challenged before the High Court on the ground that it (i) violates Article 19(1)(a) of the Constitution; and (ii) is *ultra vires* Section 31D of the Act.

14 The High Court, in the course of its interim order, observed:

> "3. Prima facie, there appears to be an element of unworkability about the Rule in that it may be seen to be almost claustrophobic in its operation and leaving very little room for flexibility. Indeed, the very concept of speaking or performing ad lib, which is the essence of spontaneity in any live speech or live performance, would be lost if pre-planned details, down to the every second of the programme must be disclosed as the impugned Rule may be read to imply."

The High Court was of the view that the duty which is cast on broadcasters in the notice to broadcast under Rule 29(1) is "apparently onerous". Consequently, it directed that the petitioners before it may be permitted to resort to the second proviso to Rule 29(4) as a "routine procedure", instead of an exception, subject to the duration of the *ex post facto* reporting being enlarged to fifteen days. In other words, the High Court, while maintaining the requirement of a prior notice under

Section 31 D, has re-fashioned the rule by stipulating that details pertaining to the broadcasts, particularly the duration, time slots and the like, including the quantum of royalty may be furnished within fifteen days of the broadcast or performance.

15 Mr Mukul Rohatgi and Mr Akhil Sibal, learned Senior Counsel appearing on behalf of the appellants, submitted that:

(i) The interim order of the High Court re-writes Rule 29(4), which is impermissible, in any event at the interim stage;

(ii) The validity of Rule 29(4) is yet to be adjudicated upon and a presumption would attach to the constitutionality of both - the Rules and the Statute;

(iii) There is no challenge to the validity of Section 31D in terms of which Rule 29 has been framed;

(iv) The order of the IPAB dated 31 December 2020 specifically requires compliance with the provisions of Rule 29 while fixing the rates of royalty; and

(v) The High Court has, in the course of its interim order, extended it only to the petitioners before it and to the broadcasters who have been impleaded as parties, as a result of which the pan-India operation of the Rule is left in the realm of uncertainty.

16 These submissions have been contested on behalf of the broadcasters by Mr Navroz Seervai and Mr Neeraj Kishan Kaul, learned Senior Counsel.

17 Mr Navroz Seervai urged that:

(i) Section 31D(2) stipulates that the broadcasting organization shall give prior notice, in such manner as may be prescribed, of its intention to broadcast the work, stating the duration and territorial coverage of the broadcast, together with the payment of royalty;

(ii) Section 31 D, in referring to a notice in the manner as may be prescribed, does not envisage that conditions incorporating minute details should be provided in the prior notice; and

(iii) The rule making power in Section 78 makes a distinction between 'form', 'manner' and 'conditions'. Since Section 31D refers to the manner in which the notice may be issued, the 'manner' cannot extend to stipulating 'conditions'.

18 Mr Neeraj Kishan Kaul has submitted that:

(i) Section 31D was introduced by Parliament by an amendment of 2012 to obviate the exercise of monopolistic rights wielded by copyright owners to the detriment of the public at large;

(ii) Section 31D creates a statutory right in favour of broadcasters to obtain licenses as a result of which the earlier regime of voluntary licensing has been replaced by the regime of statutory licenses envisaged in Section 31D;

(iii) Until December 2020, in the absence of a duly constituted IPAB, broadcasters were functioning under the ambit of voluntary licensing agreements;

(iv) Rule 29(4) defeats the object of Section 31D insofar as it incorporates minute details in the prior notice which has been prescribed;

(v) Many broadcasters operate in the context of interactive dynamic sites as a result of which the requirements which have been prescribed in Rule 29(4) are onerous and impossible to fulfill;

(vi) The broadcasters are ready and willing to pay royalties which are prescribed by the IPAB according to the statute at the end of every month and even inspection of records is furnished to copyright owners; and

(vii) Whereas Section 31D provides for only the duration and territorial coverage of the intended broadcast, the notice which has been prescribed by Rule 29(4) has gone far beyond the statutory ambit of Section 31D and is ultra vires for that reason.

19 While counsel appearing on behalf of the contesting parties have addressed submissions on merits, we would desist from expressing any opinion on the constitutional challenge which is pending consideration before the High Court of Judicature at Madras where, as noted earlier, the writ petitions are slated for final disposal on 4 October 2021.

20 At this stage, the issue is whether the interim order of the High Court can be sustained. Essentially, as the narration in the earlier part of this judgment would indicate, the High Court has substituted the provisions of Rule 29(4) with a regime of its own, which is made applicable to the broadcasters and the petitioners before it. A Constitution Bench of this Court in **In Re: Expeditious Trial of Cases Under Section**

138 of NI Act 1881[4] has emphasized that the judiciary cannot transgress into the domain of policy making by re-writing a statute, however strong the temptations maybe. This Court observed:

> "20. Conferring power on the court by reading certain words into provisions is impermissible. A judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policy-making might wisely suggest, construction must eschew interpolation and evisceration. He must not read in by way of creation. The Judge's duty is to interpret and apply the law, not to change it to meet the Judge's idea of what justice requires. The court cannot add words to a statute or read words into it which are not there."

It is a settled principle of law that when the words of a statute are clear and unambiguous, it is not permissible for the court to read words into the statute. A Constitution Bench of this Court in **Padma Sundara Rao** v **State of Tamil Nadu**[5] has observed:

> "12. …The court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in the statute is determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said.
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> …..
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> 14. While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary."

[4] Suo Motu Writ Petition (Crl.) No. 2 of 2020, 16 April 2021, available at https://main.sci.gov.in/supremecourt/2020/9631/9631_2020_31_501_27616_Judgement_16-Apr-2021.pdf

[5] (2002) 3 SCC 533

21 The court is entrusted by the Constitution of the power of judicial review. In the discharge of its mandate, the court may evaluate the validity of a legislation or rules made under it. A statute may be invalidated if is *ultra vires* constitutional guarantees or transgresses the legislative domain entrusted to the enacting legislature. Delegated legislation can, if it results in a constitutional infraction or is contrary to the ambit of the enacting statute be invalidated. However, the court in the exercise of judicial review cannot supplant the terms of the provision through judicial interpretation by re-writing statutory language. Draftsmanship is a function entrusted to the legislature. Craftsmanship on the judicial side cannot transgress into the legislative domain by re-writing the words of a statute. For then, the judicial craft enters the forbidden domain of a legislative draft. That precisely is what the Division Bench of the High Court has done by its interim order. Section 31D(2) speaks of the necessity of giving prior notice, in the manner as may be prescribed, of the intention to broadcast the work stating the duration and the territorial coverage of the broadcast, together with the payment of royalties in the manner and at the rates fixed by the Appellate Board. While the High Court has held the broadcasters down to the requirement of prior notice, it has modified the operation of Rule 29 by stipulating that the particulars which are to be furnished in the notice may be furnished within a period of fifteen days after the broadcast. The interim order converts the second proviso into a "routine procedure" instead of an exception (as the High Court has described its direction). This exercise by the High Court amounts to re-writing. Such an exercise of judicial redrafting of legislation or delegated legislation cannot be carried out. The High Court has done so at the interlocutory stage.

22 We are, therefore, clearly of the view that an exercise of judicial re-drafting of Rule 29(4) was unwarranted, particularly at the interlocutory stage. The difficulties which have been expressed before the High Court by the broadcasters have warranted an early listing of the matter and this Court has been assured by the copyright owners that they would file their counter affidavits immediately so as to facilitate the expeditious disposal of the proceedings. That having been assured, we are of the view that an exercise of judicial re-writing of a statutory rule is unwarranted in the exercise of the jurisdiction under Article 226 of the Constitution, particularly in interlocutory proceedings. The High Court was also of the view that the second proviso may be resorted to as a matter of routine, instead of as an exception and that the *ex post facto* reporting should be enlarged to a period of fifteen days (instead of a period of twenty four hours). Such an exercise was impermissible since it would substitute a statutory rule made in exercise of the power of delegated legislation with a new regime and provision which the High Court considers more practicable.

23 We accordingly allow the appeals by setting aside the interim order of the High Court dated 2 August 2021. This is, however, subject to the clarification that this Court has not expressed any opinion on the merits of the rival submissions which would fall for determination in the exercise of the writ jurisdiction of the High Court in the pending proceedings..

24 Pending application(s), if any, stands disposed of.

……..…..…..…….....J.
[Dr Dhananjaya Y Chandrachud]

……..…..…..…….....J.
[B V Nagarathna]

New Delhi;
September 27, 2021
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