



### COPYRIGHTABILITY OF SUPREME COURT JUDGMENT

IN *EASTERN Book Company v. D.B. Modak*,<sup>1</sup> a division bench of the Supreme Court comprising B.N. Agrawal and P.P. Naolekar JJ declared thus:<sup>2</sup>

The editor who inserts para numbering must know how legal argumentation and legal discourse is conducted and how a judgment of a court of law must read... Setting of paragraphs by the appellants of their own in the judgement entailed the exercise of brain work, reading and understanding of subject of disputes, different issues involved, statutory provisions applicable and interpretation of the same ...would require full understanding of the entire subject of the judgment. Making paragraphs in a judgment could not be called a mechanical process. It requires careful consideration, discernment and choice and thus it can be called as a work of an author. Creation of paragraphs would obviously require extensive reading, careful study of subject and the exercise of judgment to make paragraph which has dealt with particular aspect of the case, and separating intermixing of a different subject. Creation of paragraphs by separating them from the passage would require knowledge, sound judgment and legal skill. In our opinion, this exercise and creation thereof has a flavour of minimum amount of creativity.

The said principle would also apply when the editor has put an input whereby different judge's opinion has been shown to have been dissenting or partly dissenting or concurring etc. It also requires reading of the whole judgment and understanding the questions involved and thereafter finding out whether the judges have disagreed or have the dissenting opinion or they are partially disagreeing and partially agreeing to the view on a particular law point or even on facts. In these inputs put in by the appellants in the judgments reported in SCC, the appellants have a copyright and nobody is permitted to utilize the same.

It was a case in which M/s Eastern Book Company claimed copyright in the copy edited judgments published by them. Their application for interim injunction against the respondents was rejected on 17-1-2001 by the Delhi

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1. (2008) 1 SCC 1 at 114.

2. *Id.* at 114 paras 61-62.



High Court. The earlier stay was vacated. However, before the single judge, the respondents conceded that the appellants have copyright in the head notes and as such they undertook not to copy these head notes in their CD ROMs.

Aggrieved by this order the appellants approached the division bench of the Delhi High Court which, however, did not agree with the submission of the appellants that by making certain corrections in the judgments or putting paragraph numbers or arranging the said judgments in a particular manner while printing, the appellants can claim that the copy-edited judgments become their original literary work. The court has also held that the appellants are not the author of the Supreme Court judgments and by merely making certain corrections therein or giving paragraph numbers the character of a judgment does not change and it does not become materially different from the original judgment.

It was clear that the opinion of the division bench was that no person should claim copyright in the text of the judgment by merely putting certain inputs to make it user friendly. And M/s Eastern Book Company appealed to the apex court which responded as mentioned earlier.

In this context, it is worth while to remember that the copyrightability of head notes and editorial notes was already almost accepted by the parties and the courts. It is interesting to note that in a decision rendered more than a year prior to the present decision, the Kerala High Court declined to consider the copyrightability of each fragment of a judgment. It declared that judgment is a composite piece and when its head notes etc. are copyrightable the whole judgment should be copyrightable. Thottathil B. Radhakrishnan J in *Infoseek Solutions v. Kerala Law Times*<sup>3</sup> observed thus:<sup>4</sup>

I find considerable support in the decision of the Division Bench of the Delhi High Court in Eastern Book Company's case (Supra) holding that the work of preparing head notes, editorial notes etc., even by collecting sentences from the text of the judgment, involves labour and skill and, that originality and creativity in preparation of head notes are also available. However, for the reasons stated in the preceding paragraphs, with respect, I am unable to concur with the views of the learned single judge and the Division Bench of the Delhi High Court in Eastern Book Company's case (Supra), in so far as they relate to copyright over the published version of the text of the judgment, as reported and published as reports. In my view a law report is a composite document and its head notes, editorial comments, footnotes, setting, layout, presentation etc. and even the skill and labour involved in choosing as to whether the judgment should be reported, lead to the reporter and publisher

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3. (2006) 4 KLT 311 (decided on 4-10-06).

4. *Id.* at 325 para 37.



acquiring copyright over such report, as a composite document including the text of the judgment as so published by the reporter. No distinction exists between head notes etc. on the one hand and the main text on the other, while considering the question as to whether a reporter has a copyright over the publication.

In the operative part of the judgment the Supreme Court also declares:<sup>5</sup>

The High Court has already granted interim relief to the plaintiff-appellants by directing that though the respondent defendant shall be entitled to sell their CD-ROMs with the text of the judgment of the Supreme Court along with their own head notes, editorial notes, if any, they should not in anyway copy the head notes of plaintiff appellant; and that the defendant respondents shall also not copy the footnotes and editorial notes appearing in journal of the plaintiff-appellants. It is further directed by us that the defendant-respondents shall not use the paragraphs made by the appellants in their copy-edited version for internal references and their editor's judgment regarding the opinions expressed by the judges by using phrases like "concurring" partly dissenting etc. on the basis of reported judgments in SCC.

The Kerala High Court decision was obviously not referred to or discussed. It seems that the Supreme Court's ruling falls short of affording total copyrightability to the copyedited versions of the Supreme Court judgments. But leaving head notes, editorial notes, paragraph making and addition of 'dissenting', 'concurring' etc. what is left is the 'original' version emerging from the court which is already in the public domain. So reading the two judgments one gets the feeling that inputs for improving the readability and understandability of judgments alone may have copyrightability.

In practical terms the Kerala High Court decision helps to resolve disputes inasmuch as it tends to treat the improved version as composite one distinct from the 'original' instead of treating the different fragments of the improved version as new additions.

Irrespective of one's agreement with either of these views, it is certain that the fall out of these decisions would be positive. The legal fraternity could hope to get more sophisticatedly annotated versions of cases with innovations as the publishers may try to achieve copyrightability of case reports in future. Those reporters who are not competent and competitive may stop publishing raising the possibility of avoiding replication and confusion.

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5. *Supra* note 1 at 115 para 63.

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