

COPYRIGHT BOARD—A FUTILE FORUM

THE FUTILITY of the Copyright Board as a forum has been amply brought out in *A.K. Mukherjee v. S. Chand and Co.*¹ A.K. Mukherjee retired in 1978 as Chief of the Industrial Division of the All India Federation of Indian Chamber of Commerce. His scholarly eminence as well as his reputation as an expert on industrial economics had been widely known. Retirement afforded the scholar, Mukherjee, the opportunity to engage himself in scholarly pursuits. By 1983 he had completed a valuable script on "Economics of Indian Industries". To make it available to readers a search for publishers was undertaken to print and publish the same on suitable terms and conditions.

Copies of the script were given to publishers interested in its publication within a reasonable period of time on terms and conditions agreed upon. A copy of the manuscript was also made available to the respondents, S. Chand and Co., through an agent, acquainted with both parties.

It appears that unmindful of any consideration towards the author, but mindful of their own interests alone, which was backed by enough money and organisational power, the respondents adopted a no-care attitude and proceeded to print and publish the same. No agreement was ever entered into. The petitioner had neither knowledge of the surreptitious publishing of his book, nor had he ever granted permission to the respondents.

It was only through a sale advertisement circulated for marketing the author's work that the petitioner became aware of the events. He also found the book marketed on the shelves of booksellers for sale and distribution. This led him to move the Copyright Board under section 19-A of the Copyright Act 1957. He sought relief for colossal loss suffered by him on account of infringement of his copyright. Reliefs sought were largely of a civil nature demanding damages and seeking to restrain the respondent from harming the petitioner's interests further.

On perusal of evidence on record, the Copyright Board did not have to strive hard to find a "clear proof of mala fides"² on the part of the respondents. It further held that the total circumstances disclosed that the respondents did have a "design to corner him into a helpless position that once the publication of the book is an accomplished fact, he would be forced to agree to any terms dictated by them for surrendering his copyright in their favour".³ The board concluded its opinion by saying that "without doubt, the respondents are guilty of infringing the petitioner's copyright and the latter's claim against them is just and rightful".⁴

1. Case No. 51 of 1985 decided by the Copyright Board on 1 April 1987.

2. *Ibid.*

3. *Ibid.*

4. *Ibid.*

Despite a favourable finding for the petitioner's case, the board opted to dismiss the petition on the ground that it was presented in a "wrong forum". It expressed its helplessness in granting reliefs of a civil nature since, in its opinion, it had a limited jurisdiction as a civil court as covered only under sections 12 and 74 of the Copyright Act. It also pointed out that reliefs available in chapter XII of the Act are to be dealt with by a regular civil court and not by the board. It also directed attention for penal action as provided in chapter XIII of the Copyright Act 1957.

An exercise to examine the extent, scope of powers of the board and the purpose of setting up a Copyright Board is not being attempted here. Assuming its opinion to be correct in the matter of jurisdiction, it inferentially leads to a conclusion that the board is a forum which is infertile to provide measures and reliefs to helpless authors against attacks of sharks of the publishing syndicate. In essence it remains a futile forum, whose existence for the victims of copyright is as meaningless as its non-existence prior to the enactment of the law on the subject.

The helplessness, as indicated by the board in the instant case, is not of that degree as it has tried to maintain and sustain by queer analysis of the provisions and purpose of the Act. It cannot at least deny to itself the stature of an administrative tribunal to adjudicate between disputes of the parties, which in substance has the same functions as a court of law; and once the tribunal has found facts it has to apply legal rules impartially and independently.⁵ Instead of leaving the petitioner high and dry after finding a favourable verdict in his favour for his "just and rightful" claim against the respondents, the board ought to have viewed its existence with a meaningful attitude to resolve the issues concerning copyright and the infringement thereof. Such attitude would undoubtedly have placed a number of courses within its reach to enable it to intervene. Such approach would also beneficially disallow multiple proceedings to breed in the ordinary civil and criminal courts for copyright claims and offences. It would also have an impact of decongesting the court dockets and help prevent delays which continue to plague the legal system. Judicial responsibility by the tribunals cannot be well discharged with tightened blinkers on their vision.

In the instant case the board had options to act independently and impartially to apply the law after it was found that a grave wrong had been done to a helpless author by a powerful though uncouth publisher by flouting all the settled norms pervading normal business dealings of a civil society which are to be governed by agreements and negotiations. It had also discovered explicit culpability of extortionate nature on the part of the publisher. In these circumstances the board would have performed and fulfilled its obligation to apply the law by aiding the magistracy and police under section 39 of the Code of Criminal Procedure 1973. Also it could make use of section

5. H.W.R. Wade, *Administrative Law* 781-82 (5th ed. 1982).

154 of the code particularly when it had expressed no doubts whatsoever about the guilt of the respondent. This could have brought sections 69 and 70 of the Copyright Act 1957 into immediate action. The above courses of action did not demand praying by the petitioner. The board could have acted *suo motu* to perform its obligations which consequently would have a far-reaching effect to prevent high-handedness of the nature as instanced by facts of the case under comment.

*D.C. Pandey**

*Research Professor, Indian Law Institute, New Delhi.