

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.4196-4197 OF 2012

(Arising out of SLP(C)Nos.26581-26582 of 2011)

Super Cassettes Industries Ltd.

... Appellant

Vs.

Music Broadcast Pvt. Ltd.

... Respondent

JUDGMENT

ALTAMAS KABIR, J.

1. Leave granted.

2. The sole question for consideration in these appeals is whether on a complaint made to the Copyright Board under Section 31 of the Copyright Act, 1957, the said Board under Clause (b) of Sub-Section (1) can pass an interim order in the pending complaint. Since, we

shall be dealing with the said section throughout this judgment, the same is extracted hereinbelow :

"31. Compulsory licence in works withheld from public.-(1) If at any time during the term of copyright in any Indian work which has been published or performed in public, a complaint is made to the Copyright Board that the owner of copyright in the work-

(a) has refused to republish or allow the re-publication of the work or has refused to allow the performance in public of the work, and by reason of such refusal the work is withheld from the public; or

(b) has refused to allow communication to the public by [broadcast], of such work or in the case of a [sound recording] the work recorded in such [sound recording], on terms which the complainant considers reasonable,

the Copyright Board, after giving to the owner of the copyright in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, may, if it is satisfied that the grounds for such refusal are not reasonable, direct the Registrar of Copyrights to grant to the complainant a licence to re-publish the work, perform the work in public or communicate the work to the public by [broadcast], as the case may be, subject to payment to the owner of the copyright of such compensation and subject to such other terms and conditions as the Copyright Board may determine; and thereupon the Registrar of Copyrights shall grant the licence to the complainant in accordance with the directions of

Copyright Board, on payment of such fee as may be prescribed.

Explanation.-In this sub-section, the expression "Indian work" includes-

(i) an artistic work, the author of which is a citizen of India; and

(ii) a cinematograph film or a [sound recording] made or manufactured in India.

(2) Where two or more persons have made a complaint under sub-section (1), the licence shall be granted to the complainant who in the opinion of the Copyright Board would best serve the interests of the general public."

3. However, in order to consider the said question, it is necessary to set out some of the facts giving rise to the said question.

4. These appeals preferred by Super Cassettes Industries Ltd., hereinafter referred to as "Super Cassettes", are directed against the order dated 1st September, 2011, passed by the Delhi High Court whereby it reversed the order passed by the Copyright Board on 28th March, 2011, in which the Board held that it did

not have the power to grant an interim compulsory licence. By its judgment and order dated 1st September, 2011 in R.F.A.No.250 of 2011 and C.M.No.8977 of 2011, the High Court reversed the finding of the Copyright Board upon holding that even while the grant of compulsory licence under Section 31 of the Copyright Act was under consideration, an interim compulsory licence could be granted. The High Court also held that where the dispute is over the quantum of licence fee, an interim compulsory licence had to be granted. The impugned order directs the Copyright Board to grant an interim compulsory licence against Super Cassettes with the further direction to the Board to fix its own terms for such licences, after hearing the parties.

5. Appearing for Super Cassettes, Mr. Amit Sibal, learned counsel, submitted that on 16th May, 2008, this Court had decided the two set of cases, in which it upheld the setting aside of the compulsory licence granted against Super Cassettes by the Copyright Board

in relation to Entertainment Network India Ltd., hereinafter referred to as "ENIL", a radio broadcaster. In the other set of matters, where Super Cassettes was not a party, this Court upheld the grant of compulsory licence in relation to the works administered by Phonographic Performance Ltd., hereinafter referred to as "PPL", and remanded the matter to the Copyright Board to fix the rates at which the compulsory licences, in relation to the works administered by PPL, were to be granted.

6. Pursuant to the decision of this Court, the Copyright Board passed the order on 25th August, 2010, fixing the rates, not just for PPL, but for all music providers, including Super Cassettes, although, it was not a party to the proceedings. Mr. Sibal submitted that on 9th September, 2010, Music Broadcast Pvt. Ltd., hereinafter referred to as "MBPL", wrote to Super Cassettes informing it that MBPL proposed to broadcast the works in which copyright was owned by Super

Cassettes on the terms fixed in the aforesaid order of the Copyright Board dated 25th August, 2010. Mr. Sibal submitted that this was done despite the fact that MBPL had an existing voluntary licence from Super Cassettes, which had subsisted since 25th March, 2002, and had been amended and renewed a number of times since then. It was also submitted that several other broadcasters with existing voluntary licence from Super Cassettes wrote similar letters to it.

7. Super Cassettes filed Writ Petition No.6255 of 2010, questioning the order passed by the Copyright Board dated 25th August, 2010. After hearing Super Cassettes and the Respondents, including MBPL, on 15th September, 2010, the Delhi High Court passed an interim order to the effect that the order dated 25th August, 2010, passed by the Board would not be relied upon by any of the Respondents or any other party for a compulsory licence against Super Cassettes. Despite the aforesaid order of the Delhi High Court dated 15th

September, 2010, MBPL filed an application for compulsory licence under Section 31(1)(b) of the Copyright Act, relying solely on the rates fixed by the Copyright Board for PPL by its order dated 25th August, 2010. Other eight broadcasters also filed applications for compulsory licence against Super Cassettes, relying solely on the order of the Copyright Board dated 25th August, 2010. Super Cassettes responded to the said offer made by MBPL on the same terms as were prevalent under the expired voluntary licence agreement. The said proposal made by Super Cassettes was rejected by MBPL, while other broadcasters continued to broadcast the work of Super Cassettes on existing mutually agreed terms which were different from the terms set out in the order of the Copyright Board dated 25th August, 2010. By its order dated 28th March, 2011, the Copyright Board dismissed the application for interim relief filed by MBPL holding that it did not have the power to grant any interim compulsory licence.

8. Mr. Sibal submitted that even though MBPL did not broadcast the works of Super Cassettes after 25th December, 2010, its radio station, known as "Radio City", improved its listenership ratings to become the most popular radio station in Mumbai and was maintaining its position as the fifth most popular radio station in Delhi. Mr. Sibal urged that MBPL thereafter preferred an appeal against the order dated 28th March, 2011, before the Delhi High Court and *vide* the impugned order, the High Court held that the Copyright Board had the power to issue interim compulsory licence.

9. Mr. Sibal submitted that the impugned order of the Delhi High Court, *inter alia*, held that the power to grant interim relief is not dependent upon a specific statutory empowerment to this effect. The power is a common law principle and is not founded on any statute or legislation. Mr. Sibal submitted that the Delhi

High Court also held that the refusal of the copyright holder to grant a licence would, in effect, compel the broadcaster or any other party similarly placed, into succumbing to the demands of the owners and that since, litigation is protracted over years, a party would be unable to play or broadcast music, owned by the copyright holder, even though it was willing to pay a reasonable fee for making such broadcast and may also have to give up its action under Section 31 of the Copyright Act. Mr. Sibal urged that the High Court went on to hold that refusal to grant interim relief would frustrate the rights of a broadcaster under Section 31 of the Copyright Act, which would render the provisions of the statute futile and nugatory.

10. It was further held by the High Court that where the controversy concerns only the quantum of licence fee, an interim protection should be granted and even though Super Cassettes was not a party to the order of the Copyright Board dated 25th August, 2010, it is

similarly placed as PPL, which was bound by the order passed by the Board on 25th August, 2010. Accordingly, it was appropriate that Super Cassettes should also receive 2% of the net advertisement revenue as licence fee in the interim period for broadcasting of its sound recordings.

11. Mr. Sibal urged that the Division Bench of the Bombay High Court chose not to differ with the decision of the Single Judge in Music Choice India Pvt. Ltd. Vs. Phonographic Performance Ltd. [(2009) 39 PTC 597], in which the learned Single Judge had held that the Copyright Act did not prohibit the Copyright Board from passing any interim order for determination of reasonable fees by way of royalty or compensation by the plaintiff. The High Court disposed of the appeal by making an interim arrangement, whereby Super Cassettes was to receive an aggregate of 4% of the advertisement revenue of MBPL for broadcasting its sound recordings, music and literary work, while

remanding the matter to the Copyright Board for interim order, making it clear that the Board need not be bound by the interim arrangement devised by the Court.

12. Mr. Sibal submitted that the High Court had erred in law in holding that even in the absence of an express conferment by statute, the Copyright Board had the power to grant an interim compulsory licence under Section 31 of the Copyright Act. He urged that the Copyright Board is a Tribunal created under Section 11 of the Copyright Act, 1957, and being a creature of statute, its powers were confined to the powers given to it by the statute. Mr. Sibal urged that while Section 12 of the Act vested the Copyright Board with the authority to regulate its own procedure and Section 74 conferred certain limited powers of a civil court on the Board, the same were procedural in nature and did not vest the Board with a substantive right to grant interim orders under Section 31 of the Act. Mr. Sibal submitted that the High Court had erred in holding that

grant of interim relief was not dependent upon a specific statutory empowerment to this effect. Learned counsel submitted that being a creature of statute, the Copyright Board could only exercise such powers as were expressly vested in it by the statute and that the power to grant an interim compulsory licence not having been vested with the Board, it could not exercise such substantive power, which it did not possess.

13. In support of his submissions, Mr. Sibal referred to the decision of this Court in Rajeev Hitendra Pathak & Ors. Vs. Achyut Kashinath Karekar & Anr. [2011 (9) SCALE 287], wherein three learned Judges of this Court were called upon to consider as to whether the District Forum and the State Commission as established under the Consumer Protection Act, 1986, had the power to recall an *ex parte* order. After examining various provisions of the Consumer Protection Act, this Court held that such an express power not having been conferred on the District Forum and the State Commission, they had no

jurisdiction to exercise such powers which had not been expressly given to them.

14. Mr. Sibal also referred to the decision of this Court in Morgan Stanley Mutual Fund Vs. Kartick Das [(1994) 4 SCC 225], wherein this Court was considering the scope of the provisions of the Consumer Protection Act, 1986. On construction of Section 14 of the said Act, this Court came to the conclusion that there was no power under the Act to grant any interim relief, even of an *ad interim* nature. Their Lordships who decided the matter, observed as follows :

"..... If the jurisdiction of the Forum to grant relief is confined to the four clauses mentioned under Section 14, it passes our comprehension as to how an interim injunction could ever be granted disregarding even the balance of convenience."

15. Reference was also made to a decision of the Punjab and Haryana High Court in Sham Lal Vs. State Election Commission [AIR 1997 P&H 164], in which the High Court was considering a similar question as to whether the

Election Tribunal constituted under the Punjab State Election Commission Act, 1994, had the power to pass an injunction so as to restrain an elected representative from assuming office pending adjudication of an election petition filed against him. After considering various provisions of the 1994 Act, the Court observed that "if the legislature had so desired, nothing prevented it from conferring statutory power upon the Election Tribunal to grant interim stay or injunction or restraint order during the pendency of the election petition." Accordingly, the Court went on to hold that the Election Tribunal did not have the power to pass any order of injunction or stay which would impede the implementation of the result of election.

16. Mr. Sibal cited yet another decision on the same issue rendered by a Full Bench of the Karnataka High Court in Lingamma Vs. State of Karnataka [AIR 1982 Karnataka 18], where the question involved was as to whether the Appellate Tribunal constituted under the

Karnataka Appellate Tribunal Act, 1976, was empowered to pass interim orders when there was no express provision which conferred such substantive power on the Appellate Tribunal. The Full Bench held that "in the absence of express conferment, power to grant temporary injunction was not implied." The Full Bench further held that the fact that no express provision had been made conferring on the Tribunal jurisdiction to make interlocutory orders, clearly indicates that the legislature did not want the Tribunal to have such powers.

17. Mr. Sibal urged that in view of the aforesaid decisions and having regard to the fact that the Copyright Act did not specifically vest the Copyright Board with substantive powers to pass interim orders under Section 31 of the Copyright Act, the High Court erred in taking a view which was contrary to the well-established principle that a statutory body could exercise only such powers that were vested in it by a

statute and not otherwise. Learned counsel urged that by making an interim arrangement and granting an interim compulsory licence to the Respondent, the High Court had conferred upon itself a jurisdiction which the Copyright Board and, consequently, the High Court did not possess under Section 31 of the Copyright Act.

18. Mr. Sibal went on to submit further that all tribunals constituted under different statutes, were not the same and some enjoyed powers to pass certain orders which had been vested in them by statute, which made them different from other tribunals to whom such express powers had not been given. Learned counsel urged that there were certain tribunals which completely supplemented the jurisdiction of the Civil Court and, therefore, exercised all the powers of the Civil Court in respect of the matters entrusted to them by statute. In this regard, reference was made to Section 41(1) of the Armed Forces Tribunal Act, 1985, which specifically provides that the Tribunal shall

have all jurisdiction, powers and authority exercisable by all courts in matters relating to service. Reference was also made to other Tribunals, such as, the Telecom Disputes Settlement & Appellate Tribunal, the National Green Tribunal and also the Debts Recovery Tribunal, which had been expressly vested with powers to pass interim orders under the statutes under which they had been created. Mr. Sibal submitted that there were no similar provisions in the Copyright Act, which granted such powers to the Copyright Board.

19. Mr. Sibal then submitted that notwithstanding the fact that the Copyright Board was discharging quasi-judicial functions, it did not possess inherent powers to pass interim orders, since it continued to be a tribunal governed by the statute under which it had been created. It did not, therefore, have jurisdiction to pass interim orders which inheres in other Tribunals. Referring to the decision of this Court in Bindeshwari Prasad Singh Vs. Kali Singh [(1977) 1 SCC

57], Mr. Sibal urged that in the said decision, this Court was called upon to decide as to whether a Magistrate had the authority to review or recall his order. It was held that unlike Section 151 of the Civil Procedure Code, which vests the civil courts and certain tribunals with inherent powers, the subordinate criminal courts had no such inherent power, since there was absolutely no provision in the Code of Criminal Procedure empowering a magistrate to exercise such powers.

20. Mr. Sibal lastly referred to the decision of this Court in Transcore Vs. Union of India [(2008) 1 SCC 125], and submitted that in the said case, this Court had observed that the Debts Recovery Tribunal is a tribunal and a creature of statute and it does not have inherent powers which existed in the civil courts.

21. Mr. Sibal also submitted that apart from the decisions rendered in the case of Morgan Stanley Mutual

Fund (supra), the Supreme Court had held on several occasions that while entertaining matters, final relief ought not to have been granted at the interim stage. In fact, as submitted by Mr. Sibal, the courts will not imply a power in a particular provision of the statute if the legislative intent behind the statute suggested a contrary view. Learned counsel submitted that implying a power to exercise the powers under Section 31 of the Act was not the legislative intent which is easily discernible. It was urged that implying such a power would transform compulsory licensing to statutory licensing without any statutory mandate to do so. Mr. Sibal also reiterated the principle that power would not be implied to displace a pre-existing vested statutory right and the court would not, therefore, exercise such powers as a statutory right unless a statute expressly allowed the same. The power to override such pre-existing right had to be in express terms and could not be implied. Various other decisions were

referred to by Mr. Sibal, which will only amount to repetition to what has already been stated.

22. Mr. Sibal submitted that the High Court erred in holding that the Copyright Board had power to grant an interim compulsory licence and that when there was a dispute as to the quantum of fees payable by the licensee, an interim compulsory licence had to be given. Mr. Sibal submitted that in the face of the well-established propositions of law, the High Court's order could not stand and was liable to be set aside.

23. Dr. Abhishek Manu Singhvi, learned Senior Advocate, appearing for the Respondent, firstly contended that although Section 31 of the Copyright Act may not have expressly vested the power to pass interim orders on the Copyright Board pending disposal of an application for grant of a compulsory licence, the same would have to be read into the Section as being incidental to the powers granted by the Statute to the Board to grant

compulsory licences. Dr. Singhvi urged that it could not have been the intention of the legislature that pending the determination of the right of an applicant to a compulsory licence, the public should be deprived of the entertainment of listening to music in respect of which the owner has the copyright, in this case, Super Cassettes.

24. Dr. Singhvi urged that if it were to be held that the Board did not have such power to grant an interim compulsory licence, the consequences would be contrary to public interest, since it was not possible to assess the time that could be taken by the Copyright Board for disposing of an application for grant of compulsory licence. Dr. Singhvi submitted that the Copyright Act is a Code in itself and that matters relating to copyrights and grant of licences had been left to the Copyright Board for decision, which only lend strength to the submission that the Board is vested with incidental and ancillary powers under Section 31 of the

Act to give effect to the final relief which it is empowered to give under the said Section.

25. Dr. Singhvi referred to Section 25 of the Trade Marks Act as also Section 25(i) and (ii) of the Patents Act, which vested the authorities under the said Acts to pass appropriate orders in aid of the final relief. Dr. Singhvi urged that it is in situations such as these, that the doctrine of "implied power" comes into play. Learned counsel submitted that without holding that the Copyright Board had the authority to direct the grant of interim compulsory licences in keeping with the doctrine of implied power, the provisions of the Copyright Act would be rendered somewhat unworkable.

26. Dr. Singhvi urged that the Copyright Board is a quasi-judicial body discharging quasi-judicial functions and under the scheme of the Act, it has been vested with the power to determine the reasonableness

of royalties claimed by performing rights societies and to fix the rates thereof and to consider applications for general licences for public broadcasting of works. Dr. Singhvi submitted that it is in that context that Section 12 of the Copyright Act would have to be read. Under Section 12, which defines the powers and procedure of the Copyright Board, it has been stipulated that the Board would, subject to any rules that may be made under the Act, have the power to regulate its own procedure, including the fixing of places and times of its meetings. Referring to Sub-section (7) of Section 12, Dr. Singhvi urged that the Copyright Board is to be deemed to be a Civil Court for certain purposes and all proceedings before the Board are to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code.

27. Dr. Singhvi then drew the Court's attention to Section 19-A of the Copyright Act, which was inserted by amendment with effect from 9th August, 1984, in

regard to disputes with respect to assignment of copyright. It was submitted that the said provision clearly indicated that the Board was an adjudicating authority in regard to disputes between the parties and would, therefore, be deemed to be vested with ancillary powers to make interim orders in aid of the final relief that could be granted under Section 31 of the Act.

28. Dr. Singhvi urged that the Copyright Act contemplated the grant of three types of licences, namely :-

- (i) voluntary;
- (ii) compulsory; and
- (iii) statutory.

Dr. Singhvi urged that Sections 30, 31 and 31-A of the Act deal with grant of voluntary, compulsory and statutory licences. However, while Section 30 deals with grant of voluntary licences by the owners of the copyright, Sections 31 and 31-A speak of grant of

licences for broadcasting works which had been withheld from the public, either by the copyright owners, or where the owner of an Indian work is either dead or untraceable. However, Section 52 of the Act also made provision that certain acts performed by broadcasters were not to be considered as infringement of copyright. In particular, reference was made by Dr. Singhvi to Section 52(1)(j)(iv) which indicates that the making of sound recordings in respect of any literary, dramatic or musical work would not amount to infringement of copyright if the person making such sound recording allowed the owner of the right or his duly authorised agent or representative to inspect all records and books of accounts relating to such sound recording. Dr. Singhvi urged that, in any event, any decision in respect of the above provisions would be appealable under Section 72 of the Copyright Act. Dr. Singhvi urged that the powers now vested in the Copyright Board were, in fact, powers which had been vested in it as

high a body as Judicial Committee of the Privy Council under Section 4 of the Copyright Act, 1911, which had been passed by the Parliament of the United Kingdom and modified in its application to India by the Indian Copyright Act, 1914.

29. In support of the submissions made by him, Dr. Singhvi referred to various decisions, beginning with the decision of this Court in Income Tax Officer Vs. M.K. Mohammed Kunhi [(1969) 2 SCR 65], wherein the power of the Income Tax Appellate Tribunal to stay recovery of penalty was under consideration. Although, such power was not directly vested in the Tribunal, the High Court held that the power to order the stay or recovery of penalty is an incidental and ancillary power possessed by the Tribunal in its appellate jurisdiction. Reference was also made to the decision cited on behalf of the Appellant in Morgan Stanley's case (supra). Dr. Singhvi urged that the same was no longer good law on account of the subsequent decisions

of this Court. Dr. Singhvi urged that in Allahabad Bank, Calcutta Vs. Radha Krishna Maity & Ors. [(1999) 6 SCC 755], this Court was considering the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, hereinafter referred to as "the DRT Act", wherein it was held that in a Suit under Section 19(1) for recovery of monies, the Tribunal acted within its powers in passing an interim order to restrain the defendants from recovering any money from a particular party. It was held that in view of Section 22(1) of the Act, the Tribunal could exercise powers contained in the Civil Procedure Code and could even go beyond the Code as long as it passed orders in conformity with the principles of natural justice. This Court held further that Section 19(6) of the Act did not in any manner limit the generality of the powers of the Tribunal under Section 22(1) and that Section 19(6) was an enabling provision and that certain types of stay orders and injunctions mentioned therein could be

passed by the Tribunal, but the same could not be deemed to be exhaustive nor restricting the Tribunal's powers only to those types of injunctions or stay orders mentioned therein. It was also observed that in addition, Rule 18 enabled the Tribunal to pass orders to secure the ends of justice. Dr. Singhvi urged that the aforesaid decision of this Court was based on its earlier decision in Industrial Credit & Investment Corporation of India Ltd. Vs. Grapco Industries Ltd. & Ors. [(1999) 4 SCC 710], wherein it had been held that the Debts Recovery Tribunal had jurisdiction under Section 19(6) of the DRT Act to grant interim orders, since such power inheres in a Tribunal. —

30. Dr. Singhvi lastly contended that the decision in Rajeev Hitendra Pathak's case (supra) could not be relied upon for a decision in this case on account of the fact that in the said case this Court was called upon to consider as to whether the District Forum and the State Commission had been vested with powers of

revision, in the absence whereof they could not exercise such powers which had not been expressly vested in them. Dr. Singhvi urged that having regard to the various decisions of this Court which have categorically held that powers to pass certain interim orders were incidental and ancillary to the exercise of powers conferred on a Tribunal by the Statute, the doctrine of implied power would stand attracted and the orders of the High Court could not, therefore, be faulted.

31. Mr. Bhaskar P. Gupta, learned Senior Advocate, appearing for some of the interveners, adopted Dr. Singhvi's submissions and reiterated the concept that the Copyright Act is a complete code in itself and the parties to the dispute would have to take recourse to the provisions of the Act and not the Civil Code which lends support to Dr. Singhvi's submissions that the "doctrine of implied power" would have to be

incorporated in the provisions of the Copyright Act, as far as the Copyright Board is concerned.

32. Mr. Gupta also raised the question as to whether during the pendency of an existing licence granted under Section 30, a dispute could be raised with regard to the fees charged under Section 31(1)(b) which may subsequently convert the voluntary licence given under Section 30 of the Copyright Act into a compulsory licence under Section 31 thereof. Mr. Gupta contended that since Section 31(1)(b) of the Act contemplates adjudication, the Copyright Board had the trappings of a quasi-judicial authority which inheres in itself the right to pass interim orders in the interest of the parties and to apply the principles of natural justice, keeping in mind the public interest. In this regard, Mr. Gupta also submitted that Section 75 of the Copyright Act provides that the orders for payment of money passed by the Registrar of Copyrights, the Copyright Board or by the High Court would be deemed to

be decrees of a Civil Court and would be executable in the same manner as a decree of such Court. Mr. Gupta contended that the intention of the legislature would be clear from the scheme of the Act that matters relating to copyright should be dealt with by the authorities under the Act and not the Civil Court.

33. Mrs. Prathiba Singh, learned Advocate, who appeared for one of the parties, while reiterating the submissions made by Dr. Singhvi and Mr. Gupta, submitted that the powers of the Board had been gradually increased by legislation from time to time and even in regard to the question of subsisting licences and the grant of new licences, there could be no dispute as to the powers vested in the Copyright Board and the orders which it was competent to pass. Mrs. Singh, however, introduced another dimension into the debate by contending that the membership of the Copyright Board is drawn from various quarters. There being 14 members, it does not meet regularly and

decisions in cases are, therefore, deferred for long intervals. In fact, as pointed out by Mrs. Singh, sometimes it is not possible to hold even one meeting in a month. In such cases, unless the power to grant interim orders were read into the provisions of Section 31 of the Act, there would be a complete stalemate in regard to cases where matters were pending before the Board and the public would be deprived of the pleasure of listening to such music and sound broadcasting.

34. Mr. Harish Salve, learned Senior Advocate, in his turn provided another twist to the question under consideration in urging that inherent powers exist in an appellate forum. Mr. Salve urged that this was not a case where the Copyright Board was not entitled to pass orders of an interim nature, but whether it should exercise such power. Mr. Salve further urged that the power under Section 31(1)(b) was in respect of matters which were already in the public domain and the transaction being purely of a commercial nature, the

Board was only called upon to decide how much charges were required to be paid for broadcasting music and sound recordings in respect whereof Super Cassettes had the copyright. Mr. Salve urged that Section 31(1)(b) merely enumerated the right of the Copyright Board to decide and compute the amount of fees payable for the use of the copyright, which was being withheld from the public. According to Mr. Salve, the essence of the Copyright Act is the delicate balance between intellectual property rights and the rights of access to the copyright material. In such a situation, according to Mr. Salve, a private right of copyright would have to give way to the public interest as contemplated in Section 31 of the Copyright Act.

35. Replying to the submissions made on behalf of the Respondents and the interveners, Mr. Sibal urged that the powers which were inherent in a Tribunal as against the implied powers, stood on a different footing and, in any event, the provisions of Sections 19(4) and 19-A

were not relevant to the doctrine of implied power in the facts of this case.

36. Mr. Sibal submitted that the concept of public interest was nothing but a bogey introduced on behalf of the Respondents, when the entire transaction only involved the computation of the fees payable to a copyright owner for use of the copyright when the same was withheld from the public. Referring to the decision between ENIL and the Appellant in Entertainment Network (India) Limited Vs. Super Cassette Industries Limited [(2008) 13 SCC 30], Mr. Sibal referred to paragraph 116 thereof, which is extracted hereinbelow :-

"116. Section 31(1)(b) in fact does not create an entitlement in favour of an individual broadcaster. The right is to approach the Board when it considers that the terms of offer for grant of licence are unreasonable. It, no doubt, provides for a mechanism but the mechanism is for the purpose of determination of his right. When a claim is made in terms of the provisions of a statute, the same has to be determined. All cases may not involve narrow commercial interest. For the purpose of interpretation of a statute, the court must take into consideration all situations

including the interest of the person who intends to have a licence for replay of the sound recording in respect whereof another person has a copyright. It, however, would not mean that all and sundry can file applications. The mechanism to be adopted by the Board for determining the right of a complainant has been provided under the Act."

Mr. Sibal urged that the decision of the High Court was liable to be set aside and that of the Copyright Board was liable to be restored.

37. What emerges from the submissions made on behalf of the respective parties is the dispute as to the width of the powers vested in the Copyright Board under Section 31 of the Copyright Act. There is no dispute that the Copyright Act is a Code by itself and matters relating to copyrights and grant of licences in respect of such copyrights have been left to the Copyright Board for decision. Chapter II of the Copyright Act, 1957, deals with the establishment of a Copyright Office and the constitution of a Copyright Board and the powers and procedure to be exercised and formulated

for the functioning of the said Board. Section 11 of the Act, which comes within the said Chapter, provides for the constitution of a Copyright Board, which would hold office for such period and on such terms and conditions as may be prescribed. Section 12 enumerates the powers and procedure of the Board and is extracted hereinbelow :-

"12. Powers and procedure of Copyright Board. -

(1) The Copyright Board shall, subject to any rules that may be made under this Act, have power to regulate its own procedure, including the fixing of places and times of its sittings:

Provided that the Copyright Board shall ordinarily hear any proceeding instituted before it under this Act within the zone in which, at the time of the institution of the proceeding, the person instituting the proceeding actually and voluntarily resides or carries on business or personally works for gain.

Explanation.-In this sub-section "zone" means a zone specified in section 15 of the States Reorganisation Act, 1956. (37 of 1956).

(2) The Copyright Board may exercise and discharge its powers and functions through Benches constituted by the Chairman of the Copyright Board from amongst its members, each

Bench consisting of not less than three members:

[Provided that, if the Chairman is of opinion that any matter of importance is required to be heard by a larger Bench, he may refer the matter to a special Bench consisting of five members.]

(3) If there is a difference of opinion among the members of the Copyright Board or any Bench thereof in respect of any matter coming before it for decision under this Act, the opinion of the majority shall prevail:

[Provided that where there is no such majority, the opinion of the Chairman shall prevail.]

(4) The [Chairman] may authorise any of its members to exercise any of the powers conferred on it by section 74 and any order made or act done in exercise of those powers by the member so authorised shall be deemed to be the order or act, as the case may be, of the Board.

(5) No member of the Copyright Board shall take part in any proceedings before the Board in respect of any matter in which he has a personal interest.

(6) No act done or proceeding taken by the Copyright Board under this Act shall be questioned on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Board.

(7) The Copyright Board shall be deemed to be a civil court for the purposes of [sections 345

and 346 of the Code of Criminal Procedure, 1973 (2 of 1974)] and all proceedings before the Board shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code, 1860 (45 of 1860)".

As would be noticed, the Copyright Board has been empowered to regulate its own procedure and is to be deemed to be a Civil Court for the purposes of Sections 345 and 346 of the Code of Criminal Procedure, 1973, and all proceedings before the Board shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code. The provisions clearly indicate that the Copyright Board discharges quasi-judicial functions, which as indicated in Sections 19-A, 31, 31-A, 32 and 52, requires the Board to decide disputes in respect of matters arising therefrom. In fact, Section 6 also spells out certain disputes which the Copyright Board has to decide, and its decision in respect thereof has been made final. However, for the purposes of these appeals we are

concerned mainly with Section 31, which has been extracted hereinabove.

38. Elaborate submissions have been made regarding the power of the Copyright Board to grant interim compulsory licences in works withheld from the public, in relation to matters which were pending before it. Having considered the said submissions, we are unable to accept the submissions made by Dr. Abhishek Manu Singhvi, Mr. Bhaskar P. Gupta, Mr. Harish Salve and the other learned counsel appearing for the different interveners. The Copyright Board has been empowered in cases where the owner of a copyright in a work has withheld the same from the public, after giving the owner of the copyright in the work a reasonable opportunity of being heard and after holding such inquiry as it may consider necessary and on being satisfied that the grounds for withholding the work are not reasonable, to direct the Registrar of Copyrights to grant to the complainant a licence to republish the

work, perform the work in public or communicate the work to the public by broadcast, as the case may be, subject to payment to the owner of the copyright of such compensation and subject to such other terms and conditions as the Board may determine. The language used in the Section clearly contemplates a final order after a hearing and after holding an inquiry to see whether the ground for withholding of the work from the public was justified or not. There is no hint of any power having been given to the Board to make interim arrangements, such as, grant of interim compulsory licences, during the pendency of a final decision of an application.

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39. As has been held by this Court in innumerable cases, a Tribunal is a creature of Statute and can exercise only such powers as are vested in it by the Statute. There is a second school of thought which propagates the view that since most Tribunals have the trappings of a Court, it would be deemed to have

certain ancillary powers, though not provided by the Statute, to maintain the status-quo as prevailing at the time of filing of an application, so that the relief sought for by the Applicant is not ultimately rendered otiose. While construing the provisions of Section 14 of the Consumer Protection Act, 1986, in the Morgan Stanley Mutual Fund's case (supra), this Court categorically held that in the absence of any specific vesting of power, no interim relief could be granted, not even of an ad-interim nature. The decision in the recent judgment of this Court in Rajeev Hitendra Pathak's case (supra) also supports the case made out by Mr. Sibal to the extent that in the absence of any express power conferred on the District Forum and the State Commission under the Consumer Protection Act, they had no jurisdiction to exercise powers which had not been expressly given to them.

40. Even the decision rendered in Bindeshwari Prasad Singh's case (supra), which was a decision as to the

jurisdiction of a Magistrate to review or recall his order, it was held that in the absence of any specific power in the Code of Criminal Procedure, the Magistrate was not entitled to exercise such a power.

41. On the other hand, the various decisions cited on behalf of the Respondent and the interveners were in the context of the question as to whether a Tribunal has incidental powers, which were inherent though not specifically vested, in order to preserve the status-quo as in M.K. Mohammed Kunhi's case (supra), Allahabad Bank, Calcutta's case (supra) or even in Grapco Industries Ltd.'s case (supra), till a decision was reached in the pending matter.

42. In the instant case, the power being sought to be attributed to the Copyright Board involves the grant of the final relief, which is the only relief contemplated under Section 31 of the Copyright Act. Even in matters under Order XXXIX Rules 1 and 2 and Section 151 of the

Code of Civil Procedure, an interim relief granting the final relief should be given after exercise of great caution and in rare and exceptional cases. In the instant case, such a power is not even vested in the Copyright Board and hence the question of granting interim relief by grant of an interim compulsory licence cannot, in our view, arise. Mr. Salve's submission that the substratum of the scheme of Section 31 is commercial in nature and only involves computation of the charges to be paid to the holder of the copyright who withholds the same from the public, is no answer to the proposition that under Section 31 only an ultimate relief by way of grant of a licence on payment of reasonable charges to the copyright owner to publish and/or broadcast the work could be given. To grant an interim compulsory licence during the stay of the proceedings would amount to granting the final relief at the interim stage, although the power to grant such relief has not been vested in the Board.

43. It is no doubt true, that Tribunals discharging quasi-judicial functions and having the trappings of a Court, are generally considered to be vested with incidental and ancillary powers to discharge their functions, but that cannot surely mean that in the absence of any provision to the contrary, such Tribunal would have the power to grant at the interim stage the final relief which it could grant.

44. As also indicated hereinbefore, such incidental powers could at best be said to exist in order to preserve the status-quo, but not to alter the same, as will no doubt happen, if an interim compulsory licence is granted. If the legislature had intended that the Copyright Board should have powers to grant mandatory injunction at the interim stage, it would have vested the Board with such authority. The submission made that there is no bar to grant such interim relief in Section 31 has to be rejected since the presence of a

power cannot be inferred from the absence thereof in the Statute itself.

45. In the aforesaid circumstances, we have no hesitation in allowing the appeals and setting aside the impugned judgment and order of the Division Bench of the High Court. The Appeals are, accordingly, allowed. There will be no order as to costs.

.....J.
(ALTAMAS KABIR)

.....J.
(SURINDER SINGH NIJJAR)

New Delhi
Dated: 04.05.2012

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NON-REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NOS.4196-4197 OF 2012
[@ SLP (CIVIL) NOS.26581-26582 OF 2011]**

Super Cassettes Industries Ltd.

....Appellant

Versus

Music Broadcast Pvt. Ltd.

....Respondent

J U D G M E N T**Chelameswar, J.**

Though, I agree with the conclusion reached by my learned brother Justice Kabir, I wish to add a few lines.

2. To my mind, the issue is not whether the Copyright Board is a Court or a Tribunal while exercising the jurisdiction under Section 31 of the Copyright Act or any other Section, which authorises the Copyright Board to perform certain adjudicatory functions. It is also not the issue whether Courts or Tribunals have such powers, which are categorised as powers ancillary to their jurisdiction irrespective of the fact that the Statute, which created the jurisdiction, does not, always, expressly provide for the exercise of such

ancillary powers. This Court has held on more than one occasion that such powers could be implied - *Income Tax Officer vs. M.K. Mohammed Kunhi*, 1969 (2) SCR 65 and *Allahabad Bank, Calcutta vs. Radha Krishna Maity and others*, (1999) 6 SCC 755. As noticed by my learned brother at para 39 of the Judgment, there have been decisions of this Court, which appear conflicting on the question whether a Statutory Tribunal has powers other than those expressly conferred by the Statute.

3. In the ultimate analysis, both the Courts and the Tribunals are adjudicatory bodies to whom the Legislature entrusts the authority to resolve the disputes falling within the jurisdiction conferred upon each of such bodies and brought before them. The jurisdiction is, normally, defined with reference either to; (1) the subject matter of the dispute and / or the pecuniary value of the dispute; or (2) the territorial nexus of either the parties to the dispute or the subject matter of the dispute to the Court or Tribunal.

4. In the context of Courts adjudicating civil disputes, the jurisdiction and powers necessary to effectively exercise the jurisdiction, such as, securing the presence of defendants / respondents or witnesses, granting of interim orders etc., and the method and manner of enforcement of a decision or a decree, are matters elaborately dealt by the Code of Civil Procedure. Similarly, the Code of Criminal Procedure contains provisions necessary for the exercise of the jurisdiction of the Criminal Courts. While the Code of Civil Procedure,

under Section 151, recognises the existence of inherent powers in all Civil Courts, the Code of Criminal Procedure recognises all such inherent powers only in the High Court under Section 482.

5. Therefore, the jurisdiction and authority of not only the Tribunals, but also the Courts are structured by the statutory grants and limitations.

6. However, both the grant as well as the limitations could be either express or implied from the scheme of a particular enactment. The considerations relevant for ascertaining whether there is an implied grant of such powers, as can be culled out from the various Judgments relied upon by the learned counsel appearing in these matters, which have been taken note of by my learned brother Justice Kabir, appear to be; (1) need to preserve *status quo* with respect to the subject matter of the dispute in order to enable the party, which eventually succeeds in the litigation, to enjoy the fruits of the success; and (2) need to preserve the parties themselves a consideration, which weighed heavily with this Court in implying such powers in favour of the Magistrates while exercising the jurisdiction under Section 125 of the Code of Criminal Procedure.

7. The often stated principle that Courts would not, normally, grant a relief by way of an interim measure, which is either identical with or substantially the same as the final relief sought in the proceeding, is based on the ground that indiscriminate grant of such interim reliefs are capable of

producing public mischief see *Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Limited and others*, (1985) 1 SCC 260.

This Court opined that the injury, if any, to the party approaching the Court is reversible and the public interest in certain instances should outweigh the temporary inconvenience of individuals.

8. Take another example, if a returned candidate to the constitutionally created Legislative Bodies could be restrained from functioning as a legislator by an interim order pending the adjudication of the legality of such candidate's election, the same would produce great public mischief.

9. Therefore, different considerations come into play depending upon the context or nature of the legal rights at issue or subject matter of the dispute, etc., in deciding the question whether an adjudicatory body can be said to have been invested with the power to grant interim orders, which are identical or substantially similar to the final relief that can be afforded in the lis by implication from the scheme and language of the enactment, which created the jurisdiction.

10. For deciding the question whether the Copyright Board, exercising the jurisdiction under Section 31 of the Copyright Act, can grant *ad hoc* compulsory licence by an interim order pending the adjudication of the issue, is required to be examined.

11. Copyright in a “work”, undoubtedly, is a valuable legal right subsisting in the “owner” or somebody claiming through the owner. Such a right has more than one dimension. It may have a commercial value depending upon the quality, nature and the public demand of the work. It may also have aesthetic value. Whether such a right should be transferred or not is a matter, essentially, for the “owner” of the copyright to determine. It is, further, the right of the owner to decide on what terms and conditions (which need not necessarily be related to money alone), he would part with the copyright of his work if ever he decides to part with it. However, Section 31 of the Copyright Act creates an exception to the abovementioned principle of the right of the owner of the copyright. In substance - the Section deprives the “copyright” of the “owner” against his volition. In other words, by Section 31, the State is authorised, by its coercive powers, to deprive the owner of his copyright in a work, which is his property and the right to enjoy such property in the manner as the owner of the property pleases. Necessarily, in view of the constitutional mandate under Article 300A, such a deprivation can only be by the authority of law and it is too well entrenched a principle on the constitutional law that such a law could be only for a public purpose.

12. The core of Section 31 is that the owner of a copyright has; (1) either refused to “republish” or “allow the republication” of his work or “refused to allow the performance in public” of the work; (2) by reason of such refusal

the work is withheld from the public; and (3) the grounds for such refusal are not reasonable. It is in the abovementioned circumstances, if the Copyright Board is satisfied that the grounds of refusal are not reasonable, the Copyright Board is authorised, by law, to take steps for the grant of a compulsory licence.

13. As can be seen, the appellants are interested in the commercial exploitation of a work, of which they are not “owners” of the copyright. To succeed in their claim for a compulsory licence in their favour, they must, firstly, establish that “the work is withheld from the public”, because of the “owner’s” refusal to republish the work, etc.; secondly, the owner’s refusal is on grounds, which are “not reasonable” in law. Whether the owner is withholding the republication on grounds, which are unreasonable or not, is a question, which can only be decided upon affording a complete hearing to the owner of the work, as I have already indicated the reason for withholding need not only be monetary. Take for example the case of a book or a cinematograph film, such as, *Satanic Verses* or *Da Vinci Code*, which have created quite some commotion in certain quarters including the security threat to the author or owner of the work. If the author, on realising that repeated publication of the work might endanger his security, declines or refuses republication of the work, it cannot be said that the author (owner) unreasonably withheld republication. Such a refusal has nothing to do with the monetary considerations. Therefore, by conceding a power to grant *ad hoc*

compulsory licence during the pendency of the proceeding, under Section 31, would not only render the final inquiry into the question, a futile exercise in a case where the owner has reasons other than inadequacy of monetary compensation. The power under Section 31 to grant a compulsory licence meant for avoiding the withholding of the republication or refuse to allow the performance in public of some "work" - is, essentially, for the benefit of the public. Commercial benefit to "publisher" is incidental. Unless, it is demonstrated that failure to imply such power to direct immediate republication or performance of a work in public would be detrimental to public interest, the power to grant *ad hoc* compulsory licence, cannot be implied. No such detriment is demonstrated. In the absence of an express statutory grant, I would not imply the power to grant an *ad hoc* compulsory licence by way of interim order by the Copyright Board.

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.....J.
(J. CHELAMESWAR)

New Delhi;
MAY 4, 2012.