

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (CIVIL) NO.11901 OF 2015

(PUBLIC INTEREST LITIGATION)

Public Resource Organization, Inc & Others .. Petitioners

versus

Union of India & Another .. Respondents

L.D.O.H : 26.07.2016

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I N D E X

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NEW DELHI

DATED :28.07.2016

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (CIVIL) NO. 11901 OF 2015

(PUBLIC INTEREST LITIGATION)

**In the matter of :**

Public Resource Organization, Inc. & Others .. Petitioners

versus

Union of India & Another .. Respondents

**COUNTER AFFIDAVIT ON BEHALF OF BUREAU OF  
INDIAN STANDARDS/ RESPONDENT NO. 2, IN  
OPPOSITION TO THE ABOVE WRIT PETITION**



I, Vijay Nitnaware son of Shri Balkrishna, aged 53  
years, C/o Bureau of Indian Standards, Manak Bhawan, 9 Bahadur  
Shah Zafar Marg, New Delhi 100 002, do hereby solemnly affirm  
and state as under :

01. I am employed as Scientist-'E' with Bureau of Indian  
Standards which is arrayed as Respondent No. 2 in the present  
petition. I am presently posted at its headquarters at Manak Bhawan,  
9 Bahadur Shah Zafar Marg, New Delhi 110002. I am conversant  
with the facts of the present case based on the records maintained by  
the Bureau, and am competent to swear this affidavit.

**PRELIMINARY SUBMISSIONS:**

01. The Bureau of Indian Standards (hereinafter referred to as 'Respondent No.2' or 'the Bureau') is a body corporate constituted under the Bureau of Indian Standards Act, 1986 (hereinafter referred to as the 'BIS Act') having its headquarters at Manak Bhawan, 9 Bahadur Shah Zafar Marg, New Delhi 110002. The Bureau is empowered under the BIS Act, 1986 to formulate and establish Indian Standards. As per provisions of the BIS Act, and the Rules and Regulations framed thereunder, the Bureau performs such functions and exercises such powers as entrusted to it under the BIS Act. The Bureau is responsible for harmonious development of the activities of standardization, marking and quality certification of goods and for matters connected therewith or incidental thereto.

02. As per the Section 10 of the BIS Act, the Bureau is given certain powers and functions, *inter alia*, to establish, publish and promote in such manner as may be prescribed, the Indian Standards, in relation to any article or process; to establish, maintain and recognize laboratories for the purposes of standardization and quality control and for such other purposes as may be prescribed; to specify a Standard Mark to be called the BIS Certification Mark which shall be of such design and contain such particulars as may be prescribed to represent a particular Indian Standard; to research for formulation of Indian Standards etc.

03. For formulation of Indian Standards, Bureau functions through the Technical Committee structure comprising of Division Councils, Sectional Committees, Sub-committees and Panels. So far since the establishment of the Bureau, it has through 14 Division Councils and 347 technical committees developed 18,732 Indian Standards, which cover various Standards (specifications), methods of test, codes of practice, guidelines, recommendations, terminology, dimensions, symbols etc. It is thus submitted that the Indian Standards formulated and developed by the Bureau bear weight of intellectual work and effort by the Bureau.

04. Since the Bureau is sole and absolute owner of the Indian Standards having copyrights over the said Indian Standards as per provisions of the Copyrights Act, 1957, as such no person is entitled to reproduce the Indian Standards or extracts thereof without specific permission in writing from the Bureau in that regard, and violation of the same entails civil as well as criminal consequences as per the provisions of the BIS Act and the Indian Copyright Act, 1957. Copyright in the Indian Standards is the exclusive property of the Bureau, hence the Bureau alone is entitled to publish the Indian Standards or to permit anyone to do so on such terms and conditions including payment of royalty as Bureau may decide.

05. The Bureau has been following guidelines circulated in the year 1999 for granting copyrights exploitation rights to third parties for ISO Standards in books. The Executive Committee of the

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Bureau is entrusted with management and control of the Bureau under the Act, and the Executive Committee formulated guidelines for grant of permission to reproduce the Indian Standards, based on ISO guidelines, subject to payment of royalty as fixed by the Bureau on receipt of application for reproduction of the Indian Standards, or extracts thereof, and these guidelines are being followed by the concerned department and offices of the Bureau.

06. Similarly the Bureau is also following policy circulated in the year 2012 for the distribution of ISO publications and the protection of ISO's copyright-ISO POCSA 2012 specifying guiding principles in respect of distribution of ISO publications, protecting ISO intellectual property, copyright ownership and rights, reproduction of ISO publications, metadata and other works, distributing and selling ISO publications, metadata and other works, etc.

07. Section 37 of the BIS Act empowers the Central Government to make rules for carrying out the purposes of the Act, which are required to be published by notification in the Official Gazette, in exercise of which, the Central Government has made the Bureau of Indian Standards Rules, 1987 (hereinafter referred to as 'the BIS Rules') which are in force upon publication in the Official Gazette since 01.04.1987, whereas Section 38 of the BIS Act empowers the Executive Committee, with previous approval of the Central Government, to make regulations by notification in the

Official Gazette for the purposes of the BIS Act and upon exercising the said power the Executive Committee formulated the Bureau of Indian Standards (Certification) Regulations, 1988 (hereinafter 'the BIS Regulations') which are in force since 06.01.1988.

08. Rule 7 of the BIS Rules provides for establishment of the Indian Standards, and any revisions and amendments therein shall be notified in the Official Gazette. Thereafter the Indian Standards are published and made available for sale. It also provides that pricing of the same shall be at the discretion of the Director General of the Bureau in accordance with the policy directives of the Executive Committee. The Bureau is empowered to act in such manner as prescribed under the BIS Act and the BIS Rules framed thereunder, and the sale of the Indian Standards by the Bureau at a price is authorized under the BIS Act and the BIS Rules.

09. The Bureau, being the centre of excellence in bringing about qualitative changes in its functioning and relationship with different stakeholders, having more than 500 qualified technical and scientific personnel and more than 25000 experts voluntarily associated with the standardization activity, is making strenuous efforts in formulation of the Indian Standards. The Indian Standards formulated by the Bureau are not pure form information, rather they are prepared and developed by the Bureau in a structured manner by deploying huge intellectual and technical manpower. Thus, the Indian Standards cannot be used by any unauthorized person or body for any

purposes as the same will be denial of the due consideration to the immense efforts of the Bureau.

10. The Bureau as per Rule 7(8) of the BIS Rules makes available the formulated standards for sale at reasonable price on 'no profit-no loss' basis in soft and hard copies, wherein the soft copy can be purchased on lease for one year initially, which may be later on renewed further on yearly basis. The price of the Indian Standards as formulated by the Bureau has been fixed reasonably and not for the purpose of making profit or deriving benefit out of it. Since establishment of Bureau its sole purpose is formulation of the Indian Standards, and it is to derive its rights and duties from the BIS Act, the BIS Rules and the BIS Regulations wherein the Bureau is well authorized under Rule 7(9) of the BIS Rules to fix price of Indian standards for sale.

11. It is submitted that Shri Carl Malamud, stated to be the president of Petitioner No.1, vide sale order dated 11.04.2013 purchased on lease for 1 year the Indian Standards of Water Resources Department division with an update frequency of once in 2 months for STANDALONE user(s) wherein the user limit was shown as '1' person with an expiry date of 27.06.2014. Later on the same Standards were updated 5 times as per the sale conditions on 16.01.2013, 11.01.0.2013, 16.12.2013, 24.02.2014 and 21.04.2014 after payment of due cost.

12. Further vide another sale order dated 04.06.2013, Shri Carl Malamud had purchased on lease for 1 year the other Indian Standards of other divisions *inter alia* Petroleum, Coal & Related Products Department, Chemical Department, Civil Engineering Department, Electronics & Telecom Department, Electrotechnical Department, Food & Agricultural Department, Management & Systems Department, Mechanical Engineering Department, Medical Equipment and Hospital Planning Department, Metallurgical & Engineering Department, Textiles Department, Transport Engineering Department, Water Resources Department, and PGD for STANDALONE user(s) wherein again the user limit was '1', the same were later on updated on 17.09.2013, 04.11.2013, 28.01.2014, 26.03.2014, and 20.06.2014 after due payment for the same as per the conditions of sale order.

13. The Indian Standards purchased by Shri Carl Malamud were solely for the purpose of personal use as has been conveyed to the Bureau, even for that specific purpose the Bureau had put water mark of the name and email id of the purchaser on the Standards purchased in soft copy.

14. The Bureau on 16.04.2014 presented a performa invoice/ quotation to Shri Carl Malamud for renewal of the subscription of the soft copies of the Indian standards, as the lease period of the same was scheduled to expire on 27.06.2014, forwarding a copy of terms and conditions of the subscription along

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with it wherein the Bureau explicitly confirmed that the said annual lease of the Indian Standards is for STANDALONE user(s) meaning only the person to whom the subscription has been authorized or who has purchased the Standards could only exploit the same to the extent of personal use and not beyond.

15. Vide email/ letter dated 25.06.2014, Shri Carl Malamud approached the Bureau, and made request to renew the subscription of the Standards earlier purchased on lease by him with an option of 1 update every 6 months, and for the very first time he informed the Bureau that he was making aforesaid Indian Standards available on internet through his website <<https://law.resource.org/>>. Shri Carl Malamud not only published the Indian standards on its website but also converted and modified them as per his on whims and fancies for the purposes of putting them on the internet, and admitted to have converted and made available a total number of 192 Standards on internet, which is clearly not only violation of conditions of the sale of the Standards but also infringement of the copyright of the Bureau.

16. Upon knowledge of the above activities of Shri Carl Malamud, the Bureau vide email dated 01.08.2014, in response to his email/ letter dated 25.06.2014, objected to posting of '192 Standards/ publications of BIS' and requested him to remove all documents hosted at his website within a week otherwise the Bureau would be initiating legal action as publishing the Indian Standards in such

manner was not only against the terms and conditions of the purchase of DVD (Clause no. 8 – copying, duplicating of soft copy of standard is prohibited and is covered under the Copyright Act) but also against the copyright policy of the Bureau.

17.           Thereafter, Shri Carl Malamud vide email/ letter dated 02.08.2014 responded to the Bureau claiming in a heroic manner that he had posted 19,200 Indian Standards on his website instead of 192 Indian Standards, purportedly “to promote the timely dissemination of this information in an accurate manner to the public”. Shri Carl Malamud tried to justify his actions for publishing the Indian Standards on his website under the RTI Act and the ruling of the hon’ble Supreme Court of India in the case of SP Gupta v Union of India: AIR 1982 SC 149.

18.           In his letter dated 02.08.2014 Shri Carl Malamud further attempted to project the Indian Standards as edicts of the Government which according to him were incorporated into numerous statutes and regulatory acts of the Government of India, and which were relied upon in numerous opinions of the courts. He contended that edicts of the Government of India are rules that define rights and obligations of citizens, so it was important to know what they say, and stated that we all must know the law in a principle that goes far back in the history of India. He also contended that it is well recognized all over the world that the edicts of Government must be

available for people to read and speak, for laws are owned by the people in any democratic society.

19. Shri Carl Malamud further contended in his letter dated 02.08.2014 that the Indian Standards are some of the most important documents that the Government of India publishes. The excellent works published by the Bureau of Indian Standards on behalf of the Government codifies technical knowledge across a wide range of important fields. He also contended that Indian Standards are an essential store of knowledge that should be available to local and State Government workers, students and teachers in regional colleges, union officials and factory workers, farmers and food preparers, and many others. Finally he contended that the Bureau cannot put a price on this knowledge.

20. Shri Carl Malamud also made a representation by way of a petition before Shri Ram Vilas Paswan of the Ministry of Consumer Affairs, Food & Public Distribution on 25.10.2014 wherein he requested that the Indian Standards should be made available free of cost to the members of public and trade and the Bureau should be restrained from forbidding the posting of Indian Standards by him on his website. Shri Carl Malamud in his petition to the Ministry of Consumer Affairs, Food & Public Distribution presented baseless and frivolous grounds in support of his petition to make Indian Standards available free of cost.

21. Ministry of Consumer Affairs / Respondent No. 1 forwarded a copy of the said petition to the Bureau for its comments. The Bureau accordingly furnished its comments to Respondent No.1. Thereafter, Respondent No.1 vide letter dated 08.06.2015 in response to the petition of Shri Carl Malamud, reiterated the stand of the Bureau to the effect that (i) as per Clause 7(9) of the BIS Rules, 1987 all BIS standards are priced publications and in line with the policy of other international standard bodies like ISO, IEC, BSI, ASTM etc. Standards are priced so that they are valued and to incur the cost on the development of Standards and therefore posting of the Standards cannot be considered within permissible actions, (ii) Shri Carl Malamud, and his firm M/s Public.resources.org has violated the terms and condition for leasing of DVD containing the Indian Standards which also included copyright policy so the Bureau is not bound to renew its subscription on DVD, (iii) the Bureau is selling Standards in PDF form, and hard copies of these Standards are also available through registered BIS office and from Registered Book Sellers, and (iv) the Bureau is already publishing its Standards on its website at wide circulation stage of Standards development for comments. Comments on the Standards can be offered even after publishing.

22. Aggrieved by the rejection of the petition submitted before Respondent No.1, Shri Carl Malamud, had filed the present writ petition under the name of its organization and two other petitioners as stated in paras 5c and 5d of the present writ petition

respectively. It is submitted that the writ petition does not at all qualify under the public interest litigation, much less under the provisions of Article 226 of the Constitution of India, and is a gross abuse of the process of this hon'ble Court. Hence the writ petition is liable to be dismissed forthwith.

#### **PRELIMINARY OBJECTIONS:**

01. It is submitted at the outset that the present writ petition filed by the Petitioners seeking issuance of (a) a writ of mandamus by way of direction to the Bureau to make available all Indian Standards free of cost or at such rates as this hon'ble Court may deem fit and proper, (b) a writ of prohibition, restraining the Bureau from charging alleged exorbitant fees on any future Indian Standards, and (c) *ad interim* relief as per prayer (b) during the pendency of the present writ petition, is a gross abuse of the process of this hon'ble Court under the garb of public interest litigation which is not at all maintainable under the provisions of Article 226 of the Constitution of India, and is liable to be dismissed forthwith.

02. As already stated above, the Bureau is a body corporate constituted and empowered under the BIS Act, 1986 to formulate and establish Indian Standards. The Bureau performs all such functions and activities incidental thereto, including publication and pricing of the Indian Standards, as per the provisions of the BIS Act, the BIS Rules and the BIS Regulations. It is submitted that Rule

7 of the BIS Rules deals with Establishment, Publication and Promotion of Indian Standards, and sub rules 8 and 9 of Rule 7 of the BIS Rules empower the Bureau for publication of the Indian Standards formulated and established by it and pricing thereof, which are reproduced as under:

“ 7(8) Publication –

The Indian Standards established by the Bureau, their revisions and amendments shall be published and copies thereof, in any form as may be determined by the Bureau, shall be made available for sale.

7(9) Pricing of Indian Standards and other Publications –

The prices of Indian Standards and other publications shall be fixed by the Director General according to the policy directives of the Executive Committee and may be reviewed periodically. ”

03. Since the functions and activities of the Bureau in respect of publication and pricing of the Indian Standards, which are under challenge in the present writ petition before this hon’ble Court,

are governed under the provisions of the aforesaid BIS Rules, and the Petitioners had not questioned or challenged the legality or validity of the said Rules in the present writ petition, the contentions of the Petitioners with regard to the publication and pricing of the Indian Standards by the Bureau are liable to be rejected, and consequently the writ petition itself is liable to be dismissed forthwith.

04. It is submitted that Chapter IV of the Copyright Act, 1957 deals with the ownership of copyright and the rights of the owner of a copyright in certain works. Section 17 of the Copyright Act, 1957 deals with as to who would be the first owner of copyright of a work. Since the Indian Standards are established and formulated under the aegis of the Bureau, Clause (dd) of Section 17 of the Indian Copy Right Act, 1957 will apply with full force with regard to the ownership of the Indian Standards with the Bureau, which is reproduced as under:

“ 17. First owner of copyright.—

Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:

Provided that-

xxx

xxx

xxx

[(dd) in the case of a work made or first published by or under the direction or control of any public undertaking, such public undertaking shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.]

Explanation.—

For the purposes of this clause and section 28A, "public undertaking" means—

- (i) an undertaking owned or controlled by Government; or
- (ii) a Government company as defined in section 617 of the Companies Act, 1956; or
- (iii) a body corporate established by or under any Central, Provincial or State Act;]

05. Since the Bureau is a body corporate established by and under the Central Act, i.e., the BIS Act, it is a public undertaking within the meaning and for the purpose of Clause (dd) of Section 17



of the Copyright Act, 1957. Further, as per Clause (dd) of Section 17 of the Copyright Act, 1957, in case of a work made or first published by or under the direction or control of any public undertaking, such public undertaking shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein. Therefore the Bureau has the first ownership of the copyright in the Indian Standards which are established and formulated solely under the direction and control of the Bureau. As the first owner of the Indian Standards in terms of the provisions of the Copyright Act, 1957, the Bureau is well within its rights for publications and pricing of the Indian Standards which cannot be challenged by the Petitioners, particularly in the present so-called public interest litigation. Hence, the writ petition is liable to be dismissed on this ground alone.

06. It is submitted that Shri Carl Malamud, who is stated to be the president of Petitioner No.1, vide sale order dated 11.04.2013 had purchased the Indian Standards of Water Resources Department division. Further vide another sale order dated 04.06.2013, Shri Carl Malamud had purchased the Indian Standards of other divisions. These Indian Standards were purchased by him on lease for 1 year for STANDALONE user(s) wherein the user limit was '1', and the same were solely for the purpose of personal use as has been conveyed to the Bureau, and for that specific purpose the Bureau had put water mark of the name and email id of the purchaser on the Indian Standards purchased in soft copies i.e. DVDs. The purchase of these Indian Standards on DVDs was subject to terms

and conditions of their usage, including Clause No.8 which specifically provided that copying, duplicating of soft copies of Indian Standards was prohibited, and was covered under the Indian Copyright Act, 1957.

07. Since the aforesaid Indian Standards were purchased by Shri Carl Malamud in soft copies on lease for 1 year for STANDALONE user(s) wherein the user limit was '1', which were solely for the purpose of personal use or to be used by only '1' user, and purchase of these Indian Standards on soft copies was subject to terms and conditions attached thereto which also included Clause No.8 prohibiting thereby copying, duplicating of soft copies of Indian Standards, and stating that the same were covered under the Indian Copyright Act, 1957, the action of Shri Carl Malamud for publishing the same on his website was clearly in violation of the terms and conditions attached to the sale of the Indian Standards as well as under the provisions of the Indian Copyright Act, 1957. The present writ petition under the garb of public interest litigation is merely a desperate attempt to cover up illegal actions and activities of Shri Carl Malamud, in which the Petitioners also seem to be hand in glove with him. Hence the prayers in the writ petition are liable to be rejected and the writ petition itself is liable to be dismissed for this reason alone, forthwith.

08. Shri Carl Malamud of Petitioner No.1 has published the Indian Standards in unauthorized and illegal manner, and as per

his own admission he has published 19200 Indian Standards on his website. Even after the Bureau had informed him that publishing of the Indian Standards in this manner are in violation of its copyright policy, and requested him to remove the same from his website, he continues to keep them on his website, and has intentionally and voluntarily avoided to comply with the requirement of law, and now in a mischievous and clandestine manner, with oblique motive had filed the present writ petition through the Petitioners who seem to be accomplices in illegal activities of Shri Carl Malamud in copyright violations. Hence the writ petition is liable to be dismissed with stern warning to the Petitioners not to take law in their hands.

09. The Petitioners have alleged at various places in the present writ petition that the Bureau has been acting contrary to the object and purpose of the BIS Act, and in violation of the rights of the consumers and citizens of India. It is submitted that the Petitioners in the entire petition have miserably failed to explain as to how, and in what manner, the Bureau is acting in violation of the consumers' or citizens' rights or contrary to the object and purposes of the BIS Act. Rather, the Petitioners, particularly, Shri Malamud of Petitioner No.1, have acted in flagrant violation of the BIS Act, and Rules and Regulations framed thereunder as well as under the provisions of the Indian Copyright Act, 1957, which actions are admitted by Shri Malamud, and the Petitioners heroically in an arrogant manner by way of letters as well in the present petition, are declaring themselves purportedly acting as the crusaders for the

rights of the consumers and the citizens of India, which they are not. Even if it is assumed, without admitting that the Petitioners, and Shri Malamud of Petitioner No.1, are acting for the rights of consumers and citizens of India, their actions in violation of the BIS Act, and Rules and Regulations framed thereunder, as well as provisions of the Indian Copyright Act, 1957, cannot be justified at all, which they are attempting by way of the present writ petition which is liable to be dismissed forthwith.

10. The Petitioners have alleged that the approach of the Bureau shrouds the Indian Standards in secrecy by way of imposing prohibitory cost on the Indian Standards. It is submitted that the allegations of the Petitioners with regard to alleged secrecy shrouding the Indian Standards are false, and utterly frivolous, as the Indian Standards are made available at reasonable price in soft copies as well as hard copies. Since the pricing of the Indian Standards is done at no profit-no loss basis, there is no occasion for imposing any prohibitive cost on the Indian Standards. It is further submitted that there is no secrecy shrouding the Indian Standards.

11. The Petitioners have alleged in various places in the writ petition that Bureau is holding back "important industry information" from being published in public domain, in violation of fundamental right of the students, consumers, citizens of India and against the rights and interests of the traders and manufacturers. It is submitted that the said allegations are wholly false frivolous,

baseless, and devoid of any merit or substance. It is submitted that the Bureau is not holding back any “important industry information”, or any information, from being published in public domain, much less in violation of any fundamental right of the students, or rights and interests of the traders or manufacturer. It is rather intriguing that till date, not a single student body, or consumers’ body, or citizens’ association, or manufacturers body, or traders body, whose interest the Petitioners swear to espouse in the present writ petition, had ever approached the Bureau or Respondent No.1, with such grievance, which in fact is nothing but merely a figment of the Petitioners’ imagination, in a desperate attempt to further their own interest, and somehow defend the illegal actions of Shri Malamud, who after purchasing the Indian Standards on lease for a year on single user basis, had published the same on his website in violation of the terms and conditions and copyright policy of the Bureau attached to the said Standards. The petition is therefore, filed with *mala fide* and oblique motives and intentions, and is liable to be rejected forthwith.

12. It is repeatedly alleged by the Petitioners that the Indian Standards are laws and every citizen ought to be given free access by way of publishing the same free of cost, and the Petitioners are projecting Shri Carl Malamud, who had published the Indian Standards in violation of the copyright policy of the Bureau on his website, as a champion of this cause to furnish all laws free of cost to all Indian citizens. It is submitted in this regard that the Indian Standards cannot be termed as laws by any stretch of imagination as

sought to be presented by the Petitioners. Rule 7(1)(b) of the Bureau of Indian Standards Rules, 1987 provides that all standards, including their revisions, amendments and cancellations, shall be “established by notification in Official Gazette”, which is reproduced as under:

“ 7. Establishment, Publication and Promotion  
of Indian Standards

(1) Establishment –

(b) All standards, their revisions, amendments and cancellations shall be established by notification in the Official Gazette.

13. Section 52 of the Indian Copyright Act, 1957, excludes certain acts from the scope of infringement of copyrights under the provisions of the Indian Copyright Act, 1957, and the relevant provision, *inter alia*, is reproduced as under :

“ 52. Certain acts not to infringement of:-

(1) The following acts shall not constitute an infringement of copyright, namely: -

(q) the reproduction or publication  
of -

(i) any matter which has  
been published in any  
Official Gazette except  
an Act of a  
Legislature;....”

14. Section 52(1)(q)(i) provides that reproduction or publication of any material which has been “published in any Official Gazette”, except an Act of the Legislature, would not constitute infringement of copyrights under the provisions of the Indian Copyright Act, 1957. It is important to note here that admittedly the Indian Standards are merely notified, and not published in the Official Gazette. It is clear from the above that the reproduction or publication of Indian Standards is not excluded from the infringement of copyright. Therefore the act of reproduction and publication of the Indian Standards by Shri Malamud on his website is clearly an infringement of copyright of the Bureau.

15. Section 52(1)(q)(i) also provides that reproduction or publication of any material which has been published in any Official Gazette, “except an Act of the Legislature”, would not constitute infringement of copyrights under the provisions of the Indian Copyright Act, 1957. Hence, Section 52(1)(q)(i) creates an exception

with regard to laws passed by the law making agencies that even if such laws are published in Official Gazette, their reproduction and publication will not be excluded from infringement of copyright.

16. Therefore, even if it is assumed without admitting that the Indian Standards are laws as alleged by the Petitioners, it is clear from the conjoint reading of the above provisions of the BIS Rules and the Indian Copyright Act, 1957, that laws cannot be reproduced or published by anyone. In view of the above, the present writ petition is liable to be dismissed outright.

17. That Apart, the Petitioners in various paras, and particularly in ground D4, of the writ petition have alleged that “Indian Standards are a notification by Respondent No.2 a body under the State. Hence Indian Standards are also law within the meaning of the Constitution. Consequently there can be no copyright in respect of such law.”, which is based on erroneous and incorrect perception of law, particularly in view of the fact that the only exception carved out under the provisions of Section 52(1)(q)(i) of the Indian Copyright Act, 1957 is in respect of “... any matter which has been published in any Official Gazette...” and not with regard to matters notified in the Official Gazette. Contention of the Petitioners in ground D4 of the writ petition, and elsewhere to the above effect, is wholly frivolous, baseless and devoid of any merit or substance, and is liable to be rejected forthwith.

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18. Without prejudice to the preliminary objections raised on behalf of the Bureau hereinabove, it is submitted that the Bureau had filed a suit namely suit No.469/2008 before Tis Hazari Court at Delhi seeking, *inter alia*, rendition of accounts and declaration that the Bureau has the copyright over the Indian Standards, and hence is entitled to charge royalty for reproduction of the Indian Standards with prior permission of the Bureau. The said suit had been filed against the Defendants for infringement of copyright of the Bureau by reproducing text/ excerpts from the Indian Standards in a book stated to be for the students, without permission of the Bureau and without payment of royalty which is required to be paid to the Bureau for such reproduction. The said suit is at the final hearing stage. It is submitted that the present writ petition, though filed under the garb of the public interest litigation, involves similar questions of facts and law, which are subject matter of the suit before Tis Hazari Court, Delhi. It is submitted that such issues cannot be decided in the writ proceedings, and the suitable remedy, if any, is available to the Petitioners by way of filing a suit for declaration. The writ petition is liable to be dismissed on this ground as well.

19. It is submitted that the present writ petition is a farce, particularly in view of the fact that the Petitioners, and also Shri Carl Malamud of Petitioner No.1, had no grievances, as sought to be alleged by them in the present petition when Shri Carl Malamud purchased certain Indian Standards on leased DVDs from the Bureau, or even when Shri Carl Malamud requested the Bureau for renewal of

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subscription for the same. However, now As Shri Carl Malamud is caught for infringement of copyright activities by publishing the Indian Standards on his website in an unauthorized and illegal manner, and against the copyright policy of the Bureau, the Petitioners have come out with all kind of allegations like (i) Indian Standards are laws, (ii) Pricing of Indian Standards is against the public policy, (iii) Bureau cannot assert any copyright on the Indian Standards, (iv) the Indian Standards are pure information, etc., masquerading as the guardians of the citizen's rights, and champions of the interest of society, with sole intention to assist Shri Malamud to escape the legal consequences who continues to violate law of this nation with utter disregard and impunity.

20. The Petitioners by way the present writ petition before this hon'ble Court have prayed for (a) a writ of mandamus by way of direction to the Bureau to make available all Indian Standards free of cost or at such rates as this hon'ble Court may deem fit and proper, (b) a writ of prohibition, restraining the Bureau from charging alleged exorbitant fees on any future Indian Standards, and (c) *ad interim* relief as per prayer (b) during the pendency of the present writ petition. It is however submitted that the functions and actions of the Bureau with regard to the publication and pricing of the Indian Standards are governed under the provisions of the BIS Act, and Rules and Regulations framed thereunder. Since the Petitioners have consciously chosen not to challenge the said provisions under the BIS

Act, or BIS Rules, or BIS Regulations, the reliefs sought in the writ petition are liable to be rejected forthwith.

**REPLY ON MERITS:**

01. Contents of para 1 of the writ petition are wrong and denied. It is emphatically denied that the present writ petition can be termed as public interest litigation. So far as the contention of the Petitioners with regard to making the Indian Standards available free of cost or at nominal cost is concerned, it is submitted that the Bureau is a body corporate, constituted under the BIS Act passed by the Parliament, and acts as an agency of the State, and that the Indian Standards are the property of the Bureau, and the Bureau has the ownership and copyright under the law over the Indian Standards, and therefore the Petitioners have no right under any law to make such absurd demands, much less to seek issuance of a writ by way of an order against the Bureau to make its property available free of cost, or at nominal price.

It is emphatically denied that the Petitioners are not guided by self-gain for themselves, or that they have filed the present petition in public interest. The Petitioners are purely guided by their own self interest. The Petitioners want to have access to the Indian Standards free of cost as against much labour and cost incurred by the Bureau in the process of formulation of the Indian Standards. The Petitioners are not some kind of consumer body or a group of citizens

who are working in any field where they require the Indian Standards for their works, or for that matter do not have financial resources to avail the Indian Standards, and so they are seeking such order or directions. Rather the Petitioners are professionals who are running websites and under the garb of providing knowledge to the public, they want to have access to all Indian Standards free of cost so that they can publish them on their websites. It is not the case of the Petitioners that any affected group of citizens had ever approached them for seeking any such reliefs as prayed for by them in the present petition.

It is emphatically denied that the Indian Standards are statutorily prescribed in respect of goods, or that the citizens or manufacturers are required to have access to the Indian Standards, as if the Indian Standards are laws passed by the Parliament of India. It is further denied that in order to hold manufacturers accountable the Indian Standards are required to be made available free of cost, or that the Petitioners can publish them on their websites and make manufacturers aware of the Indian Standard, by way of masquerading as so-called crusaders for transparency in respect of Indian Standards for goods sold and made available in Indian market.

It is submitted that apart from the goods, articles or processes which are made mandatory to be produced or manufactured as per relevant Indian Standards by way of issuance of notification under Section 14 of the BIS Act, or under the relevant provision of

the Act governing such particular industry with regard to goods, articles or processes which are so notified, the manufacturers are not under any legal obligation to produce or manufacture other goods or products as per Indian Standards. The goods which are notified as mandatory to be produced conforming to the relevant Indian Standards, are manufactured by the manufacturers under a licence from the Bureau under the provisions of the BIS Act. Upon receipt of an application from the manufacturer, and after carrying out a thorough inspection of manufacturing unit of the applicant manufacturer to ensure that the applicant manufacturer has the machinery, equipment, infrastructure, etc required for manufacturing or producing the mandatory goods or product as per relevant Indian Standard, once the applicant manufacturer meets the requirements to manufacture or produce the mandatory goods or product as per relevant Indian Standard to the satisfaction of the Bureau, the Bureau grants a licence to the said manufacturer subject to the terms and conditions attached thereto, and the manufacturer thereafter can produce and manufacture the mandatory goods or product conforming to the relevant Indian Standard, and mark it with BIS Mark.

As far as the goods which are not mandatorily required to be manufactured as per relevant Indian Standard are concerned, the manufacturers of such goods may voluntarily choose on their own to produce or manufacture such goods as per relevant Indian Standard. However they cannot mark their goods with BIS Mark, or certify or

declare their goods as conforming to the relevant Indian Standard without obtaining a licence from the Bureau. In such cases where the manufacturers voluntarily choose to manufacture goods which are not notified to be mandatorily produced as per the relevant Indian Standard, the manufacturers of such goods have to follow the same procedure as followed by the manufacturers of a product which is notified to be manufactured as per relevant Indian Standard to obtain a licence from the Bureau. Such manufacturers thereafter can mark their goods voluntarily produced as per relevant Indian Standard with BIS Mark, as well as print a declaration to this effect on their product.

The Bureau after grant of the licence, whether in case of a product mandatorily required to be produced as per relevant Indian Standard or a product voluntarily produced as per relevant Indian Standard, carries out market search by way of lifting samples from the market, and surprise surveillance/ inspections are also carried out at the licensee manufacturers' premises which includes lifting of samples from their manufacturing units, and sending such samples to BIS labs in order to ascertain as to whether the licensees are adhering to the terms and conditions of the licence, and are conforming to the relevant Indian Standards while manufacturing the product under licence.

As explained hereinabove, the apprehensions of the Petitioners, whether they are genuine or a mere pretention, do not

require a blank cheque to them by way of a writ or order or direction to the Bureau to provide them all Indian Standards established and formulated by the Bureau free of cost or with nominal cost. It is submitted that the Indian Standards are even otherwise reasonably priced without addition of any profit margin, which even otherwise the Bureau cannot add, as it is not a commercial profit making organization as alleged by the Petitioners elsewhere in the present writ petition.

02. In reply to para 2 of the writ petition it is submitted that the Bureau was asked by Shri Carl Malamud of Petitioner No.1 to make all Indian Standards available free of cost to him so that he can publish them on his website. The Bureau had informed him that it was not possible to meet his request in this regard.

03. In reply to para 3 of the writ petition it is submitted that the contentions of the Petitioners that if all Indian Standards are made available free of cost “all consumers in India will benefit”, are vague and lacking in material particulars. It is submitted that the allegation of the Petitioners that if their petition is allowed, “all consumers in India will benefit” from the free publication and ease of access to the standard, is mischievous and with oblique motives, particularly in view of the fact that such allegations are not supported by referring to any particular consumer body or organization which may have been working for the welfare of the consumers, or for that matter the Petitioners have not submitted any survey or research

carried out by them to show that the consumers, not to say any particular class or group of the consumers, are suffering and being deprived of certain benefits due to pricing of the Indian Standards. The Petitioners have miserably failed to explain as to how all consumers will be benefitted if the Indian Standards are made available free of cost. Rather Indian Standards are technical documents as admitted by the Petitioners in para 5d of the present writ petition, which general public or citizen or consumers may not be able to decipher or comprehend. Moreover, the Indian Standards are used by the professional in different fields of expertise and by the manufacturers of the goods, and by availing same free of cost, they will add to their profits and gains. It is submitted that the Petitioners by way of the present petition are espousing the cause of the manufacturers under the garb and pretention of making available Indian Standards free of cost to the consumers on their website.

It is once again denied that the Indian Standards are statutory Standards. Such contentions are made to mislead this hon'ble Court, in order to get some favourable orders which the Petitioners are not entitled to under law.

Contention of the Petitioners is once again vague and lacking in material particulars with regard to the alleged "manner in which the Indian Standards are published" and the alleged "prohibitive cost" to access the Indian Standards. The Petitioners are either ignorant or cleverly making such allegation to paint the picture

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of the Bureau black before this hon'ble Court. The Petitioners have miserably failed to explain anything objectionable, much less illegal or invalid, in respect of the manner of publication of the Indian Standards complained of by them.

So far as the pricing of the Indian Standards is concerned, even though the pricing is done reasonably on 'no profit-no loss' basis, the Bureau grants discounts for various categories of users namely, students, teachers, educational institutions, etc upto 60% for knowledge purposes. The Bureau also runs consumer awareness campaigns with regard to the Indian Standards. Therefore the allegations in para 3 of the petition are false frivolous and baseless, and denied as such.

04. In reply to para 4 of the writ petition it is submitted that the contention of the Petitioners that the Bureau is reluctant or has failed to make the Indian Standards public, is false frivolous and baseless. As a matter of fact, the Bureau has published various Indian Standards on its website for the general public under the provisions of the BIS Act, and the Right to Information Act, in order to promote public education and public safety, equal justice for all, the rule of law, world peace and a better informed citizenry, particularly the Indian Standards pertaining to public safety, which were last updated on 22.01.2015. Rest of the contents of para 4 of the petition are matters of record.

It is submitted that grievance of the Petitioners or demand for publication of Indian Standards free of cost is unfounded and uncalled for as the very premise on which the present writ petition has been filed that it will benefit the consumers, smells with *mala fide* and oblique motives, particularly in view of the fact that Indian Standards are primarily used by the manufacturers to manufacture goods conforming to the relevant Indian Standards and not by the consumers. It is therefore vehemently denied that any writ, much less in the nature of mandamus or any other writ, is required to be issued against the Bureau on the aforesaid allegations.

05. In reply to para 5 of the writ petition, the submissions of the Bureau are as under:

5a. Contents of para 5a of the writ petition with regard to Petitioner No.1 that it is a registered not-for-profit organization and based in California, USA, are within the special knowledge of the Petitioners, as the Petitioners have not filed any document in respect of the same with the present writ petition. Similarly the objectives of Petitioner No.1 as stated in para 5a of the writ petition are also within the special knowledge of the Petitioners as no documents in this regard are placed on record by the Petitioners. The activities of Petitioner No.1 in order to fulfill its alleged objectives as explained in para 5a of the writ petition are wrong and denied by the Bureau to the extent wherever such activities are breaching and infringing the rights of others and are in violation of law.

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It is noteworthy to mention here that the Petitioners themselves admit in para 5a of the writ petition that they are getting grants from organizations such as Google, Omidyar Network, etc, which are operating as business entities and engaged in multi-million dollar business activities. It is submitted that the Bureau is not concerned with regard to the sources of funding of Petitioner No.1 to carry out its activities. However, if the Petitioners, including Petitioner No.1, are truly having intentions to educate people, they ought to work towards this objective in a just, fair, and appropriate manner, within the four corners of law.

5b. Contents of para 5b of the writ petition with regard to Shri Carl Malamud, and his alleged activities and achievements as explained therein, are within special knowledge of the Petitioners, and the Bureau is not concerned with regard to the same. It is submitted that whatever activities Shri Malamud is stated to have been involved into in USA, would be governed by the laws of USA, and the Bureau is not in a position to comment on the same. It is however submitted that the activities and achievements of Shri Malamud in USA cannot justify his actions in violation of law, particularly under the Indian Copyrights Act, 1957, in India.

5c. Contents of para 5c of the writ petition with regard to education and vocation of Petitioner No.2, including and his alleged activities and achievements as explained therein, are within special

knowledge of the Petitioners, and the Bureau is not concerned with regard to the same. It is however submitted that the website of Petitioner No.2 is a commercial website where the membership is offered at monthly as well as yearly subscription. So far the action of Petitioner No.2 for providing statutes or judgments as free service on internet is concerned, the statutes or an any Act of a Legislature is permitted to be reproduced or published, subject to the condition that such Act is reproduced or published together with any commentary thereon or any other original matter, and the judgments or orders passed by the courts of law, tribunals or other judicial authorities, unless the reproduction or publication of such judgment or order is prohibited by the court, are also permissible for publication by third party, under the provisions of Indian Copyright Act, 1957, and cannot be compared with the Indian Standards which fall completely in different category of works under the Indian Copyright Act.

5d. Contents of para 5d of the writ petition with regard to education and vocation of Petitioner No3, including and his alleged activities and achievements as explained therein, are within special knowledge of the Petitioners, and the Bureau is not concerned with regard to the same. It is however denied that Petitioner No.3 has no financial interest in the present litigation, particularly in view of the fact that he had decided to support Shri Malamud who is involved into intentional and deliberate act of violation of the copyright policy of the Bureau, with regard to the Indian Standards.

It is noteworthy to mention here that the Petitioners admit in para 5d that Indian Standards published by the Bureau are used by the Engineers, who are technical experts in their fields, and not by some consumers of the goods produced as per the Indian Standards.

06. Contents of para 6 of the writ petition are matters of record to the extent that Shri Carl Malamud had sent letters dated 25.06.2014 and 02.08.2014 to the Bureau. However, letter dated 25.10.2014 purported to have been written by Petitioner No.1 is within the special knowledge of the Petitioners, and the Bureau cannot comment on the contents of the same. It is submitted that the stand of the Bureau that Shri Malamud had published the Indian Standards on his website in breach of the terms and conditions attached with the Indian Standards provided to him in soft copies, as per the copyright policy of the Bureau as well as in accordance with the provisions of the Indian Copyright Act, 1957, and there was no occasion to change the same. It is denied that the issues raised by the Petitioners are of public importance. Rather, the Petitioners have filed the present petition under the garb of public interest litigation to serve their own interest.

07. In reply to the para 7 of the writ petition it is submitted that the reliefs sought by the Petitioners are not merely to seek direction to make public and freely accessible the information relating to laws and legal standards of various products. Rather the

Petitioners are seeking direction to the Bureau to make Indian Standards available free of cost. It is submitted that the no information relating to laws is sought from this hon'ble Court by the Petitioners. Moreover, the Indian Standards do not come under the category of laws nor they can be said to be legal standards by any stretch of the imagination, particularly in view of the fact that powers to make and pass laws are within the exclusive domain of the legislature, and the Indian Standards are neither made, nor passed, by the law making agencies in India. It is emphatically denied that Bureau had levied prohibitive charges on the Indian Standards, much less to speak of any arbitrary or unreasonable charges. It is submitted that the Bureau works on the principle of not for profit. As a matter of fact prices of IS/ISO 9001 for Rs.560.00 as compared to the prices of ISO 9001 for Rs.10,000.00 and BSI/ISO 9001 for Rs.11,850.00 would show that the allegation of exorbitant prohibitive pricing of Indian Standards against the Bureau are false, frivolous, baseless and devoid of any merit or substance. It is vehemently denied that the Bureau had deprived access to citizens to the law of the land, much less to speak of any violation of fundamental rights of any citizen.

08. Contents of para 8 of the writ petition are matters of record. It is however submitted that since no relief is sought against Respondent No.1, the Petitioners are not entitled to any relief against the Bureau as well, particularly in view of the admitted position that Respondent No.1 is the nodal Ministry for overseeing the enforcement of the BIS Act, and the actions of the Bureau, including



publication and pricing of the Indian Standards, are governed under the BIS Act, and the BIS Rules and the BIS Regulations framed thereunder.

09. Contents of para 9 of the writ petition are matters of record.

10. Contents of para 10 of the writ petition are matters of record. It is however submitted that the contents of para 10 of the writ petition are wholly irrelevant with regard to the issues raised by the Petitioners in the present petition.

11. Contents of para 11 of the writ petition, so far as relating to the responsibility of the Bureau with regard to Indian Standards, are matters of record. However the responsibility attributed to Respondent No.1 with regard to the Indian Standards as stated in para 11 of the writ petition is wrong and denied. It is submitted that the concerned Ministry has the power to notify any particular article or process to conform to the relevant Indian Standard under Section 14 of the BIS Act, or any other Act passed by the Parliament which relates to the said article or process so notified.

12. Contents of para 12 of the writ petition, stating therein the history of the Bureau and passing of the BIS Act by the parliament, are matters of record.

13. Contents of para 13 of the writ petition, stating therein the activities and works carried by the Bureau in accordance with the mandate given under the BIS Act, are matters of record. It is however submitted that the Bureau is also involved in activities for public awareness with regard to Indian Standards.

14. In reply to para 14 of the writ petition it is emphatically denied that the Indian Standards formulated by the Bureau are laws, much less within the meaning of Article 13 of the Constitution of India, or that the Indian Standards are applicable or binding on some particular class of people as sought to be suggested by the Petitioners. Contention of the Petitioners with regard to procedure established by law for statutory authorities, or subordinate or delegated legislation, on the strength of some ruling of the hon'ble Supreme Court of India, and comparison of the same with allegedly mandatory nature of some of the Indian Standards by way of passing of Quality Control Orders by the concerned Ministries, are far-fetched, and neither here nor there.

It is pertinent to mention here that Quality Control Orders or notifications issued by the concerned Ministry do not make any Indian Standard mandatory, rather such Orders and notification make a particular product mandatorily to be manufactured conforming to the relevant Indian Standard, which is admitted by the Petitioners in para 18 of the writ petition as well. It is submitted that the Indian Standards are merely specification for manufacturing any



article or goods as per the relevant Indian Standard set out for such article or process. It is further submitted that Quality Control Orders or notifications issued by the concerned Ministry with regard to a particular product, i.e., article or process, for manufacturing the same in conformity with the relevant Indian Standard are certainly within the meaning of laws. However, issuance of such Quality Control Orders or notification do not bring the product or the specification i.e. relevant Indian Standards, itself within the meaning of laws. Therefore it can be said that the Indian Standards are voluntary in nature, except in respect of the products brought under mandatory certification by way of issuance of the Quality Control Orders and notifications.

15. Contents of para 15 of the writ petition are matters of record, except the contention of the Petitioners that Indian Standards are laws as per the Constitution of India, which is based on the erroneous understanding of the fact that it is not the Standard which is made mandatory to be complied with, rather it the product that is made mandatory to conform with the relevant Indian Standard, as has been explained in reply to the preceding para of the writ petition. This is correctly stated by the Petitioners in para 18 of the writ petition. However, the Petitioners are taking a stand in para 15 of the writ petition which is clearly contrary to what is understood and stated by them in para 18 of the writ petition.

16. Contents of para 16 of the writ petition with regard to the provisions of Sections 7 and 10 of the BIS Act, are matters of record.

17. Contents of para 17 of the writ petition with regard to the provisions of Sections 11, 12, 14 and 15 of the BIS Act, are matters of record.

18. Contents of para 18 of the writ petition with regard to the provisions of Section 33(1) read with Sections 11, 12, 14, and 15 of the BIS Act, are matters of record. It is however submitted that the Petitioners, though in a cryptic manner, categorically admit the fact that the BIS Act makes it clear that certain goods or process shall be made compulsorily to be manufactured as per applicable Indian Standard under licence from the Bureau, and without such licence a manufacturer may not be able to either manufacture or sell goods in India which are so made mandatory to be manufactured as per relevant Indian Standards. It is however emphatically denied that this would mean or reinforce the mandatory nature of the Indian Standards prescribed, or that the same would mean as laws under the Constitution of India.

19. Contents of para 19 of the writ petition with regard to procedure for formulation of Indian Standards by the Bureau, or revision, or amendment, or cancelation thereof, at the proposal submitted by any of the bodies specified under the provisions of the

BIS Act and the BIS Regulations framed thereunder, are matters of record.

20. Contents of para 20 of the writ petition with regard to procedure for formulation of Indian Standards as laid down under the provisions of BIS Regulations framed under the BIS Act, as stated by the Petitioners, are matters of record.

21. Contents of writ petition with regard to the Indian Standards formulated by the Bureau, and the articles or processes made mandatory to conform to the Indian Standards under Section 14 of the BIS Act, and the statutes, orders, and notification that mandates the conformance of an article or process with relevant Indian Standard, are matters of record. It is however submitted that as per the averments made in para 21 of the writ petition, it is clear that it is the article or process that is made mandatory to conform with the Indian Standards, and not *vice versa*.

22. In reply to para 22 of the writ petition with regard to the statutes, orders and notifications that prescribe criminal and/ or civil penalties for non-compliance with the Indian Standards, have to be read and understood in respect of the articles and processes which are made mandatory under the said statutes, orders and notifications to conform with the relevant Indian Standards. Definition of the Indian Standards under Section 2(g) of the BIS Act, and the requirement of notification of the Indian Standards in the Official

Gazette under Rules 7(1)(b) of the BIS Rules, are matters of record. It is however submitted with regard to Rule 7(7) of the BIS Rules that the said Rules clearly states that Indian Standards are voluntary in nature and are available to the public, and that their implementation depends on adoption by concerned parties, and that an Indian Standard becomes binding if it is stipulated in a contract or referred to in a legislation or made mandatory by specific orders of the Government.

This means, the Indian Standards can be made binding either (i) under a contract between parties, i.e., the manufacturer of a particular product deciding to manufacture the said product as per the relevant Indian Standards on one hand, and the dealer who procures the said product from the manufacturer to sell the same in the market on the other hand, or (ii) when an Indian Standard is referred to in a legislation wherein a particular product is made mandatory to be manufactured as per the relevant Indian Standard, or (iii) when an Indian Standard is made mandatory by specific order of the Government. It is important to state here that merely because of a contract between the parties, or a reference of an Indian Standard in a legislation, or in case of an Indian Standard is made mandatory by specific orders of the Government, and therefore, having acquired binding nature, the said Indian Standard cannot become law. It is pertinent to mention here that the Petitioners have miserably failed to point out even a single Indian Standard made mandatory by specific order of the Government.

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23. In reply to para 23 of the writ petition it is emphatically denied that the BIS Act or the BIS Rules anywhere note that the Indian Standards will have force of law. Contents of para 23 of the writ petition with regard to Rules 7(8) and 7(9) prescribing publication and pricing of the Indian Standards are matters of record. It is correct that the Bureau notifies the Indian Standards in the Official Gazette in the manner stated by the Petitioners. It is emphatically denied that pricing of the Indian Standard and charging fees accordingly, or preventing the Petitioners from publishing the Indian Standards for the alleged reason of making them available to Indian citizens of India, are violating Article 14, or 19, or 21 of the Constitution of India. The Petitioners have miserably failed to explain as to how pricing of Indian Standards and charging fees accordingly which are as per the provisions of the BIS Act and the BIS Rules frames thereunder, or preventing Shri Carl Malamud of Petitioner No.1, or the Petitioners from publishing the Indian Standards on their website, as per the provisions of Indian Copyright Act, 1957, can be termed as violation of any of the provisions of the Constitution of India, particularly in view of the fact that Petitioners have not even challenged any of the provisions of BIS Act, or the BIS Rules, or the BIS Regulations, which empowers the Bureau in this regard, in the present writ petition.

24. In reply to para 24 of the writ petition with regard to the Annual Report of the Bureau for the year 2013-2014, without commenting on the selective figures chosen by the Petitioners from-

the said Report, the Report is a matter of record. It is however emphatically denied that the Bureau is a profitable corporation. It is submitted that the Bureau is notified vide notification namely S.O.3260 (E) dated 23.12.2014 by the Central Government (Ministry of Finance, Department of Revenue, Central Board of Direct Taxes) in exercise of powers conferred under clause (46) of Section 10 of the Income Tax Act, 1961 (43 of 1961), and is exempted from income tax in respect of its income from (i) certification fees, (ii) sale of standards, provided there is no profit involved, and (iii) income from interest. It is already clarified that the pricing of the Indian Standards are done on 'no profit-no loss' basis, and certain categories of users are also granted discount upto 60% on such price. Therefore the contention of the Petitioners that the Bureau is a profitable corporation is merely a figment of Petitioners' imagination, which is wholly false frivolous, baseless and devoid of any merit or substance, and is liable to be rejected forthwith.

25. In reply to para 25 of the writ petition it is submitted that knowledge is inherent part of the Indian Standards and Standard making activities. However the Indian Standards are intellectual property which is important for various stakeholders, and are made available to them in numerous formats at reasonable prices all over the world, including in India. The Indian Standards are priced publications, and to some extent the source of income that supports the Bureau financially in its endeavour to continue to carry on the works towards formulation of Indian Standards.

26. Contents of para 26 of the writ petition are wrong and denied. It is denied that all Indian Standards in general fall within the mandatory product certification regime. It is submitted that the Indian Standards which pertain to the products which are notified as mandatory to conform to the Indian Standards, or in case where the manufacturers voluntarily adopt the Indian Standards for manufacturing some particular products which otherwise may not be mandatory to conform Indian Standards, or the Indian Standards which are made mandatory under some Government Orders, are the ones which fall under the mandatory product certification regime. Various ways in which the Indian Standards can be purchased are matters of record.

27. Contents of para 27 of the writ petition with regard to the cost of the Indian Standards given in Annexure D of the petition, Division wise or else, in soft copies or hard copies, without commenting on the averments made by the Petitioners, are matters of record.

28. Contents of para 28 of the writ petition with regard to different Divisions and Standard categories are matters of record. It is however emphatically denied that any person wishing to buy Indian Standards will be forced to purchase multiple Standards. It is submitted that the Bureau does not force anyone to purchase multiple Standards. The Petitioners themselves have admittedly stated that “purchasing a single Standard is not adequate to comply with the

requirement of law". Hence, there is no occasion for the Bureau to force anyone to purchase multiple Indian Standards, as the one will purchase the number of Indian Standards as per one's requirement. The Bureau also does not force anyone to purchase Indian Standards as per Divisions, or entire set of Indian Standards. The Petitioners have themselves admittedly stated that for entire set of Standards "costs are substantially higher" as compared to "that of individual Standards". Hence there is no occasion for Bureau to force anyone to purchase entire set of Standards if one wishes to purchase individual Standards. The allegations made by the Petitioners are contrary to their own admissions in para 28 of the writ petition, which are even otherwise false, frivolous and baseless having no merit or substance.

29. Contents of para 29 of the writ petition contain merely statements of possibilities in future, and no comments are required from the Bureau at present with regard to the same.

30. Contents of para 30 of the writ petition with regard to subscription of DVDs by Shri Carl Malamud containing the Indian Standards, are correct. The Petitioners admit that Shri Carl Malamud published the contents of the said DVD on internet, even though the transaction permitted the usage of the DVD by a single user along with copyright policy of the Bureau. By publishing the contents of said DVD, i.e., the Indian Standards, on his website, Shri Malamud had deliberately and intentionally violated the terms of leasing of DVD containing such Indian Standards.



31. Contents of para 31 of the writ petition are matters of record. It is submitted that in view of the violation of terms and conditions of the DVD containing the Indian Standards, and admission of the Petitioners for committing violation of the Indian Copyrights Act, the renewal for usage of the Indian Standards in the said DVD was not permitted by the Bureau.

32. Contents of para 32 of the writ petition with regard to letter dated 02.08.2014 and contents thereof, are matters of record. It is however submitted that the Petitioners cannot justify the illegal actions of Shri Carl Malamud under the shadows of the provisions of the Constitution of India or the Right to Information Act, while he is admittedly guilty of flagrant breaches and violations of the terms of the leasing the DVD, as well as the provisions of the BIS Act, the BIS Rules, the BIS Regulations, as well as of the Indian Copyrights Act, 1957.

33. In reply to para 33 of the writ petition it is submitted that it is very unfortunate that the Petitioners are presenting Shri Carl Malamud as the modern day Robin Hood in a heroic manner, who violates the law of the land, and claims to be acting in the welfare of consumers and citizens of India. It seems that the Petitioners and Shri Malamud have no reverence towards the laws of this nation. On the one hand they swear by the Constitution of India, and on the other hand they justify violation of the provisions of the BIS Act (and the Rules and Regulations framed thereunder), as well as that of the

Indian Copyright Right Act, which have been enacted by the parliament constituted under the same Constitution. The allegations made by the Petitioners with regard to empowering of citizens of India, or canvassing the Indian Standards as laws of the land, are hollow pretentions which are governed by nothing else but the self interest.

34. Contentions of the Petitioners in para 34 of the writ petition are a distinct example of contrary statements, and wholly frivolous. As a matter of fact it brings out the true intentions of Petitioners behind the present writ petition. The Petitioners are well aware that it is not the consumers who require the knowledge of the Indian Standards as the Indian Standards are technical specification beyond common citizens' and consumers' comprehension. If anyone can use them for their benefit, it is only the manufacturers who are producing, or will be producing, the goods as per the Indian Standards. For the general public or the consumers, it is sufficient to know that there are Indian Standards in respect of certain goods, for which it is not necessary to publish the entire script of any Standard in the Official Gazette or on the Petitioners' or of Shri Malamud's website. As per the Petitioners, as stated by them, what is required is 'publicity', not the publication of the entire script, of the Indian Standards for the benefit of the consumers and citizens. By demanding to make the entire script of the Indian Standards made available publically free of cost, the Petitioners are in fact fighting

the cause of the manufacturers under the garb of the crusaders for the consumers in the present writ petition, which they cannot be allowed.

35. Contents of para 35 of the writ petition with regard to filing of a petition by the Petitioners with Respondent No.1, and rejection of the said petition by Respondent No.1, are matters of record. It is emphatically denied that access of 'such' information to the members of the public and citizens is neither imperative, nor necessary for enforcement of their rights. As submitted above what is required is the publicity that certain Indian Standards are formulated and the consumers have a choice to purchase products manufactured as per the relevant Indian Standards. It is further submitted that the Petitioners have miserably failed to explain as to how publicity or lack of publicity of the Indian Standards can be substituted with publishing the Indian Standards on their website free of cost under the pretext of 'dissemination of knowledge and empowering citizens of India', as alleged by the Petitioners.

36. Contents of para 36 of the writ petition are repetitive in nature to the extent that the Petitioners have reiterated what they believe. It is denied that the Petitioners have no financial interest, or that they had come together or approached this hon'ble Court for 'dissemination of information and free access of information for the public'. The Petitioners are presuming that their petition will be allowed and therefore alleging that they will not stand to gain as a result of the present petition, whereas the submissions made

hereinabove clearly show that the Petitioners are fighting a proxy litigation under the garb of crusaders for free information for the general public. The Petitioners' contentions with regard to their 'strong' beliefs, as projected by them in para 36 of the petition, are merely a façade and have nothing to do with welfare of consumers or empowerment of citizens of India.

37. Contents of para 37 of the writ petition clearly show the intention of the Petitioners behind the present petition, though the allegation therein are emphatically denied by the Bureau. Contention of the Petitioners that "...enforcement of standards and obligations of manufacturers will be substantially affected if the Petitioners are wrongfully and unfairly deprived of their rights and information under the law of the land...", loudly and clearly echoes the interest of the manufacturers, rather than of the consumers, which the Petitioners otherwise purported to have espoused by way of the present petition. Further, the alleged concerns of the Petitioners that it is practically impossible for the Bureau to enforce each and every Standard is neither here, nor there. The Petitioners have miserably failed to explain as to how making all Standards publically available free of cost will 'logistically' and 'practically' help the Bureau 'to enforce' the same. To allege that "...independent manufacturers do not disclose standards of their respective products, except to say whether it is compliant with Indian standard or not..." also clearly shows how desperate the Petitioners are to lay their hands on the Indian Standards, which the users, including the independent

manufacturers, do not disclose under the terms and conditions and the copyright policy of the Bureau, which have no sanctity in eyes of the Petitioners, as the Petitioner No.1 had already exhibited by his actions and conduct, and Petitioner No.2 and 3 by their unrelenting support to Petitioner No.1. It is emphatically denied that a consumer or a member of the public has no way of ascertaining whether the product sought to be consumed should mandatorily comply with Standards as per Section 14 of the BIS Act, or to know what such standard should be. It is submitted that once a product is notified to mandatorily conform to the relevant Indian Standard, the Bureau and the concerned authorities have a mechanism in place to ensure the compliance thereof. In any case, the Petitioners have miserably failed to explain as to how making Indian Standards available free of cost on website by the Petitioners will help consumers and general public to ascertain as to whether the product sought to be consumed by them has mandatorily complied with the Indian Standard, and what such Standard should be. Contentions therefore of the Petitioners are false, frivolous, baseless, and without any merit of substance, and are liable to be rejected forthwith.

38. Contents of para 38 of the writ petition are vague, general and lacks in material particulars as to what is the grievance of the Petitioners with regard to the BIS Act, or to the rights and duties cast by the BIS Act upon the Bureau, or Manufacturers, or to the objectives of the BIS Act. The Petitioners cannot expect the Respondents to read between the lines, and reply to the same.

39. Contents of para 39 of the writ petition are wrong and emphatically denied, particularly with regard to the allegation made by the Petitioners that the Bureau's response, in any manner, is contrary to the object and purpose of the BIS Act, or in violation of the rights of the citizens of India. The Petitioners have in the entire petition have miserably failed to explain as to in what manner, and how, the Bureau is responding in violation of the citizens' rights or contrary to the object and purposes of the BIS Act. Rather, the Petitioners, particularly, Shri Malamud of Petitioner No.1, have acted in violation of the BIS Act, and rules and regulations framed thereunder as well as under the provisions of the Indian Copyright Act, 1957, which actions are admitted by Shri Malamud, and the Petitioners heroically and in arrogant manner, allegedly acting as the crusaders for the rights of the consumers and the citizens of India, which they are not. Even if it is assumed, without admitting that the Petitioners and Shri Malamud of Petitioner No.1 are acting for the rights of consumers and citizens of India, their actions in violation of the BIS Act, and Rules and Regulations framed thereunder as well as provisions of the Indian Copyright Act, 1957, cannot be justified at all. Contentions of the Petitioners with regard to secrecy shrouding the Indian Standards are false, and utterly frivolous, as the Indian Standards are available at reasonable price in soft copies as well as hard copies, and there is no prohibitive cost on the Indian Standards, and there is no secrecy shrouding the Indian Standards, much less in violation of any alleged right of the citizens, not to speak of any

defeat of the purpose of the BIS Act as alleged by the Petitioners. The Petitioners' allegations with regard to "standards which are not notified in accordance with law laid down by the Supreme Court cannot be law of India and further" are in the special knowledge of the Petitioners, and the Bureau is not in position to comment on the same. The Petitioners' contention that the "Respondents cannot put a price on the notification of standards for the purpose of compliance with the procedure established by law", is vague, general and lacks material particulars. It is however submitted that the Bureau is empowered to put a price on the Indian Standards for their sale in soft copies or hand copies, under the provisions of the BIS Act, and Rules and Regulations framed thereunder, as well as under the provisions of the Indian Copyright Act, 1957, and intriguingly the Petitioners have chosen not to challenge these provisions in the present writ petition.

40. In reply to para 40 of the writ petition it is submitted that the Petitioners have miserably failed to disclose any right that they are attempting to enforce by way of the present petition under the Constitution of India or the BIS Act, or both. It is emphatically denied that the Petitioners approached the Respondents and the Respondents did not respond to the representations of the Petitioners. The Petitioners themselves admit to have received response of the Respondents in the same paragraph stating "...since the receipt of the response of Respondent No.2 by Petitioner No.1, Petitioners have sought to obtain more information...". The Petitioners are

sporadically making false allegations in the entire writ petition. As a matter of fact Shri Malamud of Petitioner No.1 had made representation to the Bureau as well as before the Respondent No.1, and the response of the Bureau as well as Respondent No.1 to the representation of Shri Malamud of Petitioner No.1 has been filed by the Petitioners along with the present writ petition which clearly falsifies the said contention of the Petitioners. The Petitioners have not submitted any documents to show that Petitioners No.2 and 3 had approached the Bureau or Respondent No.1 for that matter. It is emphatically denied that the petition involves any issue of the public importance. Rather the Petitioners are serving their own interest by way of the present petition, and consequently the interest of the manufacturers who are required to purchase the Indian Standards in order to produce their products in conformity to the Indian Standards.

41. Contents of para 41 of the writ petition are general, vague and lacks material particulars and fail to disclose as to what actions of the Respondents, are sought to be struck down. It is assumed that the Petitioners are challenging the action of the Bureau with regard to publication and pricing of the Indian Standards, which are performed as per the provisions of the BIS Rules, framed under the BIS Act, as well as the Indian Copyright Act, 1957, which have not been challenged by the Petitioners in the present writ petition, and therefore the submissions of the Petitioners cannot be entertained or attended to by this hon'ble Court, and the Petitioners are not entitled to any direction against the Bureau to make the Indian



Standards free of cost. The Bureau is already making the Indian Standards available at concessional rates to certain class of users. Therefore the grounds urged are liable to be rejected forthwith as under:

### G R O U N D S

- A. Contents of ground A of the writ petition invoking fundamental rights of the citizens of India to know the Indian Standards under the provisions of the Constitution of India are devoid of any merit or substance. The Petitioners are purported to be acting as guardians of the fundamental rights of the citizens of India under Articles 14, 19 and 21 of the Constitution of India, and seeking availability of Indian Standards free of cost under the pretext that the Indian Standards directly affect the health and safety of the people, and are related to the Governmental policies aimed at promoting standardization of public welfare and are expected to be adhered to by the members of the trade. It is submitted in this regard that what is required is not the availability of the Indian Standards at no cost, but the publicity of the relevant Standards among the general public, and the adherence of the said Standards by the manufacturers. Even otherwise the Bureau on its own had already published various public safety Standards on

its website which were last updated on 22.01.2015. The Petitioners cannot force the Bureau to publish and make all Indian Standards available free of cost.

1. Contents of ground A1 are wrong and denied. It is emphatically denied that the Indian Standards as such are laws as per Article 13 of the Constitution of India. Article 13 of the Constitution of prescribes as under:

“13. Laws inconsistent with or in derogation of the fundamental rights

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void

(3) In this article, unless the context otherwise requires law includes any Ordinance, order, bye law, rule, regulation, notification, custom or usages having in the territory of India the force of law; laws in force includes laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas

(4) Nothing in this article shall apply to any amendment of this Constitution made under Article 368 Right of Equality. ”

It is submitted that nothing in the Articles 13 of the Constitution of India suggests that the Indian Standards formulated by the Bureau can be brought under the purview of laws. At the most,

the Indian Standards can be made binding under Rule 7(7)(b) of the BIS Rules. However just because a particular Standard is made binding, does not mean that the said Standard has acquired the nature of law. It is submitted that the Bureau is well within its rights under the provisions of BIS Rules framed under the BIS Act, and under the Indian Copyright Act, 1957, to exercise ownership as well as publication and pricing of the Indian Standards. The Petitioners have not challenged the provisions of these Acts, hence ground A1 is liable to be rejected. All other contentions are repetitive in nature, and have been replied to and explained wherever they have appeared in the writ petition.

2. Contents of ground A2 of the writ petition are devoid of any merit or substance, particularly with regard to the reliance placed by the Petitioners on the case reported as Secretary, Ministry of Information & Broadcasting v. Cricket Association of Bengal: AIR 1995 SC 1236; which is not applicable in the facts and circumstances of the present case. It is submitted that it is not the Petitioners, but Shri Carl Malamud, who had purchased the Indian Standards on a yearly lease

for single user in soft copies of DVDs, and in gross violation of the terms and conditions as well as copyright clause attached to the same, he had published the said Indian Standards on his website in an unauthorized and illegal manner. The Petitioners have filed the present petition to defend Shri Malamud, under the garb of the crusaders and guardians of the rights of the consumers and citizens of India, though their real intentions are more than apparent from the contents of the petition itself as to whose interest they are in fact protecting. By providing intellectual property of the Bureau on their website, may be free of cost, the Petitioners are only acting in furtherance of their own self interest, or the interest of the manufacturers as has been explained above.

3. Contents of ground A3 of the writ petition are wrong and denied. It is emphatically denied that the Bureau is holding back any "important industry information" from being published in public domain, much less in violation of any fundamental right of the students, or rights and interests of the traders or manufacturers in practicing their profession. As a matter of fact, till

date, not a single student body, or manufacturers body, or traders body, had approached to the Bureau or to Respondent No.1, with such grievance, which is nothing but the figment of the imagination of the Petitioners, in a desperate attempt to further their own interest, and somehow defend the illegal actions of Shri Malamud. The reliance placed by the Petitioners upon the case of *Maneka Gandhi v Union of India*: 1978 AIR 597; 1978 SCR (2) 621; is not at all applicable to the present case, and merely a desperate attempt to falsely accuse the Bureau for violation of fundamental rights of the people, when there is none. Contentions raised by the Petitioners in ground A3 are liable to be rejected forthwith.

4. In reply to ground A4 it is submitted that the Petitioners are in gross error in alleging that the Indian Standards are laws of the land, and a price cannot be put on the knowledge of such laws. It is an incorrect understanding of the Petitioners. The Indian Standards are not laws by any stretch of imagination, particularly under any of the provisions of the Constitution of India. Therefore no case of infringement of any of the fundamental

rights of the citizens of India is made out by the Petitioners.

5. In reply to ground A4 it is submitted that the Petitioners are in gross error in alleging that levying of charges or sale of publication is unreasonable restriction, or that the same violates any of the fundamental rights. It is submitted at the cost of repetition that the Indian Standards are priced at no profit-no loss basis, and various categories of buyers are given upto 60% discount as well.

- B. In reply to ground B of the writ petition it is submitted that the Bureau publishes the Indian Standards under the BIS Act and the BIS Rules. However publication of the Indian Standards by the Bureau does not give any right to the Petitioners, or Shri Carl Malamud, to reproduce or publish the same on their website.

1. Sections 2(g) and 10(b) of the BIS Act, as reproduced by the Petitioners in ground B1 of the writ petition are a matter of record.

2. Section 10(1)(a) of the BIS Act, as reproduced by the Petitioners in ground B2 of the writ petition are a matter of record.
3. Section 7(1)(b) of the BIS Act, as reproduced by the Petitioners in ground B3 of the writ petition are a matter of record. It is however emphatically denied that the Bureau is under any obligation to publish the Indian Standards in the Official Gazette, which is clear from Rule 7(1)(b) wherein the said Rule merely requires that “All Standards, their revisions, amendments and cancelations shall be established by notification”. There is clear difference between “establish” and “publish” as used in the BIS Rules, which requires the Bureau to “establish” an Indian Standards by way of notification, and not “publish” an Indian Standard in an Official Gazette. Rest of the contents of ground B3 are matters of record. It is not the case of the Petitioners that the Bureau as a statutory body is not fulfilling its obligations, and therefore the Petitioners are entitled under law to take over the same upon themselves. Therefore the ground is liable to be rejected.



4. Contents of ground B4 are matters of record with regard to the procedure followed by the Bureau to notify the Indian Standards in the Official Gazette. It is however submitted that the Bureau is neither required nor under any obligation under law to publish entire script of the Indian Standards in the Official Gazette. It is emphatically denied that there is any violation of the obligation by the Bureau, much less under any of the provisions of the BIS Act, or the Rules framed thereunder. The Petitioners have miserably failed to reproduce even a single provision from the BIS Act, and from the Rules framed thereunder, that the Bureau is bound to publish entire script of the Indian Standards. The ground is baseless, frivolous, and without any merit of or substance.
5. Contents of ground B5 of the writ petition are based on the incorrect understanding of law, and the judgment of the hon'ble Supreme Court of India namely *Harla v. State of Rajasthan*: AIR 1951 SC 467; has not application to the questions of facts and law involved in the present case. It is denied that the Petitioners have explained even a single action of the Bureau contrary to law. The Bureau is not required to publish entire script of its intellectual property i.e. the Indian Standards.

The notification issued with regard to establishment of an Indian Standards is very much in compliance of the relevant provisions of the BIS Rules, and Section 14 or Section 10(b) of the BIS Act, or Rules 7(1)(b) of the BIS Rules, nowhere requires that Bureau to publish entire script of an Indian Standard while notifying the establishment of the same in the Official Gazette.

The allegations are based on incorrect understanding of the BIS Act, and Rules framed thereunder, which have been explained under preliminary objections in the present counter affidavit.

6. Contents of ground B6 of the writ petition are wrong and denied. It is emphatically denied that any of the actions of the Bureau is arbitrary, or that any of the decisions of the Bureau is not determined by relevant factors for which the BIS Act has been enacted. Contents of ground B6 of the writ petition are general, vague and lacks in material particulars. It is submitted that the Petitioners have not explained as to what power they are referring to which has been conferred on the Bureau, and Bureau has not exercised the same, in furtherance of the objects of the BIS Act.

7. Contents of ground B7 of the writ petition are wrong and denied. It is emphatically denied that non-publication of the Indian Standards in the Official Gazette is a violation of any due process by the Bureau.
- C. Contents of ground C of the writ petition are based on presumptions, conjectures and surmises that the Director (Sales) of the Bureau does not have the power under the BIS Act to sell publications containing the Indian Standards, and that the Indian Standards are bound to be made available free of cost. The Petitioners have miserably failed to substantiate such allegation as per the BIS Act, and Rule and Regulations framed thereunder.
1. Contents of ground C1 of the writ petition with regard to Rule 7(9) of the BIS Rules are wrong and denied. It is submitted that the allegations in respect of the said Rule are false, frivolous, baseless and without any merit or substance. Even otherwise the Petitioners have not sought any relief from this hon'ble Court for quashing or striking down the said Rule. The contentions therefore are liable to be rejected forthwith.

2. Contents of ground C2 of the writ petition reproducing from the judgment in the case of BIS v Director General of Income Tax (Exemptions): (2013) 260 CTR (Del) 39; are matters of record.
  3. Contents of ground C3 are matters of record to the extent that the Bureau is creation of statute, and that it is 'state' within the meaning of Article 12 of the Constitution of India, and carrying out functions as per the provisions of the Constitution of India. It is however emphatically denied that the Bureau cannot charge fees, which by no stretch of imagination can be said to be exorbitant or prohibitory. It is further denied that the Bureau cannot prevent others, including the Petitioners, from publishing Indian Standards under the pretext of making information accessible to the citizens of India.
- D. Contents of ground D of the writ petition are wrong and denied. It is denied that the Bureau is withholding any information from the public. The Petitioners have failed to explain as to why the State cannot assert its copyright or rights against the infringement of its copyright. The Petitioners cannot be allowed to infringe a copyright

merely for the reason that it subsists in the State. It is emphatically denied that the Indian Standards are information, as the same are research works under the aegis of the Bureau, and as a body corporate the Bureau asserts its copyright on the Indian Standards, which cannot be alleged as wrongful withholding of information, much less contrary to any procedure established by law or violation of rights of people or the Constitution of India.

1. Contents of ground D1 of the writ petition reproducing provisions of Section 9 of the RTI Act, are matter of record.
2. Contents of ground D2 of the writ petition reproducing extracts from the judgment passed by Delhi High Court in the case reported as DMRC v Sudhir Vohra: 2011 I AD (Delhi) 369; are matters of record.
3. Contents of ground D3 of the writ petition stating that the Bureau claims copyright on all its publications, and the copy of the Indian Standard annexed as Annexure 'G', and copyright asserted by the Bureau at page 18 of the said annexure, are matters of record. It is however submitted that the

Indian Standards are not pure information, rather works of research undertaken under the control of the Bureau, and therefore cannot be sought under the provisions of RTI as copyrighted information. Even if it is assumed, without admitting, that the copyrighted Indian Standards can be brought under the purview of Section 9 of the RTI Act, it will not give any right to the person who will receive such copyrighted Indian Standards under RTI to publish them on his website, and thereby infringing the copyright of the Bureau with impunity on such Indian Standards, or to violate with utter disregard the provisions of the Indian Copyright Act, 1957.

4. Contents of ground D4 of the writ petition are wrong and denied. It is emphatically denied that the Indian Standards are a notification by Respondent No.2 and therefore are also law within the meaning of the Constitution, or that there can be no copyright in respect of such law. It is submitted that such contentions are based on erroneous and incorrect perception of law, particularly in view of the provisions of Section 52(1)(q)(i) of the Indian Copyright Act, 1957 wherein it is clearly provided that reproduction of

“... any matter which has been published in any Official Gazette...” will not amount to infringement of copyright, which is clearly distinct and separate from reproduction of any matter notified in the Official Gazette. It is emphatically denied that setting or creation of Indian Standards by the Bureau, or certification programmes of the Bureau, can be classified as ‘statutory monopoly’, or abuse of power or position to its own advantage, or to the prejudice of the citizens of India. It is submitted that a statutory monopoly, or a legal or *de jure* monopoly as it is called, is a monopoly where a protection from competition is granted by law. It may be in the form of a ‘government monopoly’ where the state owns the particular means of production, or in the form of ‘government-granted monopoly’ to protect a private interest from competition namely, granting of exclusive rights to offer a particular service in a specific region, including patented inventions, by regulating their policies and prices. The allegation of the Petitioners are false, frivolous, baseless, and without any merit or substance, and are liable to be rejected forthwith.

5. Contents of ground D5 with regard to statutory monopoly are repetition of ground D4 and no separate reply is required. It is however denied that the copyright violation is subjecting any citizen to double jeopardy. The Petitioners have miserably failed to explain as to how any citizen is doubly jeopardized. The Petitioners are using this kind of legal jargon in order to confuse the whole issue and to get some favourable orders which they are not entitled to under law. It is emphatically denied that no person or authority or State can claim copyright in respect of laws. The writ petition is replete with this contention, which is based on erroneous and incorrect understanding of law of copyrights, particularly in view of the provisions of Section 52(1)(q)(i) of the Copyright Act, 1957. It is correct that reported judgment of the courts of law do not have any copyright. The Petitioners are seemed to be on a wild goose chase while comparing the Indian Standards with reported judgment of the courts of law in order to bring the Indian Standards under the same category. Such contention is wholly frivolous, baseless and without any merit or substance, hence is liable to rejected forthwith.



6. Contents of ground D6 of the writ petition are correct to the extent that provisions of Section 52(1)(q)(i) of the Indian Copyright Act, 1957 provide that reproduction or publication of any matter which has been published in any Official Gazette, except an Act of Legislature, shall not constitute infringement of a copyright. It is emphatically denied that the Indian Standards are “required to be published in the Official Gazette” and therefore any publication thereof shall not constitute a copyright infringement. The said contention is also replete in the writ petition, and is based on erroneous and incorrect understanding of the statute referred above. It is submitted that the provision contained in Rule 7(1)(b) of the BIS Rules, states that all standards, their revisions, amendments and cancellations shall be established by notification in the Official Gazette. The plain reading of the said Rule would show that the Indian Standards are established, not published, by such notification. It is in the nature of a declaration by the Bureau that certain Indian Standard has been formulated and available with the Bureau as per the requirement of Rule 7(1)(b) of the BIS Rules, and cannot be confused with publication of the Indian Standards which is

governed under Rule 7(8) of the BIS Rules, an activity which can take place after the establishment of the Indian Standards by notification in Official Gazette. It emphatically denied that the Bureau cannot be allowed to claim copyright infringement merely because it does not publish Indian Standards in the Official Gazette.

- E. Contents of ground E are wrong and denied. It is emphatically denied that charging of royalty by the Bureau for its copyright on the Indian Standards is against the public policy. The said allegation is too general, vague and lacks in material particulars. It is submitted that the Standards all over the world are priced publications, and are also source of raising funds for bodies engaged into formulation of Standards, and to support ISO Standardization model. The Bureau is the founder member of the ISO, and a signatory to the documents "Policy for the distribution of ISO publication and the protection of ISO's copyright", which is adopted by the Bureau in respect of its own Indian Standards. The plea of public policy is false, frivolous, baseless and devoid of any merit or substance, and hence is liable to be rejected forthwith.

1. Contents of ground E1 of the writ petition with regard to the formulation of the Indian Standards by the Bureau on various subjects, and the provisions of the BIS Act, referred to by the Petitioners, are matters of record.
2. Contents of ground E2 of the writ petition alleging monopoly are rephrased repetition of ground D4 and D5 of the writ petition, hence no separate reply is required.
3. Contents of ground E3 of the writ petition with regard to pricing of the Indian Standards are repetition of para 27 of the writ petition, hence do not require separate reply. It is however, emphatically denied that such pricing of the Indian Standards is exorbitant or that it is royalty to access information, much less against any declared public policy. As a matter of fact the pricing of the Indian Standards is done on 'no profit-no-loss' basis, and various categories of users are also given discount upto 60% on the said price. The Petitioners have miserably failed to point out any such public policy as alleged by them.

4. Contents of ground E4 are again repetition of para 27 of the writ petition, and do not require separate reply. It is however emphatically denied that someone buying a single Indian Standard is forced to buy the Indian Standards for entire technical group. It is submitted that the Indian Standards are available individually as well in bundles of a particular group. It is entirely the choice of the users as to whether they wish to buy a single Indian Standard or a bundle of Indian Standards relating to a particular technical group. The allegation of the Petitioners against bundling of Indian Standards as abuse of power by the Bureau, is *mala fide*, vexatious and motivated. It is emphatically denied that there is any unilateral imposition of unfair terms on buyers of the Indian Standards. The Petitioners have miserably failed to point out even a single unfair term allegedly imposed by the Bureau on the users.
5. Contents of ground E5 are again repetition of the ground above, and do not required separate reply. It is however emphatically denied that levying or charging of fees for leasing the Indian Standards is contrary to any of the public policy. It is emphatically denied that the pricing of Indian

Standards by the Bureau which strictly is as per the BIS Rules framed under the BIS Act, in exercise of ownership and copyright over the Indian Standards, is in violation of Articles 14, or 19, or 21 of the Constitution of India, or that the same is liable to be struck down. The Petitioners have not even challenged the provisions of law governing the actions of the Bureau sought to be struck down. The writ petition is a farce. The allegations made by the Petitioners are liable to be rejected, prayers are liable to be refused, and petition is liable to be dismissed with exemplary costs for wasting the precious time of this hon'ble court.

6. Contents of ground E6 are wrong and denied. It is emphatically denied that the Bureau is charging any high fees from the educational institutions, or that the said fees is increasing the cost of education, or that it is imposing burden on students, or that it is violating the right of the students to information. Rather, the Bureau is granting upto 60% discount on the price of the Indian Standards which even otherwise are priced on 'no profit-no loss' basis. The allegations are

false and baseless, and liable to be rejected forthwith.

F. Contents of ground F of the writ petition are wrong and denied. It is emphatically denied that actions of the Bureau are contrary to any of the settled or accepted international practices with regard to free and easy access of information relating to law to the citizens of India. The Petitioners have miserably failed to point out as to what information relating to law has been sought by them from the Bureau which the Bureau had not provided them. So far as the Indian Standards are concerned, they are neither pure information, nor laws. The allegations that Indian Standards are laws, has been replied under preliminary objections to the writ petition which are not being repeated here. That apart, even if it is assumed, without admitting, that the Indian Standards can be obtained as copyrighted information under RTI, it does not give any right to the receiver of such information under RTI to publish these copyrighted Standards on his website under the pretext of providing information to the general public.

1. Contents of grounds F1, F2 and F3 of the writ petition have no relevance to the issues in questions under the present writ petition.

2. In reply to grounds F4, F5 and F6 of the writ petition, it is submitted that the Indian Standards are neither government edicts, nor legislative enactment, nor judicial decisions, nor administrative rulings, nor public ordinances, nor similar types of legal materials. Hence the orders and practices of the US Copyright Office as reproduced in ground F4, or extracts of judgment passed by the US Court of Appeals in *Veeck v Southern Building Code Congress* case as reproduced in ground F5, or extracts of the *Howell v Miller* case as reproduced in ground F6, have no relevance to the issues in question in the present writ petition. It is emphatically denied that Rules 7(8) and 7(9) of the BIS Rules set out any policy contrary to the BIS Act, or its objectives, or is in violation of the rights of Indian citizens. Even otherwise, the Petitioners have not challenged, or sought quashing or setting aside of these Rules in the present writ petition. The allegation that “these practices are inconsistent with those followed by societies which follow rule of law and hence, such a practice deserves to be quashed” is too general, vague and lacks in

material particulars, and liable to rejected forthwith.

42. Contents of para 42 of the writ petition is wrong and denied. It is emphatically denied that the Petitioners have no other efficacious remedy. It is submitted that the only remedy available to the Petitioners is to file suit for declaration that the Bureau has no ownership over the Indian Standards, and consequently no right to exercise copyright over the Indian Standards, or fix price of the Indian Standards. In view of the fact that the functions and actions of the Bureau with regard to the publication and pricing of the Indian Standards are governed under the provisions of the BIS Act, and Rules and Regulations framed thereunder, and the Petitioners have not challenged the said provisions under the BIS Act, or BIS Rules, or BIS Regulations, the reliefs sought in the writ petition are liable to be rejected forthwith. So far as the representations of the Petitioners are concerned, since the demand made by the Petitioners was not in accordance with the provisions of the BIS Act, or Rules and Regulations framed thereunder, therefore the same could not be acceded to, and the Petitioners were informed accordingly. It is submitted that the Petitioners are only espousing first their own cause, and secondly the cause of the manufacturers who are required to purchase Indian Standards, by way of the present petition under the garb of the public interest litigation, which is liable to be rejected forthwith.



43. Contents of para 43 of the writ petition require no reply from the answering Respondent.

44. Contents of para 44 of the writ petition require no reply from the answering Respondent.

45. Contents of para 45 of the writ petition require no reply from the answering Respondent.

46. Contents of para 46 of the writ petition require no reply from the answering Respondent.

#### **REPLY TO THE PRAYER CLAUSE**

a. It is submitted that prayer clause 'a' of the writ petition whereby the Petitioners have sought a writ of mandamus by way of direction to the Bureau to make available all Indian Standards free of cost or at such rates as this hon'ble Court may deem fit and proper, is not maintainable under the provisions of Article 226 of the Constitution of India. It is further submitted the Indian Standards are priced publication, and are priced reasonably at 'no profit-no loss' basis, as per the provisions of the BIS Rules framed under the BIS Act. Therefore the actions of the Bureau with regard to publication and pricing of the Indian Standards are governed under the provisions of the BIS Act, and the BIS Rules framed thereunder. So far as the relief for making Indian Standards available free of cost is concerned,

unless the provisions of BIS Act, and the Rules framed thereunder, with regard to the publication and pricing of the Indian Standards are challenged, and struck down by this hon'ble Court as *ultra vires*, the Petitioners cannot be entitled to the said relief. That apart, this hon'ble Court cannot be burdened to sit and fix the prices of the Indian Standards at such rates as this hon'ble Court may deem fit and proper exercising its powers under the writ jurisdiction, which is exclusively within the domain of the civil courts. Hence, prayer clause 'a' is liable to be rejected forthwith.

b. It is submitted that prayer clause 'b' of the writ petition whereby the Petitioners have sought a writ of prohibition, restraining the Bureau from charging alleged exorbitant fees on any future Indian Standards, is not maintainable under the provisions of Article 226 of the Constitution of India. It is submitted that issue with regard to pricing of the Indian Standards or as to whether the Bureau is charging exorbitant fees on the Indian Standards, cannot be determined under the writ jurisdiction, nor any injunction can be granted on such pricing, much less on any future Indian Standards. Hence, prayer clause 'b' is also liable to be rejected forthwith.

c. It is submitted that prayer clause 'c' of writ petition whereby the Petitioners have sought *ad interim* relief as per prayer clause 'b' during the pendency of the present writ petition. Since in view of the submission made herein above, the prayer clause 'b' itself is not maintainable, and is liable to be rejected, consequently

prayer clause 'c' also cannot be granted. Hence, prayer clause 'c' is also liable to be rejected forthwith.

d. It is submitted that the Petitioners are not entitled to any relief. The contentions raised by the Petitioners in the writ petitions are liable to be rejected, and consequently the writ petition is liable to be dismissed with exemplary cost against the Petitioners and in favour of the Bureau, and it is prayed accordingly.

*(Ramesh Kumar, Adv)*  
*D-998/2009*  
 I identify the Deponent who has signed in my presence.  
*Depl 1/12*

DEPONENT  
*MAA*  
 विजय नितनारे  
 VIJAY NITANWARE  
 वैज्ञानिक 'ई' (ई-सेल)  
 Scientist 'E' (E-Cell)  
 भारतीय मानक ब्यूरो  
 BUREAU OF INDIAN STANDARDS  
 कलकत्ता 700 002  
 26 JUL 2016

Verified at New Delhi on this the \_\_\_\_ day of July, 2016 that contents of paras 01 to 22 of the preliminary submissions, paras 01 to 20 of the preliminary objections, paras 01 to 46 of reply to the writ petition on merit, reply to paras A to F of grounds of the writ petition, and to prayer clauses 'a' to 'd' are drafted by counsel for the Bureau at my instructions, based on the records maintained by the Bureau during the course of its ordinary works in the present case, and legal submission therein are based on the legal advice received from counsel for the Bureau, which are believed to be correct by me, no part of it is false, and nothing material has been concealed therefrom.



CERTIFIED THAT THE DEPONENT  
 Smt/Sri/Km.....  
 S/o W/o.....  
 R/o.....  
 Identified has.....  
 that the contents of the affidavit which have been read & explained to me are true and correct to his knowledge.  
*26*

26 JUL 2016  
 DEPONENT  
*MAA*  
 विजय नितनारे  
 VIJAY NITANWARE  
 वैज्ञानिक 'ई' (ई-सेल)  
 Scientist 'E' (E-Cell)  
 भारतीय मानक ब्यूरो  
 BUREAU OF INDIAN STANDARDS  
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 26 JUL 2016