

Powers of the court to grant interim licence Vis-a-Vis
Rights of owners of Copyright: A Study in the light of Supreme Court's
decision in Super Cassettes Industries Ltd. case^x

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1. Sec 31 of the Copyright Act, 1957 provides thus:-

(i) 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 republication 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 (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 such inquiry as it may deem necessary, may if it is satisfied that the grounds of such refusal are not reasonable, direct the Registrar of Copyright to grant to the complainant a license 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 terms and conditions as the Copyright Board may determine, and therefrom the Registrar of Copyright shall grant the license to the complainant in accordance with the directions of Copyright Board, on payment of such fee as may be prescribed;

^x Super Cassettes Industries Ltd. Vs. Music Broadcast Pvt. Ltd., AIR 2012 SC P.3144.

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Explanation: 'Indian work' includes an artistic work, the author of which is a citizen of India; a cinematograph film or (sound recording) made or manufactured in India.

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

The power under Sec 31 of the Indian Copyright Act relates to the grant of compulsory license in works withheld from the public.

2. While dealing with the power of the Dist. Forum to recall an 'ex parte order', the Supreme Court ruled, "such a power not having been conferred on the Dist. Forum and the State Commissions, they had no jurisdiction to exercise such powers, which had not been expressly given to them".¹ In Morgan Stanley Mutual Fund,² the Supreme Court ruled that, even an interim relief cannot be granted, when there was no power under the Act to grant such a relief.

These cases demonstrate the principle of 'rule of law', that an authority cannot exercise a jurisdiction not granted to it by law, and every authority shall act in accordance with law.

In the absence of express conferment of power to grant even a temporary injunction, such a power cannot be implied³ and therefore not exercisable under the doctrine of implied power. The absence of such a power is clearly indicative of the intention of the legislature not to grant such a power and the courts are bound to give effect to the intention of the legislature, as indicated or made known.

3. Though, the civil courts are vested with 'inherent powers',⁴ no such power is conferred on the criminal courts.⁵ On the same analogy, the Debts Recovery Tribunal did not possess the 'inherent powers'

¹ Rajeev Hitendra Pathak & others Vs. Achyut Kashinath Karakar, AIR 2012 SC (Civ) P.192.

² Morgan Stanley Mutual Fund Vs. Kartick Das (1994)4 SCC P.245.

³ Lingamma Vs. State of Karnataka, AIR 1982 Karnataka P.18

⁴ See Sec 151 of the Civil Procedure Code.

⁵ Bindeshwari Prasad Singh Vs. Kali Singh, AIR 1977 SC P.2432.

of civil courts⁶ but in a suit under Sec 19(1) for recovery of money under Debts Recovery Tribunal (DRT), it was held that the tribunal acted within its powers in passing an interim order.⁷ In M.K.Mohammed Kunbi's case,⁸ it was held that a power to order stay or recovery of penalty is an incidental and ancillary power, though not vested in the tribunal, but possessed in the exercise of its appellate jurisdiction. Thus, the powers to pass certain interim orders have been considered as incidental or ancillary to the exercise of powers conferred by Statute by invoking the 'doctrine of implied powers'.

4. A critical analysis of Sec 31 of the Copyright Act reveals that Sec 31(1)(b) relates to 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. The proceedings of the Copyright Board are deemed as 'judicial proceedings'⁹ and the Copyright Board is deemed as a 'criminal court'.¹⁰ Public interest in certain cases should outweigh the temporary inconvenience of individuals.¹¹ No doubt it is the Statutory grant and limitation which determine the jurisdiction and authority of courts and tribunals.

5. Copyright confers a valuable right vested in the owner or anybody claiming through such owner and this right has a double-edged value, such as a commercial value which no doubt depends on the quality, nature and public demand and the other has 'aesthetic value'. It is the absolute right of the owner to transfer these rights or not and also the terms and conditions of such transfers. Unless he decides to part with the rights, there can be no transference but Sec 31 of the Copyright Act provides an exception, when he can be deprived of his rights against his volition. Such deprivation can be only under the authority of law and the law must be essentially relate to a public purpose.¹² Compulsory licence in works withheld from the public is constitutionally supportable under Art 300 A of the Constitution.

⁶ Court in Transcore Vs. union of India, AIR 2007 SC P.712.

⁷ Allahabad Bank, Calcutta Vs. Radha Kishan Maity, AIR 1999 Sc P.3426.

⁸ ITO Vs. M.K.Mohammed Kunbi, AIR 1969 SC P.490.

⁹ See Sections 193 and 228 of Indian Penal Code.

¹⁰ See Sections 345 and 346 of Criminal Procedure Code.

¹¹ Asst. Collector of Central Excise Vs. Dunlop India Ltd., Chandan Nagar, AIR 1985 SC P.330.

¹² See for details Art 300A of the Constitution of India.

6. When a complainant seeks for a license to publish a work of an author in circumstances stipulated under Sec 31 of the Indian Copyright Act, there is no provision to grant an interim license pending the disposal of the complaint, in view of the absence of a statutory provision to that effect. The Supreme Court felt granting an interim license would amount to giving total relief itself, thereby making a final enquiry into the complaint an 'exercise in futility'. The objections to the grant of interim license, apart from making the final enquiry futile, also grounded on the following facts:-

- (i) Where it poses a security threat to the author;
- (ii) Where the author has reasons other than inadequate monetary considerations;
- (iii) Where withholding is necessary in public interest, not for the benefit of the public but commercial benefit to the individual;
- (iv) Power to grant when detrimental to public interest, the power to grant cannot be implied; and
- (v) Where the refusal by the author cannot be considered to be 'unreasonable'.

It can therefore, be asserted positively that the complainant cannot claim the right to publish as of 'right' but the claim has to be decided with reference to the following criteria by the authorities:-

- (1) The work is withheld from the public, because of owner's refusal; and
- (2) The owner's refusal must be on grounds which are 'unreasonable'. This has to be decided in a final enquiry by affording opportunity of hearing to the owners concerned.

7. It is the absence of a Statutory provision in the Copyright Act, which made the apex court to reject the claim for an interim or temporary license. There is no doubt that the members of the public are denied of their right of access and benefit from work until the issue is finally determined. Further, there may lot of delay in the disposal of the complaint by the Copyright Board, which makes the deprivation substantial or total as members of public suffer. The approach of the court must be to make the statute workable and

power to grant relief carries the incidental or ancillary power to grant interim relief as decided in many cases decided by the apex court under the doctrine of 'implied powers'. Thus, there is a need to amend Sec 31 of the Copyright Act. The amendment may be in the following terms:-

After Sec 31(2) of the following provision be added:-

Sec 31(3) : *The Copyright Board shall have the power to grant interim licence, pending the disposal of the complaint and the exercise of the power shall be subject to the conditions:-*

- a) That the complainant shall pay compensation, as may be determined by the Copyright Board, equal to the loss suffered by the owner of the Copyright , when the complaint is finally rejected;*
- b) The complainant shall deposit an amount equivalent to the sum so determined with the Copyright Board or furnish Bank guarantee for the said amount, which will be payable to the owner, where the complaint is dismissed; and*
- c) In the event of the complainant succeeding in the case, the deposit shall be refunded to him excluding the amount payable by him to the owner as compensation.*

The aforesaid amendments will justly balance the public interest with interests of the owners of Copyright.