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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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**CASE COMMENT: THE CHANCELLOR, MASTERS &
SCHOLARS OF UNIVERSITY OF OXFORD & ORS v/s
RAMESHWARI PHOTOCOPY SERVICES & ORS
(2016) 160 DRJ (SN) 678**

AUTHORED BY - SOUMI LAHIRI

BA. LLB, 3rd Year

University of Petroleum and Energy Studies

INTRODUCTION

Briefly, this case is about a judgement which has permitted photocopying of copyrighted material for the purpose of the proliferation of education by photocopying of books and selling them as 'Course pack', for the benefit of the Delhi University students. In this Delhi High Court case, Rameshwari Photocopy and Services has been alleged to have infringed copyright by the plaintiff and was asked for a compensation of Rs.60,01200 and Rs.65000 for court fees by the big international publishing houses such as Oxford University Press, Cambridge University Press United Kingdom, Cambridge University Press India Pvt. Ltd., Taylor & Francis Group, United Kingdom and Taylor & Francis Books India Pvt. Ltd. IRRO¹ acted as proper parties in this case as this act of selling copyrighted material was made without their sanctions. During the trial, a search and seizure were attempted at Rameshwari's photocopy shop at the premises of the University and it was found that 8.8% copyrighted material was sold in the course pack and he was also selling whole copies of copyrighted books. The contention raised from the side defendant by the APEAK and SPEAK² was that the photocopies made were solely for the purpose of education, made with the permission of the faculty. Therefore, they pleaded protection under Section 52(1)(a) which allows fair use and dealing of copyrighted materials like literary, dramatic, musical or artistic work. A comparison with the USA has also been drawn in the arguments and the case of **Google Search Book**³ has been cited where digitalisation was taken under the ambit of fair use as it was contended that no search function will be possible without a digitalised copy.

¹ Indian Reprographic Rights Organisation

² Association of Students for Equitable Access to Knowledge (ASEAK) and Society for Promoting Educational Access and Knowledge (SPEAK)

³ Authors Guild, Inc. v. Google, Inc. 721 F.3d 132

The case was further taken to the Delhi High Court where the decision of the trial court was upheld. Afterwards, a group of students and ex-students of Oxford University requested the authority to take back the case from their end as the judgement was for a good cause, so, after five years the case was taken back and a special leave petition (SLP) was rejected which was raised by other proper parties to the case.

Prima facie, looks like an ideal judgement but when it comes to protocols and guidelines, the judgement has remained nothing but silent. Proper implementation without exploitation does not seem like an option in the paradigm created by the judgement. The exception has been used as a controlling norm, and it deprives certain groups of authors from benefitting from their own right holder ships. In the place of providing a structure of subsidy for those who primarily make content for academicians, the judgement put the onus on the publishing houses for the proliferation of education without even looking at the bigger picture and realising the amount of damage it will cause in the near future. This gives rise to the necessity of a standardised meaning and objective of fair use.

BACKGROUND

The term fair use has been given a very liberal interpretation in this case which has resulted in a rise of different complicated questions such as the economic drawback of the publishing houses and authors who create content solely for the purpose of academic use, and the anonymity regarding the regulations. The court has absolutely neglected the outlook of international treaties and organisations such as TRIPS⁴, Bernes Convention⁵, WIPO⁶ etc. According to TRIPS Article 13 – “members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.” Here it has been made extremely clear that limitations or exceptions must be confined only for certain special cases without exploiting their works and unreasonably prejudice their ownership over their intellectual property. In this case, we will be able to see a group of publishers and authors getting highly exploited which is in conflict with the international aspect. To put it in perspective we could take up an illustration of ‘A’ as a famous economist who authors books which are solely written for the purpose of academic use, now the passing of the judgement

⁴ Trade-Related Aspects of Intellectual Property Rights

⁵ Berne Convention for the Protection of Literary and Artistic Works (Paris Text 1971)

⁶ World Intellectual Property Organization

will not really encourage the university library to buy in more copies to make it more accessible to the students but it will be exploited via photocopying. This will demotivate such authors and will affect the right holder heavily, therefore, disrupting the equilibrium of the stakeholders namely the author and students. Considering the huge youth base and the chances of corruption in the absence of regulations, the publishing houses will be facing huge losses. In this case, the court attempted to take a stance in proliferating education but ended up hampering the rights of the right holders and publishing houses which absolutely contradicts the whole point of copyrighted works.

Article 9⁷ of the Bernes Convention talks about the exclusive right of authorization by the owner or by the legislation in special cases to reproduce works in any manner or form. In this case, the court has imposed the burden of the proliferation of education without seeking any permission or even considering the distress of certain right holders and unilaterally propagated the idea of a social agenda without considering the best interests of the right holders.

There was a similar case on the same forefront of **Cambridge University Press v. Becker**⁸ decided on 11th May 2012, which decided that Universities do not require a license to photocopy below the threshold value of 10% in the District Court of United States for the northern district of Georgia. The difference in between these cases is the lack of mechanisation in the prior instance. The Delhi Court failed to recognise the detriments led via the allowance of unlimited photocopied works summed with the economic backlash on the publishing houses and the authors.

In the case of **CCH Canadian Ltd. vs. Law Society of Upper Canada**⁹, the Law Society of Upper Canada (LSUC) is a research library offering custom and self-photocopying services. CCH Canadians sued them for 11 specific works as they were infringing copyrights. So, here one of the issues raised was whether the dealings made by the law society with the works of the publishers covered under fair dealings under Sec 29 of Canada's Copyright Act of 1985¹⁰.

⁷ Article 9: (1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form. (2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author. (3) Any sound or visual recording shall be considered as a reproduction for the purposes of this Convention.

⁸ Cambridge University Press v. Becker, 863 F.Supp.2d 1190 (N.D.Ga., 2012)

⁹ CCH Canadian Ltd. v Law Society of Upper Canada, [2004] 1 SCR 339

¹⁰ Sec 29 of Copyright Act (R.S.C., 1985, c. C-42) Fair dealing for the purpose of research, private study,

In its advance, the court prescribed a two-step test to help understand what falls under the ambit of fair dealings and what does not. In order to show that a dealing was fair under s.29 of the Copyright Act the defendant must prove a) that the dealing was for purpose of either research or private study and b) the dealing was fair. A series of factors were also to be considered including a) the purpose of dealing (research, private study, criticism, review, news reporting), b) characteristics of dealing, c) amount of dealing, d) alternatives, e) nature of the work and f) effect of dealing on the work on the market of the copyright owner. Here the Supreme Court of Canada had provided tests to determine the fair use doctrine keeping in mind the balance between the right holders as well as the other stakeholders such as researchers in this case.

ANALYSIS

The decision of the court had taken up a utilitarian approach propounded by John Stuart Mill which talks about greater happiness for the greater number of people; neglecting the incentive system on which it actually runs. The utilitarian approach of IPR believes in the protection of innovations or any new creation to encourage people to disclose their innovations openly without any fear of appropriation. The court failed to reiterate on the incentive system while passing the judgement, and blatantly focussed on the upheaval of the social agenda of spreading and making education more accessible.

In regards to the present case, we can identify that the other two pertinent theories of IPR have been highly neglected. The labour and the personality theory which play a big role in giving shape and establishing the concepts in today's copyright laws. Labour theory by John Locke talks about providing the author or the inventor with the fruits of his or her labour. This theory reasons why the right holder must get exclusive rights over the intellectual property by establishing simple concepts like fairness and justice. Next, coming to Hegel's personality theory, it talks about any work or invention born out of their personality would belong solely to them. This again glorifies the exclusive rights of the right holder; it expresses how a piece of art or invention is a manifestation of the creator's personality. It identifies the connection between the creator and the creation and justifies why it is required to recognise the right of the right holder.

education, parody or satire does not infringe copyright.

However, this case defies both the labour as well as the personality theory as the author is deprived of his fruits of labour as well as is barely getting recognition and absolute right holder ship as most of the rights have been stripped off in the name of fair use. Fair use in its true sense is equating both sides and not just stripping off the rights of the beholder. Even after considering exceptions as stated in this case, certain regulations or omissions must have been made while deciding such a crucial case. These kinds of judgements can affect the stand of the authors who have generated any form of intellectual work with their own hard labour and will even discourage them from producing such works further as they are not getting the recognition they deserve and also might feel less protected even after implementation of the copyright laws. This judgement weakens the whole standpoint of copyright laws in the name of fair use. Alternatively, the court could have at least provided a proper guideline considering both the stakeholder that is the students as well as the authors or could have limited the ambit of photocopying the artefacts. A more analysed judgement with relation to the international laws in place as well as looking into the other civil law country advancements, a better, sustainable and more equitable stand could have made a revolutionising judgement. The whole concept of propagating education looks highly superficial and flawed as this judgement has firstly, deprived the actual owners from benefitting of their works and secondly has restricted the benefit of the judgement to Delhi. As a student, the relaxation might seem highly beneficial as it curbs the high rates of course books but at the same time deprive the actual owner from benefitting of it. We must understand the prime and the most primary concern is to protect the rights of the copyright holder before propagating any socialist agendas. We cannot overlook the rights of the creator because it will demotivate as well as make them feel insecure and lessen the number of productions of works in our paradigm.

CONCLUSION

This case concluded with a withdrawal of the case by the plaintiffs in honour of the requests made to the plaintiffs by Oxford students and alumni, but this case could barely make a difference in the status quo as the judgement remained restricted to Delhi. Due to lack of proper scheming for the authors who solely write books for academic purposes, guidelines and limitations, this couldn't become a revolutionary judgement. But this was definitely a positive step towards the creation of affordable and easier access to education and it has been appreciated by several countries such as Nigeria, South Africa¹¹, etc. Though this case lacked

¹¹ Case Comment: Delhi University Photocopy Case from Nigerian and South African Contexts Desmond Oriakhogba Journal of Intellectual Property Laws (2018) Issue III, 21 -30.

proper mechanisation, it sure had the potential of making a difference and it definitely did make a jurisprudential shift in the field of IPR.

OTHER REFERENCES:

1. <https://spicyip.com/2016/10/a-critique-of-du-photocopy-judgment-i.html> - A Critique of DU Photocopy Judgment -I
2. <https://spicyip.com/2021/06/a-guide-on-fair-use-cases-in-india-part-ii.html> - A Guide on Fair Use Cases in India – Part II
3. <https://spicyip.com/resources-links/du-photocopy-case#:~:text=In%20a%20landmark%20judgment%2C%20the,by%20educational%20institutions%20does%20not> - The Chancellor, Masters & Scholars of the University of Oxford & Ors. v. Rameshwari Photocopy Services & Ors. [DU Photocopying Case]
4. Chadha, V. (2021). Analysing the “education exception” clause in copyright law with special reference to Delhi University photocopy case. NTUT Journal Of Intellectual Property Law and Management, 10(1), 1-18

