

IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRA-ORDINARY CIVIL JURISDICTION)
W. P. (C) NO. 11901 OF 2015
(IN THE MATTER OF PUBLIC INTEREST LITIGATION)

PUBLIC RESOURCE ORG, INC. & ORS. ..PETITIONERS

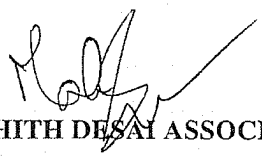
VERSUS

UNION OF INDIA & ANOTHER. ..RESPONDENTS

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NEW DELHI
17.05.2018

IN THE HIGH COURT OF DELHI AT NEW DELHI
EXTRA-ORDINARY CIVIL JURISDICTION
WRIT PETITION (C) NO. 11901 OF 2015
IN THE MATTER OF A PUBLIC INTEREST LITIGATION

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..RESPONDENTS

WRITTEN SUBMISSIONS ON BEHALF OF PETITIONERS

1. The Petitioner submits that Indian Standards are law within the meaning of Article 13 of the Constitution of India, 1950, and are therefore bound to be made freely available in public domain. Indian Standards ought to be made freely available as there is a fundamental right to access such knowledge and information and secrecy or non-accessibility of enforceable laws is the antithesis in a society governed by rule of law.
 2. Status of standards issued under BIS law
 - a. Section 16 of the BIS Act, 2016, empowers Central Government to notify goods which shall comply with Indian Standards (as defined in S. 2(17)). Indian Standards are notified in the Official Gazette in terms of S. 16 read with S. 2(24). Section 17 prohibits sale of goods which have been notified under S. 16(1) from being sold in the absence of conformity with Indian Standards. Section 29 (2) provides for imprisonment of up to one year or fine of Rs. 100,000 for sale of goods in violation of S. 17. Further, Section 31 provides that consumers shall be entitled to claim compensation for loss due to non-compliance with Indian Standards.
 - b. BIS is a creature of a statute and members of the Governing Council who constitute the BIS include, the Minister-in-charge of the relevant Ministry or Department (Ministry of Consumer Affairs, Food and Public Distribution). It follows that rules, regulations, including Indian Standards, notified by BIS are therefore law, in terms of the ruling of the Hon'ble Supreme Court of India ('**Supreme Court**') as held in *Sukhdev Singh & Ors. v. Bhagatram Sardar Singh Raghuvanshi and Anr.* [(1975) 1 SCC 421].
 - c. It is respectfully submitted that Indian Standards are issued by a statutory authority, are duly notified and have a binding and mandatory effect.
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Instances of such mandatory notifications is illustratively set out in Annexure A (pp. 60 – 64) and Annexure B (pp. 65 – 78) to the Petition.

- d. Indian Standards are law that binds manufacturers and service providers and entitles the consumers to enforce them under the Consumer Protection Act, 1986. Indian Standards are subordinate legislation that have been made under power conferred by the BIS Act, 2016 and have the force and effect as the BIS Act, 2016, itself.

3. Notification of Indian Standards:

- a. Indian Standards are required to be notified in the Official Gazette which is an authorized legal document of Government of India containing the mode of operation of the laws of the land.
- b. In *Sambhu Nath Jah v. Kedar Prasad Sinha* [(1972) 3 SCR 183], Supreme Court held that:

“The object of publication in in official gazette is twofold : to give publicity to the notification further to provide authenticity to the contents of that notification case some dispute arises with regard to the contents.”

- c. For an effective publication, it is not enough to be a mere notification, but one which informs the people of India of a new law. As held in *Raza Buland Sugar Co. Ltd. Rampur, v. Municipal Board, Rampur* [(1965) 1 SCR 970], there would be no injustice if the Indian Standards are made public, however, grave and irreparable injustice would be caused to people of India if access to Indian Standards are denied. See also *Universal Cans and Containers Ltd. v. Union of India* (1993) 64 ELT 23 Delhi.

4. Effect of non-compliance with Indian Standards:

- a. In terms of S. 17 and S. 31 of the BIS Act, 2016, penal and coercive consequences which deprive a person of his/her liberty. In *V.K. Ashokan v. Assistant Excise Commissioner & Ors.* [(2009) 14 SCC 85], the Supreme Court held that principles of natural justice must be complied with since coercive actions (cancellation of licence in that case) would have serious civil consequences and it was obligatory on the part of tax authorities to comply with principles of natural justice. The Supreme Court relied on its observations in *State of Orissa v. Dr. Binapani Dei* [(1967) 2 SCR 625] where the court held that:

“It is an authority for the proposition when by reason of an action on the part of a statutory authority, civil orconsequences ensue, principles of natural justice are required to be followed. In such an event, although no express provision is laid down in this behalf, compliance with principles of natural justice would be implicit. In case of denial of principles of natural justice in a statute, the same may also be held ultra vires Article 14 of the Constitution.”

- b. Therefore, coercive action that follows due to non-compliance with Indian Standards, requires that the Indian Standards be made available in the first place. [See also *Collector of Customs v. Jindal Strips Ltd. & Ors.* (1999) SCC OnLine Cal 457 (FB)].
5. No copyright in respect of law:
- a. Section 52 (1)(q) of the Copyright Act, 1957, (Copyright Act) provides that there would be no infringement in respect of:
 - (i) any matter which has been published in any Official Gazette except an Act of a Legislature;
 - (ii) any Act of a Legislature subject to the condition that such Act is reproduced or published together with any commentary thereon or any other original matter;

It is submitted that Indian Standards being law and published in the Official Gazette are duly excepted from copyright protection.

- b. It is also submitted that Indian Standards have no protection from disclosure under Right to Information Act, 2005.
6. Fundamental Right to free access of Indian Standards:
- a. It is submitted that compliance with Indian Standards is mandatory for specified persons (Section 2(25)) and consumers (Section 2(9)) have the right to enforce Indian Standards and seek damages in the case of breach of Indian Standards. If people are given the ability to enforce statutory rights, they should be given access to such laws [*State of UP and Ors. v. Babu Ram Upadhyaya* (1961) 2 SCR 679].
 - b. The right of citizens to access information and to have knowledge of the same as a fundamental right has been upheld in [*Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspaper Bombay (P) Ltd.* (1988) 4 SCC 592] and the court held that:

“Right to know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age in our land under Article 21 of our Constitution. That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take upon themselves the responsibility to inform.”
 - c. It is submitted that denial of access to Indian Standards would be in violation of principle of rule of law as it would be in violation of Articles 14, 19 and 21. It was held in *R.D. Shetty v. International Airport Authority* [(1979) 3 SCC 489]:

“It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should
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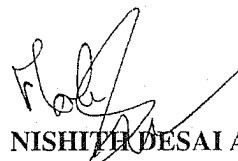
be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement."

d. However, the blanket refusal and the prohibitive costs imposed by Respondent No.2 are unreasonable, arbitrary and therefore, unconstitutional.

7. It is respectfully submitted that in light of the above submissions, it is respectfully prayed that this Hon'ble Court be pleased to hold that Indian Standards be made available freely with no restrictions.

PETITIONER

THROUGH



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17.05.2018

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