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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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# **OXFORD V RAMESHWARI PHOTOCOPY SERVICE: CASE COMMENT**

AUTHORED BY - ANANTA CHOPRA

## **INTRODUCTION**

Copyright law grants exclusive rights to individuals for their creative works. Various criteria have been established to determine what qualifies for copyright protection. However, once copyright is secured, questions arise regarding the extent of its applicability. Worldwide, students often rely on books from different publishers for their studies. Financial constraints may hinder their ability to purchase these books, leading to recourse through libraries or photocopying pages for personal use.

A pivotal case shedding light on this issue is *The Chancellor, Masters & Scholars of the University of Oxford & Ors. v. Rameshwari Photocopy Services & Anr.* (2016), where a landmark judgment declared that mass photocopying of portions of copyrighted books was legally permissible for educational purposes. This article chronicles the sequence of judgments and orders handed down by the Delhi High Court since the lawsuit's initiation in 2012, delving into the legal nuances and conclusions reached by the Court.

## **Facts of the Case**

1. Established in 1998, Rameshwari Photocopy Service is a photocopy shop located on the Delhi School of Economics (DSE) premises at the North Campus of Delhi University. It is owned by Dharampal Singh. Students from the DSE frequently visited this store, which served as the main source of supplies for a range of course materials. The reason for this was that a few instructors at the Delhi School of Economics created course materials that contained excerpts from books released by different foreign publishers.
2. It was decided to duplicate, bind, and sell these pages to students for 50 paise (US\$0.01) a page through Rameshwari Photocopy Service.

A copyright infringement lawsuit was filed in the Delhi High Court in 2012 by Oxford University Press, Cambridge University Press (UK), Taylor & Francis Group (UK), Cambridge University Press India Pvt. Ltd., and Taylor & Francis Books India Pvt. Ltd. against Rameshwari Photocopy Service and the University of Delhi for distributing copies of their published books without the proper license.

Students, academics, and activists all overwhelmingly supported Rameshwari Services as a result of the litigation; in fact, many petitions were made to join the defense of the case.

3. As an illustration, the Society for Promoting Educational Access and Knowledge (SPEAK) and the Association of Students for Equitable Access to Knowledge (ASEAK) asked to be entered as defendants. They were then designated as defendants three and four, respectively.

More than 309 well-known authors and academics from throughout the globe wrote to the publishers in March 2013 pleading with them to dismiss the case. Remarkably, 33 of the 309 signatories were producers of works whose copyright Delhi University and its photocopier were allegedly violating, and they had a direct contact with the plaintiff-publishers.

4. Prominent academics who signed included Professors Richard Falk, Arjun Appadurai, Jonathan Parry, Ramachandra Guha, Farid Esack, TN Madan, Ian Copland, Tanika Sarkar, and Uma Chakravarty, as well as Thomas Blom Hansen, Partha Chatterjee, Ayesha Jalal, Christophe Jaffrelot, Veena Das, Pratap Bhanu Mehta, and Marc Galanter.
5. A temporary injunction prohibiting Rameshwari Services from selling the photocopied course packs was passed by the Delhi High Court at the end of 2012. The Court further directed a Local Commissioner to visit the business without warning and seize any copies of the plaintiff's works that it had generated that were allegedly infringing after making an inventory of them.
6. Judge Rajiv Sahai Endlaw dismissed the lawsuit in 2016 and lifted the injunction, allowing Rameshwari Photocopy Services to start selling the course bundles again. Later that year, a



two-judge court overturned the earlier ruling and permitted the litigation trial to proceed, ruling that copyrighted works that were reproduced for educational reasons did not violate copyright. The Delhi High Court, meanwhile, declined to impose an injunction on the store and instead requested that it provide regular reports on the coursepacks it was selling.

Students, faculty, and alumni of Oxford University wrote an open letter to Oxford University Press in 2017 asking them to drop their appeal of the Division Bench ruling in the Indian Supreme Court. In light of this, the three publishers—Oxford University Press, Cambridge University Press (UK), and Taylor & Francis Group (UK)—withdrew from the action, citing their desire to avoid being embroiled in legal disputes with their clients, the academic institutions.

### **Legal Provisions Involved**

The pertinent sources of legal provisions were the Copyright Act of 1957 and the Copyright Rules of 2013. Section 52(1)(i) was the primary issue around which the entire legal dispute was fought. Certain acts that do not violate copyright are discussed in Section 52. In particular, Section 52(1)(i) declared that copying of any work by a teacher or student during teaching, as part of an exam question, or as an answer to such a question constituted fair dealing of that work. Whether the matter will proceed under Section 52(1)(i) or Section 52(1)(h) was one of the main questions. According to this clause, publications of copyrighted works may be permitted for legitimate uses of the works. However, that was restricted to just two excerpts from the same author's works that were released during a five-year period by the same publisher.

International conventions were also mentioned, specifically the Berne Convention of 1886 and the Agreement on Trade-Related Aspect of Intellectual Property Rights of 1995, due to the lack of significant Indian case laws in this area.

The relevant articles were-

- a) Article 9 of the Berne Convention: Allows for governments to make legislation to govern the reproduction of copyrighted works in special cases.
- b) Article 10 of the Berne Convention: This article allows for quotations to be made of works

already in the public domain, provided it is compatible with fair practice. Moreover, this article also states that the utilization of copyrighted works can be used for teaching with appropriate agreements.

- c) Article 13 of TRIPS: This talks about exceptions to exclusive rights only in special circumstances.

## **Arguments advanced by both sides**

### **Plaintiff Side**

The plaintiffs claimed that Rameshwari Services' permission to include parts of their copyrighted published works in the coursepacks amounted to institutional approval of copyright infringement. The coursepacks were acting as textbooks and competing with the sales of the officially published textbooks because they just included photocopies of the copyrighted publication. It was reported that Rameshwari was engaging in commercial operations by charging 40-50 paise per page for the coursepacks, rather than the standard market cost of 20-25 paise per page for any photocopy. Additionally, it was contended that Rameshwari could not be comparable to a teacher reproducing anything for a class to learn from, hence Section 52(1)(i) of the Copyright Act would not apply.

Alternatively, it was argued, Section 52(1)(h) would become unnecessary if it were determined that the reproduction done by Rameshwari Photocopy Services fell within the purview of Section 52(1)(i). Section 52(1) did not apply to the course materials since they were being utilized for "preparation of instruction" rather than "instruction" (i). Rather, Section 52(1)(h) need to be implemented, permitting the replication of a maximum of two excerpts from an author's work published by the same publisher throughout a five-year period. The plaintiffs also cited Articles 9 and 10 of the Berne Convention of 1886 and Article 13 of the Agreement on Trade-Related Aspect of Intellectual Property Rights of 1995.

In their final plea, the plaintiffs argued that the defendants should be required to obtain licenses from the Indian Reprographic Rights Organization since academic institutions constituted the majority of the books' intended audience and that the academic publishing industry would suffer irreversible losses if unrestricted reproduction from these books were permitted.

## **Defendants**

The defendants argued that their actions fell comfortably within Section 52 of the 1957 Copyright Act's definition of fair dealings. According to Rameshwari Photocopy Services, their inability to compete with publishing houses stemmed from the small fee they charged for their services, which was set by the license agreement they had with the Delhi School of Economics. It went on to say that their actions were in the best interests of the students because many of them were unable to purchase the books from which the course syllabus contained snippets. Delhi University's defense was based solely on Section 52(1)(i). The University contended that Rameshwari Photocopy Services was authorized to run a photocopy shop on campus, enabling students to make copies for research and instructional uses. Rejecting the University's request to assign books to Rameshwari Photocopy Services for the purpose of creating course packs, the University contended that unlimited photocopying would be allowed because Section 52(1)(i) of the Copyright Act, 1957 covers reproduction for educational purposes and does not place any restrictions on the amount of reproduction. The argument went on to say that the terms "publication" in Section 52(1)(h) and "reproduction" in Section 52(1)(i) were not the same. "Publication" meant releasing works for the general public, but in this case, it meant something more specific to the pupils. It was argued that Section 52(1)(h) could not be applied as a result.

The University of Delhi contended that member nations were permitted to suggest lawful exceptions to copyright under both the Berne Convention and the TRIPS Agreement, and that the educational exception created by Section 52(1)(i) represented one such exception.

### **Issues Involved in the case**

The main issues, in this entire case were:

1. Whether the right of reproduction of any work by a teacher or a pupil in the course of instruction is absolute and not constricted with the condition of it being fair use?
2. What is the span of the phrase 'by a teacher or a pupil in the course of instruction' in Section 52(1)(i)?
3. What constitutes 'publication' and 'reproduction'?

## **Judgement**

Following the initial filing of the lawsuit in 2012, the plaintiff-publishers succeeded in obtaining an interim injunction against the defendants. Rameshwari Services was not authorized to assemble and market the coursepacks, according to the Delhi High Court.

After that, the University of Delhi filed an appeal, which the same Court's two-judge bench rejected. Based primarily on Section 52(1)(i) of the Copyright Act of 1957, which stipulates that the reproduction of any work by a teacher or student in the course of instruction does not constitute copyright infringement, Justice Rajiv Sahai Endlaw dismissed the lawsuit in September 2016 and lifted the 2012 interim injunction.

The following observations were also made by the single-judge bench:

Copyright was not an inalienable, heavenly right that granted its possessor total ownership. Rather, the main objective of copyright was to promote knowledge gathering and the public's intellectual development. Educational institutions that may become involved in these types of lawsuits may find that Section 52 provides them with a comprehensive defense.

The term "teacher" in the Section pertained not just to specific educators but also to educational establishments in general.

The term "lecture" had not been purposefully added by the legislation. They took such action because they didn't intend to restrict the interpretation of the word "instruction" as it was used in the Section. This term covered lectures as well as any other instruction provided by the teacher that aids in the students' acquisition of considerable subject-matter knowledge. Giving and receiving instruction was never restricted to in-person interactions; instead, it involved the teacher preparing by creating a syllabus, assigning textbooks, reading aloud, and making sure that everything was understood, whether through in-person interactions in the classroom or through other means like periodic tests or student clarifications.

Since taking images of books or reproducing them was legal, photocopying books for the benefit of students—as directed by the university—could likewise be regarded as non-infringement of

copyright.

The Court believed that since the University could perform photocopying, there was no reason why someone else could not follow the University's instructions and perform photocopying as well.

