

IN THE HIGH COURT OF DELHI AT NEW DELHI  
(EXTRA-ORDINARY WRIT JURISDICTION)

W.P. (CIVIL) NO.11901 OF 2015

PUBLIC RESOURCE ORG. INC & ORS. .. PETITIONERS


VERSUS

UNION OF INDIA & ANOTHER .. RESPONDENTS

NDOH: 23.05.2018

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NEW DELHI

DATED : MAY 19, 2018

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WRITTEN SYNOPSIS OF BIS/RESPONDENT NO.2

1. The Petitioners by way of the present writ petition has approached this hon'ble Court with the following prayers:
  - a. Issuance of writ of *mandamus* directing BIS/Respondent 2 to make available all Indian Standards **free of cost** or **at such rates this hon'ble Court may deem fit and proper**;
  - b. Issuance of writ of prohibition, restraining BIS from charging exorbitant fees/ charges **on any future Indian Standards**.
2. It is submitted that Mr. Carl Malamud, stated to be president of Petitioner No.1, had admittedly violated the copyright of BIS on the Indian Standards after taking the same on lease for a year and thereafter publishing them on his website. Upon being confronted by BIS, the Petitioners have filed the present writ petition.
3. Case of BIS is that as per **Rule 25** [earlier Rule 7(8) and 7(9)] of the BIS Rules, BIS is empowered for **publication** of the Indian Standards formulated and established by it and **pricing** thereof. The Petitioners have challenged the functions and activities of BIS in respect of publication and pricing of the Indian Standards, however no challenge has been made to the rule itself.
4. Further, case of BIS is that BIS is the **First Owner** of the Indian Standards by virtue of the provisions of **Section 17** of the Copyright Act, 1957. Therefore, as the first owner of the Indian Standards, BIS is well within its rights for publications and pricing of the Indian Standards.
5. So far as the contention of the Petitioners that the Indian Standards are laws because they are notified in the official gazette, or because they are made mandatory under **Section 16** of BIS Act, or because there are punitive actions under **Section 29(2)** of BIS Act, or for any other reasons, is concerned, it is based on fallacious understanding of the Petitioners. The provisions of BIS Act are laws, not the Indian Standards which are governed by BIS Act.

6. As per **Rule 24** of BIS Rules, the Indian Standards are voluntary and their implementation depends on adoption by concerned parties. 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.
7. So far as notification of the Indian Standards in official gazette is concerned, as per case relied upon by the Petitioners, the object of such notification is to give 'publicity' and 'authenticity', and not the statutory force to an Indian Standard.
8. To say that 'for an effective publication, it is not enough to be a mere notification', shows that the Petitioners are attempting to mix up the true intent and purpose of legislature behind BIS Act. If indeed the intent of the legislation was to publish the entire script of an Indian Standard by way of notification in the official gazette, it would not have used the words notification and publication separately to define the functions of the Bureau. Raza Buland case [(1965) 1 SCR 970], and Universal Cans case [(1993) 64 ELT 23 Delhi] are wholly irrelevant to the issue involved in the present case.
9. It is submitted that Indian Standards are freely available, and there is no secrecy about them. The Petitioners are attempting to bring confusion in the use of words, "freely available" which means freely accessible, with "free of cost".
10. The Petitioner is further mixing up the non-compliance of the provisions of BIS Act, Rules and Regulations to say it is equivalent to non-compliance of Indian Standards.
11. The Petitioners are attempting to contend that under Section 52(1)(q) of the Copyright Act, in case of laws **published** in official gazette, no copyright infringement can be brought against anyone. Though a bare reading of Section 52(1)(q) would make it clear that the said provision is coupled with a *proviso* which prohibits the pure text of an Act of legislature. Even if it is assumed for the sake of arguments that Indian Standards are laws, the said provision of Copyright Act does not support the contention of the Petitioners.
12. It is further submitted that Indian Standards are merely **notified**, not published, in the official gazette, and under Section 52(1)(q) of Copyright Act, it is the **reproduction or publication** which has been exempted from infringement of copyright.
13. 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.

14. Lastly, case of BIS is that as per Section 11 of the BIS Act, 2016 “No individual shall, without the authorisation of the Bureau, in any manner or form, **publish, reproduce or record** any Indian Standard or part thereof, or any other publication of the Bureau.” Publication means, the Indian Standards published in booklet forms by the Bureau filed by the Petitioner as Annexure G/ Page 318, which clearly asserts copyright of the Bureau thereon.

The petition therefore is misconceived and is liable to be dismissed.



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