

Received on 29/1/19  
(MDK)

IN THE HIGH COURT OF DELHI AT NEW DELHI

C.M. NO. \_\_\_\_\_ OF 2019

IN

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

NDOH:04.02.2019

INDEX

Sl. No.	Particulars	Pages
1	Urgent application	1
2	Application under Section 151 of CPC 1908 seeking condonation of delay in filing counter affidavit along with supporting affidavit	2 - 8
3	Counter affidavit to the amended writ petition on behalf of Respondent No.2, the Bureau of Indian Standards	9 - 126
4	Notice of motion and proof of service	127

Counter affidavit has been served as per notice of motions and proof of service is affixed thereon.



RAMESH KUMAR, ADVOCATE  
CHIRAMEL & CO  
SOLICITORS & ADVOCATES  
COUNSEL FOR RESPONDENT NO.2

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NEW DELHI

DATED : JANUARY 25<sup>TH</sup>, 2019

IN THE HIGH COURT OF DELHI AT NEW DELHI

C.M. NO. \_\_\_\_\_ OF 2019

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WRIT PETITION (CIVIL) NO. 11901 OF 2015

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In the matter of :

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versus

Union of India & Another .. Respondents

**URGENT APPLICATION**

To,

The Registrar

Delhi High Court

New Delhi

Dear Sir,

Kindly place the accompanying application under Section 151 of CPC 1908 seeking condonation of delay in filing the counter affidavit along with counter affidavit on behalf Respondent No.2, before the hon'ble Court on 04.02.2019 i.e. the date already fixed in the above case, on urgent basis.

Prayed accordingly.



RAMESH KUMAR, ADVOCATE  
CHIRAMEL & CO  
SOLICITORS & ADVOCATES  
COUNSEL FOR RESPONDENT NO.2

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Public Resource Organization, Inc. & Others .. Petitioners

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APPLICATION UNDER SECTION 151 OF CPC 1908 SEEKING  
CONDONATION OF DELAY IN FILING COUNTER AFFIDAVIT  
TO THE AMENDED WRIT PETITION

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Respondent No. 2 Bureau of Indian Standards, most respectfully  
submits as under:

01. The Petitioners had filed the above writ petition before this hon'ble Court seeking various directions by way of writs from this hon'ble Court which came up before this hon'ble Court for hearing on 13.11.2018 when the Petitioner sought liberty to amend the writ petition in view of repeal of the BIS Act, 1986 and enactment of BIS Act, 2016, which was permitted by this hon'ble Court, and the petition was directed to be listed before the Court on 07.12.2018.

02. The Petitioners thereafter filed amended writ petition and served a copy of the amended writ petition, wherein the petitioner added various new prayers by way of relief. Since the amended writ petition was filed beyond the time granted by this hon'ble Court, the Petitioner also filed an application namely CM No.47089/2018, seeking condonation of delay of 7 days in filing the amended writ petition. The said application was listed before this hon'ble Court on 07.12.2018 along with the writ petition when this hon'ble Court allowed the application and took on record the amended writ petition, and granted four weeks to the Respondent Bureau to file its counter affidavit, and adjourned the case for 04.02.2019.

03. During the course of hearing on 07.12.2018, it was pointed out on behalf of the Bureau that the Petitioners has referred to various foreign authorities which were not readily available to the Bureau or its counsel in order to examine and respond to the same, and therefore counsel for the Petitioners agreed to supply the said authorities to the Bureau or its counsel. Thereafter, the said authorities were received by counsel for the Bureau on 13.12.2018. Counsel for the Bureau sent the same along with amended writ petition to the Bureau for comments and parawise reply. Concerned departments of the Bureau perused the writ petition and thereafter sent their parawise comments on the writ petition to counsel for the Bureau for drafting of the counter affidavit.

04. It is submitted that since the Petitioners have enlarged the averments in the amended writ petition by adding various grounds and

submissions 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) declare Section 11 of the BIS Act as *ultra vires* the Constitution of India, (d) declare Section 9(g) of the BIS Act as *ultra vires* the Constitution of India, (e) declare Rule 25 of the BIS Rules *ultra vires* the Constitution of India, (f) *ad interim* relief as per prayer (b) during the pendency of the writ petition, counsel for the Bureau examined the same, particularly in the light of the parawise comments received from the Bureau as well as various pronouncements of the Supreme Court of India, and prepared a draft of the counter affidavit to be filed on behalf of the Bureau, which took him considerable time to draft.

05. Thereafter the draft of the counter affidavit prepared by counsel for the Bureau was sent to the Bureau for approval and signature of the authorized signatory when the concerned departments examined the same for approval and signature of the authorized signatory which took further time to finalize and approve the draft counter affidavit.

06. It is submitted that in the above circumstances, four weeks time granted by this hon'ble Court for filing the counter affidavit expired on 05.01.2018, hence the Bureau is filing the counter affidavit with a delay of 20 days. It is submitted that the delay in filing

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the counter affidavit by the Bureau is neither intentional nor deliberate but due to the facts and circumstances stated hereinabove, which were not in the control of the Bureau.

07. It is therefore submitted that the Bureau is filing the present application seeking condonation of delay in filing the counter affidavit and for taking the counter affidavit on record. It is further submitted that in case the delay in filing counter affidavit is condoned by this hon'ble Court, no prejudice will be caused to the Petitioners. However, a denial of condonation of delay will cause irreparable loss injury and damage to the case of the Bureau in opposition to the writ petition.

08. It is therefore submitted that this hon'ble Court may kindly be pleased to condone the delay of 20 days in filing the counter affidavit, and take the counter affidavit on record for the proper adjudication of the issues raised by the Petitioners in the above writ petition.

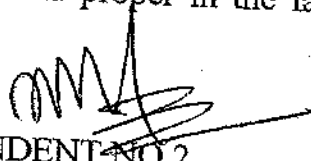
09. The present application is *bona fide* and in the interest of justice.

#### PRAYER

It is therefore most respectfully prayed that this hon'ble Court may kindly be pleased to condone the delay of 20 days in filing the counter affidavit of Respondent No.2 the Bureau of Indian Standards, and take the counter affidavit on record.

6

This hon'ble Court may also be pleased to pass any other such orders or directions as deemed fit and proper in the facts and circumstances of the present case.


  
RESPONDENT NO.2  
BUREAU OF INDIAN STANDARDS

THROUGH:

विजय नितनावारे  
VIJAY NITNAWARE  
वैज्ञानिक 'ई' एवं प्रमुख (विजय)  
Scientist 'E' & Head (Sale)  
भारतीय मानक ब्यूरो  
BUREAU OF INDIAN STANDARDS  
६, बहादुरशाह जफर मार्ग, नई दिल्ली-110002  
6, Bahadur Shah Zafar Marg, New Delhi-110002

SHRI VIJAY NITNAWARE  
SCIENTIST 'E' & AUTHORIZED SIGNATORY  
BUREAU OF INDIAN STANDARDS

THROUGH:

  
RAMESH KUMAR, ADVOCATE  
CHIRAMEL & CO  
SOLICITORS & ADVOCATES  
COUNSEL FOR RESPONDENT NO.2

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7  
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.. Petitioners

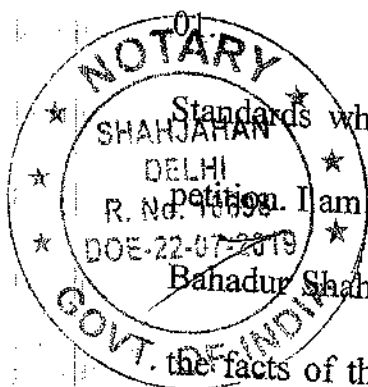
versus

Union of India & Another


.. Respondents

AFFIDAVIT OF SHRI VIJAY NITNAWARE SON OF SHRI  
BALKRISHNA NITNAWARE, AGED 56 YEARS, C/O BUREAU  
OF INDIAN STANDARDS, MANAK BHAVAN, 9  
BAHADURSHAH ZAFAR MARD, NEW DELHI 110002

I, the deponent abovenamed, do hereby solemnly affirm  
and state as under :



I am employed as Scientist 'E' with Bureau of Indian Standards which is arrayed as Respondent No. 2 in the above writ 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.

  
विजय नितनावरे  
VIJAY NITNAWARE  
वैज्ञानिक 'ई' एवं प्रमुख (विक्रय)  
Scientist 'E' & Head (Sale)  
भारतीय मानक ब्यूरो  
BUREAU OF INDIAN STANDARDS  
9, पहादुरशाह ज़ाफर मार्ग, नई दिल्ली-110002  
9, Bahadur Shah Zafar Marg, New Delhi-110002



02. I have read and understood the contents of the accompanying application seeking condonation of delay in filing the counter affidavit to the above writ petition, which has been drafted by the Respondent Bureau's counsel as per my instructions, and parawise comments provided by the concerned departments, in which legal submissions are based on the advice received from the Bureau's counsel which are believed to be correct by me, and which are not being repeated here for the sake of brevity, but may be read as part and parcel of this affidavit.

*[Signature]*

DEPONENT

विजय नितान्वारे  
VIJAY NITANWARE  
वैज्ञानिक 'ई' एवं प्रमुख (विक्रय)  
Scientist 'E' & Head (Sale)  
भारतीय मानक ब्यूरो  
BUREAU OF INDIAN STANDARDS  
१, बहादुरशाह जफर मार्ग, नई दिल्ली-110002  
१, Bahadur Shah Zafar Marg, New Delhi-110002

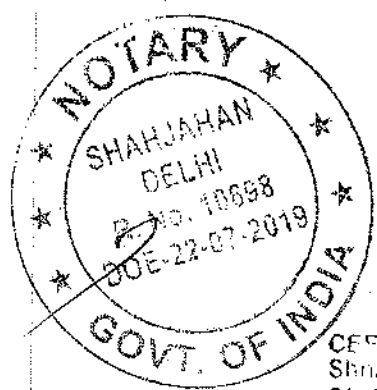
*[Signature]*  
Ramesh Kumar  
5/9/8/2009

VERIFICATION

I Identified the deponent who has Signed / put in my presence.

25 JAN 2019

Verified at New Delhi on this the 25<sup>th</sup> day of January, 2019 that the contents of my above affidavit are true, no part of it is false, and nothing material has been concealed therefrom.



25 JAN 2019  
ATTESTED  
NOTARY, DELHI

*[Signature]*

DEPONENT

विजय नितान्वारे  
VIJAY NITANWARE  
वैज्ञानिक 'ई' एवं प्रमुख (विक्रय)  
Scientist 'E' & Head (Sale)  
भारतीय मानक ब्यूरो  
BUREAU OF INDIAN STANDARDS  
१, बहादुरशाह जफर मार्ग, नई दिल्ली-110002  
१, Bahadur Shah Zafar Marg, New Delhi-110002

CERTIFIED THAT THE DEPONENT  
Shri. *[Signature]*  
S/o *[Signature]*  
Idr. *[Signature]*  
has seen *[Signature]* at Delhi  
on *[Signature]*  
that the contents of the affidavit which  
have been signed by him are  
true and correct to the best of his knowledge

Notary Public

9  
IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (CIVIL) NO. 11901 OF 2015  
(PUBLIC INTEREST LITIGATION)

In the matter of :

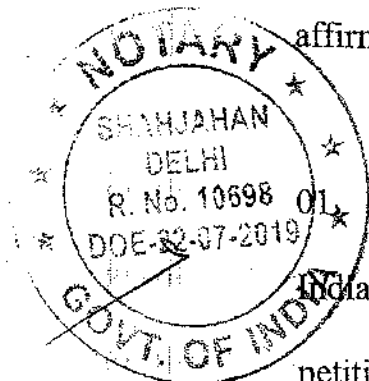
Public Resource Organization, Inc. & Others .. Petitioners

versus

Union of India & Another .. Respondents

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

I, Vijay Nitnaware son of Shri Balkrishna Nitnaware,  
aged 56 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 :



I am employed as Scientist-E & Head 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:

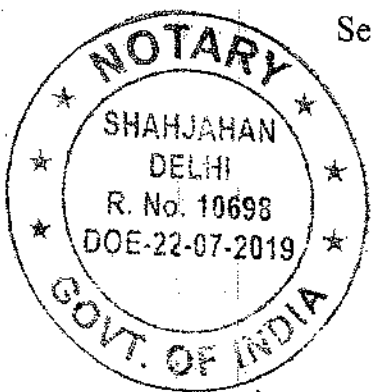
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01. The Bureau of Indian Standards (hereinafter referred to as 'Respondent No.2' or 'the Bureau') is a body corporate constituted under the Bureau of Indian Standards Act, 1986 which stands repealed and replaced with the Bureau of Indian Standards Act, 2016 (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 for the harmonious development of the activities of standardization, conformity assessment and quality assurance of goods, articles, processes, systems and services and for matters connected therewith or incidental thereto. 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.

02. Section 9(1)(g) of the BIS Act, the Bureau is given certain powers and functions, *inter alia*, to publish Indian Standards and sell such publications and publications of international bodies.

Section 9(1)(g) is reproduced as under:



“ 9(1) The powers and duties as may be assigned to the Bureau under this Act shall be exercised and performed by the Governing Council and, in particular, such powers may

include the power to—

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xxx

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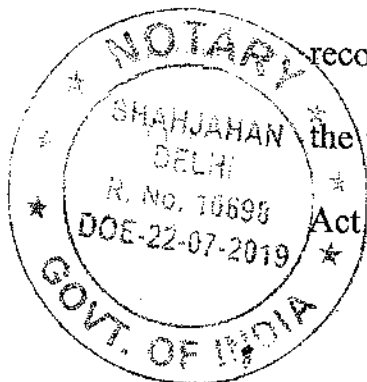
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- (g) publish Indian Standards and sell such publications and publications of international bodies;...”

03. As per Section 10(2)(5) of the BIS Act, notwithstanding anything contained in any other law, the copyright in an Indian Standard or any other publication of the Bureau shall vest in the Bureau. Section 10(2)(5) is reproduced as under:

“ 10(5) Notwithstanding anything contained in any other law, the copyright in an Indian Standard or any other publication of the Bureau shall vest in the Bureau. ”

04. Further, unauthorized publication, reproduction or recording of any Indian Standard or part thereof is prohibited under the provisions of Section 11 of the BIS Act. Section 11 of the BIS Act is reproduced as under:



“ 11(1) No individual shall, without the authorisation of the Bureau, in any manner or form, publish, reproduce or record any

*[Handwritten signature]*

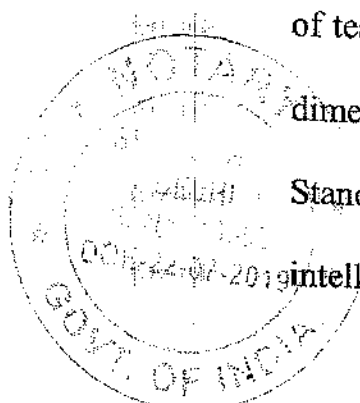
Indian Standard or part thereof, or any other publication of the Bureau.

- (2) No person shall issue a document that creates, or may create the impression that it is or contains an Indian Standard, as contemplated in this Act:

Provided that nothing in this subsection shall prevent any individual from making acopy of Indian Standard for his personal use. ”

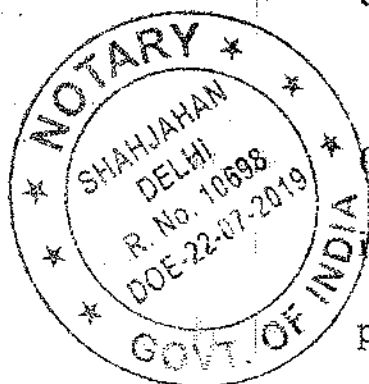
05. For formulation of Indian Standards, Bureau functions through the Technical Committee structure comprising of Division Councils, Sectional Committees, Sub-committees and Panels. So far since the establishment of the Bureau, it has through 14 Division Councils and 347 technical committees developed 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.

06. It is submitted that 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 or publish in any form 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.

07. 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 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.



08. 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 POSCO 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,

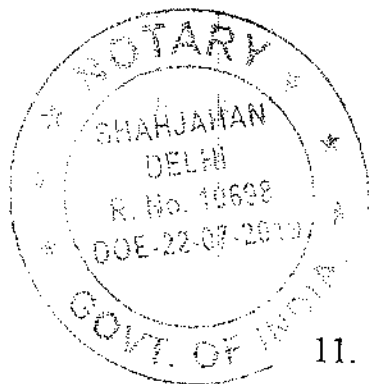
distributing and selling ISO publications, metadata and other works, etc.

09. Section 10(4) of the BIS Act provides for establishment of an Indian Standard by way of notification in the Official Gazette. Section 10(4) of the BIS Act is reproduced as under:

“ 10(4) The Indian Standard shall be notified and remain valid till withdrawn by the Bureau.”

10. Rule 15(2) of The Bureau of Indian Standards Rules, 2017 [hereinafter 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 by the Bureau and made available for sale. Rule 15(2) of the BIS Rules are reproduced as under:

“ (15(2) All Indian Standards, their revisions, amendments and withdrawal shall be established by notification in the Official Gazette. ”

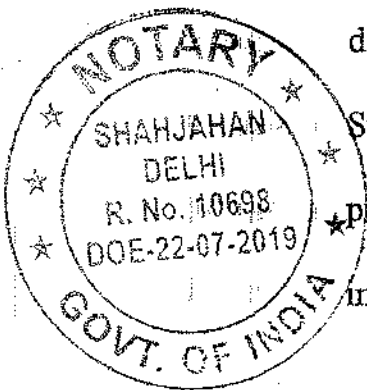


11. Rule 25 of the BIS Rules provides that publication and pricing of the Indian Standards shall be at the discretion of the Bureau. The Bureau is empowered to act in such manner as prescribed under the BIS Act and the BIS Rules framed thereunder, and the sale of the Indian Standards by the Bureau at a price is

authorized under the BIS Rules. Rule 25 of the BIS Rules is reproduced as under:

“ 25. 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 at such prices as may be determined by the Bureau. ”

12. 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.



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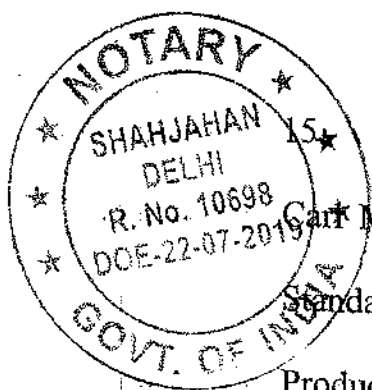
13. The Bureau makes available the formulated standards for sale at reasonable price on 'no profit-no loss' basis in soft and hard copies, wherein the soft copy can be purchased on lease for one



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 the BIS Rules to fix price of Indian standards for sale.

14. 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.



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 &

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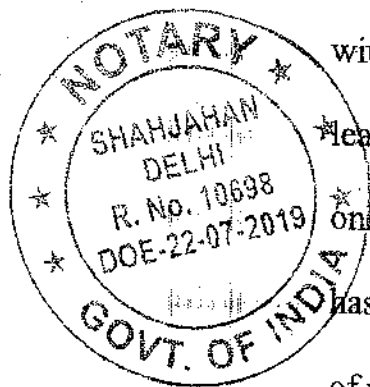
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Engineering Department, Textiles Department, Transport Engineering Department, Water Resources Department, and PGD for STANDALONE user(s) wherein again the user limit was '1', the same were later on updated on 17.09.2013, 04.11.2013, 28.01.2014, 26.03.2014, and 20.06.2014 after due payment for the same as per the conditions of sale order.

16. 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.

17. 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 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.

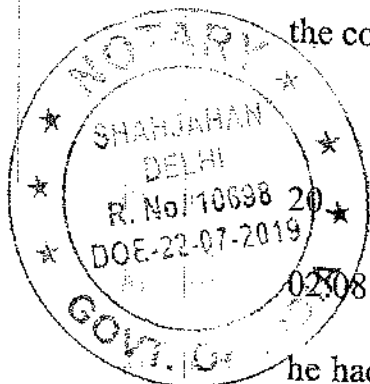
18. Vide email/ letter dated 25.06.2014, Shri Carl Malamud approached the Bureau, and made request to renew the subscription of the Standards earlier purchased on lease by him with an option of



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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.

19. 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.

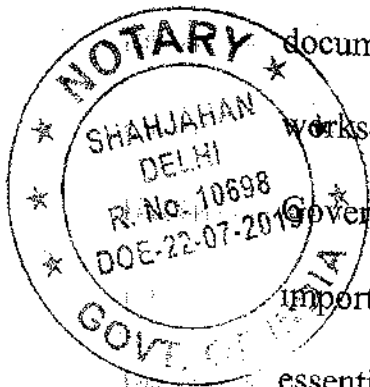


Thereafter, Shri Carl Malamud vide email/ letter dated 02.08.2014 responded to the Bureau claiming in a heroic manner that he had posted 19,200 Indian Standards on his website instead of 192 Indian Standards, purportedly "to promote the timely dissemination of this information in an accurate manner to 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.

21. 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.

22. 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

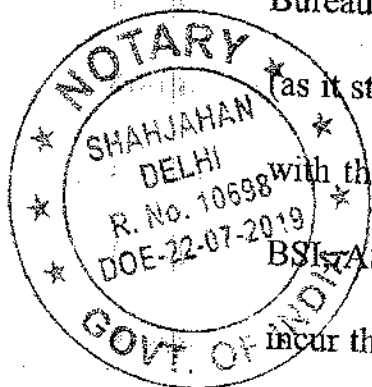


*[Signature]*

preparers, and many others. Finally he contended that the Bureau cannot put a price on this knowledge.

23. Shri Carl Malamud also made a representation by way of a petition before the then hon'ble Minister 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.

24. 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 (as it stood then) 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

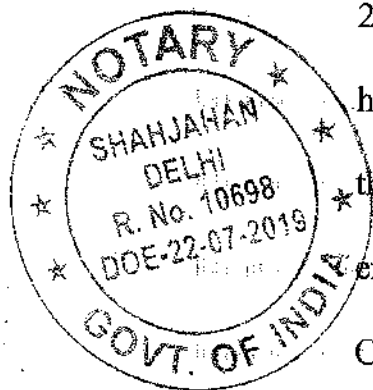


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Indian Standards which also included copyright policy so the Bureau is not bound to renew its subscription on DVD, (iii) the Bureau is selling Standards in PDF form, and hard copies of these Standards are also available through registered BIS office 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.

25. 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 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.

26. The writ petition came up before this hon'ble Court for hearing on 13.11.2018 when the Petitioner sought liberty to amend the writ petition in view of repeal of the BIS Act, 1986 and enactment of BIS Act, 2016, which was permitted by this hon'ble Court, and the petition was directed to be listed before the Court on 07.12.2018. In the meantime the Petitioners have served a copy of the amended writ petition, wherein the petitioner has added various new prayers by way of relief, which are liable to be rejected forthwith.



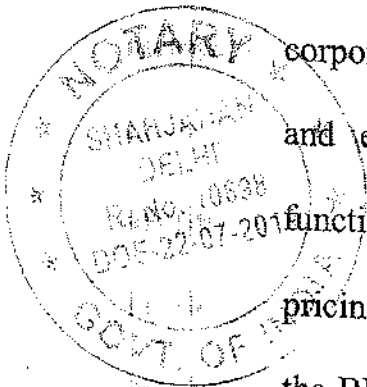
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PRELIMINARY OBJECTIONS:

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01. It is submitted at the outset that the amended 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) declare Section 11 of the BIS Act as *ultra vires* the Constitution of India, (d) declare Section 9(g) of the BIS Act as *ultra vires* the Constitution of India, (e) declare Rule 25 of the BIS Rules *ultra vires* the Constitution of India, (f) *ad interim* relief as per prayer (b) during the pendency of the 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, 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 25 of the BIS Rules deals with Publication and of the Indian Standards formulated and established by the Bureau and pricing thereof.

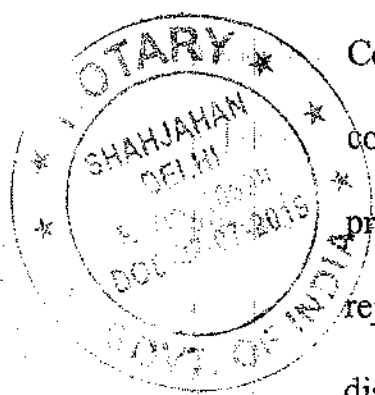


03. Since the functions and activities of the Bureau in respect of publication and pricing of the Indian Standards, which are under challenge in the writ petition before this hon'ble Court, are governed under the provisions of the aforesaid BIS Rules, and the said Rules are framed by the Central Government performing sovereign functions of the State, under Section 9(3) of the BIS Act, which is reproduced as under:

“ 9(3) The Bureau shall perform its functions under this section through the Governing Council in accordance with the direction and subject to such rules as may be made by the Central Government.”

04. It is submitted that the Petitioners have miserably failed to make out a case against the Bureau or the Central Government in regard to any of the provisions the BIS Act, or the BIS Rules, much less a case to show any of such provisions as *ultra vires* to the Constitution of India in the present writ petition, therefore 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 dismissed forthwith.

05. 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:

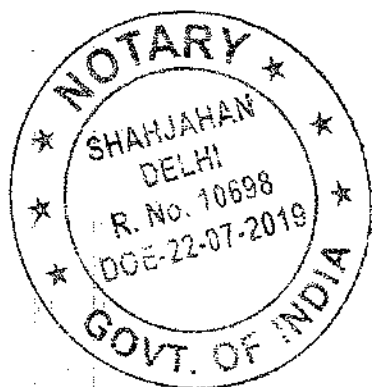
Provided that-

XXX

XXX

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[(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.



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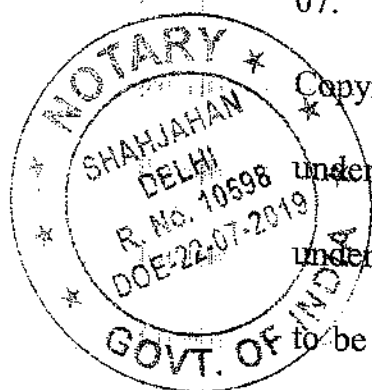
Explanation.—

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;]

06. 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.

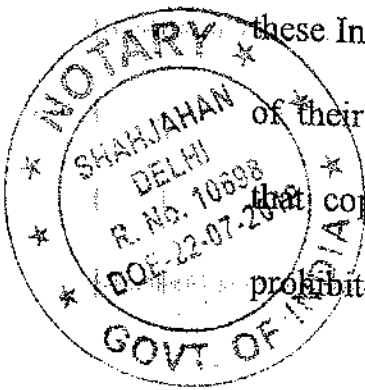
07. Further, as per Clause (dd) of Section 17 of the Copyright Act, 1957, in case of a work made or first published by or under the direction or control of any public undertaking, such public undertaking shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein. 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.



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08. 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.

09. 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.

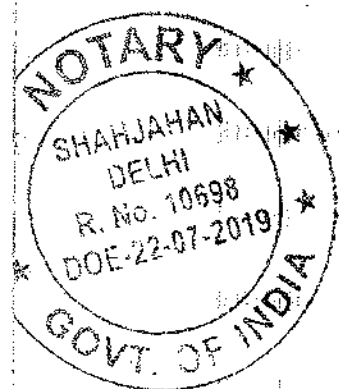


10. Since the aforesaid Indian Standards were purchased by Shri Carl Malamud in soft copies on lease for 1 year for STANDALONE user(s) wherein the user limit was '1', which were

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.

11. The present writ petition under the garb of public interest litigation is nothing but 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.

12. 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

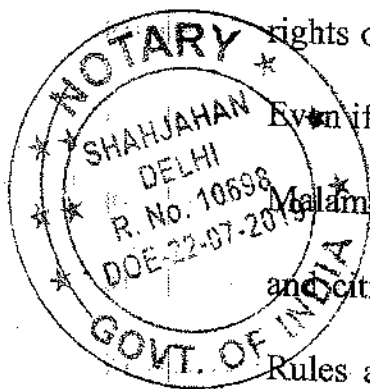


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accomplices in illegal activities of Shri Carl Malamud in copyright violations. Hence the writ petition is liable to be dismissed with stern warning to the Petitioners not to take law in their hands.

13. The Petitioners it attempting to set up a case in the present writ petition that as if 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.

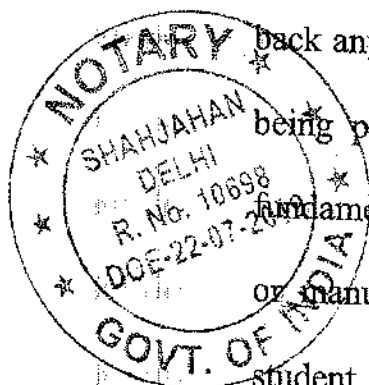
Even if it is assumed, without admitting that the Petitioners, and Shri Malamud of Petitioner No.1, are acting for the rights of consumers and citizens of India, their actions in violation of the BIS Act, and Rules and Regulations framed thereunder, as well as provisions of the Indian Copyright Act,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



A handwritten signature in dark ink, appearing to be "MMA" or similar, located below the notary seal.

14. The Petitioners are attempting to project before this hon'ble Court that the the Bureau is keeping the Indian Standards secret by way of imposing prohibitory cost on the Indian Standards. It is submitted that such contention of the Petitioners with regard to alleged secrecy with regard to 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, and no one has been denied a copy thereof till date. 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 about the Indian Standards.

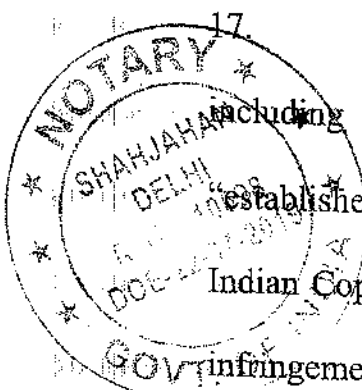
15. The Petitioners have been attempting to allege that that the Bureau is holding back "important industry information" from being published in public domain, in violation of fundamental right of the students, consumers, citizens of India and against the rights and interests of the traders and manufacturers. 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



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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.

16. 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.



17. Rule 15(2) of the BIS Rules provides that all standards, including their revisions, amendments and cancellations, shall be established by notification in Official Gazette". 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 :

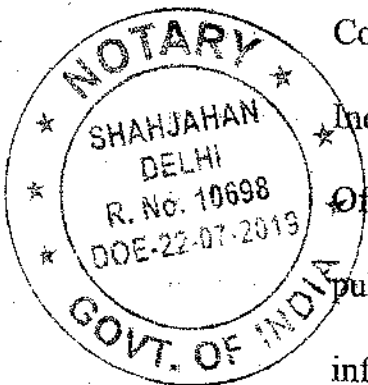
“ 52. Certain acts not to infringement of:-

(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;....”

18. 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.

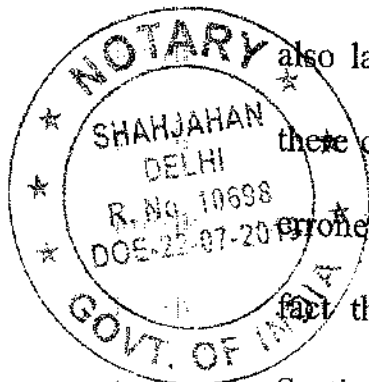




19. Section 52(1)(q)(i) also provides that reproduction or publication of any material which has been published in any Official Gazette, "except an Act of the Legislature", would not constitute infringement of copyrights under the provisions of the Indian Copyright Act, 1957. Hence, Section 52(1)(q)(i)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

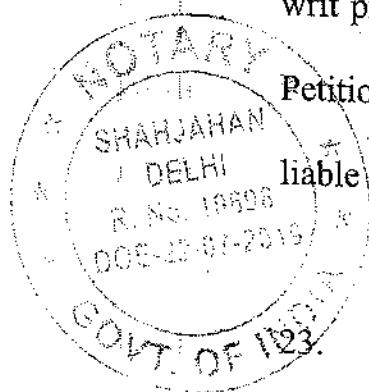
20. Therefore, even if it is assumed without admitting that the Indian Standards are laws as alleged by the Petitioners, it is clear from the conjoint reading of the above provisions of the BIS Rules and the Indian Copyright Act, 1957, that laws cannot be reproduced or published by anyone. In view of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

21. That Apart, the Petitioners in various paras 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, and 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 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.

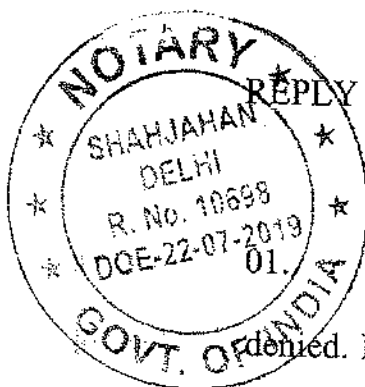
22. Without prejudice to the preliminary objections raised on behalf of the Bureau hereinabove, it is submitted that the Bureau had filed a suit namely suit No.469/2008 before Tis Hazari Court at Delhi seeking, *inter alia*, for rendition of accounts and declaration that the Bureau has the copyright 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.



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  
 ...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.

24. The reliefs therefore sought by the Petitioners under the  
 ...prayers of the present writ petition before this hon'ble Court are not  
 ...maintainable under law.



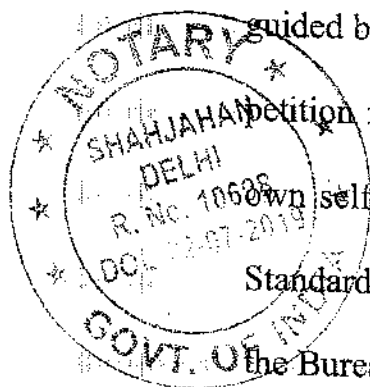
#### REPLY ON MERITS:

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. It is further denied that there is no  
 ...efficacious remedy available to the Petitioners. The Petitioners are  
 ...essentially challenging the right and ownership of the Bureau over  
 ...the Indian Standards which can be challenged only by way of filing a

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suit for declaration, which the Petitioners have failed to avail. 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. Even otherwise, the Indian Standards published and pricing thereof is done by the Bureau on no profit- no loss basis. That Apart, *proviso* to Section 11(2) does not prohibit any individual from making a copy of Indian Standard for her personal use. That apart, the Indian Standards are sold to various groups of people, including students upto 60% discounted price.

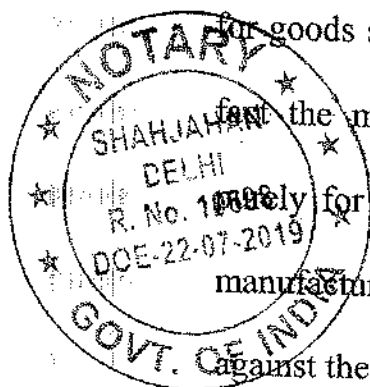
It is emphatically denied that the Petitioners are not guided by self-gain for themselves, or that they have filed the present petition in public interest. The Petitioners are purely guided by their own self interest. The Petitioners want to have access to the Indian Standards free of cost as against 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.

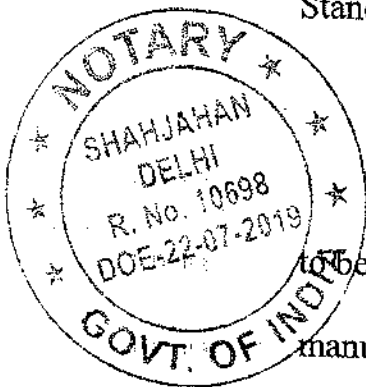
It is emphatically denied that the Indian Standards are statutorily prescribed in respect of goods, or that the citizens or manufacturers are required to have access to the Indian Standards, as if the Indian Standards are laws passed by the Parliament of India. It is further denied that in order to hold 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. As a matter of fact the manufacturers are people who use the Indian Standards merely for making profits and selling the Indian Standards to such manufacturers cannot by stretch of imagination be termed as against their interest.



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 in the Official Gazette, under the relevant provision of the Act

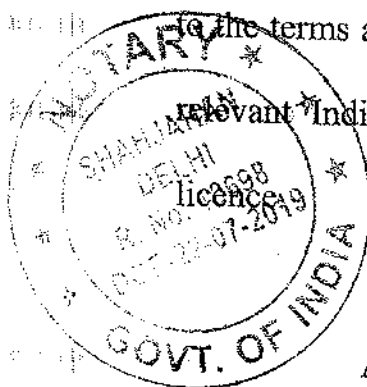
governing such particular industry with regard to goods, articles or processes which are so notified, the manufacturers are not under any legal obligation to produce or manufacture other goods or products as per Indian Standards. The goods which are notified as mandatory to be produced conforming to 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.

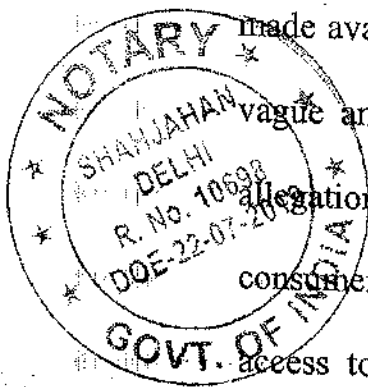


As explained hereinabove, the apprehensions of the Petitioners, whether they are genuine or a mere pretention, do not require a blank cheque to them by way of a writ or order or direction to the Bureau to provide them all Indian Standards established and formulated by the Bureau free of cost or alleged nominal cost. It is

submitted at the cost of repetition 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.

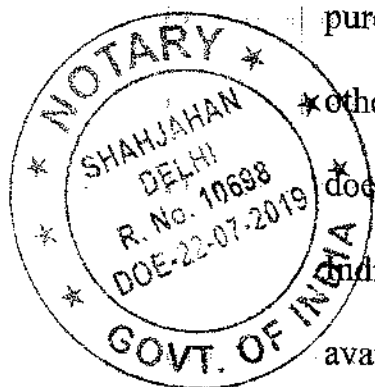
02. In reply to para 2 of the writ petition it is submitted that the information stated to have been obtained by the Petitioners with regard to the publication of the Indian Standards are already available in the BIS Act, and Rules and Regulations framed thereunder, and on the website of the the Bureau, and there is no secrecy about the same. The Petitioners have admitted that the information is available on the website of the Bureau and in the BIS Act which is stated to be the primary source of information for the Petitioners.

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 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 merely add to their profits and financial gain. 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 submitted that the students, professors, scholars, researchers or scientist can always use the Indian Standards by purchasing the Indian Standards upto 60% discounted price, and even otherwise personal use by such individuals of the Indian Standards does not amount to infringement of copyright of the Bureau on such Indian Standards. It is submitted that the Bureau itself has made available large number of Indian Standards freely on its website, and the Indian Standards which has no use for general public and are largely used by the Manufacturers, which are essential for the general public, particularly relating to public health and safety, security, infrastructure requirements, and mass consumption have been enforced for compulsory certification of the goods.



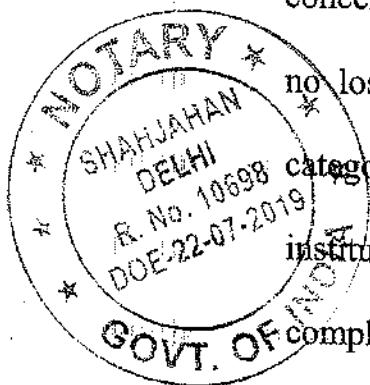
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It is once again denied that the Indian Standards are statutory Standards. Such contentions are made to mislead this hon'ble Court, in order to get some favourable orders which the Petitioners are not entitled to under law.

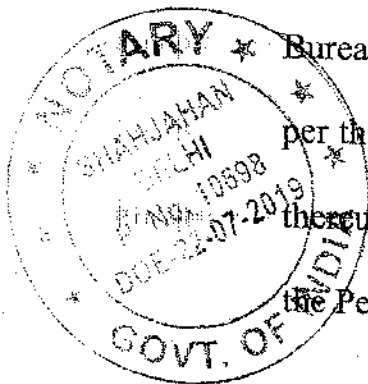
Contention of the Petitioners is once again vague and lacking in material particulars with regard to the alleged "manner in which the Indian Standards are published" and the alleged "prohibitive cost" to access the Indian Standards. The Petitioners are either ignorant or cleverly making such allegation to paint the picture 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 or pricing 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, and since the Bureau grants discounts for various categories of users namely, students, teachers, educational institutions, etc upto 60% for knowledge purposes, it cannot be complained of by the Petitioners. 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.



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04. Contents of para 4 of the writ petition are wrong and denied. it is denied that any writ of any nature as sought by the Petitioners is required to be issued by this hon'ble Court against the Ministry of Consumer Affairs/ Respondent No.1, or against the Bureau in the present case, merely because the Bureau is the creation of the statute, or is a government body, or is 'state' under Article 12 of the Constitution of India. The Bureau is fulfilling its responsibility under the BIS Act, and the Rules and Regulations framed thereunder, and it is emphatically denied that the Bureau is reluctant in any manner or has failed to make Indian Standards public under any of the provisions of the BIS Act or the Rules and Regulations framed thereunder. The Petitioners are accepting that the Bureau can sell the standards, however the Petitioners want to have freedom to deal with the Indian Standards in the manner they would like to, which they cannot be allowed under law. The Petitioners attempt to the In reply to para 4 of the writ petition it is submitted that the challenge Section 11 of the BIS Act, on the grounds urged is wholly frivolous and liable to rejected forthwith. It is submitted that the depriving the Bureau of its lawful right to publish and sell the Indian Standards as per the provisions of the BIS Act, and Rules and Regulations framed thereunder, itself is sufficient ground to dismiss the writ petition of the Petitioners.



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

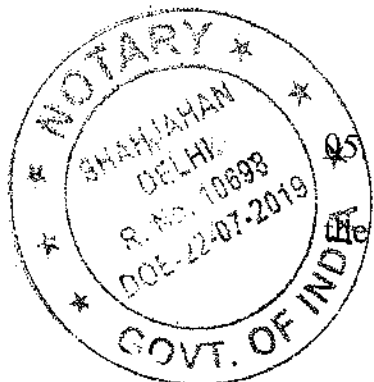
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provisions of the BIS Act, and the Right to Information Act, in order to promote public education and public safety, equal justice for all, the rule of law, world peace and a better informed citizenry, particularly the Indian Standards pertaining to public safety, which have been updated time to time.

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.

#### RE.: PARTIES



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

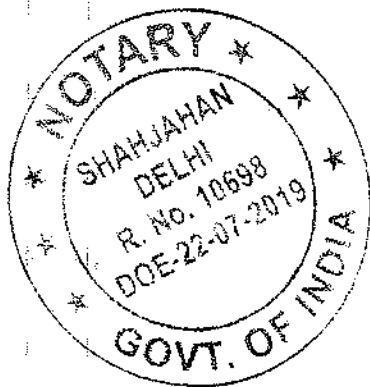
- 5a. Contents of para 5a of the writ petition with regard to Petitioner No.1 that it is a registered not-for-profit organization and based in California, USA, are within the special knowledge of the Petitioners, and Petitioners are put to strict proof

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thereof. 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, and the Petitioners are put to strict proof thereof. 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.

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.

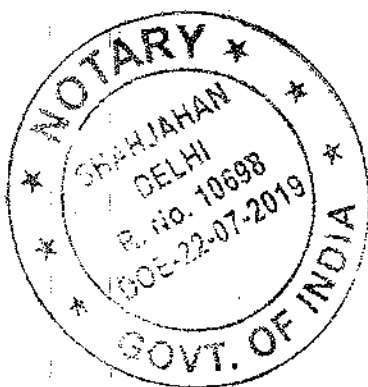


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5b. Contents of para 5b of the writ petition with regard to Shri Carl Malamud, and his alleged activities and achievements, and vocation and avocation, as explained therein, are within special knowledge of the Petitioners, and the Bureau is not concerned 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 BIS Act and 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

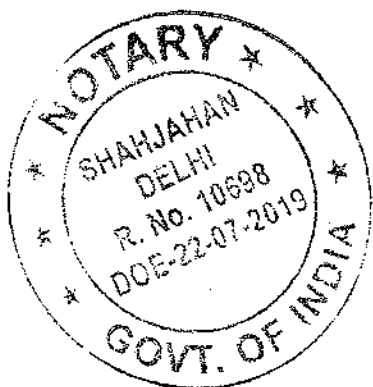


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service on internet is concerned, the statutes or an any Act of a Legislature is permitted to be reproduced or published, subject to the condition that such Act is reproduced or published together with any commentary thereon or any other original matter, 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 BIS Act and 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



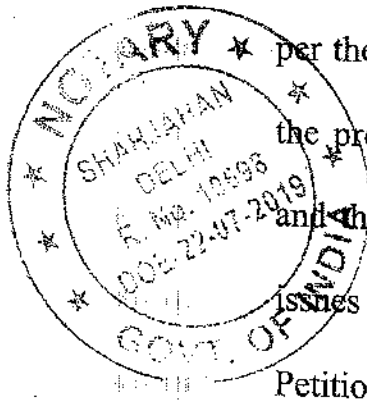
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copyright policy of the Bureau, with regard to the Indian Standards.

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.

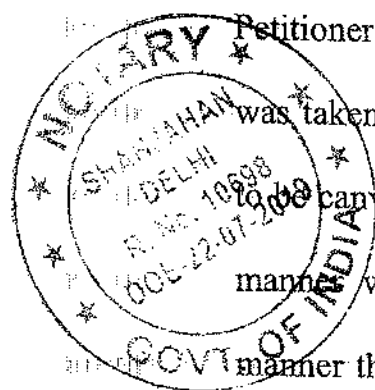
06. Contents of para 6 of the writ petition are matters of record to the extent that Shri Carl Malamud had sent letters dated 25.06.2014 and 02.08.2014 to the Bureau. However, letter dated 25.10.2014 purported to have been written by Petitioner No.1 is within the special knowledge of the Petitioners, 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 BIS Act and 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.



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It is submitted that Petitioner No.1 is stated to be an organization that is devoted to improved standards of transparency, empowering citizens and helping citizens enforce their rights. The Petitioners however have miserably failed to explain in the writ petition as to how in and what manner publication of the Indian Standards by them on their websites would improve standards of transparency, or empowering citizens or help citizens to enforce their rights, as the Indian Standards formulated by the Bureau have no connection with the alleged activities of Petitioner No.1 or the Petitioners. It is submitted that traveling expeditions of Shri Carl Malamud and his passion for objectives of Petitioner No.1 have no concern with the Bureau or standardization activities undertaken by the Bureau in India. It is further submitted that having subscribed the Indian Standards on lease for personal use as explained hereinabove under the preliminary submissions, subject to terms and conditions of the copyright attached thereto, Shri Carl Malamud cannot handover the same to Petitioner No.1 as if the Indian Standards have become his own property for making the same available on website of



Petitioner No.1. It is submitted that subscription of Indian Standards was taken by Shri Carl Malamud, and not Petitioner No.1 as sought by the Petitioners in the writ petition in mischievous manner with oblique motives, and having come to know in the manner the Indian Standards are misused by Mr. Carl Malamud and

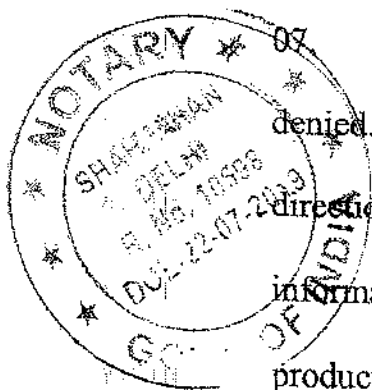
Petitioner No.1, the Bureau is well within its rights to refuse access and renewal of the subscription to Mr. Carl Malamud. It is

*cm* emphatically denied that the denial of further subscription of the Indian Standards in view of the misuse thereof by him can by no

stretch of imagination be termed as denial of information or access of information or violation of fundamental rights, as alleged by the Petitioners, and the Petitioner No.1's alleged devotion to greater transparency or access of information cannot give the Petitioners a right to continue to engage into activities involving flagrant breach of the copyright of the Bureau, particularly when the Indian Standards are not secret documents as alleged by the Petitioners, and are available for sale just like any other work of a writer who has produced such work and has copyright thereon is available for sale, and are not some kind of information as sought to be alleged and canvassed by the Petitioners. It is denied that Petitioner No.1 has no commercial interest or that the petition is *bona fide* or that Petitioner No.1 has any *locus standi* to file the writ petition. It is submitted that the writ petition is wholly misconceived and is liable to be dismissed forthwith.

#### RE.; OBJECT OF THE PETITION

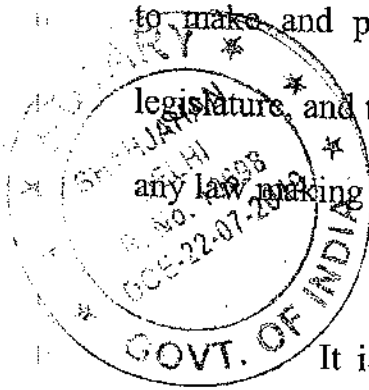
Contents of para 7 of the writ petition are wrong and denied. It is denied that the Petitioners are seeking limited relief for direction to the Respondents to make public and freely accessible information relating to laws or the alleged legal standards of various products. Rather, the Petitioners as per their own admissions in the form of averments made in para 7 of the writ petition are also seeking striking down of Sections 11(1) and 9(g) of the BIS Act as well as Rule 25 of the BIS Rules as unconstitutional. It is emphatically denied that the Indian Standards qualify as 'information relating to



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laws' or information relating to 'legal standards of various products' as alleged by the Petitioners in the writ petition. Therefore there is no occasion for issuance of any direction by this hon'ble Court to the Bureau 'to make public and freely accessible information relating to laws' or alleged 'legal standards of various products'. The Petitioners in fact in an mischievous manner are seeking direction to the Bureau to make Indian Standards available free of cost so that they can lay their hands on the Indian Standards which are the properties of the Bureau, and publish them as per their own whims and fancies under the garb of providing information.

It is submitted that the Petitioners have not sought any information relating to 'laws' from this hon'ble Court in the writ petition. 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 any law making agency in India.



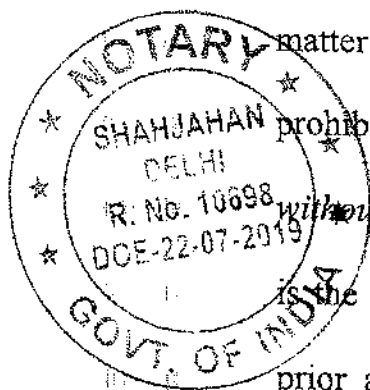
It is submitted that *proviso to* Section 11 of BIS Act clearly provides for any individual for making a copy of Indian Standard for his personal use, and therefore any challenge to Section 11 of the BIS Act is no maintainable under law. It is emphatically denied that Bureau had levied 'prohibitive charges' on the Indian Standards, much less to speak of any arbitrary or unreasonable charges to deprive access of citizens to 'the law of land' or thus

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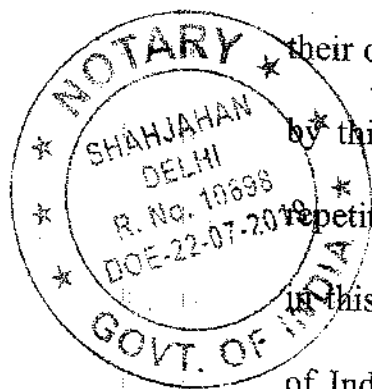
violate any fundamental rights of the citizens, as alleged by the Petitioners. It is vehemently denied that the Bureau had deprived access to citizens to any law of the land, much less to speak of any violation of fundamental rights of any citizen. As a matter of fact as on date as per Section 9(g) of the BIS Act, the pricing of the Indian Standards is determined reasonably on no profit-no loss basis which is clear from price 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, and which shows that the allegation of exorbitant prohibitive or arbitrary pricing of Indian Standards against the Bureau are on the face of it are false, frivolous, baseless and devoid of any merit or substance.

It is further denied that Section 11(1) of the BIS Act prohibits freely dissemination or making available the Indian Standards or parts thereof, or that the said provision is liable to be struck down. The Petitioners have no right to enter into the domain of the legislation and challenge it on false and frivolous grounds. As a matter of fact, Section 11(1) of the BIS Act merely provides for prohibition to publish, reproduce or record any Indian Standard without authorization by Bureau. It is submitted that since the Bureau is the owner of the Indian Standards, and the BIS Act provides for prior authorization of the Bureau before the Indian Standards are published, reproduced or recorded by any person, it cannot by any stretch of imagination be said to be *ultra vires* of the Constitution of India or liable to be struck down by this hon'ble Court.



*[Signature]*

It is submitted at the cost of repetition as has been explained hereinabove in the present para of the reply to the writ petition that the pricing of the Indian Standards is done on no profit-no loss basis, and the Indian Standards are made available even upto 60% discount on the said price to different classes of persons including students, and therefore alleging the pricing as "...prohibitive charges..." and challenging the said pricing as "...arbitrary, unreasonable...", depriving "...access of citizens to the law of the land...", and violating "...fundamental mental rights of citizens..." is wholly misconceived and frivolous, and is liable to be rejected forthwith. Similarly, it is submitted that the contentions of the Petitioners alleging that "...Section 9(g) of the BIS Act and Rule 25 of the BIS Rules 2018 ("BIS Rules") which authorizes BIS to sell the Indian Standards at a price which may be determined by BIS - be struck down as *ultra vires* the constitution or in the alternate - interpret to mean that BIS may sell the Indian Standards at a *nominal price* as determined by BIS, are nothing but dictating to the Court and to the law making bodies of this nation to redraft the law as per their own whims and fancies, which the Petitioner cannot be allowed by this hon'ble Court. It is worth noting here again at the cost of repetition that Section 11 also provides in the *proviso* that "...nothing in this sub-section shall prevent any individual from making a copy of Indian Standard for his personal use...", which more than takes care of the individuals who wants to use the Indian Standards for personal use by making copies thereof.



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Contents of remaining para 7 of the writ petition are matters of record, hence require no reply.

RE.: HISTORY OF BUREAU OF INDIAN STANDARDS

8. Contents of para 8 of the writ petition are in line with the preliminary submissions of the Bureau, and therefore are matters of record.

RE.: ENACTMENT OF THE BIS ACT 2016

9. Contents of para 9 of the writ petition are in line with the preliminary submissions of the Bureau, and therefore are matters of record.

10. Contents of para 10 of the writ petition are in line with the preliminary submissions of the Bureau, and therefore are matters of record.



11. Contents of para 11 of the writ petition are in line with the preliminary submissions of the Bureau, and therefore are matters of record.

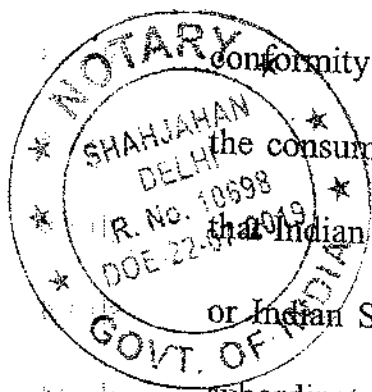
RE.: PRIMARY OBJECT OF BIS

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12. Contents of para 12 of the writ petition are matters of record to the extent that activities of the Bureau involves formulation

of Indian Standards and product certification. It is however submitted that the activities of the Bureau are not restricted or limited to formulation of Indian Standards or product certification, which clear from the bare reading of the BIS Act, 2016. It is further submitted that the Bureau also undertakes the activities for awareness of the Bureau's role which the Bureau plays to ensure safety and efficacy of the products used by the consumers by way of conducting inspections of the premises of the manufacturing units of the manufacturers as well as market surveillance by lifting samples of the products and testing them in the BIS labs or BIS recognized labs, and in case of any failure, the Bureau also prosecute the manufacturers who violate the certification scheme under the provisions of the BIS Act.

13. Contents of para 13 of the writ petition which are repetitive in nature to say that the Indian Standards are laws within the meaning of Article 13 of the Constitution of India, are wrong and denied. The Indian Standards are binding on the manufacturers who obtain licence from the Bureau to manufacture their products in conformity with the Indian Standards, and have no binding force on the consumers in any manner whatsoever. It is emphatically denied that Indian Standards can be said to be procedure established by law or Indian Standards have been followed by any statutory authority, subordinate or delegated, or the Indian Standards are legislation or law under the Constitution of India. It is submitted that merely because an Indian Standard is 'mandatory' as per any Quality Control Order, the said Indian Standard can be treated as law, rather it is the Quality Control Order which has the force of law.



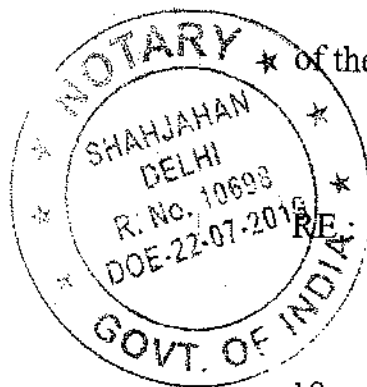
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14. Contents of para 14 of the writ petition are matters of record except to the extent that Indian Standards are laws as per Constitution of India as sought to be alleged by the Petitioners.

15. Contents of para 15 of the writ petition are matters of record. It is submitted at the cost of repetition that the Bureau does not work for generating profits from sale of Indian Standards and the pricing of the Indian Standards are determined on no profit- no loss basis, and Indian Standards are sold even upto 60% discount to certain categories of its users.

16. Contents of para 16 of the writ petition are mere reproduction of statement of objects and reasons of the BIS Act, including preamble to the BIS Act, and require no reply thereto.

17. Contents of para 17 of the writ petition are mere reproduction of the functions of the Bureau as stated in Section 9(2) of the BIS Act, and require no reply thereto.



18. Contents of para 18 of the writ petition, including provisions of Section 7 of the BIS Act, are matters of record, and require no reply thereto.

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19. Contents of para 19 of the writ petition so far as paraphrasing the provisions of Section 10 of the BIS Act are matters of record, and require no reply thereto.

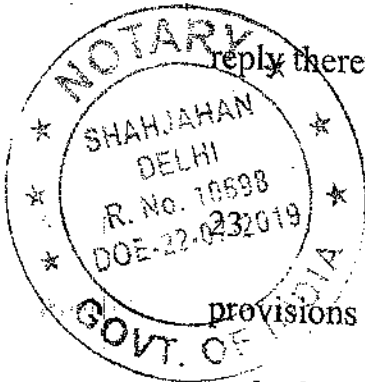
20. Contents of para 20 of the writ petition relate to provisions of Sections 10(4) and 10(5) of the BIS Act, which do not require any reply thereto.

21. Contents of para 21 of the writ petition relate to provisions of Section 11 of the BIS Act, which do not require any reply thereto. The Petitioners have however deliberately omitted to mention *proviso* to Section 11 of the BIS Act, whereby it is specifically provided that nothing in sub-section (2) of Section 11 of the BIS Act shall prevent any individual from making a copy of Indian Standard for his personal use.

22. Contents of para 22 of the writ petition relate to provisions of Sections 13 of the BIS Act, which do not require any reply thereto.

23. Contents of para 23 of the writ petition relate to provisions of Section 14 of the BIS Act, which do not require any reply thereto.

24. Contents of para 24 of the writ petition relate to provisions of Section 17 of the BIS Act, which do not require any reply thereto.



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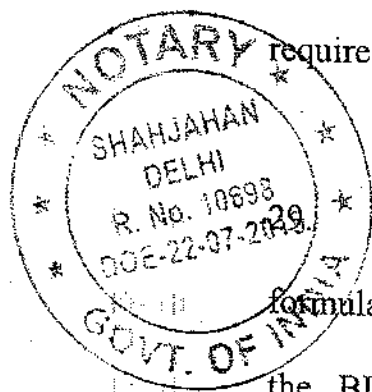
25. Contents of para 25 of the writ petition relate to provisions of Section 28 of the BIS Act, which do not require any reply thereto.

26. Contents of para 26 of the writ petition relate to provisions of Sections 29(1), 11, 26(1), 14(6), 14(8), 15 and 17 of the BIS Act, which do not require any reply thereto.

27. Contents of para 27 of the writ petition relate to provisions of Sections 30, 32, and 33 of the BIS Act, which do not require any reply thereto.

RE.: PROCESS OF FORMULATION OF INDIAN STANDARDS

28. Contents of para 28 of the writ petition relate to formulation of Indian Standards as per provisions of the BIS Act, and the BIS Rules and BIS Regulations framed thereunder, and do not require any reply thereto.



Contents of para 29 of the writ petition relate to formulation of Indian Standards as per provisions of the BIS Act, and the BIS Rules and BIS Regulations framed thereunder, and do not require any reply thereto.

30. Contents of para 30 of the writ petition so far as relate to Section 16 of the BIS Act [Section 14 of the old Act] or to statutes

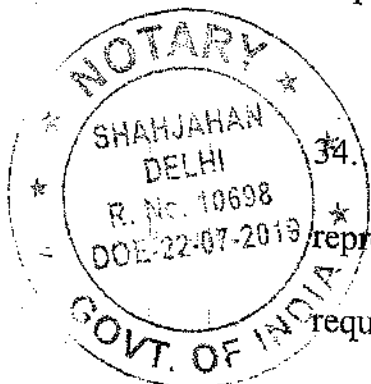
or orders or notifications whereby certain products have been notified to have mandatory conformance with the relevant Indian Standards, are matters of record, and do not require any reply thereto.

31. Contents of para 31 of the writ petition relate to criminal or civil penalties prescribed by certain statutes or orders or notifications, which are matters of record, and do not require any reply thereto.

RE.: NOTIFICATION/ PUBLICATION OF INDIAN STANDARDS

32. Contents of para 32 of the writ petition merely reproduce provisions of Section 2(39) of the BIS Act, and do not require any reply thereto.

33. Contents of para 33 of the writ petition merely reproduce provisions of Section 2(17) of the BIS Act, and do not require any reply thereto.



34. Contents of para 34 of the writ petition merely reproduce provisions of Section 2(24) of the BIS Act, and do not require any reply thereto.

35. Contents of para 35 of the writ petition merely reproduce provisions of Section 10(4) of the BIS Act, and do not require any reply thereto.

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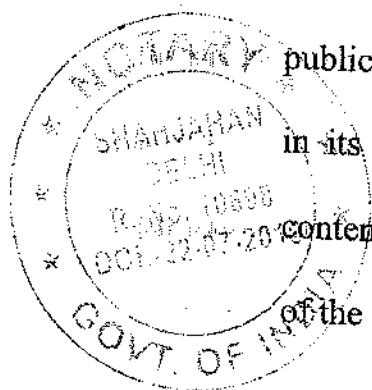
36. Contents of para 36 of the writ petition merely reproduce provisions of Rule 15(2) of the BIS Rules, and do not require any reply thereto.

37. Contents of para 37 of the writ petition merely reproduce provisions of Rules 22(5) and 25(6) of the BIS Rules, and do not require any reply thereto.

38. Contents of para 38 of the writ petition merely reproduce provisions of Rule 24 of the BIS Rules, and do not require any reply thereto.

39. In reply to para 39 of the writ petition it is submitted that as per the BIS Act, and the BIS Rules and the BIS Regulations framed thereunder, the Indian Standards are required to be notified in the Official Gazette by the Bureau. It is however emphatically denied that any of the provisions of the BIS Act, or the BIS Rules and the BIS Regulations framed thereunder, anywhere provides for publication of the Indian Standards in the Official Gazette, much less in its entirety, as sought to be alleged by the Petitioners, which contentions completely goes against the provisions of Section 10(5) of the BIS Act.

40. In reply to para 40 of the writ petition it is submitted that notification of the Indian Standards are done by the Bureau strictly as per the provisions of BIS Act, and Rules and Regulations framed thereunder. It is further submitted that price of the Indian Standards is



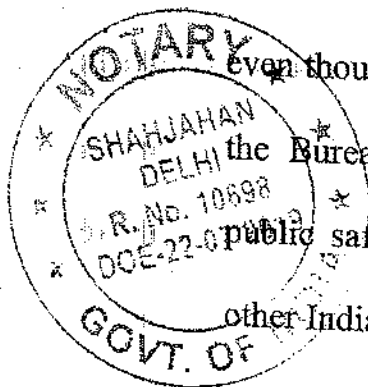
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also determined by the Bureau as per the mandate provided under the BIS Act, which cannot by any stretch of imagination be said to be contrary to the scheme of the BIS Act or objective of the Bureau as sought to be alleged by the Petitioners.

41. Contents of para 41 of the writ petition are wrong and denied. It is denied that the BIS Act, or the Rules framed thereunder, anywhere provides that the Indian Standards will have the force of law, and the said contention of the Petitioners is wholly misconceived. It is further denied that the publication of the Indian Standards or pricing thereof or preventing the Petitioners from publishing the Indian Standards is in any manner violative of Articles 14, or 19, or 21 of the Constitution of India, or against the pit and substance of the Act, as alleged by the Petitioners.

RE.: GENERATING PROFIT BY SALE OF INDIAN STANDARDS

42. In reply to para 42 of the writ petition it is submitted that even though not all Indian Standards are published on the website of the Bureau, however various Indian Standards which pertain to public safety etc are published by the Bureau on its website, and other Indian Standards are available on sale.

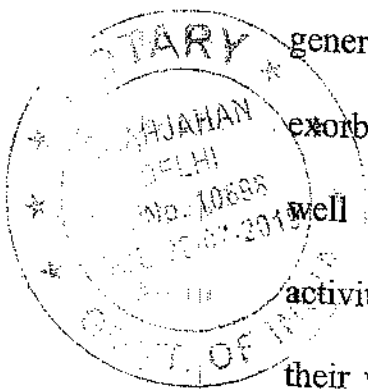


43. In reply to para 43 of the writ petition it is denied that the publication of the Indian Standards and pricing thereof or making the Indian Standards available for sale is nowhere contrary to the provisions of BIS Act, rather the same is specifically provided by the

BIS Act, which does not contradict in any manner the objective of the Bureau.

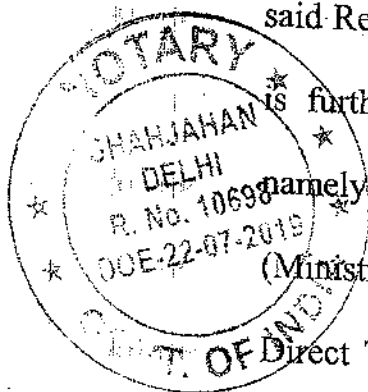
44. Contents of para 44 of the writ petition with regard to alleged 'exorbitant fee' is repetitive in nature and is denied by the Bureau. It is submitted that provisions of Section 11 read with proviso to Section 11(2) are in harmony with the provisions of Section 10(5) of the BIS Act. It is submitted that it is not the consumers, but the manufacturers of the goods, who are required to know as to which Indian Standard apply to goods and services supplied to the consumers, and the rights of the consumers are safeguarded by the Bureau as per the provisions of the BIS Act, and Rules and Regulations framed thereunder, in case the manufacturers do not comply with the relevant Indian Standards.

45. Contents of para 45 of the writ petition are wrong and denied. It is emphatically denied that the Bureau is acting as a capitalist corporation or that the Bureau is giving preference to generating profits through sale of Indian Standards, much less at exorbitant prices as falsely alleged by the Petitioners. The Bureau is well aware of its objective and purpose, and carries out various activities in order to promote awareness among the consumers for their welfare. It is denied that publishing and providing all Indian Standards free of cost will promote awareness among the consumers, and as a matter of fact no consumer body or association has approached till date to the Bureau with such a proposal, which falsifies the contention of the Petitioners. It is further denied that the



BIS Act anywhere requires the Bureau to do so, rather the BIS Act specifically provides the copyright to the Bureau over the Indian Standards formulated by the Bureau and for publications, pricing and sale thereof which is determined as a matter of policy at no profit- no loss basis.

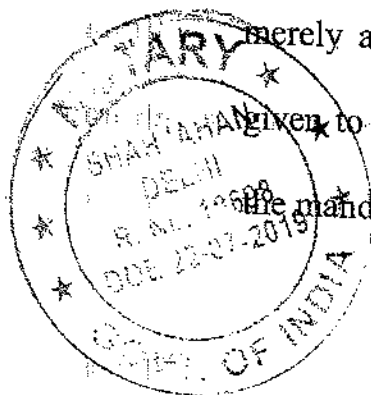
46. Contents of para 46 of the writ petition are wrong and denied to the extent that the Bureau has generated profits in the financial years 2013-14, 2014-15, 2015-16 or 2016-17 as stated to have been shown in the annual reports of the Bureau. It is submitted that the amounts sought to be canvassed as profits for each of the said financial years in a clever and mischievous manner by the Petitioners are merely the available surplus funds with the Bureau which are carried forward each year to the next year to be used for various purposes including in formulation of Indian Standards and promotions thereof. In reply to para 46 of the writ petition with regard to the Annual Report of the Bureau for the year 2013-2014, it is denied that the selective figures chosen by the Petitioners from the said Report can be termed as profits by any stretch of imagination. It is further 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



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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 making profits 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.

47. Contents of para 47 of the writ petition so far as relate to the goals of the Bureau are concerned, are matters of record. It is not the case of the Petitioners that the Bureau is not carrying out activities in furtherance of its goals as mandated by the BIS Act. It is however emphatically denied that the Bureau is earning any profits out of sale of the Indian Standards formulated and adopted for manufacturers of goods, services, articles or systems, or from services provided to the public towards fulfillment of its duties as a welfare state. It is submitted that the purpose, goal and objective of Food Safety and Standards Authority of India [FSSAI] which is established under the Food Safety and Standards Act, 2006 which merely acts towards packaging of the food products, and mandate given to the FSSAI under the said Act is completely different from the mandate of the Bureau under BIS Act.



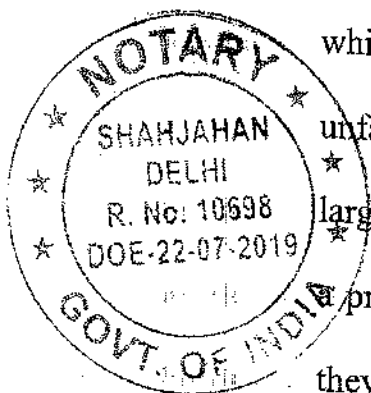
It is submitted that the Bureau determines the price of the Indian Standards on base charges i.e. on no profit-no loss basis, to cover the costs incurred, and even at such no profit- no loss based prices the Bureau provides upto 60% discounts on sale thereof to certain categories of purchasers. It is emphatically denied at the cost



64

of repetition that the Indian Standards are sold at exorbitant prices or that the mechanism of sale provided under the BIS Act is not public spirited, as sought to be alleged by the Petitioners, whereas no such allegations have ever emerged from any of the consumer body or association who are working for welfare of the consumers in India. It is submitted that the income generated from sale of the Indian Standards can by no stretch of imagination be said to be 'high amount of income' or against the public policy of India as sought to be canvassed by the Petitioners in a mischievous manner.

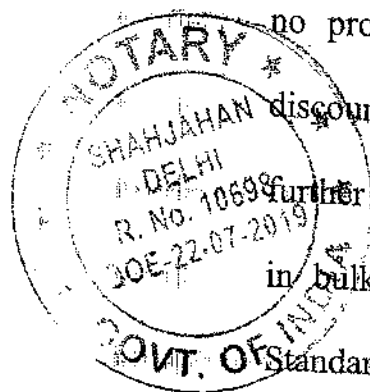
48. Contents of para 48 of the writ petition so far as relate to the sale of Indian Standards by various modes or from different outlets is concerned, the same are matters of record. It is however submitted that prices of Indian Standards are while purchased in bulk or under a package containing large numbers of Indian Standards would definitely cost more than the price of a single Indian Standard, which is fully justified under the BIS Act. It is however unfathomable that any of the consumer is likely to purchase a set of large numbers of Indian Standards just for educating himself for such price, particularly when the Indian Standards are so technical that they cannot be understood by the common consumers, and only are useful for the manufacturers who employ the personnel with such technical qualification which is required for reading and understanding the Indian Standards for compliance thereof during the process of manufacturing a product in conformity thereof.



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49. Contents of para 49 of the writ petition with regard to ways for purchasing the Indian Standards are matters of record. Indian Standards are primarily purchased by the manufacturers who use them for commercial purposes for producing goods and selling the said goods in the market and providing the Indian Standards to such manufacturers free of cost would only add to the profits of such manufacturers, whereas by selling the Indian Standards at no profit margin to such manufacturers, the Bureau is merely recovering the cost of publication thereof in order to spend the said amount on formulation, promotion, publication, etc of the Indian Standards.

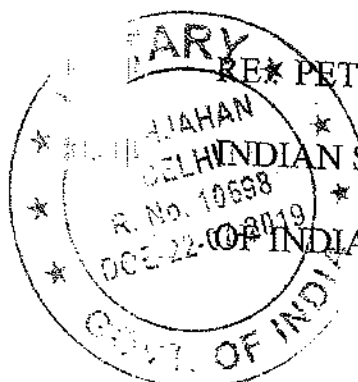
50. Contents of para 50 of the writ petition relate to selling and purchasing of Indian Standards in bulk, i.e., division-wise, and the price thereof sought to be canvassed by the Petitioner is with oblique motives. It is submitted at the cost of repetition that Bureau determines the price of the Indian Standards on base charges i.e. on no profit-no loss basis, to cover the costs incurred, and even at such no profit- no loss based prices the Bureau provides upto 60% discounts on sale thereof to certain categories of purchasers. It is further submitted that prices of Indian Standards are while purchased in bulk or under a package containing large numbers of Indian Standards would definitely cost more than the price of a single Indian Standard, which is fully justified under the BIS Act.



51. In reply to para 51 of the writ petition it is submitted that para 51 of the petition categorically demonstrates here as to whose interest the Petitioners are in fact espousing in the writ

petition. The Petitioners have themselves admitted herein that it is the manufacturers who purchase such division-wise Indian Standards in order to comply therewith while producing products in conformity with the said Indian Standards. It goes without saying that such manufacturers who works for profits can definitely afford to purchase division-wise Indian Standards which are sold on no profit- no loss basis, and in such sale no rights of the consumers are violated. The Petitioners further admit that a set of Indian Standards would cost more than the cost of an individual standard.

52. In reply to para 52 of the writ petition it is submitted that the Petitioners on the one hand are clearly speaking for the manufacturers, and on the other hand speaking of bringing the knowledge of the Indian Standards aspect to the academics and consumers, whereas both groups of people stand on different footings when it comes to the purpose behind use of the Indian Standards by them.

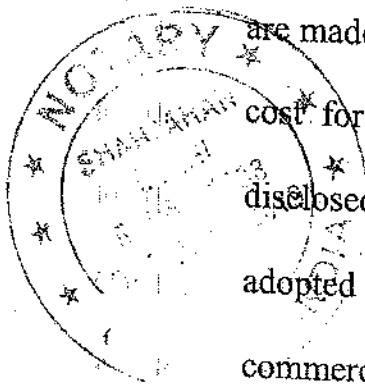


53. Contents of para 53 of the writ petition are wrong and denied. It is denied that Petitioner No.1 or Shri Carl Malamud as the President of Petitioner No.1 having derived the inspiration from the 2006 Report of the National Knowledge Commission chaired by Shri Sam Pitroda, had subscribed DVDs containing Indian Standards and

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made the Indian Standards available to broader audience in internet completely free of cost for non-commercial usage. It is submitted that Petitioner No.1 and its president Shri Carl Malamud has come up with this ingenious excuse by way of afterthought after being caught in the act of infringement of copyright of the Bureau over the Indian Standards which is apparent from the fact that neither at the time of subscribing the DVDs containing Indian Standards nor at the time of renewal of the subscription thereof, Petitioner No.1 or its president Shri Carl Malamud disclosed any such purpose to the Bureau. Moreover, the law making agency of India by way of passing the BIS Act has given the mandate, *inter alia*, for formulation and promotion of the Indian Standards to the Bureau, and no other agency in India or abroad has been given such a mandate for promoting or making available the Indian Standards in any manner, much less by providing Indian Standards on the internet.

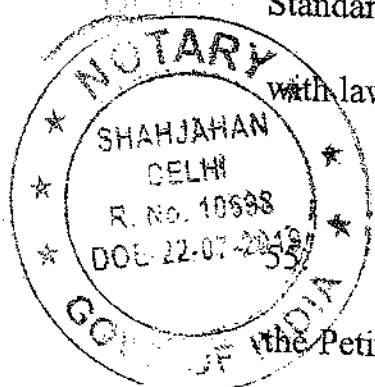
The Petitioners have alleged that the Indian Standards are made available by Petitioner No.1 and Shri Carl Malamud free of cost for non-commercial usage, whereas the Petitioners have not disclosed as to what mechanism or system they have developed or adopted in order to prevent use of the Indian Standards for commercial purpose in case the Indian Standards published by them on internet are used by the manufacturers for commercial purpose. The Petitioners are clearly attempting to cover up Petitioner No.1 and Mr. Carl Malamud from the illegal act of infringement of the copyright of the Bureau committed by them. It is submitted that the Bureau is already involved in activities for public awareness with



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regard to Indian Standards within the scheme of the BIS Act, and no other agency is allowed to take over such mandate of the Bureau as per the provisions of the BIS Act and the Rules and Regulations framed thereunder.

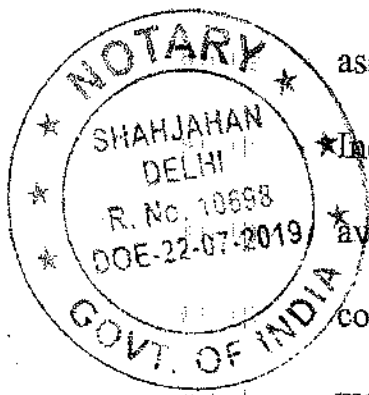
54. In reply to para 54 of the writ petition it is submitted that Petitioner No.1 vide letter dated 25.06.2014 to the Director general of the Bureau has merely sought renewal of subscription for DVDs containing Indian Standards when the Bureau vide letter dated 01.08.2014 informed Petitioner No.1 that Petitioner No.1 cannot publish the Indian Standards which were subscribed by Petitioner No.1 for personal use only, and such acts of Petitioner No.1 were in violation of copyright of the Bureau over the Indian Standards, which could invite legal action under the Copyright Act, 1957 in case Petitioner No.1 does not remove the Indian Standards published on its website within a week. It is further submitted that the Bureau was well within its rights to ask Petitioner No.1 to remove the Indian Standards from its website, and to initiate legal action in accordance with law.



In reply to para 55 of the writ petition it is submitted that the Petitioners stated herein categorical admission of Petitioner No.1 that Petitioner No.1 had infringed the copyright of the Bureau under the garb of making available Indian Standards on its website in pursuance of transparency and good governance under fundamental rights of citizens and under Right to Information Act, 2005. Without prejudice to the rights and contentions of the Bureau with regard to

the copyright of the Bureau over the Indian Standards and without admitting that Indian Standards are some piece of information, even if it is assumed for the sake of argument that the Indian Standards are some kind of information, it is submitted that even under the Right to Information Act, 2005 copies of the informations are provided on payment of fees and not free of cost. It is submitted that Petitioner No.1 is neither entitled to nor can be allowed under law to treat the Indian Standards as some kind of information and publish the same on its website.

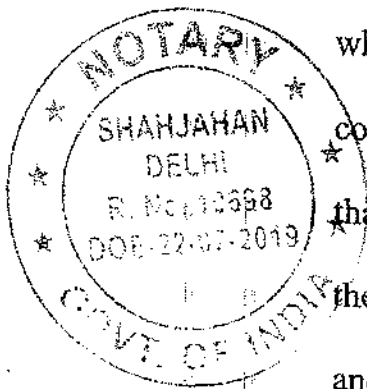
56. In reply to para 56 of the writ petition it is submitted that even if it is assumed that Petitioner No.1 has made available Indian Standards freely available on its website without charging any sum, it does not give any right to Petitioner No.1 to act in violation of the provisions of the BIS Act, or Rules and Regulations framed thereunder, or against the provisions of the Copyright Act, 1957. It is denied that act of Petitioner No.1 or the Petitioners, in violation of the copyright of the Bureau over the Indian Standards can be treated as their commitment to the values enshrined in the Constitution of India, or empowering citizens against manufacturers. By making available the entire script of the Indian Standards publically free of cost, the Petitioners are in fact fighting the cause of the manufacturers while masquerading under the garb of the crusaders for the consumers and citizens in the present writ petition, which they cannot be allowed.



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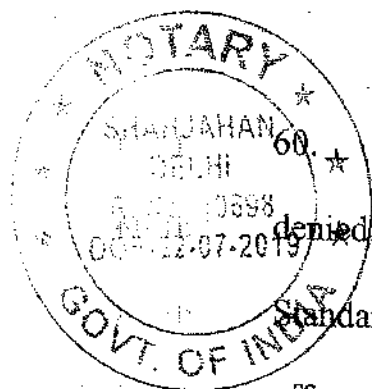
57. Contents of para 57 of the writ petition are wrong and denied. It is denied that the Petitioners are not seeking publication and free access to Indian Standards for manufacturers, particularly when they have miserably failed to explain as to what steps they had taken to prevent the manufacturers from having access to the Indian Standards free of cost which have been published by Petitioner No.1 on its website having no regards to the copyright of the Bureau over the said Indian Standards, and in flagrant violation of the BIS Act, and Rules and Regulations framed thereunder, and the Copyright Act, 1957.

58. Contents of para 58 of the writ petition so far as relate to filing of the petition by Petitioner No.1 before Respondent No.1 and its dismissal is concerned, are matters of record. It is however submitted at the cost of repetition that the Petitioners cannot be allowed to publish Indian Standards formulated by the Bureau as per mandate given to the Bureau under the provisions of the BIS Act which even otherwise amounts to violation and infringement of copyright of the Bureau over the Indian Standards. It is submitted that in view of the copyright of the Bureau over the Indian Standards, the Petitioners are specifically barred to publish Indian Standards, and the Petitioner cannot continue such activity under the garb of protection and enforcement of the rights of public and citizens. It is emphatically denied that the Indian Standards are prescribed without giving publicity. Rather the Respondents, including the Bureau, are actively engaged into publicity and promotion of the Indian Standards in a structured manner and the Petitioners cannot hijack



such sovereign functions of the state under the garb of dissemination of knowledge or empowering citizens of India.

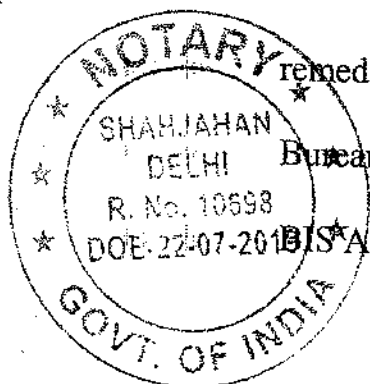
59. In reply to para 59 of the writ petition it is submitted that the beliefs and objectives of the Petitioners are their personal matters, and the Bureau has no connection with the same, particularly when the Petitioners are acting independently as per their own whims and fancies. It is however submitted that no one, including the Petitioners, can be allowed by any court of law to act in violation of the law of the land, particularly in the present case in violations of the BIS Act, and Rules and Regulations framed thereunder, and the Copyright Act, 1957. The writ petition of the Petitioners seeking directions by way of writs from this hon'ble Court to strike down the provisions of the BIS Act, and BIS Rules, and to allow them to infringe copyright of the Bureau over the Indian Standards, is therefore wholly misconceived and is liable to be dismissed forthwith.





are mandatory and therefore no all Indian Standards are required to be enforced. It is further submitted that Indian Standards are required to be complied with by the manufacturers who wish to manufacture their goods in conformity with the relevant Indian Standards, and such manufacturers have the access to the Indian Standards after payment of the requisite fee or price which is determined by the Bureau on no profit-no loss basis. It is submitted that it is not the Indian Standards which provide any information as to whether a product sought to be consumed by a consumer is mandatorily required to comply with relevant Indian Standard. Rather such information is contained on the Quality Control Orders relating to such products which are notified by the concerned department or Ministry or the Bureau, and such Quality Control Order are freely available to all citizens of India.

61. In reply to para 61 of the writ petition it is submitted that the worries of the Petitioners are hypochondriac and mere figment of their imagination, as the BIS Act not only provides rights but also remedies, which are placed as a duty upon the Bureau, and the Bureau is sufficiently fulfilling its duties under the provisions of the BIS Act, and Rules and Regulations framed thereunder.

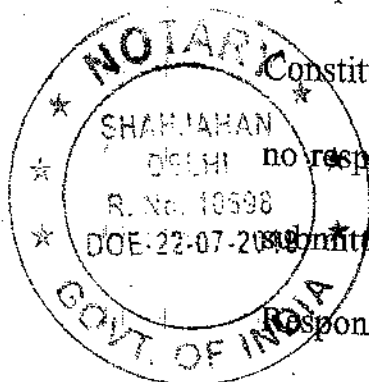


62. Contents of para 62 of the writ petition are wrong and denied. It is emphatically denied that the Bureau's response is contrary to the object and purpose of the BIS Act, or in violation of the rights of citizens of India. The Petitioners are attempting to paint a picture of the Bureau completely black in their desperation to have

access to the Indian Standards free of cost by alleging that the approach of the Bureau shrouds Indian Standards in secrecy by imposing prohibitory cost, and that it violates the rights of the citizens of Indian and defeats the purpose of BIS Act, which is wholly false, frivolous and having no merit or substance, and is liable to be rejected forthwith. It is submitted that there is not a single Indian Standard which is not notified in accordance with law passed by the Indian Parliament, and the Supreme Court of India comes to picture only when such laws are not complied with. The Petitioners on the one hand want no price to be put on Indian Standards and on the other hand wants the Indian Standards be sold at nominal or base price. It is submitted that the Petitioners in this manner cannot dictate this hon'ble Court as to how the law making agencies should work, or how the Bureau ought to conduct itself under the provisions of the BIS Act, and Rules and Regulations framed thereunder.

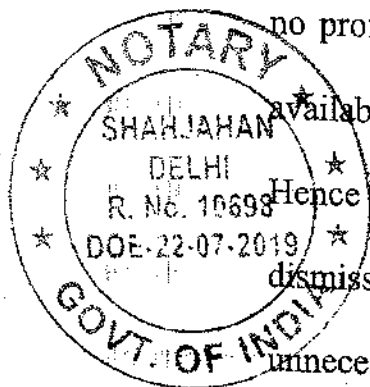
63. Contents of para 63 of the writ petition are wrong and denied. It is submitted that the Petitioners have not explained in the writ petition as to what right they are alleging to enforce under the

Constitution of India or under the BIS Act. It is denied that there was no response to the representations spoken of by the Petitioners. It is submitted that the representations of Petitioner No.1 before the Respondents were directed towards seeking free hands on the Indian Standards for publishing the Indian Standards on its website which were responded to adequately by the Respondents in accordance with the provisions of the BIS Act, and the Rules and Regulations framed thereunder. It is submitted that the Petitioners are attempting



to make issues out of no issues. It is submitted that the functioning of the Bureau is no secret and it is clearly stated in the BIS Act, and Rules and Regulations framed thereunder, and enquiries of the Petitioners are merely rowing and fishing expeditions in order to get something which they can use against the Bureau or the Respondents, while there is nothing of that sort.

64. In reply to para 64 of the writ petition it is submitted that the Petitioners have failed to make out any case for striking down Section 11 of the BIS Act which is in line with the provisions of the Copyright Act, 1957. It is submitted that formulation of Indian Standards involves very high cost and efforts of its scientist and the Indian Standards so formulated cannot be sought to be made available by way of a writ petition free of cost. So far as the Petitioners' contention that Indian Standards may be made available at concessional rates is concerned, it is submitted at the cost of repetition that the pricing of the Indian Standards are determined at no profit- no loss basis, and the Indian Standards are already made available to certain categories of purchasers at discount upto 60%. Hence the writ petition is wholly misconceived and liable to be dismissed with exemplary cost for dragging the Bureau in unnecessary litigation by way of the present writ petition.



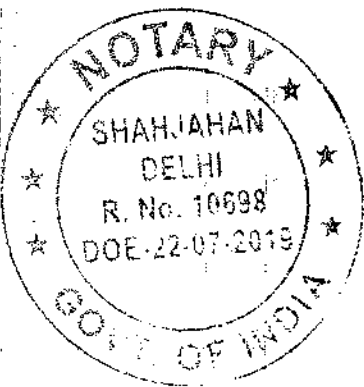
RE.: REPLY TO THE GROUNDS OF WRIT PETITION

65. Contents of para 65 of the writ petition are wrong and denied. It is specifically denied that the Bureau is under any

obligation to publish the Indian Standards, much less in their entirety, in the Official Gazette. The petitioners have already made an unsuccessful attempt to convince the Hon'ble Minister Mr. Ram Vilas Paswan in this regard by way of their petition. It is submitted that if indeed, had it been the obligation of the Bureau, the Hon'ble Minister would have accepted the contentions of the Petitioners, which in fact stand rejected.

It is further denied that the "... *Entire content of the Indian Standard has to be published in the Official Gazette...*", as sought to be alleged by the Petitioners.

- a. In reply to para 65(a) of the writ petition it is submitted that the notification of an Indian Standard in the Official Gazette by publishing its Title, Number and the process or article or service or goods to which the said Indian Standard relates to are done by the Bureau as per the provisions of Section 10(4) of the BIS Act, 2016 read with Rules 15(2) and 22(6) of the BIS Rules 2018. It is further submitted that the notified Indian Standard is published in different forms as provided under Section 10(2)(a) of the BIS Act read with Rule 25 of the BIS Rules 2018. The copyright in such Indian Standard notified, and thereafter script thereof published, by the Bureau vests in the Bureau as per Section 10(5) of the BIS Act. It is further submitted that no other individual can

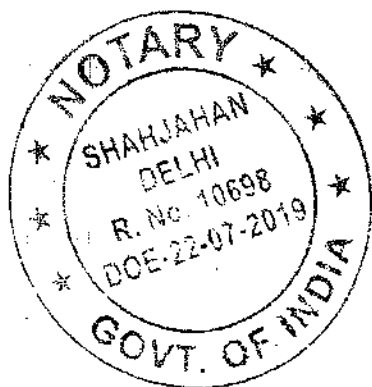


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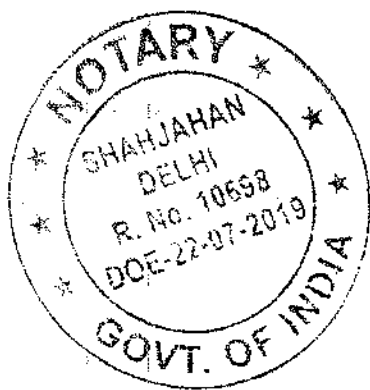
publish such Indian Standard without the authorisation of the Bureau as per Section 11(1) of the BIS Act, though making a copy thereof by an individual for personal use is permitted under *proviso* to Section 11(2) of the BIS Act. Further even though the Bureau is empowered to publish an Indian Standard, and to make available copies thereof for sale, at such price as determined by the Bureau as per Rule 25 of the BIS Rules, as a matter of policy the notified Indian Standards are priced at 'no profit- no loss' basis, and sold at discounted upto 60% to certain categories of the purchasers including student body, scholars, etc.

It is denied that there is any violation of the Bureau's obligations under BIS Act or BIS Rules as alleged by the Petitioners. It is vehemently denied that the policy of charging fees or price for a copy of the Indian Standards or in bulk, as stated herein above or preventing the petitioners from publishing the Indian Standards on their website under the garb of making them available to citizens of India is violative of Articles 14, or, 19 or 21 of the Constitution of India, or of the objects or scheme of the act as alleged by the petitioners under paras 18 to 26 of the writ petition which have been suitably replied to by the Bureau.



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- b. Contents of para 65(b) of the writ petition are wrong and denied as wholly misconceived and having no merit or substance. It is submitted that a bare reading of the provisions of Section 10(4) of the BIS Act, 2016 along with Rules 15(2) and 22(6) of the BIS Rules 2018 in comparison to provisions of Section 10(2)(a) of the BIS Act along with Rule 25 of the BIS Rules 2018, makes it abundantly clear that notification of Indian Standards cannot be treated as publication of Indian Standards. The draftsmen of the BIS Act 2016 and BIS Rules 2018 have carefully used the words notification and publication, and provided procedure thereof, in the Act as well as Rules. The interpretation sought to be given by the Petitioners is wholly misplaced and is liable to be rejected forthwith.



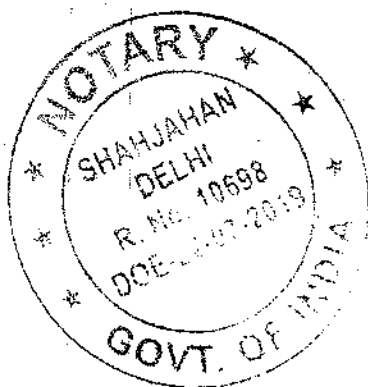
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It is submitted that the Petitioners are repeated attempting to equate the Indian Standards with Rules or Regulations which is wholly fallacious on the face of it. The Petitioner is hopelessly attempting to impress upon notification in an official gazette as an act by the authority of law. It is not the case of the Petitioners that the Bureau has not notified the Indian Standards in the

78

Official Gazette, rather the grievance of the Petitioners is that the Bureau is not notifying the entire script of the Indian Standard in the Official Gazette, and that therefore the Bureau is acting arbitrarily and out outside its power under law, which is wholly misplaced as there is no obligation or duty casted upon the Bureau under the BIS Act, 2016, or under the Rules framed thereunder, to publish or notify the entire script of the Indian Standards in the Official Gazette. As a matter of fact notification of an Indian Standard in the Official Gazette is provided as mean of declaring official that such an Indian Standard has been formulated by the Bureau.

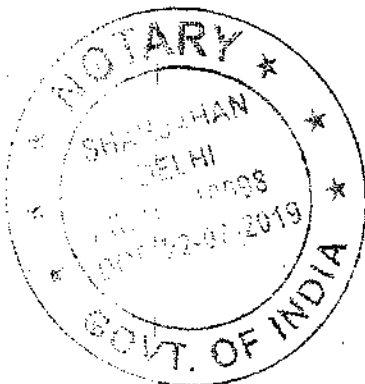
- c. Contents of para 65(c) of the writ petition are wrong and denied as wholly misconceived and having no merit or substance. It is denied that unless the Indian Standards are published in its entire script in the Official Gazette there can be no harmonious development of standardization, conformity assessment and quality assurance of goods, articles, processes, systems and services. The Petitioners on the face it have lifted these terms from the BIS Act and Rules, and are well aware of the procedure and process provided under the BIS Act 2016 and BIS Rules 1018 for



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79

- d. Contents of para 65(d) of the writ petition reproduce Section 9(2) of the BIS Act *verbatim*, which does not require any reply thereto.
- e. Contents of para 65(e) of the writ petition are wrong and denied. It is denied that the Bureau will not be able to perform the function under Section 9(2) of the BIS Act, 2016 unless the Indian Standards are made available free of cost to the public. The Petitioners have miserably failed in the entire writ petition to disclose as to how making Indian Standards available free of cost will help the general public or performance of the functions of the Bureau under Section 9(2) of the BIS act, 2016. The Petitioners are painting a glossy picture as if the moment all Indian Standards are made available free of cost there will be consumer revolution in India which will change the whole scenario in Indian market and the people being aware of Indian Standards will start testing the goods purchased by the in their home laboratories, and the students and scholars and technicians and researchers will start formulating further and better Indian Standards, while as a matter of fact, only the manufacturers and website owners, like the Petitioners, will be benefitted at the cost and labour of the Bureau and

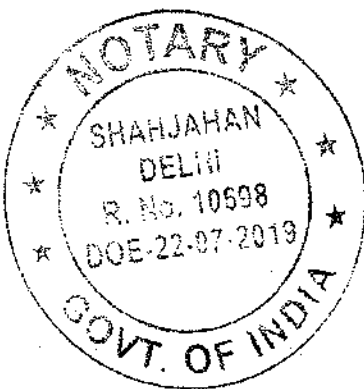


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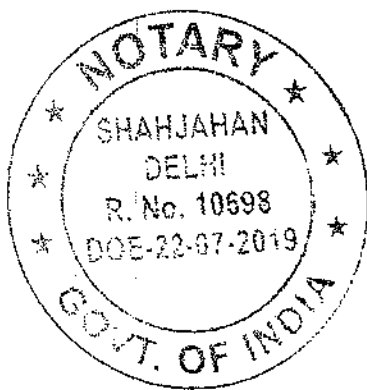
such activities and objects. The petitioner is however in a desperate attempt to impress upon this hon'ble Court that they are so committed to development of ecosystem which according to them the BIS Act 2016 seeks to achieve, are advocating the free availability of Indian Standards which is nothing but a mask which is apparent from the reasons provided by the Petitioner in the para under reply. It is submitted that Indian Standards are *followed* by the manufacturers and service providers who want to manufacture or provides goods and services with a certain quality and standard, and not by Students or Scholars or Technicians or general public, as sought to be canvassed by the Petitioners. That apart, Indian Standards are *enforced* by the Bureau and agencies notified by the Central Government, and not by Students or Scholars or Technicians or general public. Therefore, contentions of the Petitioners that availability of Indian Standards free of cost will enable the Students or Scholars or Technicians or general public to follow or enforce the Indian Standards is devoid of any merit or substance.



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81

scientist employed by it. It is repeated at the cost of repetition that the contention of the Petitioners is wholly frivolous that awareness among consumers can only be spread if they are aware of the Indian Standards that the products need to comply with, for the reasons that the Indian Standards are technical documents and contents thereof cannot be comprehended by the general public or consumers. It is submitted that for the awareness of the consumers it is sufficient that they know that there is a particular Indian Standard established by the Bureau in respect of the particular goods and services, and that which of the Indian Standards are mandatory to be followed by the manufacturers or service providers, and which of the Indian Standards are voluntary for which the Bureau undertakes various activities in order to educate and inform and make the consumers aware.



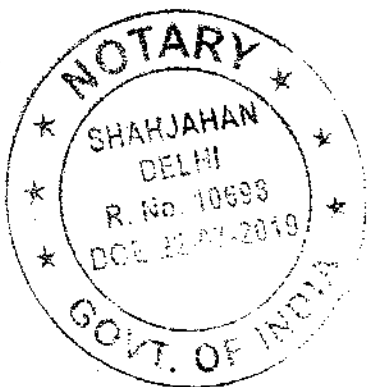
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It is rather intriguing that the Petitioners have not disclosed as to what other measures they have taken or employed in order to spread awareness among the consumers, if indeed they are acting in the interest of the consumers as they have so laboriously sought o canvass before this hon'ble Court, apart from publishing the Indian Standards

in flagrant violations of the copyright of the Bureau.

The Petitioners have further failed to disclose as to how the publication of the Indian Standards on their website will result into identifying the defaulting manufacturers who falsely represent that their product comply with Indian Standards, unless the product is tested in a BIS lab or BIS recognized lab, for which there is complete process and procedure provided in the BIS Act read with Rules and regulations framed thereunder, including prosecution of the defaulting manufacturers.

- f. In reply to para 65(f) of the of the petition it is submitted that the Bureau is well aware of its mandate and duties and obligations under the BIS Act, and Rules and Regulations framed thereunder, including Section 10(5) of the BIS Act, and the Bureau has been discharging its obligation with utmost diligence. The Petitioners have failed to bring up any failure on the part of the Bureau.

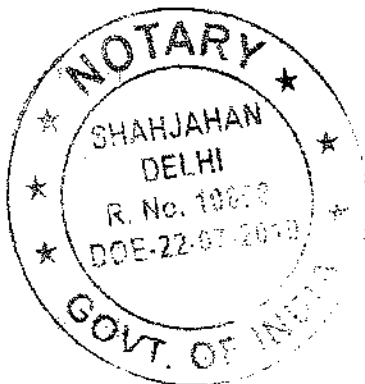


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- g. Contents of para 65(g) of the petition are wrong and denied. It is submitted that Sections 10(4) or

2(24) of the BIS Act, 2016 not even remotely suggest for publishing the entire script of any Indian Standard in the Official Gazette. It is clear from Rule 15(2) and Rules 25 of the BIS Rules that establishment of an Indian Standard is an altogether different act than publishing of the Indian Standards, as the publication can be done only after an Indian Standard is established by way of notification in the Official Gazette, and not that publication of an Indian Standard is provided by way of notification in the Official Gazette. The contention of the Petitioners is wholly frivolous and is liable to be rejected forthwith.

- h. In reply to para 65(h) of the petition it is submitted that the case law relied upon by the Petitioners is on face of it is based on the premise that Indian Standards are delegated legislation, whereas such a proposition is wholly misplaced, as the Indian Standards are technical documents, a work of the scientist under the aegis of the Bureau, and cannot be equated with the delegated legislation, and therefore the contention of the Petitioners is liable to be rejected forthwith.



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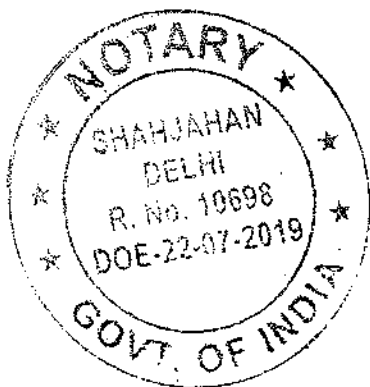
- i. In reply to para 65(i) of the petition it is submitted that the case law relied upon by the

84

Petitioners is once again based on the premise that Indian Standards are delegated legislation, whereas such a proposition is wholly misplaced, as the Indian Standards are technical documents, a work of the scientist under the aegis of the Bureau, and cannot be equated with the subordinate legislation, and therefore the contention of the Petitioners is liable to be rejected forthwith.

j. In reply to para 65(j) of the petition are repetition of para 65(h) of the writ petition and it is submitted at the cost of repetition that the Indian Standards are technical documents, a work of the scientist under the aegis of the Bureau, and cannot be equated with the delegated legislation, and therefore the contention of the Petitioners is liable to be rejected forthwith.

k. Contents of para 65(k) of the writ petition which are based on the contentions raised in paras 65(h) to 65 (j) are wrong and denied. It is emphatically denied that any of the actions of the Bureau are contrary to law, particularly with regard to non-publication of Indian Standards in the Official Gazette as sought to be contented by the petitioners. It is submitted that the notification of



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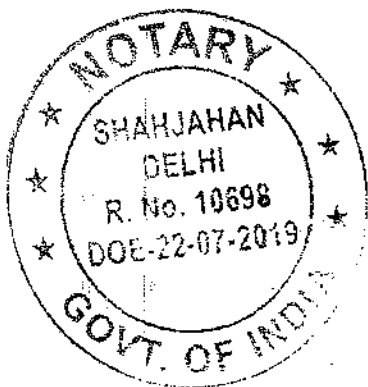
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the Indian Standards is as per the provisions of the BIS Act, 2016 as well as Rules and Regulations framed thereunder, which is clear from the conjoint reading of Sections 10(4) and 2(24) of the BIS Act, 2016 and Rule 15(2) and Rule 22(6) of the BIS Rules 2018, and the contentions of the Petitioners is liable to be rejected forthwith.

l. Contents of para 65(l) of the writ petition are wrong and denied. it is submitted that the actions of the Bureau are completely in conformity with the factors which the BIS act, 2016 has been enacted for. It is further submitted that the Bureau is acting in furtherance of the object of the BIS Act, 2016.

m. In reply to para 65(m) of the writ petition it is submitted that attempt of the Petitioner to invoke Directive Principles of State Policy is devoid of any merit or substance as the said principles are application only in case of a law making process.

n. Contents of para 65(n) of the petition are wrong a denied. It is submitted that in the following paras the Petitioners have miserably failed to show as to how the Directive Principles of State Policy can be applied in case of the Indian Standards.

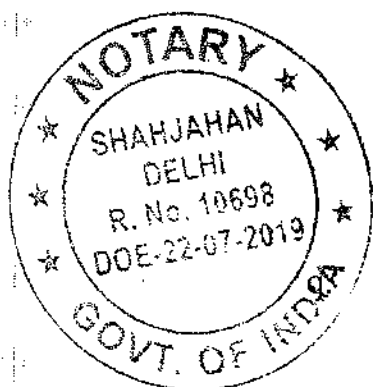


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o. In reply to para 65(o) of the petition it is submitted that the Petitioners have reproduced *verbatim* Article 38 of the Constitution of India, which does not require any reply thereto.

p. Contents of para 65(p) of the petition are wrong and denied. It is denied that non-publication of an Indian Standard in Official Gazette, or selling the Indian Standard allegedly at exorbitant price (which on the face of it is false) is resulting into creating inequality between persons. It is further denied that the students, or the professors, or scholars, or small manufacturers, or consumers are deprived of the knowledge of the Indian Standards due to pricing of the Indian Standards.

As a matter of fact, till date no such persons have approached the Bureau with any such grievance as sought to be canvassed by the Petitioners.



In reply to para 65(q) of the petition it is submitted that the Petitioners have reproduced *verbatim* Article 3839(b) of the Constitution of India, which does not require any reply thereto.

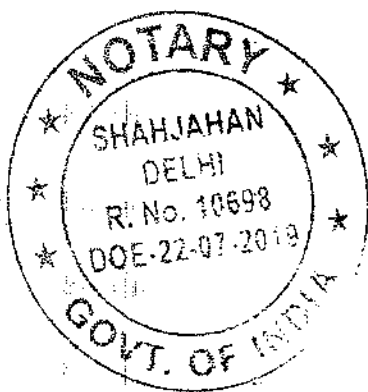
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r. In reply to para 65(r) of the petition it is submitted that the contentions of the Petitioners are wholly

87

frivolous, as the Bureau is mandated under the BIS Act, 2016 as well as under the Rules and Regulations framed thereunder, to formulate, establish, and notify the Indian Standards, as well as for publishing, pricing and sale thereof. It is submitted that the Indian Standards are priced publications, and there is no restriction on anyone to the Indian Standards. As a matter of fact in order to ensure public good certain categories of the Indian Standards including Indian Standards relating to safety etc are published on its website by the Bureau which are available free of cost to anyone.

s. In reply to para 65(s) of the petition it is submitted that the Petitioners have reproduced *verbatim* Article 39(c) of the Constitution of India, which does not require any reply thereto.



t. Contents of para 65(t) of the petition are wrong and denied. It is denied that non-publication of the Indian Standards in the Official Gazette will result into concentration of knowledge regarding means of production of the right quality of goods to only a handful of people. As a matter of fact, the manufacturers and producers of goods are engaged into commercial ventures and they are

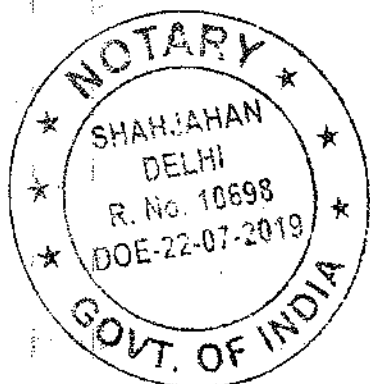
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fully capable of purchasing the Indian Standards which are priced at no profit no loss basis. It is submitted that none of the manufacturers or producers of goods have raised any such grievance as sought to be canvassed by the Petitioners in the writ petition.

u. In reply to para 65(u) of the petition it is submitted that the Petitioners have reproduced *verbatim* Article 47 of the Constitution of India, which does not require any reply thereto.

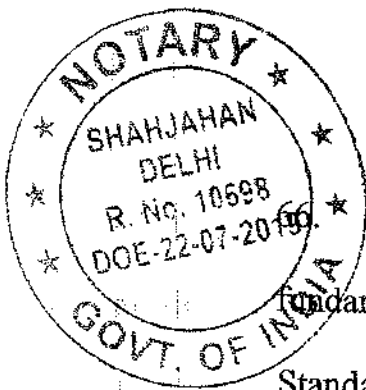
v. Content of para 65(v) of the petition are wrong and denied. It is submitted that the Petitioners are attempting to canvass the publication of Indian Standards as the magic wands which will change the lives of the people, whereas the Indian Standards are meant for the manufacturing and production activities relating to good and services, and there is a set procedure for mandatory Indian Standards as well as the voluntary Indian Standards for enforcement thereof. The Bureau is conscious of its obligation in respect of the awareness and enforcement of the Indian Standards, and the publication of such Indian Standards in Official Gazette merely deprive the Bureau the financial aid which is used for



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formulation and propagation of the Indian Standards, where as publication of the Indian Standards on Petitioners website will benefit no one other than the Petitioners and the manufacturers who would be having access to them without paying for them and consequently adding to their profits.

- w. Contents of para 65(w) of the writ petition are wrong and denied. it is emphatically denied that non-publication of Indian Standards in Official Gazettes is a violation of due process or is against the ideals or principles of the Constitution of India as sought to be alleged by the Petitioners. As a matter of fact the Petitioners are aggrieved merely for the reason that they cannot publish the Indian Standards on their website unless the same are brought in the public domain by way of publication thereof in the Official Gazette.

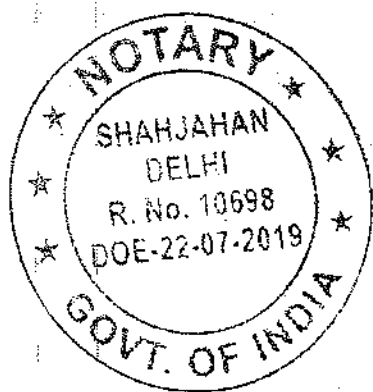


Contents of para 66 of the writ petition invoking fundamental rights of the citizens of India to know the Indian Standards under the provisions of the Constitution of India are devoid of any merit or substance. The Petitioners are purported to be acting as guardians of the fundamental rights of the citizens 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. The Petitioners cannot force the Bureau to publish and make all Indian Standards available free of cost.

- a. Contents of para 66(a) of the petition are wrong and denied. It is emphatically denied that the Indian Standards are laws as per Article 13 of the Constitution of India. Article 13 of the Constitution is reproduced as under:

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

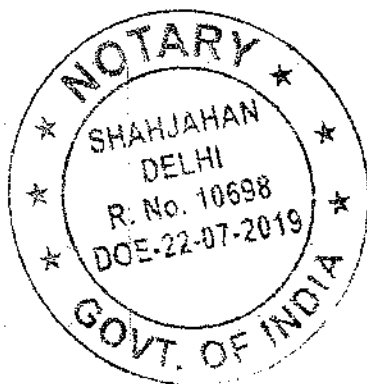


- (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void

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(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

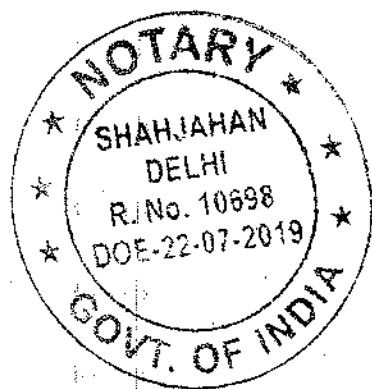


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(4) Nothing in this article shall apply to any amendment of this Constitution

made under Article 368 Right of Equality. ”

It is submitted that nothing in the Articles 13 of the Constitution of India provides that the Indian Standards formulated by the Bureau can be brought under the purview of laws. At the most, an Indian Standards can be made mandatory. However, just because a particular Standard is made mandatory, does not mean that the said Standard has acquired the status 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 copyright of the Bureau, as per the Copyright Act, 1957, hence contention of the Petitioners 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 hereinabove.

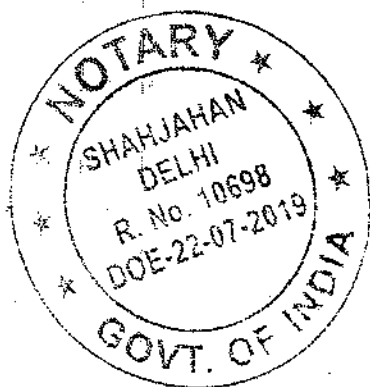


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- b. Contents of para 66(b) of the writ petition with regard to the provisions of Sections 17, 16(1) and 29(3) of the BIS Act are matters of record. It is

however emphatically denied that just because an Indian Standard is mandatory, it can be treated as law. The punishment is as per law enshrined in the provisions of the BIS Act, and not as per the penal provisions in the Indian Standard, rather as a matter of fact there is no penal provisions in any of the Indian Standards because the Indian Standards are not laws.

- c. Contents of para 66(c) of the writ petition are matters of record to the extent pertaining to Rule 24(2) of the BIS Rules. It is however submitted that Rules 24(2) nowhere suggests that Indian Standards, even if made mandatory, takes the status of laws.
- d. Contents of para 66(d) of the writ petition are merely reproducing *verbatim* Section 2(39) of the BIS Act, 2016, and does not require any reply thereto.
- e. Contents of para 66(e) of the writ petition are wrong and denied. It is submitted that the words 'rules', 'guidelines', 'definitions of characteristic' nowhere even remotely suggest that Indian Standards are laws. It is correctly stated by the

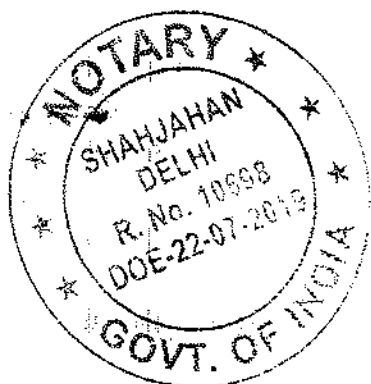


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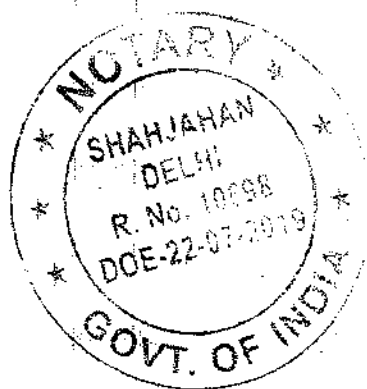
petitioners that the Indian Standards are made to ensure the goods are fit for their purpose.

- f. Contents of para 66(f) of the writ petition are wrong and denied. It is denied that the Indian Standards are statutory instruments or that the same are made in exercise of its power delegated by legislature under BIS Act, 2016. As a matter of fact the BIS Act has merely given the mandate (i.e permission, or authorization, or consent, or directive, or command, or order and or terms of office) to the Bureau to formulate Indian Standards, which cannot be equated with delegated power of legislation. Such an interpretation is completely against the provisions of the BIS Act, 2016 and the Rules and Regulations framed thereunder. The Indian Standards therefore cannot be termed as subordinate legislation by any stretch of imagination. It is denied that the legislation has given the power to the Bureau to establish Indian Standards by publishing them in the Official Gazette. As a matter of fact, the BIS Act, 2016 merely provides for notification of the Indian Standards in the Official Gazette, and not the publication of the Indian Standards in the Official Gazette.



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- g. Contents of para 66(g) of the writ petition with regard to Section 3 of the BIS Act are matters of record, and require no reply thereto.
- h. Contents of para 66(h) of the writ petition with regard to Governing Council as well as Organizational Chart of the Bureau are matters of record, and require no reply thereto.
- i. Contents of para 66(i) of the writ petition with regard to Governing Council and its composition as well as its functions in accordance of the BIS Act are matters of record, and require no reply thereto.
- j. In reply to para 66(j) of the writ petition it is submitted that apart from the representations of the industry, the Bureau also has adequate representation for users and consumer organizations, Central and State Governments, research organizations and regulatory agencies. It is further submitted that the Bureau has been provided with statutory status in order to provide adequate autonomy and flexibility in its operations, and to ensure that priority is given to various aspects of its functions in line with

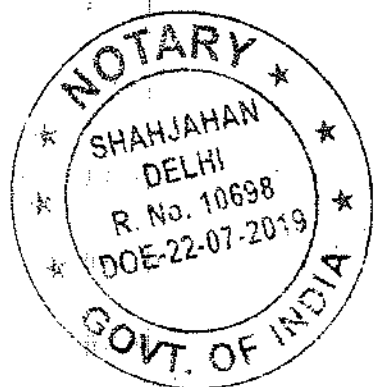


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national priorities. It is for the said reasons that appointment of public authorities is provided in the Bureau, and establishment of Indian Standards by way of notification in the Official Gazette merely provides the authorization to the said Standards.

- k. In reply to para 66(k) of the writ petition it is submitted that handbooks, guides and other publications are issued by the Bureau to bring clarity in smooth functioning of the Bureau whereas the Indian Standards are notified to announce to the general public that such Indian Standards have been formulated by the Bureau. The legislature has given absolute autonomy to the Bureau and therefore there was no requirement for the legislature to give any specific mandate to the Bureau for issuance of any handbooks, guides or other publications. The Petitioner cannot derive any other intent of the legislature unless the same is provided under the BIS Act, or Rules and Regulations framed thereunder.

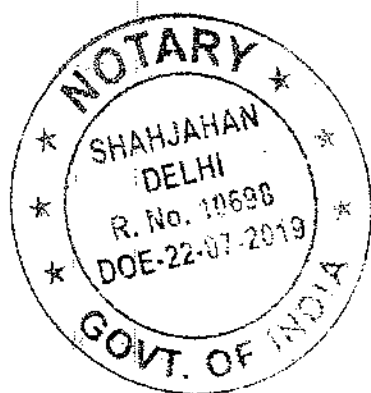


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- l. In reply to para 66(l) of the writ petition it is submitted that requirement of circulation of the draft specification or Indian Standard is done

92

among the stakeholder groups, whereas a Bill is circulated for the purpose of eliciting public opinion thereon, such opinions are obtained through the agency of the State Government. As a matter of fact no public opinion is elicited on the draft specification or Indian Standards. That apart, delegated legislations are not required to be circulated for eliciting public opinion as the said legislations are within the powers of the administrative and quasi judicial authorities. Hence, comparison between an Indian Standard and delegated legislation, particularly on the basis of the circulation of a draft specification among the stakeholders as sought to be canvassed is nothing but a desperate attempt in a clever and calculated manner to somehow give colour of legislation to the Indian Standards which is liable to be rejected forthwith.



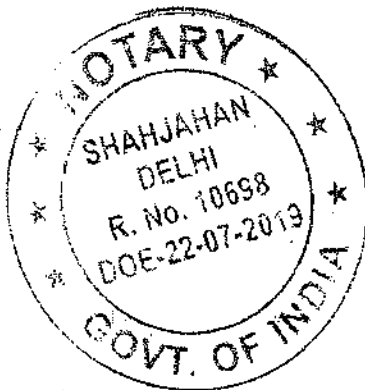
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m. Contents of para 66(m) of the writ petition are wrong and denied. It is denied that like all statutory instruments, Indian Standards are mandated to be established, amended and withdrawn by notification in the Official Gazette. As a matter of fact, requirement of law is to publish the statutory instruments in the Official Gazette, whereas requirement of the BIS Act is to

notify the Indian Standards in the Official Gazette, and there is no requirement stated in the BIS Act that the Indian Standards are required to be published in the Official Gazette. Therefore, contentions of the Petitioners are devoid of any merit or substance and are liable to be rejected forthwith.

n. Contents of para 66(n) of the writ petition merely reproduce *verbatim* Section 15(2) of the BIS Act, and therefore require no reply thereto.

o. Contents of para 66(o) of the writ petition are wrong and denied. It is emphatically denied that the establishment of Indian Standards in exercise of powers delegated (rather mandate conferred) upon the Bureau under BIS Act gives the Indian Standards the status of law.

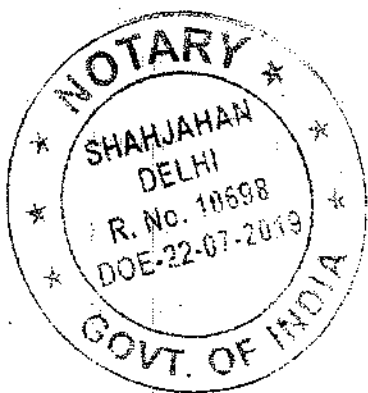


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1. p. In reply to para 66(p) of the writ petition it is submitted that the reliance placed by the Petitioners on the pronouncement of the Supreme Court of India in the case reported as Secretary, Ministry of Informations & Broadcasting vs Cricket Association of Bengal AIR 1995 CS 1236 is wholly misplaced, and is not applicable in the present case. It is submitted that the present case

99

involves the issue of copyright on the Indian Standards which are formulated under the aegis of the Bureau whereas the case cited by the Petitioners have no relevance to the copyright issue. It is further 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.

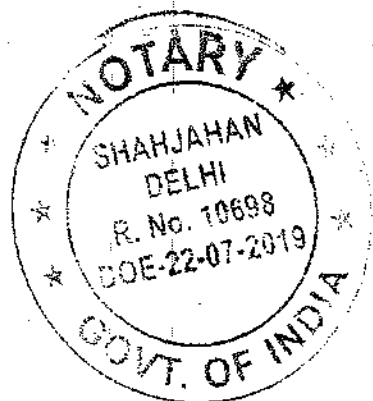


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- q. Contents of para 66(q) of the writ petition are wrong and denied. It is emphatically denied that-

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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 or Inder Praksh vs Deputy Commissioner & ors AIR 1979 Delhi 87 [Delhi High Court]; 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 para 66(q) are liable to be rejected forthwith.



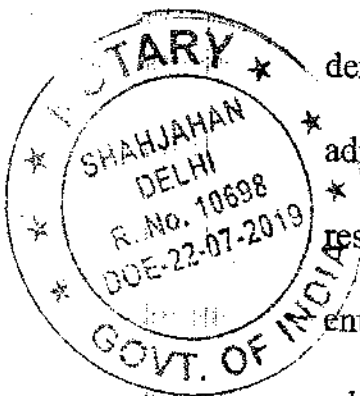
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- r. Contents of para 66(r) of the writ petition are wrong and denied. It is denied that the Indian

Standards are laws of the land, or that there is any fundamental right of any citizen is infringed by way of pricing of the Indian Standards, which is strictly as per the provisions of the BIS Act and Rules framed thereunder.

- s. Contents of para 66(s) of the writ petition are wrong and denied. It is further denied that there is any levying of charges. It is emphatically denied that publication is published at high price. It is Denied that there is any unreasonable restrictions that violates fundamental rights or the right to equality of citizens, much less by failing to make laws easily accessible to the citizens. Contentions of the Petitioners in this regard are liable to be rejected forthwith.

67. Contents of para 67 of the writ petition are wrong and denied. It is submitted that it is the internal managerial and administrative arrangement of the Bureau as to who should be responsible for a particular function, and the Petitioners are not entitled to interfere in the administrative functioning of the Bureau which is an autonomous body under the BIS Act. It is submitted that the publication, pricing and sale of the Indian Standards are provided under the BIS Act, and Rules framed thereunder, and the Petitioners cannot dictate to the Bureau as to in what manner, and who should be entrusted with the responsibility in that regard. It submitted that the

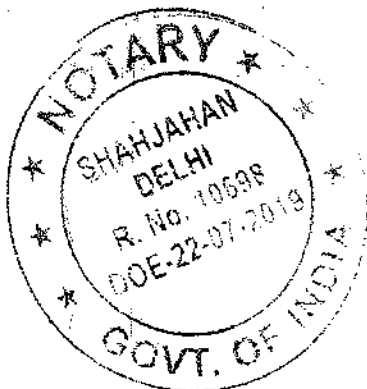


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the BIS Act, or the Rules framed thereunder nowhere provides for free of cost the Indian Standards. So far as providing the Indian Standards at minimum cost is considered, it is already clarified that the Indian Standards are priced at no profit-no loss basis, and certain categories of the purchasers are provided upto 60% discount on such prices, for which reasons the Petitioners cannot have any grievance on the pricing or sale of the Indian Standards.

a. Contents of para 67(a) of the writ petition are wrong and denied to allege that Rule 25 of the BIS Rules is unreasonable or arbitrary, much less for the lack of any guidelines or for conferring excessive discretion with no guidelines. It is already clarified that the pricing of the Indian Standards is guided by no profit-no loss principle, and certain categories of the purchasers are provided upto 60% discount on such prices, and therefore the Petitioners cannot have any grievance on the pricing or sale of the Indian Standards.

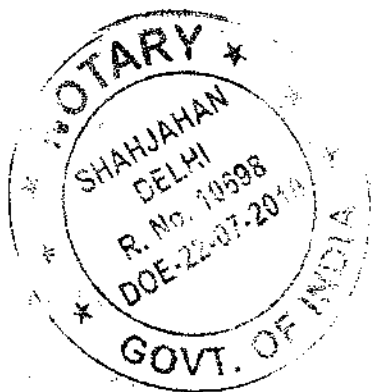
b. Contents of para 67(b) of the writ petition reproduce *verbatim* certain portions of the judgment of this hon'ble Court in the case reported as Bureau of Indian Standards vs Director General of Income Tax (Exemptions) : (2013) 260 CTR (Del) 39, which does not require



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103

any reply thereto. It is however submitted that the said portion of the judgment supports the contentions of the Bureau that the Bureau is not guided by profit making at all, and pricing and sale of Indian Standards is purely based on no profit- no loss basis. That apart, the portion of the said judgment or the entire judgment nowhere states that Indian Standards are laws. Further the judgment clearly states that activities of the Bureau cannot be said to be involving or carrying on any trade or commercial activity, and the pricing and sale of the publications including Indian Standards is not at all found to be exorbitant as alleged by the Petitioners. Moreover, this hon'ble Court in the said judgment did not find that the Bureau cannot be permitted to sell Indian Standards. It is submitted that as long as the Bureau has the copyright in the Indian Standards, the Petitioners cannot infringe the said copyright under the garb of making information accessible to the citizens of India because the Indian Standards are not pure piece of information by any stretch of imagination much less under any law.



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68. Contents of para 68 of the writ petition are wrong and denied. It is emphatically denied that the Indian Standards are

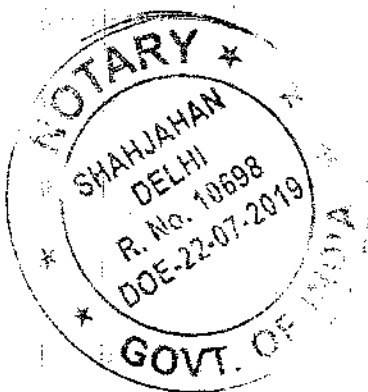


104

informations and the Bureau is withholding information from public on account of copyright. It is submitted that there is no copyright on information under any law, and as Indian Standards are not informations as alleged by the Petitioners, the Bureau has the copyright on the Indian Standards. It is emphatically denied that no copyright can subsist in the State, as Section 17 of the Copyright Right Act, 1957 clearly provides for copyright of the public sector undertakings. It is submitted that since the Bureau is not withholding any information, it is not violating any right of the people of India or its Constitution.

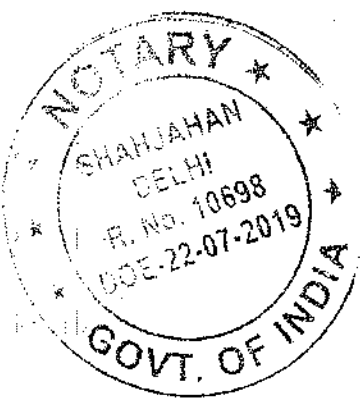
a. Contents of para 68(a) of the writ petition merely reproduce *verbatim* Section 9 of the RTI Act, which require no reply thereto. It is however submitted that the provisions of Section 9 of the RTI Act are not applicable in the present case.

b. Contents of para 68(b) of the writ petition merely reproduce *verbatim* certain portions of the judgment passed by this hon'ble Court in the case reported as DMRC vs Sudhir Vohra [2011 I AD (Delhi) 369], which does not require any reply thereto. It is however submitted that the said judgment referred to by the Petitioners has no relevance or applicability to the present case.



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c. In reply to para 68(c) of the writ petition it is submitted that contentions of the Petitioners stated therein are wrong and denied. It is further submitted that the Indian Standards are not some kind of secret documents, and against payment of the fees, Indian Standards can be made available to the applicant. However, it does not mean that the Bureau loses its copyright over the Indian Standards by providing them under RTI. It is submitted that the Bureau had at no point of time withheld the access to the Indian Standards which can be purchased by anyone at the price attached to the individual Indian Standards or at the discounted price, as the case may be. However, actions of the Petitioners, particularly Petitioner No.1 and Mr. Carl Malamud, are clearly in violation of the copyright of the Bureau.



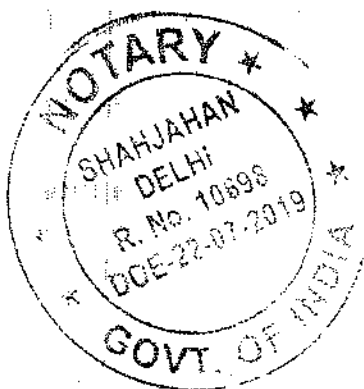
d. In reply to para 68(d) of the writ petition it is submitted that the statement with regard to establishment of the Indian Standards by way of notification in the Official Gazette is repetitive in nature which is a matter of fact. It is denied at the cost of repetition that notification of an Indian Standard in the Official Gazette does not give the said Indian Standard status of law under any law, much less under any of the provisions of the

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Constitution of India. It is denied that the Bureau has any kind of monopoly in creation, setting of standards and certifying programs or that the Bureau is abusing the power or position of its own advantage or to the prejudice of citizens of India. Rather, the Bureau is given the mandate to formulate the Indian Standards, and the Bureau is as a body corporate is fully justified to own and assert its copyright over the works created by its scientist under its employment.

e. Contents of para 689(e) of the writ petition are repetitive in nature with regard to the provision of Rule 22(4) of the BIS Rules, which are a matter of fact. It is a fallacious understanding of the Petitioner *qua* law relating to copyright which is more than apparent from the contention raised by the Petitioners to the effect that the Bureau is 'forcefully asserting' its copyright on the Indian Standards which may not even be the result of its own work.

f. Contents of para 68(f) of the writ petition are wrong and denied. It is denied that there is any kind of statutory monopoly as sought to be alleged by the Petitioners. It is denied that the copyright of the Bureau has subjected to any of

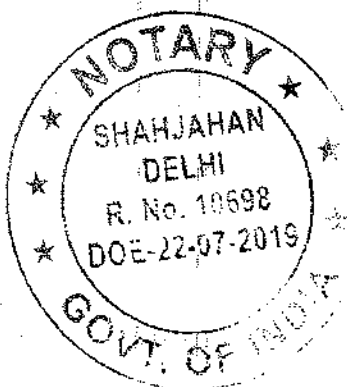


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107

the citizens to double jeopardy. Rather, it is the mischievous people who under the garb of public interest attempt to violate the copyright of the Bureau who could face the trouble within the four corners of law. It is once again the fallacious understanding of the Petitioners that Indian Standards are laws and that the Bureau cannot have copyright over the Indian Standards. It is submitted at the cost of repetition that the Indian Standards are not laws and that the Bureau is fully entitled to have copyright over the Indian Standards as per law.

- g. Contents of para 68(g) of the writ petition are wrong and denied. It is denied that the Indian Standards can be covered under the provisions of Section 52(q)(i) of the Copyright Act. It is admitted by the Petitioners themselves in the petition that the Indian Standards are not published in the Official Gazette, hence Section 52(q)(i) has no relevance or applicability to the Indian Standards or to the present case. It is further submitted that Section 52(q)(i) of the Copyright Act nowhere suggests or prescribes any requirement for the Indian Standards to be published in the Official Gazette. The Petitioner cannot seek to make or enforce their own law



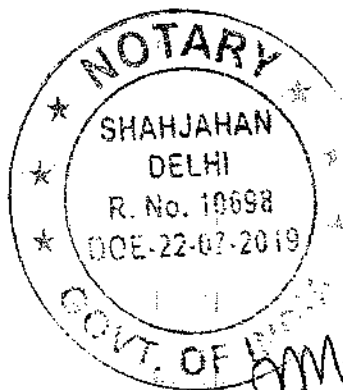
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through this hon'ble Court to say that even if the Indian Standards are not published in the Official Gazette, the Bureau cannot assert copyright on them.

69. Contents of para 69 of the writ petition are wrong and denied. It is denied that charging of royalty on its copyright by the Bureau is against the public policy. So far as the Bureau is using the funds derived from the royalty are being used for research, formulations of Indian Standards, propagating the Indian Standards among consumers, etc, the Petitioners cannot allege it to be against the public policy by any stretch of imagination.

a. Contents of para 69(a) of the writ petition has merely stated the Indian Standards which have been formulated by the Bureau, and the importance of the said Indian Standards, and mandatory nature of some of these Indian Standards which are matters of fact, and require no reply thereto.

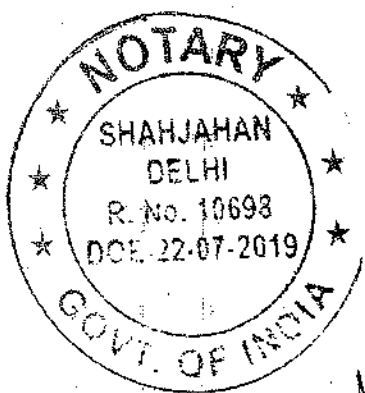
b. Contents of para 69(b) of the writ petition are wrong and denied. It is submitted that there is no monopoly for publishing and distribution of Indian Standards, rather what the Bureau is doing is merely fulfilling its functions under the mandate provided in the BIS Act, and Rules and



109

Regulations framed thereunder. It is submitted that the Petitioners have miserably failed to bring before this hon'ble Court even a single case where functions of the Bureau has resulted as detrimental to the interest of the society. Rather, what the Petitioner are seeking is detrimental to the Bureau, which would ultimately result as detrimental to the interest of the society.

- c. In reply to para 69(c) of the writ petition it is submitted that the Petitioner through clever and prolix drafting are trying to paint a picture as if Bureau is charging exorbitant price for the Indian Standards. Rather, the Petitioner has failed to explain as to why any consumer or student or researchers would like to amass freely the text/script of the Indian Standards, or as to how providing such large number of Indian Standards free of cost to a few class of people will serve the public interest which the Petitioners are projecting themselves as protectors of. As a matter of fact, a single copy of the Indian Standard will not cost as much specially if it is purchased by a person from certain category who are entitled to discount upto 60% percent thereon. It is denied that the royalty or pricing of Indian Standard can be termed as royalty to access information that affect public

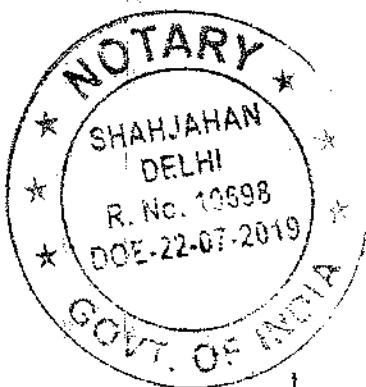


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safety. As a matter of fact the Indian Standards relating to public safety are already published by the Bureau on its website and are available to anyone free of cost. It is submitted that there is nothing that the Bureau is doing which can be said to be against the public policy.

- d. Contents of para 69(d) of the writ petition are wrong and denied. It is submitted that there is no requirement to buy Indian Standards for an entire technical group unless you are involved into some kind of commercial venture. It is submitted that bundling of the Indian Standards is merely to facilitate the purchaser to access one class or division of Indian Standards at one go rather than purchasing each Indian Standards relating to particular class separately, though there is no restriction on the purchaser to do so. It is therefore emphatically denied that bundling of Indian Standards of a particular class by the Bureau can be termed as abuse of its dominant power or unilateral imposition of unfair terms on buyers.



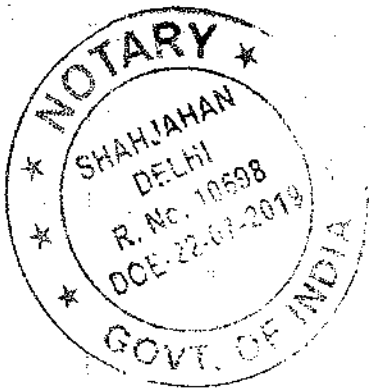
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- e. Contents of para 69(e) of the writ petition are wrong and denied. It is emphatically denied that pricing of Indian Standards which is termed by the Petitioners as levy and charges and fees is

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contrary to public policy of India, or deserve to be struck down as violative of Articles 14, 19, and 21 of the Constitution of India. Even otherwise such contentions of the Petitioners are contrary to their own assertions whereby the Petitioners have stated that Indian Standards may be provided at minimal or base price, which the Bureau is already doing.

- f. Contents of para 69(f) of the writ petition are wrong and denied. It is submitted that educational institutions comes under the category which are given maximum discount over the sale price of the Indian Standards, which are even otherwise priced as no profit- no loss basis as stated by the Bureau herein above. Hence it is denied that the prices of the Indian Standards are causing cost of education to increase or imposing a burden on students who are also provided discount on the prices of the Indian Standards. It is further denied that there is any violation of the right to information of any students. The allegations are merely the figments of the imagination of the petitioners, which are liable to be rejected forthwith.

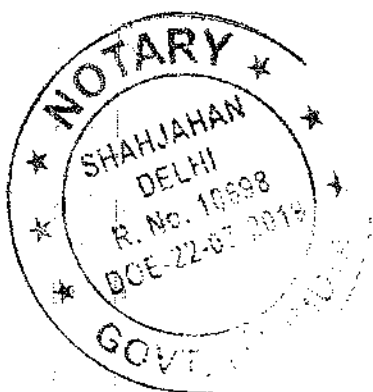


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70. Contents of para 70 of the writ petition are wrong and denied. It is denied that prohibition on sale of Indian Standards would amount to allowing loot of the Indian Standards by unscrupulous people of the society at large, and it will definitely affect the revenue position of the Bureau (not the profits as there are no profits as alleged by the Petitioners), which will ultimately burden the public *ex-chequer* and affect the efforts of the Bureau in formulation and propagation of the Indian Standards.

- a. In reply to para 70(a) of the writ petition it is submitted that the Petitioners on the one hand are alleging exorbitant pricing of the Indian Standards and crores of rupees being profited by the Bureau by way of canvassing huge figures from the Annual Reports of the Bureau, and on the other hand to suit their own contentions in a different way are also willing to take a contrary stand to say that sale of Indian Standards constitutes only 1.44% of its total revenue and 2.75% of its profit (which is not a profit but only the surplus fund, which any public organization is required to keep, or else it will go bankrupt). In any case, the Petitioners seem to be adamant to rob the Bureau of its revenue generation from the sale of the Indian Standards which they are not entitled to under law.

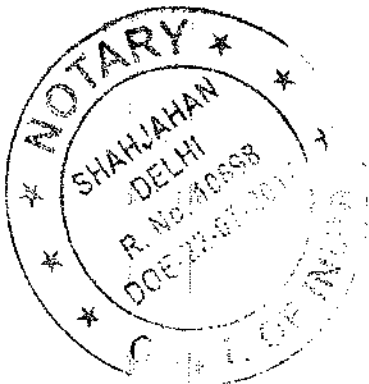


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71. Contents of para 71 of the writ petition are wrong and denied. It is emphatically denied that Section 11 of the BIS Act is arbitrary, or unreasonable or against the principles of BIS act, or is *ultra vires* the Constitution of India.

a. Contents of para 71(a) of the writ petition are relating to the provisions of Section 11 of the BIS Act and hence are matters of record. It is however submitted that the Petitioners have deliberately not stated anything about the proviso to Section 11(2) of the BIS Act, which clearly states that nothing in this subsection shall prevent any individual from making a copy of the Indian Standard for his personal use. It is therefore denied that Section 11 of the BIS Act is against the object of the BIS Act, or that it is *ultra vires* of the Constitution of India.

b. Contents of para 71(b) of the writ petition are wrong and denied. It is denied that the the Bureau is compelling individuals to purchase Indian Standards at alleged exorbitant prices, or that prices are violative of Articles, 14, 19, and 21 of the Constitution of India. It is further denied that the Indian Standards are public domain which is nothing but a fallacious understanding of the Petitioners of the provisions of the Copyright Act.

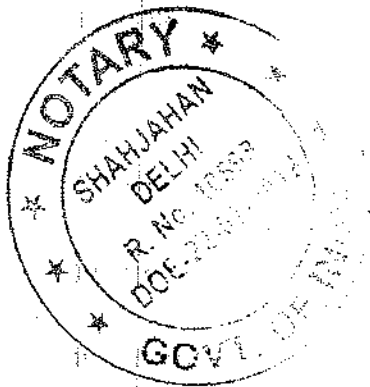


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It further denied that the Bureau is curtailing the rights of individuals by not providing the Indian Standards free of cost. It is further denied that the Indian Standards are published in Official Gazette. Rather the grievance of the Petitioners in the entire petition is that the the Indian Standards are not published in the Official Gazette by the Bureau. It is denied that there is any infringement of fundamental rights of the citizens as sought to be alleged by the Petitioners.

72. Contents of para 72 of the writ petition are wrong and denied. it is denied that Section 9(g) of the BIS Act and Rule 25 of the BIS Rules are arbitrary, or unreasonable, or against the scheme of the BIS act, or are *ultra vires* of the Constitution of India.



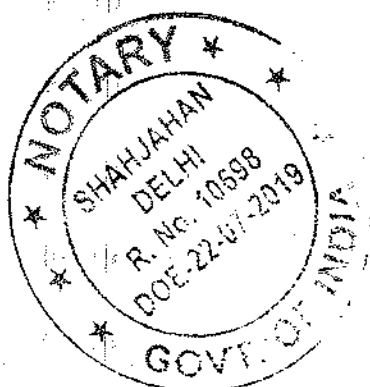
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- a. Contents of para 72(a) of the petition are a matter of fact, hence require no reply thereto.
- b. Contents of para 72(b) of the writ petition are wrong and denied. It is denied there is anything wrong which the BIS Act seeks to achieve. The Bureau is not engaged into any activity which can be said to be against the public welfare. It is emphatically denied that the Bureau is abusing the power by selling the Indian Standards, much less at any exorbitant prices as alleged by the

115

Petitioners. It is further denied that the Bureau is denying access to the Indian Standards to the public, rather the Indian Standards which relate to public safety are published by the Bureau on its website which can be accessed free of cost.

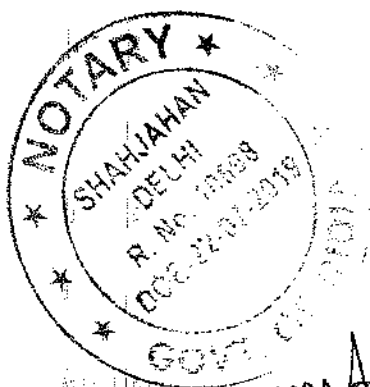
- c. Contents of para 72(c) of the writ petition are wrong and denied. It is denied that Rule 25 of the BIS Rules is arbitrary or unreasonable or against the scheme of the BIS Act, or that the same is *ultra vires* of the Constitution of India.
- d. Contents of para 72(d) of the writ petition are wrong and denied. It is denied that the BIS Act or any other law prohibits the Bureau to sell the Indian Standards or generate income therefrom, or that Rule 25 of the BIS Rule is liable to be struck down, much less as *ultra vires* of the Constitution of India. So far as selling Indian Standards at nominal price is concerned, the Bureau has already explained hereinabove that the pricing of the Indian Standards is based on no profit-no loss principle and the Bureau's policy to sell the Indian Standards at discounted prices to certain categories of purchasers meets the purpose of providing the Indian Standards at nominal prices as determined by the Bureau.



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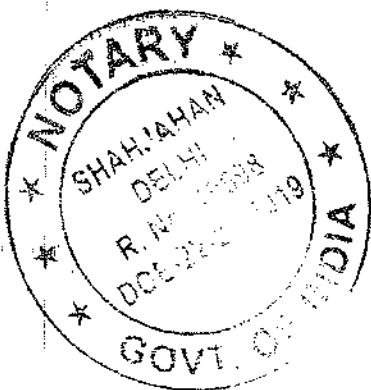
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- e. In reply to para 72(e) of the writ petition it is submitted that the Petitioners apart from making baseless and frivolous allegations have not been able to make out any case under paras 64 to 68 or any other paras of the writ petition for public interest litigation or to show that Sections 9(g) of the BIS Act or Rule 25 of the BIS Rules can be struck down as *ultra vires* of the Constitution of India, rather the whole effort of the Petitioners appears to be in self-interest or in the interest of people who wish to lay their hands on the intellectual property of the Bureau without making any payments with ulterior motives, and thereby robbing the Bureau of its revenue which is utilized for Standard formulation activities and propagation thereof among the general public, and making the Bureau financially handicapped which they cannot be allowed under the law. It is submitted at the cost of repetition that the Bureau is already selling the Indian Standards as determined by the Bureau at no profit- no loss basis and even providing discount upto 60% on such price of the Indian Standards to certain categories of purchasers.



117

73. Contents of para 73 of the writ petition are wrong and denied. It is denied at the cost of repetition that the Indian Standards are information, or laws. It is submitted that the Indian Standards are easily accessible on payment of price, and there is no such international practice as alleged by the Petitioners that Indian Standards or any Standards are made available free of cost. As a matter of fact, the Petitioner No.1 and Mr. Carl Malamud are well aware of this position who are facing the legal action for infringing copyright of the other international Standards formulation bodies for publishing their Standards on website. It therefore does not lie in the mouth of the Petitioner to allege that Indian Standards are laws or there is any international practice which allows them to infringe copyright of the Bureau under the pretext of free and easy access of information to the citizens of a country.

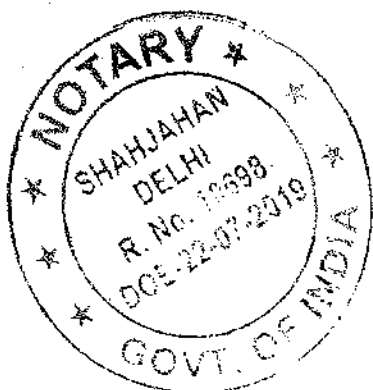


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a. In reply to para 73(a) of the writ petition it is submitted that the contentions of the Petitioners *qua* Clause 29 of the Magna Carta, are not only irrelevant but also frivolous as the Bureau is not selling 'justice' or 'right' to anyone, or denying anyone, or deferring to anyone, hence the same is liable to be rejected forthwith.

B. Contents of para 73(b) of the writ petition are repetition of para 73(a) of the writ petition which has been suitably replied to by the Bureau hereinabove.

- c. Contents of para 73(c) of the writ petition are based on the erroneous premise of the Petitioners that the Indian Standards are laws, which are wrong and denied. Lord Bingham's reiterations of fundamental or elements or doctrines of the Rules of Law has not relevance to the Indian Standards, hence contention thereon are liable to be rejected forthwith.
- d. Contents of para 73(d) of the writ petition are based on the fallacious understanding of the Petitioners to the effect that the Indian Standards are government edicts, which is wrong and denied. The reliance placed by the Petitioners on Third Compendium of U.S. Copyright Office Practice is wholly irrelevant in the present case, and is liable to be rejected forthwith.
- e. Contents of para 73(e) of the writ petition are based on fallacious understanding of the Petitioners to the effect that the Indian Standards are and the erroneous understanding of the ruling of the U.S. Court of Appeals in the case of Veek vs Southern Building Code Congress, hence are wrong and denied. The Bureau reserves its right to

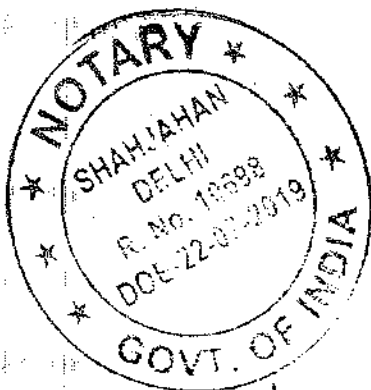


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make submissions if needed and to refer to the  
Week case.

f. Contents of para 73(f) of the writ petition are based on the fallacious understanding of the Petitioners to the effect that the Indian Standards are laws, which is wrong and denied. It is submitted the reliance placed by the Petitioners in the ruling of the US 6<sup>th</sup> Circuit Court in the case of Howell vs Miller, or Davidson vs Wheelock, is wholly irrelevant to the facts of the present case, and is liable to be rejected.

g. Contents of para 73(g) of the writ petition are wrong and denied. It is denied that there is any policy set out in Rule 25 of the BIS Rules, or that such policy is is implemented by the Bureau contrary to the BIS Act or its objectives or is violative of the rights of citizens of India. It is submitted that there is no such practice followed by the Bureau which can be said to be inconsistent with those followed by societies which follow the rule of law.

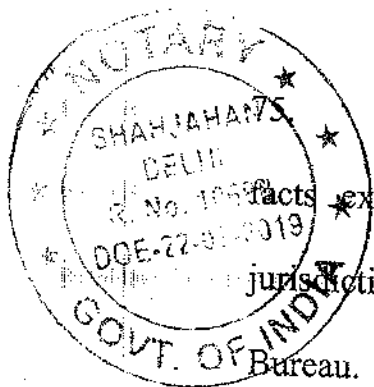


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74. Contents of para 74 of the writ petition are wrong and denied. It is denied that the Petitioners have no other efficacious remedy. It is submitted that since the Petitioners are challenging the



copyright of the Bureau on the Indian Standards formulated by the Bureau, the only remedy is to challenge the copyright of the Bureau under the Copyright Act, 1953 before the appropriate forum. The remedy under public interest litigations cannot look into the disputed questions of facts and laws which can be decided by the Court designated under the law for such copyright disputes. It is denied that the Bureau has failed to address the the so called concerns of the Petitioners which are raised by the Petitioners in the petition. As a matter of fact the the Petitioner No.1 has merely approached the Bureau with one request to allow them to publish the Indian Standards on their website only after they were caught into the act doing so without permission in utter violation of the copyright of the Bureau, which was not allowed by the Bureau. It is denied that there is any cause which could be justified by the petitioners to take away the copyright of the Bureau over the Indian Standards formulated by the Bureau.



Contents of para 75 of the writ petitions are matter of facts except to the extent that any cause of action has arisen within jurisdiction of this hon'ble Court, which is vehemently denied by the Bureau.

76.

Contents of para 76 of the writ petition are wrong and denied. As a matter of fact there was a delay, and the Petitioners has filed the condonation of delay in filing the petition, and the said application stands disposed of by this hon'ble Court.

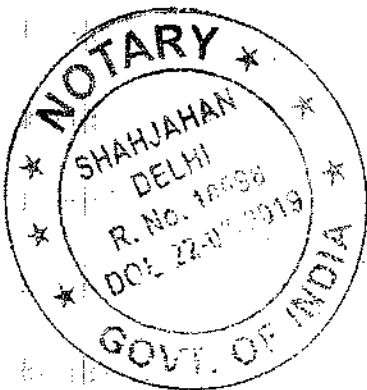
121

77. Contents of para 76 of the writ petition relating to court fees are a matter between the Petitioners and this hon'ble Court and requires no reply from the Bureau.

78. Contents of para 78 of the writ petition are in the special knowledge of the Petitioners and the Bureau is not in the position to comment on the same.

REPLY TO THE PRAYER CLAUSE:

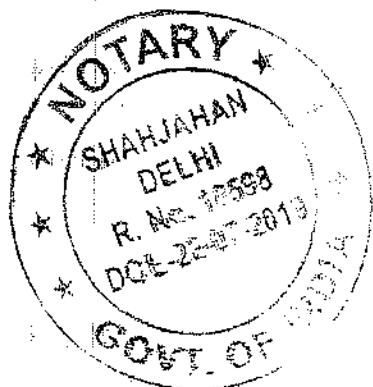
- a. It is submitted that prayer clause 'a' of the writ petition whereby the Petitioners have sought a writ of mandamus by way of direction to the Bureau to make available all Indian Standards free of cost or at such rates as this hon'ble Court may deem fit and proper, is not maintainable under the provisions 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. Moreover, the Indian Standards are sold to certain categories of purchasers at discount upto 60% on the price. Therefore the actions of the Bureau with regard to publication and pricing of the Indian Standards are governed under the provisions of



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the BIS Act, and the BIS Rules framed thereunder.

So far as the relief for making Indian Standards available free of cost is concerned, it is submitted that the Petitioners have miserably failed to bring up any case before this hon'ble Court to show that the provisions of BIS Act, and the Rules framed thereunder, with regard to the publication and pricing of the Indian Standards are liable to be struck down by this hon'ble Court as *ultra vires*, hence the Petitioners cannot be entitled to the said relief. That apart, any such prayer if allowed will not only burden the *exchequer* of the nation but also rob the Bureau of the revenue which is generated from the sale of the Indian Standards and utilized by the Bureau for in the activities of formulation of Indian Standards and propagation thereof. Hence such a prayer cannot be allowed to the Petitioners.

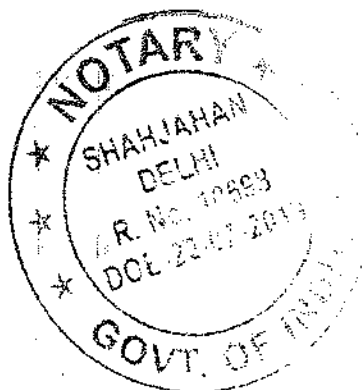


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Further, it is submitted that this hon'ble Court cannot be burdened to sit over the Indian Standards for fixing the prices thereof at such rates as this hon'ble Court may deem fit and proper exercising its powers under the writ jurisdiction, which is exclusively within the

domain of the civil courts. Hence, prayer clause 'a' is liable to be rejected forthwith.

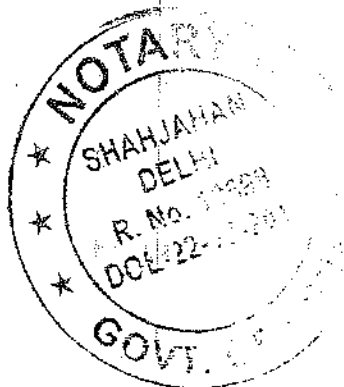
- b. It is submitted that prayer clause 'b' of the writ petition whereby the Petitioners have sought a writ of prohibition, restraining the Bureau from charging alleged exorbitant fees on any future Indian Standards, is not maintainable under the provisions of Article 226 of the Constitution of India. 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.



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- c. It is submitted with regard to the prayer clause c of the writ petition that the Petitioners have miserably failed to set up a case against the provisions of Section 11 of the BIS Act so as to seek it to be declared as *ultra vires* of the Constitution of India, particularly in view of the proviso to Section 11(2) of the BIS Act, hence the prayer clause 'c' is liable to be rejected forthwith.

- d. It is submitted with regard to the prayer clause d of the writ petition that the Petitioners have miserably failed to set up as case against the provisions of Section 9(g) of the BIS Act so as to seek it to be declared as *ultra vires* of the Constitution of India, particularly in view of fact the no international bodies of which the Bureau is a member has any objection for such publication of their Standards and sale thereof by the Bureau, and the Copyright Act, 1953 allows the Bureau as a corporate body to have its copyright on such works as Indian Standards, hence the prayer clause 'd' is liable to be rejected forthwith.
- e. It is submitted with regard to the prayer clause e of the writ petition that the Petitioners have miserably failed to set up as case against the provisions of Rule 25 of the BIS Rules so as to seek it to be declared as *ultra vires* of the Constitution of India, particularly in view of the submissions made herein above including against prayer clausd 'c' and 'd', hence the prayer clause 'e' is liable to be rejected forthwith.
- f. It is submitted that prayer clause 'f' of writ petition whereby the Petitioners have sought *ad interim* relief as per prayer clause 'b' during the

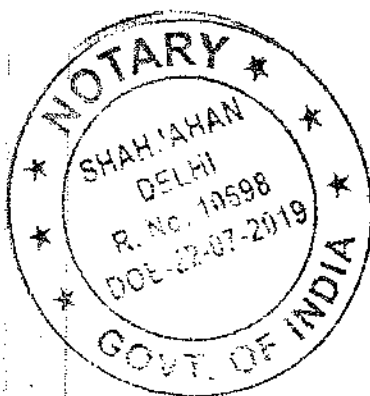


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pendency of the present writ petition. Since in view of the submission made herein above, the prayer clause 'b' itself is not maintainable, and is liable to be rejected, consequently prayer clause 'c' also cannot be granted. Hence, prayer clause 'c' is also liable to be rejected forthwith.

g. 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 in view of the submissions made herein above under the preliminary submissions, preliminary objections as well under prarawise reply and reply to the grounds and prayer clauses of the writ petition, the petition is liable to be dismissed with exemplary cost against the Petitioners and in favour of the Bureau, and it is prayed accordingly.



*(Signature)*

DEPONENT

विजय नितानवारे  
VIJAY NITANWARE  
शैक्षणिक 'ब' एवं प्रमुख (विभाग)  
Scientist 'B' & Head (Sale)  
भारतीय मानक ब्यूरो  
BUREAU OF INDIAN STANDARDS  
6, बंगाल रोड जवाहर नगर, नई दिल्ली-110002  
Dr. Ramesh Chandra Mehta, New Delhi-110002

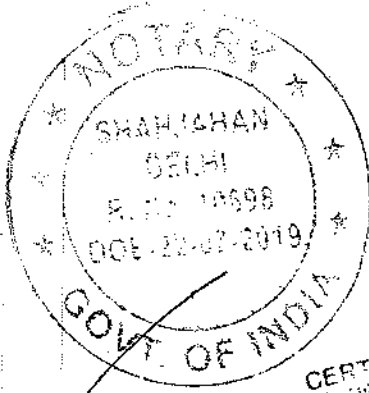
VERIFICATION

25 JAN 2019

Verified at New Delhi on this the 25<sup>th</sup> day of January, 2019 that contents of paras 01 to 26 of the preliminary submissions, paras 01 to 20 of the preliminary objections, paras 01 to 78 of reply to the writ petition on merit, reply to paras a to g of the prayer clauses 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.

I Identified the deponent who has signed / put in my presence.

25 JAN 2019



ATTESTED  
NOTARY, DELHI

DEPONENT

विजय नितनावारे  
VIJAY NITANWARE  
हेतुलिक 'B' एवं प्रामुख (नितव)  
Solealist 'B' & Prasad (Sole)  
बुरावनादिस प्रामुख एवं प्रामुख  
BUREAU OF INDIAN STANDARDS  
१, बुरावनादिस प्रामुख एवं प्रामुख, नई दिल्ली-110002  
१, बुरावनादिस प्रामुख एवं प्रामुख, नई दिल्ली-110002

CERTIFIED THAT THE DEPONENT  
Shri/Smt./...  
S/o W/o ...  
Identified by ...  
has solemnly ...  
on ... which  
that the content ...  
have been read ...  
true and correct ...

IN THE HIGH COURT OF DELHI AT NEW DELHI

C.M. NO. \_\_\_\_\_ OF 2019

IN

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

### NOTICE OF MOTION

#### **NISHIT DESAI ASSOCIATES**

Counsel for the Petitioners

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New Delhi 110024

Ph. 9987115749

#### **SHRI MANIK DOGRA, ADVOCATE**

Respondent No.1

A-27, Defence Colony

New Delhi 110024

Ph. 9811700104

[Note: There are only 2 respondents in the case. Counter affidavit is being filed by Respondent No.2. The Petitioner and Respondent No.1 has been served on above addresses through their counsels.]



**RAMESH KUMAR, ADVOCATE**

**CHIRAMEL & CO**

**SOLICITORS & ADVOCATES**

**COUNSEL FOR RESPONDENT NO.2**

**THAKKAR SADAN, LINK ROAD**

**NEW DELHI 110 055**

**TEL. 23510953, 23514538, (T/F) 23546531**

**e-mail : chiramelco@hotmail.com**

NEW DELHI

DATED : JANUARY 25<sup>TH</sup>, 2019