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

% **Reserved on: 02nd March, 2022**
Pronounced on: 09th March, 2022

\+ **W.P.(C)-IPD 21/2021 & CM APPL.Nos. 28, 35, 17949 of 2021**
PHONOGRAPHIC PERFORMANCE LIMITED ..... Petitioner
versus
UNION OF INDIA ..... Respondent

\+ **W.P. (C)- IPD 41/2021 and CM No.27851/2021**
PHONOGRAPHIC PERFORMANCE LIMITED ..... Petitioner
versus
UNION OF INDIA & ORS. .....Respondents

Presence : Mr.Rajiv Nayar and Mr.Akhil Sibal, Sr Advocates with Mr.Ankur Sangal, Mr.Saurabh Seth, Ms.Sucheta Roy, Ms.Asavari Jain and Ms.Deboshree Mukherjee and Ms.Trisha Nag, Advocates.
Mr.Harish V. Shankar, CGSC, Ms.S. Bushra Kazim and Mr.Karan Chhibber, Advocates.
Mr.Jagdish Sagar, Advocate for R2/RMPL.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. Both the above captioned writ petitions are filed with the following prayers:-

W.P.(C)-IPD 21/2021

(a) issue a writ of certiorari or any other appropriate writ, order or direction quashing and setting aside the Impugned Order dated 25 May 2021 bearing no. F No. P-12-2/2018 IPR-VII passed by the Respondent;
(b) issue a writ of Mandamus or any other appropriate writ or order, directing the Respondent to decide the Petitioner's application for re-registration as a copyright

society in accordance with Rule 47 of the Copyright Rules, 2013;

W.P.(C)-IPD 41/2021

i. issue a writ of certiorari or any other appropriate writ, order or direction quashing and setting aside the Certificate of Registration dated 18 June 2021 granted to the Respondent No. 2;
ii. direct the Respondent Nos.1 and 3 to produce all records in relation to the grant of the Impugned Registration to the Respondent No. 2

2. Both these petitions are being disposed of by this common order.

3. The petitioner "*Phonographic Performance Limited*", a company registered under the Companies Act, 1956, (hereinafter referred as *PPL*) was a registered copyright society till the introduction of an amendment in the Copyright Act in the year 2012. It introduced section *33(3A)* mandating "*every copyright society already registered before the coming into force of the Copyright (Amendment) Act, 2012 shall get itself registered under this Chapter within a period of one year from the date of commencement of the Copyright (Amendment) Act, 2012*."

4. The petitioner being a copyright society was assigned copyright in various sound recordings for communication to public in the areas of public performance and broadcast. The Petitioner owned and/or controlled the public performance rights of 350+ music companies, with more than 3 million international and domestic sound recordings; being an oldest and the largest copyright society in the country. The petitioner represented about 80-90% of sound recordings ever created in the country. The Petitioner served a useful public utility of acting as a "single window" to various parties seeking license for authorised use of sound

recordings and bring together the copyright owners and users across various parts of India for better convenience and better administration.

5. In the year 2012, the legal framework regarding copyright societies underwent a sea change and the amended provisions of the Copyright Act, especially Section *33(3A)*, required the existing copyright societies, such as the Petitioner, to compulsorily *re-register* themselves under the amended provisions within a period of *one* year from the date of commencement of Copyright (Amendment) Act, 2012.

6. On 14th March 2013, the Copyright Rules, 2013 were introduced, wherein as per Rule *47*, a copyright society applying for re-registration, had to file an application in Form *IX* as provided under the Rules within a period of two months from the date of coming into force of the said Rules. In view of the aforesaid, on 09.05.2013 (which is within one year of the enactment of the Copyright Amendment Act, 2012 and within two months from the enactment of the Copyright Rules 2013), the Petitioner filed an application for its re-registration as a copyright society.

7. Even though there was a compulsion and onus upon the respondent to decide re-registration application within *two* months, the Respondent did not take any decision on the Petitioner's application for re-registration for over a year, which greatly impacted the Petitioner's ability to carry on its business. Therefore, in order to protect its business and the rights of its members, the Petitioner began conducting its business as a non-society and was compelled to file a request for the withdrawal of its re-registration application on 20.05.2014, with an *intention to file an application for fresh registration* at an appropriate stage. However, vide its letter dated 20.11.2014, the respondent

categorically rejected the Petitioner's request for withdrawal stating the Petitioner's application under Section *33(3A)* of the Copyright Act was still under consideration. The petitioner then started working on its functioning and made a representation on 11.01.2018 before the respondent, informing the respondent of the various positive initiatives and developments undertaken by the petitioner towards its members and licensees.

8. However, on 24.05.2021 the petitioner was shocked to receive a non-speaking and unreasoned order dated 25.05.2021 passed by the Respondent rejecting the petitioner's application for re-registration as a Copyright Society with an observation *the petitioner's application dated 09.05.2013 stood withdrawn and its application dated 11.01. 2018 had been filed belatedly* as per the provisions of Section *33(3A)* of the Copyright Act, 1957. The petitioner is filing the present petition, being aggrieved of the order number F.No.P-12-2/2018 IPR-VII dated 25.05.2021 ("*Impugned Order*") passed by the respondent.

9. It is argued the observations made by the respondent in the impugned order are completely erroneous, incorrect, unreasoned, arbitrary, without application of mind and contrary to the principles of natural justice. It is alleged the respondent has arrived at a conclusion without considering and appreciating the complete facts and law and passed the impugned order, which is liable to be set aside.

10. On the other hand the argument of respondent No.1/UOI is two folds viz ***a)*** the case put up by the petitioner in this petition was never put up in the correspondences and he cannot seek the principle of promissory estoppel against the Government as there was never any

promise by the Government to accord consent for re-registration of the petitioner's society as such application, filed in January 2018, was much beyond the *two months period* as prescribed in the Rules; and ***b)*** reference was made to *Dange Committee Report* enquiring about the misdeeds of M/s.Indian Performing Right Society Limited (*IPRS*), another society and during the course of enquiry it was found some directors of *IPRS* were common in the petitioner's society and since the IPRS had made changes *per* recommendations of the Government, it was re-registered.

11. Further the contention of respondent No.2/*RMPL* is three fold viz. ***a)*** the petitioner though sought re-registration vide letter dated 2013, but sought its withdrawal and hence its application automatically stood surrendered. Even otherwise the petitioners were not desirous to continue to function as a society as despite the Central Government declined to accept their letter, the petitioner had actually withdrawn its application for re-registration by its conduct since it started taking licenses from the assignees / authors and started acting as authors for giving licenses to various persons, hence to say that their application was pending is totally frivolous; ***b)*** the Central Government was rather satisfied the petitioners were mismanaging hence, it did not grant re registration and it was well within its power under Section *33 (4)* of the Copyright Act; and ***c)*** the petitioners rather *elected* to act as assignees of the authors and hence could not have claimed any *lien* over re-registration of its candidature as once it had *elected* a position, it could not have changed its position to its benefit if the registration was awarded to respondent No.2. Reference

was made to *Karam Kapahi and Others vs. Lal Chand* 2010 (4) SCC 753, wherein the Court held as under:

> *"53. In the old equity case of Streatfield Vs. Streatfield (White and Tudor's Leading Cases in Equity, 9th Edition, Volume I, 1928) this principle has been discussed in words which are so apt and elegant that I better quote them:*
> *"Election is the obligation imposed upon a party by Courts of equity to choose between two inconsistent or alternative rights or claims in cases where there is a clear intention of the person from whom he derives one that he should not enjoy both. Every case of election, therefore, presupposes a plurality of gifts or rights, with an intention, express or implied, of the party who has a right to control one or both that one should be a substitute for the other. The party who is to take has a choice, but he cannot enjoy the benefit of both. The principle is stated thus in Jarman on Wills "That he who accepts a benefit under a deed or will must adopt the whole contents of the instrument, conforming to all its provisions, and renouncing every right inconsistent with it" (h). The principle of the doctrine of election is now well settled."*

In *National Insurance Company vs. Mastan and Others* 2006 (2) SCC 641, the Court held as under:

> *"23. The 'doctrine of election' is a branch of 'rule of estoppel', in terms whereof a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. The doctrine of election postulates that when two remedies are available for the same relief the aggrieved party has the option to elect either of them but not both. Although there are certain exceptions to the same rule but the same has no application in the instant case."*

12. Lastly it was argued the petitioners case falls under Rule *47(2)* of the Copyright Act, which deals with the re-registration and not Rule *49* and thus, even if opportunity of being heard was not granted then also it did not cause any prejudice to the petitioner. It was argued there is, hence, allow the petition or to remand the matter only on this Court. The

reliance is made to *Dharmapal Satyapal Limited vs. Deputy Commissioner of Central Excise* 2015 (8) *SCC 519:*

> *"45. Keeping in view the aforesaid principles in mind, even when we find that there is an infraction of principles of natural justice, we have to address a further question as to whether any purpose would be served in remitting the case to the authority to make fresh demand of amount recoverable, only after issuing notice to show cause to the Appellant. In the facts of the present case, we find that such an exercise would be totally futile having regard to the law laid down by this Court in R.C. Tobacco (supra)."*

13. It was argued a hyper technical view ought not be taken *qua* the compliance of natural justice since no prejudice is caused to the petitioner by not giving a hearing. Reference was also made to *K.L.Tripathi vs. State Bank of India* 1984 (1) SCC 43.

14. It is argued no case is made for re-registration of the petitioner as a Copyright Society as it never acted as a Copyright Society after giving its letter of withdrawal in the year *2014*; further there was no promise made by the Government and lastly no prejudice is caused to the petitioner by not affording them an opportunity of being heard as it was the petitioner's own choice to become an owner of musical recordings and it never on its own continued as a Copyright Society after 2013 despite Government giving it's an opportunity, hence cannot seek setting aside of impugned order.

15. It is argued the petitioner even filed an opposition to the application dated 01.03.2018 for registration of respondent No.2 as a Copyright Society but it did not disclose this fact in W.P.(C) No.*21/2021* and when respondent No.2 was accorded registration only then it had moved the second W.P.(C) No.*41/2021* impleading respondent No.2.

16. Heard.

17. Before proceeding further, let me take a look at the relevant provisions of The Copyright Act and Rules made therein, as under:-

> ***33. Registration of Copyright society.—*** *(1) No person or association of persons shall, after coming into force of the Copyright (Amendment) Act, 1994 (38 of 1994) commence or, carry on the business of issuing or granting licences in respect of any work in which copyright subsists or in respect of any other rights conferred by this Act except under or in accordance with the registration granted under sub-section (3):*
> *Provided that an owner of copyright shall, in his individual capacity, continue to have the right to grant licences in respect of his own works consistent with his obligations as a member of the registered copyright society.*
> *(3) The Central Government may, having regard to the interests of the authors and other owners of rights under this Act, the interest and convenience of the public and in particular of the groups of persons who are most likely to seek licences in respect of the relevant rights and the ability and professional competence of the applicants, register such association of persons as a copyright society subject to such conditions as may be prescribed:*
> *Provided that the Central Government shall not ordinarily register more than one copyright society to do business in respect of the same class of works.*
>
> ***(3A) The registration granted to a copyright society under sub-section (3)*** *shall be for a period of five years and may be renewed from time to time before the end of every five years on a request in the prescribed form and the Central Government may renew the registration after considering the report of Registrar of Copyrights on the working of the copyright society under section 36:*
> *Provided that the renewal of the registration of a copyright society shall be subject to the continued collective control of the copyright society being shared with the authors of works in their capacity as owners of copyright or of the right to receive royalty:*
>
> *Provided further that every copyright society already registered before the coming into force of the Copyright (Amendment) Act, 2012 shall get itself registered under this Chapter within a period of one year from the*

date of commencement of the Copyright (Amendment) Act, 2012.

The Section *33A* was introduced on 21.06.2012 and its second proviso notes:-

> *Provided further that the [Appellate 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.*

The Rules *44* & *47* notes:

> ***44. Conditions for submission of application for registration of copyright society.—****(1) Any association of persons, having an independent legal personality, comprising seven or more authors and other owners of rights (hereinafter referred to as "the applicant") formed for the purpose of carrying on the business of issuing or granting licencees in respect of a right or set of rights in specific categories of works may file with the Registrar of Copyrights an application in* ***Form VIII*** *for submission to the Central Government for grant of permission to carry on such business and for its registration as a copyright society. The Central Government may grant registration of the society for a period of five years under sub-section (3A) of section 33.*
>
> ***47. Application and conditions for re-registration or renewal of existing copyright societies****.—(1) A Copyright society registered section 33 and desirous of carrying on the business as a copyright society shall submit an application for re-registration in* ***Form-IX*** *to the Registrar of Copyrights within a period two months from the date of Coming into force of these rules.*
> *(2) A Copyright society registered under this chapter may apply for renewal of its registration within a period of three months before the expiry of its registration. The application for such renewal shall be made to the Registrar of Copyrights in Form-IX for submission to Central Government for grant of permission to continue with its business and the Central Government may renew the registration of the society for a further period of five years after considering the report of the Registrar of Copyrights on the working of the copyright society."*

18. Further, second proviso to Rule 49 says:-

> ***"49. Conditions for registration of a copyright society.—*** *(1) When an application for registration is submitted to the Central Government through the Registrar of Copyrights, that Government may, within a period of sixty days from the date of its receipt by the Registrar of Copyrights either register the applicant as a copyright society or, if—*
> *(i) xxx*
> *(ii) there exists another copyright society registered under the Act for administering the same right or set of rights in the specific categories of works and it is well functioning; or*
> *(iii) the Central Government has reason to believe that the members of the applicant are not bona fide copyright authors or other owners or they have not voluntarily signed the instrument setting up the applicant and the application for registration; or*
> *(iv)the application is found to be incomplete in any respect, reject the application:*
> *Provided that no such application shall be rejected without giving an opportunity of being heard to the applicant.*
> *xxxxx."*

19. Per Rule *47* the petitioner gave an application for re-registration within two months i.e. in May, 2013 but the appropriate government did not decide such application within time and lingered it on one pretext or the other for an year and since fate of rules was allegedly not clear hence the petitioner allegedly sought withdrawal of its application. Admittedly, such withdrawal was *never* allowed and hence the petitioner in the intervening period acted as an owner of the Copyright users *per* proviso to Section *33(1),* and there was no illegality in it, as during the intervening period the businesses and rights of its members need to be protected.

20. It was vide letter dated 20.05.2014 respondent had rejected its application for withdrawal stating *interalia* its application is still *under consideration* and the petitioner *may continue* as a Copyright society in

the *interest of owners*. The Government claimed such an application for withdrawal was not even maintainable in the eyes of law. Only if the withdrawal application of the petitioner was accepted by respondent no.1, it could have applied for fresh registration, but since all these years its letter of withdrawal was kept in abeyance by respondent no.1 itself, hence it could not apply for fresh registration.

21. Admittedly, correspondence was exchanged between the parties *viz.* letters of petitioner dated 11.01.2018, 09.03.2018 and of 06.12.2018, to disclose its *positive steps* to make the petitioner fully compliant to all necessary changes required by respondent no.1 to be undertaken by it. Rather, *per* letter dated 31.12.2018 the Government required the petitioner to submit an Action Taken Report on issues indicated in the compliance letter, preferably to Rule *58 (8)* and *65* of the Copyright Act. The petitioner after making the changes, intimated the Government vide its letter dated 21.01.2019 and thereafter also wrote letters dated 05.09.2019 and 23.10.2019 giving all compliances to the issues involved. Such correspondences do show the Government kept the application of re-registration filed by the petitioner alive all this time, pursuant to which, the petitioner took steps for its re-registration as a Copyright Society.

22. It is to be noted IPRS also filed its withdrawal application along with that of petitioner and despite there being an enquiry pending against it, yet it was allowed to be re-registered as a Copyright Society and whereas the petitioner's request for re-registration was unceremoniously rejected by the Government vide the impugned order. There was never any enquiry pending against the petitioner's society. The letters of the

Government written to the petitioner rather clarify it was the Government who had assured the petitioner of its application for re-registration not being rejected.

23. The letter dated 20.11.2014 written to the Chairman of the petitioner by respondent No.1 notes:

> *"**Subject: Current status of PPL as a Registered Copyright Society-matter regarding.***
> *Sir, I am directed to refer to your letter dated 20.05.2014 on the above subject and to say that the stand taken by you in the letter in question is not acceptable to the Central Government being not maintainable in the eyes of law.*
> *2. The application dated 09.05.2013 for re-registration as a registered Copyright Society filed by PPL u/s 33 (3A) of the Copyright Act, 1957 is still under consideration of the Central Government and no final decision has been taken on it so far. Pending a final decision on it, the PPL may not take an unilateral decision on its own to not to continue as a Copyright Society as the interest of hundreds of right owners who are members of PPL are involved herewith."*

24. Even an Office Memorandum of the Copyright Division, Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India, dated 06.10.2016 notes:

> *"*
> *Udyog Bhawan, New Delhi*
> *Dated the 6th October, 2016*
>
> ***OFFICE MEMORANDUM***
>
> *Subject: Current status of IPRS & PPL respectively as a Copyright Society-Clarification regarding*
> *It is stated hereby for general information that M/s Indian Performing Rights Society Ltd. (IPRS) and M/s Phonographic Performance Ltd. (PPL) were registered as Copyright Societies u/s 33 of the pre-amended Copyright Act, 1957 for carrying out Copyright business in the field of Musical & Literary works and Sound recording works respectively. However, the said registration was over w.e.f. 21.06.2013 i.e. on e year from the date of enactment of the Copyright (Amendment) Act, 2012 on 21.06.2012. Both the Societies have applied for re-registration before the Central Government u/s 33 of the amended Act within the*

prescribed time limit and their request for re-registration as Copyright Societies is under examination.
2. Since there were allegations of malpractices against the IPRS, the Central Government has constituted an enquiry against it, which is currently in progress."

25. A bare perusal of the Office Memorandum dated 06.10.2016 would show IPRS and petitioner, both filed applications for withdrawl and there were allegations of mal-practices only against IPRS and not against this petitioner and further both applications were admitted to be *filed in time* and were under examination. All this was enough to give *legitimate expectation* to the petitioner about pendency of its application and governments intention to re-register it.

26. The stand of respondent no.1 in its counter affidavit is *IPRS* was granted registration after an extensive enquiry and only upon successful completion of all conditions, but, admittedly, there was never any enquiry pending against petitioner and vide letter dated 31.12.2018 (Annexure-L), the Government only required three compliances from petitioner and the petitioner answered those vide its letter dated 21.01.2019 (Annexure-M).

27. The arguments of the respondent no.2 *viz.*, the petitioners never wished to continue to work as a Copyright Society, hence sought withdrawl cannot be accepted as *firstly* what prompted the petitioner to move an application for withdrawl is not an issue at this stage and *secondly* one only need to examine how the petitioner was made to believe its application was under process and was being examined. It is to be noted the petitioner had applied for the copyright society re-registration immediately after the introduction of the copyright

amendment. It was working as an owner, because its application for re-registration was pending, hence, petitioner had never *chosen* or *elected* itself to work as an owner of the copyright and not as a society, but it was because of the circumstances explained above.

28. Though it was argued by the respondent, proviso to Rule *49(1)* shall be applicable only to applications for registration and not to applications for re-registration but where the petitioner was a registered society prior to the amendment and where its application for re-registration was in process the respondent no.1, being a quasi-judicial authority, ought to have given the petitioner an opportunity of being heard, especially in circumstances enumerated above.

29. It cannot be said, principles of natural justice would apply only to cases of *fresh* registrations and not to applications for *re-registration*. Admittedly there is no separate rule for hearing on applications for re-registration and Rule *49* stipulates the condition only for registration but it is equally true if an application for re-registration is rejected to pave way to register another society, then this principle ought to be read in Rule *47* (supra) and would squarely apply to applications for re-registration. It is needless to mention the certificate granted to the *IPRS* on its application for re-registration is too under Rule *49*.

30. Thus the impugned order show there was sheer non-application of mind by the competent authority in rejecting the application of the petitioner without giving an *opportunity of being heard* to it. Respondent no.1 rather failed to decide the application on *merits* and dismissed it on the premise, *the petitioner filed fresh application only in June 2018*, which premise is wholly incorrect as the application dated June 2018 was

never under, Form *IX* and rather was a letter given by the petitioner to comply with issues involved. The impugned order is wholly silent qua the correspondences exchanged between petitioner and respondent no.1 and to an Office Memorandum dated 06.10.2016 which rather declared the application was *well within time*.

31. Thus before passing the impugned order, respondent no.1 ought to have considered ***a)*** rejection of the application of withdrawl; ***b)*** the office memorandum of 2016 and ***c)*** correspondences between the year *2014* till *2018* revealing the application of petitioner was being processed at the end of the Government and was alive *lest* there was no reason for petitioner to correspond with the Government. These facts do not find mention in the impugned order, hence it is bad in law and is set aside.

32. Now coming to second impugned order dated 18.06.2021, I may first refer to an order dated 02.06.2021 passed in W.P.(C)*5735/2021* wherein in para *8* it was directed as under:

> *"8. Having regard to the fact that the petitioner's communication dated 20.05.2014 was expressly rejected by the respondent vide its communication dated 20.11.2014, and the subsequent correspondence between the parties treating the petitioner's application as a live application, the petitioner has made out a case for a limited ad interim order. However, I am of the view that an order restraining the respondent from processing any other application would not be appropriate at this stage, particularly as no other applicant is even a party before this Court. Suffice it to clarify that, in the event the petitioner succeeds in the present petition, its application for re-registration dated 09.05.2013 under Rule 47 of the Rules would stand revived, and would have to be examined on its own merits. This position will be borne in mind by the respondent, and the respondent shall not take any action inconsistent with this position during the pendency of the present petition. In the event the respondent is considering any other application for registration in the interim, the applicant will also be*

informed of the pendency of this petition and the contents of this order."

33. The respondent No.1, while granting the registration to the RMPL/ respondent No.2, had completely ignored the order passed by this Court in WP No. *21/2021*, wherein this Court while granting the ad-interim stay to the petitioner, clarified the respondent No. 1/ Government would have to keep in mind that in case the petitioner succeeded in the present Writ Petition, its 2013 re-registration application would stand revived, and directed the respondent No.1 *to not take any steps inconsistent with the said position* during the pendency of the writ petition.

34. The respondent No.1 has not considered if the petitioner's re-registration application gets revived, it may not get the registration on the ground as envisaged in Section *33 (3)* and Rule No.*49*, which says only one copyright society would be registered for administering the rights relating to same class of work i.e. sound recording.

35. If the respondent No.2/ RMPL registration is not set-aside, the same would irreversibly prejudice the petitioner's chances for registration as a copyright society, unless the Government consider giving registration to two societies though, *per* Rule *49* of the Copyright Rules, the registration of another copyright society for the same class of works is an *express ground for rejection* of a subsequent application.

36. The respondent No. 1, after failing to act upon the petitioner's application for re-registration as a Copyright Society for 9 years and the respondent No. 2/RMPL's application for registration as a copyright society for 3 years, proceeded in great haste to register the respondent

No.2 as a copyright society within 15 days of the interim order passed in the first Writ Petition. There was no reason for the respondent No. 1 to grant the impugned registration to the respondent No.2 in such a hurry.

37. If the first writ petition is allowed, the second writ petition would have to be allowed as a corollary, or in view of the order dated 02.06.2021 passed by this Court in W.P.(C)-IPD No.*21/2021*, if the said Writ is allowed, the petitioner's application for re-registration would stand revived, and hence the order granting RMPL registration as a copyright society would have to be set aside as RMPL's application for registration was subsequent in time to the petitioner's application.

38. Thus in view of above, impugned orders dated 25.05.2021 and 18.06.2021 both are set aside. Respondent No.1 is directed to re-consider the application of the petitioner for re-registration on merits, *as being filed in time*. The respondent No.1 is expected to undertake this whole exercise within a reasonable time and the outcome be communicated to the petitioner.

39. Consequently, both the petitions are allowed in terms of above. Pending application(s), if any, also stand disposed of.

YOGESH KHANNA, J.

MARCH 09, 2022
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