



2025:DHC:3695



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

+ C.O.(COMM.IPD-CR) 8/2024, I.A. 33181/2024 & I.A. 33182/2024

AL HAMD TRADENATION

.....Petitioner

Through: Mr. Aditya Ganju, Ms. Pallavi Shali,
Ms. Sambhavi Mishra and Mr.
Samanyu Sethi, Advs.
M: 9560047212

versus

PHONOGRAPHIC PERFORMANCE LIMITEDRespondent

Through: Mr. Chander M. Lall, Sr. Adv. with
Mr. Ankur Sangal, Ms. Sucheta Roy, a,
Mr. Raghu Vinayak Sinha, Mr.
Shaurya Pandey and Ms. Ananya
Mehan, Advs.
M: 7761895769

CORAM:**HON'BLE MS. JUSTICE MINI PUSHKARNA****JUDGMENT**

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13.05.2025**MINI PUSHKARNA, J:**

1. The present petition has been filed under Section 31 of the Copyright Act, 1957 ("Copyright Act"), read with Rule 6 of the Copyright Rules, 2013 ("Copyright Rules"), seeking grant of compulsory license and ascertainment of license rates, thereof. As per the petitioner, the respondent has sought to charge unreasonable and prohibitory licence fees towards its repertoire of sound recordings, which effectively entails refusal to publish/re-publish and/or allow performance of its works in public, on account of which, the



present petition has been filed.

2. The brief facts of the case are as follows:

2.1 The petitioner, in the regular course of its business, was organising a corporate event for 50 persons on 14th July, 2024, at Hotel Lutyens in Delhi. While booking the hotel for the event, the petitioner was informed that it needs to take a license from the respondent for the music to be played in the event, and the license fee for 1-150 persons, would be Rs. 49,500/-.

2.2 The petitioner, thereafter, checked the website of the respondent and noted that the license fee for 1-150 persons, as per respondent's website was Rs. 55,440/- with effect from 29th April, 2024.

2.3 On 2nd July, 2024, the petitioner *bonafidely* wrote to the respondent informing them about the petitioner's event and also offering them the license fee of Rs. 16,500/-, i.e., 1/3rd of the old license fee of Rs. 49,500/-. As the petitioner was organising the event only for 50 people, accordingly, it offered to pay the 1/3rd of the license fee.

2.4 On 2nd July, 2024, the respondent refused to issue license at the rate quoted by the petitioner. In response thereto, on 3rd July, 2024, the petitioner wrote to the respondent reiterating its offer for the license.

2.5 While the petitioner was exploring the possibility of filing the compulsory license petition, the respondent filed a suit, i.e., *CS(COMM) 564/2024*, for infringement of copyright against the petitioner on 9th July, 2024.

2.6 The petitioner, being aggrieved by the high license fee demanded by the respondent towards its repertoire of sound recordings, on the ground that the same was unreasonable, has filed the present petition.



3. On behalf of the petitioner, it is contended as follows:

3.1 Even if it is accepted that respondent is the owner of copyright in its repertoire, such ownership of copyright in the sound recordings cannot give a free hand to the respondent to procure any arbitrary and unreasonable license fees. The respondent must be held accountable for ensuring that it charges a fair and reasonable license fee for its repertoire.

3.2 The respondent is demanding unreasonable license fees towards its repertoire of sound recordings, thereby, depriving the public of the sound recordings owned by the respondent. Such act on part of the respondent amounts to withholding the works from the public and in effect amounts to refusal of republishing the works, and/or allowing its performance in public.

3.3 Since the terms of the offer by the respondent, are unreasonable, it constitutes as refusal on the part of the respondent. Thus, the petitioner is entitled to compulsory license from the respondent.

4. *Per contra*, on behalf of the respondent, it is contended as follows:

4.1 The respondent is the owner of the copyright in the sound recordings in its repertoire and is exclusively entitled to grant licenses for communication to the public.

4.2 The respondent, being the owner of the copyright in relation to communication to the public/public performance of the sound recordings of its members, is entitled to license the same at the rate, which it has determined.

4.3 Section 31 of the Copyright Act is applicable only to those cases, wherein, the work in question has been withheld from the public. In the present case, the respondent's repertoire is being freely licensed to the



public for their consumption by multiple entities, be it restaurants, hotels, etc. The members of the public have access to the respondent's repertoire by various mediums and the same are not therefore, '*withheld from the public*'.

4.4 The petitioner in the present case is a Delhi based event organiser and is admittedly not a broadcasting organisation, nor is it looking to broadcast the respondent's sound recordings. Hence, the petitioner has filed the present petition under Section 31(1)(a) and not Section 31(1)(b) of the Copyright Act.

4.5 The respondent has not refused to allow the performance of its work in the public. The respondent was free and willing to license its works to the petitioner upon payment of the license fees, as per the respondent's publicly published tariffs, on the basis of which, various other entities are taking appropriate licenses. However, the petitioner herein has specifically denied to pay the appropriate fees to the respondent, thereby, intending to exploit the sound recordings of the respondent, without any license.

4.6 The offer being made by the respondent, is neither unreasonable nor is being made on a stand, which is arbitrary. If the respondent's works are not licensed to the petitioner, the same would not be withheld from the public, since there are over 9100 entities/parties, which have obtained over 32,000 copyright licenses for communication of sound recordings at various events across the country, since April, 2023.

4.7 Further, as per Section 31 of the Copyright Act, the Commercial Court can grant a license to the applicant to either republish the work, perform the work in public or communicate the sound recording to the public, by broadcast. The license being sought by the petitioner is to



'perform the work in public'. The right to *'perform the work in public'* is limited to literary, dramatic and musical works, and does not extend to sound recordings. As per Section 31(1) of the Copyright Act, the license granted for communication to the public is limited to broadcast.

4.8 The petitioner cannot be licensed the right of communicating the respondent's sound recordings to the public under Section 31(1) of the Copyright Act, as compulsory license can only be sought for republishing a work or performing a work in public or communication to the public, by way of broadcast.

5. I have heard learned counsels for the parties and have perused the record.

6. At the outset, it is to be noted that during the time when the present judgment was reserved, the right of the respondent, i.e., Phonographic Performance Limited (PPL), for granting license of their works, had been subject matter of adjudication before this Court. In a suit for infringement filed by the respondent herein, i.e., *CS(COMM) 714/2022*, titled as, *Phonographic Performance Limited Versus Azure Hospitality Private Limited & Ors.*, the issue was raised that since the respondent herein was not a registered society, it cannot carry out the business of issuing licenses in respect of sound recording works, since as per Section 33 of the Copyright Act, only a registered copyright society is permitted to carry out the business of issuing such licenses and collect royalties for the same. By judgment dated 3rd March, 2025, learned Single Judge of this Court held that since on account of various assignments, the public performance rights of the sound recording had been assigned in favour of the PPL/respondent herein, the



respondent had the right to issue licenses for its copyright sound recordings.

7. The aforesaid judgment of the learned Single Judge was challenged before the Division Bench of this Court in **FAO(OS) (COMM) 41/2025**, titled as, **Azure Hospitality Private Limited Versus Phonographic Performance Limited**. By judgment dated 15th April, 2025, reported as **2025 SCC OnLine Del 2407**, it was held by the learned Division Bench that respondent herein, i.e., PPL, cannot be permitted to issue or grant licenses for the sound recordings in its repertoire, without registering itself as a copyright society or becoming a member of any registered copyright society. The learned Division Bench further held that the respondent herein is entitled to payment, as per the tariff of Recorded Music Performance Limited (RMPL), a registered copyright society that manages the public performance and radio broadcasting rights of its member companies, particularly, those related to sound recordings. The findings of the learned Division Bench in the aforesaid case of **Azure Hospitality Private Limited (Supra)**, are reproduced as under:

“xxx xxx xxx

23.2 We, in the circumstances, find prima facie substance in Mr. Dayan Krishnan's contention that PPL cannot be permitted to, without registering itself as a copyright society or becoming a member of any registered copyright society, issue or grant licences for the sound recordings in its repertoire at any rate palatable to it. The entire purpose of introducing Section 33A in the Copyright Act would, thereby, stand frustrated. Section 33(1) could plainly be avoided by neither registering oneself as a copyright society, nor becoming a member of any registered copyright society. This would, as Ms. Swathi Sukumar submitted, frustrate not only Section 33, but, in fact, Chapter VII of the Copyright Act itself, in its entirety. The requirement of being a member of a registered copyright society, which is clearly intended by the legislature to be mandatory, would become dispensable.



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24.2 One of the contentions advanced in the written submissions filed by Azure is that, not being a registered copyright society or a member of a registered copyright society, PPL has no enforceable legal right in respect of the sound recordings assigned to it, insofar as their communication to the public by third parties is concerned, as PPL cannot grant any licence for the said purpose in view of the proscription contained in Section 33(1) of the Copyright Act. We have found prima facie merit in this contention. The further issue that would arise would be whether, in such a situation, PPL can maintain the suit at all. We refrain from returning any finding on this contention, as it was not orally argued at the Bar. We, therefore, leave this issue open.

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25.5 As we have held, there is no embargo on PPL licensing the sound recordings assigned to it and forming part of its repertoire, but, for that purpose, PPL would have either to be a registered copyright society or a member of one. PPL is admittedly not a registered copyright society, though it was one at an earlier point of time. It could, however, still licence the subject sound recordings for playing in the public, but in accordance with the terms of the copyright society registration which, presently, vests only with RMPL. If PPL were to be a member of RMPL - we note, from the website of RMPL that it has nearly 700 members - it could grant licences to others, such as Azure, to play the sound recordings in which copyright stands assigned to it, but at the Tariff rates applicable to RMPL as per the copyright society registration granted to it under Section 33(3). We find, from the website of RMPL, that these rates are on a monthly basis, and based on the nature of the establishment where the recordings are to be played, apart from other incidental considerations.

25.6 We are, therefore, of the view that, pending disposal of CS (Comm) 714/2022, Azure would be required to make payment, to PPL, payment for playing the recordings on the basis of the Tariff Rate applicable to RMPL, as if PPL were a member of RMPL. We deem this to be an equitable arrangement as, following on our prima facie findings above, if PPL were to permit the sound recordings in its repertoire to be licenced to others for being communicated to the public, that can only be in terms of the registration granted to RMPL, of which PPL would have to be a member. The licensing would, then, have to be as per the Tariff rates charged by RMPL.

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27. In accordance with our observations *supra*, therefore, IA 16777/2022 would stand disposed of with a **direction to Azure to make payment to PPL as per the Tariff of RMPL, as displayed on its website, and in accordance with the terms thereof, in the event that Azure intends to play any of the sound recordings forming part of PPL's repertoire in any of its outlets. Azure and PPL would both place on record before the learned Single Judge, a three-monthly statement of the payments, if any, so made and received.** The payment would be strictly subject to the outcome of CS (Comm) 714/2022.

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(Emphasis Supplied)

8. The aforesaid judgment of the learned Division Bench has been challenged before the Hon’ble Supreme Court in *Special Leave Petition (C) No. 10977/2025*, in the case titled as *Phonographic Performance Limited Versus Azure Hospitality Private Limited*. By its order 21st April, 2025, the Hon’ble Supreme Court has passed directions staying Paragraph 27 of the judgment passed by the learned Division Bench of this Court, as well as the judgment passed by the learned Single Judge. The order dated 21st April, 2025, passed by the Hon’ble Supreme Court, is as under:-

“Application seeking exemption from filing a certified copy of the impugned order is allowed.

Issue notice, returnable on 21st July, 2025.

The impugned directions in terms of paragraph 27 of the impugned order shall remain stayed. We, however, clarify that notwithstanding this order of stay, the order dated 3rd March, 2025 passed by the learned Single Judge will not operate.

(Emphasis Supplied)

9. Considering the aforesaid development, it is clarified that any directions passed in the present judgment, shall be subject to any directions passed by the Hon’ble Supreme Court in the aforesaid matter that may have bearing on the outcome of the proceedings in the present case.



10. Noting the aforesaid, this Court proceeds to deal with the present case.

11. The issue raised in the present case is regarding grant of a compulsory license in favour of the petitioner with regard to the repertoire of sound recordings in which the respondent/PPL has copyrights, so that the petitioner can communicate the said sound recordings to the public.

12. The statutory provisions regarding compulsory licenses are contained in Chapter VI of the Copyright Act. Section 31 and Rules 6 to 8 of the Copyright Rules, stipulate with regard to compulsory licence in works withheld from public. Section 31 of the Copyright Act, reads as under:

“31. Compulsory licence in works withheld from public.—(1) If at any time during the term of copyright in [any work] which has been published or performed in public, a complaint is made to the [Commercial Court] 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 a [sound recording] the work recorded in such [sound recording], on terms which the complainant considers reasonable;

the [Commercial Court], 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 deemed 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 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 [Commercial Court] may determine; and thereupon the Registrar of Copyrights shall grant the [licence to such person or persons who, in the opinion of the [Commercial Court], is or are qualified to do so] in accordance



with the directions of the [Commercial Court], on payment of such fee, as may be prescribed.”

(Emphasis Supplied)

13. Reading of the aforesaid Section makes it apparent that the said Section clearly provides that refusal to allow republishing, or performance in public by the owner of any copyrighted works, would attract the provisions of compulsory license. Upon an application for compulsory license, the Court shall give a reasonable opportunity of being heard to the owner of the copyright in the work, and after holding inquiry, if the Court is satisfied that the grounds for refusal are not reasonable, direct the Registrar of Copyrights to grant the applicant, a license to republish, perform the work in public, etc. This is subject to payment to the owner of the copyright, such compensation, and other terms and conditions, as the Court may determine.

14. Rules 6 to 8 of the Copyright Rules provide the method and manner, in which, the compensation to the owner, has to be computed.

15. Explaining the concept of compulsory licenses, *Copinger and Skone James on Copyright (19th Edition, 2025, Para 32-02, Pg. 1147, Vol. II)*, has stated as follows:

“32-02 Concept of compulsory licences *Although copyright is a property right, in certain limited circumstances the law permits uses of works without the consent of the copyright owner if the user complies with specified conditions, including the payment of a fee. In such circumstances, the copyright owner is compelled to license the particular use of the work and the licence is referred to as a “compulsory licence” or “licence of right”.* Although the conceptual distinction is sometimes blurred, such licences differ from permitted acts in that payment is required. *The effect of a compulsory licence is not dissimilar to the refusal by a court of injunctive relief or to a statutory right of “equitable remuneration” in that the right owner is left with the possibility of financial compensation for uses of the work rather than control over such uses.* A further useful distinction can be drawn between statutory licences and compulsory licences



properly so called. In the case of a statutory licence the rate is fixed by law, whereas in the case of a compulsory licence the rate is left to be negotiated, but in neither case can use be refused or prevented. Collectively these licences can be referred to as non-voluntary licences.”

(Emphasis Supplied)

16. On the one hand, the concept of compulsory licence recognises right of the owner of a copyright, on the other hand, at the same time, it permits the use of works of the copyright owner by a third party, if specified terms and conditions are fulfilled, including, payment of fees to the owner of the copyright, as per the quantum of compensation or royalties, as determined by the Court.

17. The Hon’ble Supreme Court in the case of *Entertainment Network (India) Limited Versus Super Cassette Industries Limited, (2008) 13 SCC 30*, has delved into the various aspects of compulsory licence. The relevant extracts from the said judgment are reproduced as under:

“xxx xxx xxx

Essential features of the Copyright Act

87. The Act seeks to maintain a balance between the interest of the owner of the copyright in protecting his works on the one hand and the interest of the public to have access to the works on the other.
The extent to which the owner is entitled to protection in regard to his work for which he has obtained copyright and the interest of the public is a matter which would depend upon the statutory provisions.

88. Whereas the Act provides for exclusive rights in favour of owners of the copyright, there are provisions where it has been recognised that public has also substantial interest in the availability of the works. The provisions relating to grant of compulsory licence must be viewed having regard to the aforementioned competing rights wherefor an appropriate balance has to be struck.
For the said purpose, we may notice the broad features of the Act.

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Compulsory licence

96. *The scheme of the Act affirms the freedom to contract as being the primary machinery by which the copyright owner publishes his work through a voluntary licence regime in terms of Section 30. Compulsory licences are an exception to the general freedom of the copyright owner to contract.*

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115. *In response to a query as to whether when an application for compulsory licence is filed any publication thereof is made or not; we are informed that no such rule or practice exists. Apart from the fact that application for grant of compulsory licence in the matter of sound recording may be by different persons; the wide range of it has been noticed by us hereinbefore. It may be for different parts of the country, nay different cities. If a compulsory licence is granted only once covering every single part of the country, the same cannot lead to a conclusion that no other person can approach the Board.*

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Right to property—is the concept applicable

118. *An owner of a copyright indisputably has a right akin to the right to property. It is also a human right. Now, human rights have started gaining a multifaceted approach. Property rights vis-à-vis individuals are also incorporated within the “multiversity” of human rights. As, for example, any claim of adverse possession has to be read in consonance with human rights. The activist approach of the European Court of Human Rights is quite visible from the judgment of *Beaulane Properties Ltd. v. Palmer* [2005 EWHC 817 (Ch)] and *JA Pye (Oxford) Ltd. v. Graham* [(2003) 1 AC 419 : (2002) 3 WLR 221 : (2002) 3 All ER 865 (HL)] .*

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121. *But the right to property is no longer a fundamental right. It will be subject to reasonable restrictions. In terms of Article 300-A of the Constitution, it may be subject to the conditions laid down therein, namely, it may be wholly or in part acquired in public interest and on payment of reasonable compensation.*

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131. *When such a complaint is made, it confers the jurisdiction upon the Board. It may ultimately allow or reject the complaint but it cannot be said that the complaint itself is not maintainable.*



xxx xxx xxx”

(Emphasis Supplied)

18. From the reading of the aforesaid judgment of the Hon’ble Supreme Court in the case of ***Entertainment Network (India) Limited (Supra)***, the following principles in relation to compulsory licenses, can be culled out:

I. The Copyright Act seeks to maintain a balance between the interest of the owner of the copyright in protecting his works on the one hand, and the interest of the public to have access to the works on the other.

II. Though the Copyright Act provides for exclusive rights in favour of owners of the copyright, it recognises that public has also substantial interest in the availability of the works.

III. Compulsory Licences are an exception to the general freedom of the copyright owner to contract.

IV. Merely because certain members of the public have access to the copyrighted works, would not mean that others lose their right to seek compulsory licence.

V. The Right of the owner of the copyright is akin to Right to Property, which is not a Fundamental Right and is subject to reasonable restrictions.

19. On the aspect of what constitutes refusal in the context of Section 31 of the Copyright Act, the Hon’ble Supreme Court in the aforesaid case, ***Entertainment Network (India) Limited (Supra)***, has held as follows:

“xxx xxx xxx

108. The meaning of a word must be attributed to the context in which it is used. For giving a contextual meaning, the text of the statute must be kept in mind. An act of refusal depends upon the fact of each case. Only because an offer is made for negotiation or an offer is made for grant of licence, the same per se may not be sufficient to arrive at a conclusion that the owner of the copyright has not withheld its



work from public. When an offer is made on an unreasonable term or a stand is taken which is otherwise arbitrary, it may amount to a refusal on the part of the owner of a copyright.

109. When the owner of a copyright or the copyright society exercises monopoly in it, then the bargaining power of an owner of a copyright and the proposed licensee may not be same. When an offer is made by an owner of a copyright for grant of licence, the same may not have anything to do with any term or condition which is wholly alien or foreign therefor. An unreasonable demand if acceded to, becomes an unconstitutional (sic unconscionable) contract which for all intent and purport may amount to refusal to allow communication to the public work recorded in sound recording. A de jure offer may not be a de facto offer.

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124. The right to property, therefore, is not dealt with its subject to restrict when a right to property creates a monopoly to which public must have access. Withholding the same from public may amount to unfair trade practice. In our constitutional scheme of statute monopoly is not encouraged. Knowledge must be allowed to be disseminated. An artistic work if made public should be made available subject of course to reasonable terms and grant of reasonable compensation to the public at large.

xxx xxx xxx”

(Emphasis Supplied)

20. Thus, it has unequivocally been laid down that in our constitutional scheme of statute, monopoly is not encouraged and an artistic work, if made public, should be made available subject to reasonable terms. If the terms of the offer to provide copyrighted work, are unreasonable, then it may constitute refusal on part of the owner of copyright.

21. In the present case, the petitioner was organizing a corporate event for 50 persons. As per the website of the respondent, for an event for 1-150 persons, the rate charged by the respondent was ₹ 55,440/-. Since the petitioner was organizing the event only for 50 people, it offered to pay 1/3rd of the licence fee, which was refused by the respondent. Considering the



licence fee demanded by the respondent, it is evident that the licence fee is structured in a manner that whether the audience is 1 or 150, the licence fee is the same. Further, the licence fee is exactly the same whether licensee is required to play one song or a large quantity of songs, and irrespective of the duration of the event.

22. This Court notes the licence fee charged by the respondent, as given in the petition, as follows:

Average Attendance	Licence Fee Per Event In Rs.
0-150	55,440
151-300	66,528
301-450	79,834
451-600	95,800
601-750	1,14,960
751-900	1,37,952
901-1050	1,65,543
Every Additional Pax Over 1050, Rs 110 will be charged on and above tariff for 1050 Pax	

23. The aforesaid licence fee structure by the respondent is in contrast to the licence fee structure followed by RMPL, which is the only statutorily recognised copyright society in India, with regard to sound recording. The RMPL's tariff for various events, as given in the petition, is reproduced as under:



Events									
This RMPL's Tariff is applicable for a planned public or social occasion wherein Music (Sound recordings) are used as Background Score & may or may not be part of main Business. (Which also Includes DJ parties, performance of minus-one tracks, karaoke tracks etc)									
Without Sponsors / Tickets									
Avg.Attendance/Duration	Tier-1 or Metro			Tier-2 Cities			Tier-3 Cities		
	Per Event Fee (In Rs.)			Per Event Fee (In Rs.)			Per Event Fee (In Rs.)		
Avg. Attendance/ Duration	1 hr.	2hr.	Above 2 hr.	1 hr.	2hr.	Above 2 hr.	1 hr.	2hr.	Above 2 hr.
Up to 100	15000	20000	4000/half hr	10000	15000	3500/half hr	7500	12500	2500/half hr
101- 250	25000	30000	5500/half hr	15000	25000	4500/half hr	12500	20000	3500/half hr
251-500	30000	35000	7500/half hr	20000	30000	5500/half hr	17500	25000	4500/half hr
501-1000	35000	40000	9000/half hr	25000	35000	7500/half hr	22500	30000	5500/half hr
Above 1000	40000	45000	10000/half hr	30000	40000	9000/half hr	27500	35000	7000/half hr

24. This Court notes the submission of the petitioner that it is an event organising entity. If the petitioner is required to pay the licence fee for each event that the petitioner organises, as per the tariff rate of the respondent, it will not only place an undue burden on the petitioner, but also on the general public. The licence fee as demanded by the respondent is not commensurate with market standards, as compared to RMPL, which is charging considerably lesser licence fee for their repertoire of songs.

25. This Court rejects the contention of the respondent that for refusal in terms of Section 31(a) of the Copyright Act, there must be a downright refusal. This Court does not agree with the submission on behalf of the respondent that there is no withholding of copyrighted work by the respondent, as the same is available to the public on the tariffs as available on the website of the respondent. This Court cannot ignore the fact that the respondent holds a vast repertoire of sound recordings. Therefore, there is an obligation to charge fair and reasonable licence rates.

26. The respondent has sought to justify its stand on the ground that the term '*reasonable*' occurs only in Section 31(b) of Copyright Act pertaining



to broadcast of copyrighted work or sound recordings. Thus, as per the respondent, it is only in cases of broadcast under Section 31(b) of the Copyright Act that the court can go into the question of reasonable terms. As per the respondent, in cases of Section 31(a) of Copyright Act pertaining to performance in public of the copyrighted work, the role of the Court would only be confined in granting compulsory licence in case there is refusal by the owner of the copyrighted work. Further, as per the respondent's case, the Court cannot go into the issue of reasonableness of the terms of providing copyrighted work while dealing with cases covered under Section 31(a) of the Copyright Act, which includes, allowing the performance in public of the copyrighted work.

27. The aforesaid contentions of the respondent are against the tenor of the principles laid down by the Hon'ble Supreme Court, as noted above, and cannot be accepted. The Hon'ble Supreme Court has categorically laid down that, mere fact that an offer is made for negotiation or an offer is made for grant of licence, the same *per se* may not be sufficient to arrive at a conclusion that the owner of the copyright has not withheld its work from public. Offer to make copyrighted work available on an unreasonable term, would also amount to refusal on the part of owner of a copyright. Thus, if this Court finds that the terms offered by the respondent are not reasonable, this Court is not precluded from adjudicating on the said issue, and can proceed to determine the terms and conditions of licence for the copyrighted work. The Hon'ble Supreme Court has deprecated unfair trade practice and has laid down in categorical terms that monopoly is not encouraged in our constitutional scheme of statute.



28. The respondent cannot be given a free hand to procure any arbitrary and unreasonable licence fees. The respondent has to be held accountable for ensuring that it charges a fair and reasonable licence fee for its repertoire. Accordingly, this Court is within its authority to direct compulsory license to check an abuse of monopoly.

29. The rights of the public to republish, perform and have access to the published works on fair and equitable terms, cannot be denied. The respondent cannot be allowed to take advantage of its market leadership in having ownership of repertoire of songs in order to create an arbitrary licensing regime, which cannot be permitted.

30. Rule 8 of the Copyright Rules provides the manner of determining compensation or royalties in cases of compulsory licences. The said Rule clearly stipulates that the prevailing standards of royalties with regard to publication of works or performance of the work in public can be taken into consideration at the time of determining the quantum of compensation or royalty.

31. The concept of availability of copyrighted works at fair and reasonable rates of licence, wherever such work is sought to be licensed, is enjoined in the Copyright Act and Rules. At this stage, reference may be made to Section 33A of the Copyright Act, which provides that if any person is aggrieved by the tariff scheme published, may appeal to the Commercial Court, which after holding such enquiry as it may consider necessary, make such orders as may be required to remove any unreasonable element, anomaly or inconsistency therein. Section 33A of the Copyright Act, reads as under:



“33-A. Tariff scheme by copyright societies.—(1) Every copyright society shall publish its tariff scheme in such manner as may be prescribed.

(2) Any person who is aggrieved by the tariff scheme may appeal to the [Commercial Court] and the Board may, if satisfied after holding such inquiry as it may consider necessary, make such orders as may be required to remove any unreasonable element, anomaly or inconsistency therein:

Provided that the aggrieved person shall pay to the copyright society any fee as may be prescribed that has fallen due before making an appeal to the [Commercial Court] and shall continue to pay such fee until the appeal is decided, and the Board shall not issue any order staying the collection of such fee pending disposal of the appeal:

Provided further that the [Commercial Court] may after hearing the parties fix an interim tariff and direct the aggrieved parties to make the payment accordingly pending disposal of the appeal.”

(Emphasis Supplied)

32. A Division Bench of this Court in the case of **Anand Bhushan and Others Versus Union of India, 2018 SCC OnLine Del 9316**, has held that while examining the question whether the tariff was unreasonable, the prevailing standards of royalties to such commercial exploitation of works, can be examined. Thus, it has been held as follows:

“xxx xxx xxx

38. As discussed earlier, the Board under sub-section (2) to Section 33A of the Act while deciding the appeal of any person, is entitled to conduct enquiry as may be necessary and required, thereafter it can pass orders so required to remove any unreasonable element, anomaly or inconsistency therein. We have already interpreted “unreasonable element”, where we have held that it is not to be read as meaning the same as “anomaly” and “inconsistency.” Sub-rule (5) to Rule 57 ensures that the Board while examining the question whether the tariff was unreasonable can examine the prevailing standards of royalties to such commercial exploitation of works. This, we do not think, is an unreasonable or illegal stipulation which the Board must take into consideration while deciding the appeal. If



an appeal is filed, the Board can issue general directions on whether the tariff is unreasonable and suffers inherent inconsistency.

xxx xxx xxx”

(Emphasis Supplied)

33. Thus, on reasonable terms and compensation to the owner of the copyrighted work, the availability of copyrighted work to the public at large, is vital. This objective lies at the core of the statutory framework related to the Copyright Act and Rules. The respondent’s whole business model is based upon giving out licences to restaurants, events, parties, etc. Therefore, to completely oust the said parties from seeking compulsory licence, if such parties are aggrieved by the tariff of the respondent, would make the provision of compulsory licensing otiose. An owner of copyrighted work, when entering into the realm of ‘business’ in issuing licences for its copyrighted work, which includes, repertoire of songs, as in the present case, would be governed by the statutory regulations in terms of the Copyright Act and Rules.

34. Section 31(a) of the Copyright Act highlights the terms, ‘work’, ‘publish’ and ‘performance in public’. The term ‘work’ is defined in Section 2(y) of the Copyright Act, which also includes, sound recording. Section 2(y) of the Copyright Act, reads as under:

“2. Interpretation.—In this Act, unless the context otherwise requires,—

xxx xxx xxx

(y) **“work” means any of the following works, namely,—**

(i) a literary, dramatic, musical or artistic work;

(ii) a cinematograph film;

*(iii) **a [sound recording];**”*

(Emphasis Supplied)



35. In relation to the term ‘publish’, Section 3 of the Copyright Act defines the meaning of publication, to mean a work which is available to the public, including, communicating the work to the public. Section 3 of the Copyright Act reads as under:

*“3. Meaning of publication.—For the purposes of this Act, **“publication” means making a work available to the public** by issue of copies or **by communicating the work to the public.**”*

(Emphasis Supplied)

36. In relation to ‘performance in public’, Section 2(ff) of the Copyright Act defines ‘communication to the public’ to mean making any work or performance available for being seen or heard or otherwise enjoyed by the public, in the following manner:

“2. Interpretation.—In this Act, unless the context otherwise requires,—

xxx xxx xxx

*(ff) **“communication to the public” means making any work or performance available for being seen or heard or otherwise enjoyed by the public directly** or by any means of display or diffusion other than by issuing physical copies of it, whether simultaneously or at places and times chosen individually, regardless of whether any member of the public actually sees, hears or otherwise enjoys the work or performance so made available.”*

(Emphasis Supplied)

37. A conjoined reading of the aforesaid Sections of the Copyright Act, clearly brings forth that ‘work’ includes ‘sound recording’, and that ‘publication’ of ‘work’ includes communicating the work, i.e., the sound recording, to the public. ‘Communication to the public’ includes performance in public. Thus, it is evident that ‘performance in public’ of the work, would also include sound recording. The performance in public of a sound recording, when refused, which includes raising unreasonable and



arbitrary demand towards tariff/licence fee, would attract the rigors of Section 31(a) of the Copyright Act. Therefore, the contention of the respondent that the right to '*perform the work in public*', is limited to literary, dramatic and musical works, is rejected.

38. The judgment in the case of ***Pune Video Theaters Association Versus Cinemaster, 2001 SCC OnLine CB 1***, relied upon by the respondent, is clearly distinguishable and is not applicable to the facts and circumstances of the present case. The said case dealt with association of video parlours who were engaged in the business of exhibiting cinematographic films recorded on videotapes to the public, on payment of consideration for exhibit of movies privately for home viewing. In the said case, the Copyright Board had recorded that the films were being exhibited daily, and the petitioner therein had not been able to name a single film which had been withheld from the public. Further, the finding in the said judgment was in the peculiar facts and circumstances of the said case. As discussed in the preceding paragraphs, the Hon'ble Supreme Court has categorically laid down that offer to make copyrighted work available on an unreasonable term, would also amount to refusal on the part of owner of a copyright. Therefore, the aforesaid judgment, i.e., ***Pune Video Theaters Association (Supra)***, does not come to the aid of the respondent, in any manner.

39. Considering the detailed discussion hereinabove, the prayer of the petitioner for a compulsory licence on fair and reasonable tariff, is considered meritorious.

40. Accordingly, in order to determine the compensation, terms, and conditions of licence, the parties are directed to file their Affidavit of



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Evidence. Let the needful be done within a period of eight weeks from today.

41. List for directions before the Roster Bench on 29th May, 2025.

**(MINI PUSHKARNA)
JUDGE**

MAY 13, 2025/ak/au