PETITIONER:
INDIAN PERFORMING RIGHT SOCIETY LTD.

Vs.

RESPONDENT:
EASTERN INDIA MOTION PICTURES ASSOCIATION

DATE OF JUDGMENT14/03/1977

BENCH:
SINGH, JASWANT
BENCH:
SINGH, JASWANT
KRISHNAIYER, V.R.

CITATION:
1977 AIR 1443 1977 SCR (3) 206
1977 SCC (2) 820

ACT:

Copy Right Act (Act 14 of 1957), 1957--Whether in view of the provisions of the Copy Right Act 1957 an existing and future rights of music .... composer, lyricist is capable of assignment under s. 18 when he grants a licence or permission u/s. 30 to an author (owner) of a cinematograph film for its incorporation in the sound track of a cinematograph film--Whether the producer of a cinematograph film can defeat the same by engaging in the same person: Scope of ss. 2(d), (f), (j), (m), (p), (q), (r), (v), (y), 13,14,17,18, 19 22, 26, 30 and 34 of the Act.

HEADNOTE:

The appellant society was incorporated in terms of section 2(r) of the Copyright Act. 1957 (Act 14 of 1957), in the State of Maharashtra on August 23, 1969 as a company limited by guarantee for the purpose of carrying on business in India of issuing or granting licences for performance in public of all existing and future Indian musical works in which copyright within the meaning of s. 13 subsists in India. The appellant company has amongst its members the composers of musical works, authors of literary and dramatic works and artistes. In accordance with the provisions of section 33 of the Copyright Act, the appellant published on September 27, 1969 and November 29, 1969 in the "Statesman" and the Gazette of India respectively a tariff laying down the fees, charges and royalties that it proposed to collect for the grant of licences for performance in public of works in respect of which it claimed to be an assignee of copyrights and to have authority to grant the aforesaid licences. A number of persons including various associations of producers of cinematograph films including the sound track thereof and the Cinematograph Exhibitors Association of India filed objections in respect of the tariff before the Copyright Board in accordance with the provisions of section 34 of the Act, repudiating the rights of the appellant. The Copyright Board held : (1) In the absence of proof to the contrary, the composers of lyrics and music retained the copyright in their musical works incorporated in the sound track of cinematograph films provided such lyrical and musical works were printed on written and that they could assign the performing right in public to the

appellant. (2) The tariff as published by the appellant was reasonable. (3) The appellant had the right to grant licences for the public performance of music in the sound track of copyrighted Indian cinematograph films and (4) It could collect fees, royalties and charges in respect of those films w.e.f. the date on which the tariff was published in the Gazette of India. The High Court allowed the appeal preferred by the respondents under s. 72 of the Act and held: (i) Unless there is a contract to the contrary a composer who composes a lyric or music for the first time for valuable consideration for a cinematograph film does not acquire any copyright either in respect of film or its sound track which he is capable of assigning. (ii) Under proviso (b) to section 17 of the Act, the owner of the film at whose instance the composition is made becomes the first owner of the copyright in the composition. (iii) The composer can claim a copyright in his work only if there is an express agreement between him and the owner of the cinematograph film reserving his copyright. (iv) Though section 18 of the Act confers power to make a contract of assignment. the power can be exercised only when there is an existing or future right to be assigned and that in the circumstances of the present case, assignment, if any, of the copyright in any future work is of no effect.

In appeal by certificate to this Court, the appellant contended (1) The author (composer) of a literary or musical work has copyright which includes. inter alia. the exclusive right (a) to perform the work in public and

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(b) to make any cinematograph film or a record in respect of the work. (2) That copyright in a literary or musical work is infringed by any person if without a licence granted to him by the owner of the copyright, he makes a cinematograph film in respect of the work or perform the work in public by exhibiting the cinematograph film. (3) If a person desires to exhibit in public a cinematograph film containing a musical work, he has to take the permission not only of the owner of the copyright in the cinematograph film but also the permission of the owner of the copyright in the literary or musical work which is incorporated in the cinematograph film, as according to s. 13(4) of the Act, the copyright in a cinematograph film or a record does not effect the separate copyright in any work in respect of which or a substantial part of which the film or as the case may be, the record is made (4). The provisions of section 17(b) of the Act have no application to a literary or musical work or the separate copyright therein and do not take away the copyright in a literary or musical work embodied in a cinematograph film. (5) The only modes in which the author of a literary work or musical work ceases to be the owner of copyright in the work are (a) by assigning under s. 18(b) by relinquishment under s. 21 and (c) by the composer composing the work in the course of his employment under a contract of service with an employer in which case the employer becomes the owner of the copyright in the musical work. (6) In the case of an assignment of copyright in future work and the employment of the author to produce a work under a contract of service, the question of priorities will be decided according to the principles "where equities are equal, the first in time shall prevail". The respondent's contentions were (i) Unless a music is notationally written, printed or graphically reproduced it is not a musical work within the meaning of Copyright Act and there is no copyright in songs or orchestral pieces sung or played directly without its notation being written.

(ii) Since a "cinematograph film" is defined in section 2(f) of the Act as including the sound track and the "cinema tograph" is required to be construed to include any work produced by any process analogous to cinematography the owner of the cinematograph film is the first owner of the copyright therein including the right of the composer of the literary or musical work incorporated in the sound track of the film. (iii) In the case of the film in which a lyric (which literally means a short poem directly expressing the poet's own thoughts and sentiments in instances failing within the purview of the expression "literary work" as defined in section 2(0) of the Act has been plagiarised, there will be copyright in the film vesting in the producer. (iv) The Act confers a separate copyright of a cinematograph film as a film, its author under s. 2(d)(v) of the Act being the owner of the film at the time of its completion. (v) In the case of a lyric or music incorporated under the sound track of a cinematograph film, since in section 2(f) of the Act cinematograph film includes its sound track and section 13(1)(b) of the Act confers copyright on the cinematograph film and section 14(c) (ii) of the Act confers on the. owner of copyright the right to cause the film in so far as it consists of visual images to be seen in public and in so far as it consists of songs to be heard in public, it is not necessary for the owner of the cinematograph film to secure the permission of the composer of the lyric or of the music incorporated in the sound track of a cinematograph film for exhibiting or causing the exhibition of the sound portion of the film in public or for causing the records of the sound track of the film to be heard in public. (vii) It is not correct to say that under s. 17 proviso (b) in order that the producer of the cinematograph film should have copyright in the literary or musical work incorporated in it, the making of the entire film should be commissioned. Section 17(b) will equally apply if someone is commissioned to make any component part of a cinematograph film such as a lyric or musical work i.e. when such component of the film is made at the instance of a film producer for valuable consideration, the copyright for such component shall as well vest in the producer. (viii) As the Act confers a separate copyright on a cinematograph film as a film the producer can exercise both the rights conferred on him under s. 141(c)(ii) of the Act and all that section 13(4) of the Act (when applicable) provides is that the rights created by section 14(1)(a) and (b) shall coexist with those created by section 14(1)(e) and (d) of the Act.

Dismissing the appeal the Court,

HELD: (Per Krishna Iyer, J. concurring)

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(1) Copyright in a cinema film exists in law but section 13(4) of the Act preserves the separate survival in its individuality of a copyright enjoyed by any work notwithstanding its confluence in the film. This persistence of the aesthetic personality of the intellectual property cannot cut down the copyright of the film qua film. The exclusive right, otherwise, called copyright, in the' case of a musical work extends to all the sub rights spelt out in section 14(1) (a). A harmonious construction, of s. 14, which is the integral yoga of copyright shows that the artiste enjoys his copyright in the musical _work the film producer is the master of his combination of artistic .pieces and the two can. happily co-exist and need not conflict. [223 A-C]

(2) The boundaries of composite creations of art which

are at once individual and collective may be viewed from different angles. In a cosmic perspective, a thing of beauty has no boundary and is humanity's property but in the materialist plane on which artistes thrive private and exclusive estate inert subsists. The enigmatic smale of Mona Lisa is the timeless heritage of mankind, but, till liberated by the prescribed passage of time, the private copy right of the human maker says, "hands off. [223 F-G]

(3) The film producer has the sole right to exercise what is his entitlement under section 14(1)(c) qua film. But, he cannot trench on the composer's copyright which he does only if the 'music' is performed or produced or reproduced separately, in violation of section 14(1)(a). A film may be caused to be exhibited as a film but the pieces of music cannot be picked out of the sound track and played in the cinema or the theatre. To do that is the privilege of the composer and that right of his is not drowned in the film' copyright except where there is special provision such as section 17, proviso (c). Beyond exhibiting the film as a cinema show if the producer plays the songs separately to attract an audience or for other reasons he infringes the composer's copyright, the copyright of the composer or the Performing Acts Society comes into play, if a music is played, whether in a restaurant or aeroplane or radio station or cinema theatre. [223 C-E]

(4) Section 14 has in its careful arrangement of the right belonging each copyright has a certain melody and harmony to music which is to loose the sense of the same. Our copyright statute protects the composite cinematograph work produced by lay out of heavy money and many talents but does not extinguish the copyrightable component parts in toto. The music which has merged through the sound track, into the motion picture is copyright by the producer but, on account of this monopoly, the music composer's copyright does not perish. The twin rights can co-exist each fulfiling itself in its delectable distinctiveness. [224 A-B]

Observation:

Apart from the music composed, the singer must be conferred a right. Copyrighted music is not the soulful tune, the superb singing, the glorious voice or the wonderful rendering. It is the melody or harmony reduced to print writing or graphic form of musical works. Author as defined in s.2(d) in relation to a musical work is only the composer and section 16 confines copyright to those works which are recognised by the Act, which means the composer alone has copyright in a musical work and the singer has none. This disentitlement of the musician or group of musical artistes to copyright is un-Indian because the major attraction which lends monetary value to a musical performance is not the music maker so much as the musician. Perhaps both deserve to be recognised by the copyright law, because art in one sense depends on the ethos and the aesthetic best of a people and while universal protection of intellectual and aesthetic property of creators of "works" is an international obligation each country in its law must protect such rights wherever originally is contributed. [224 E-H]

Per Jaswant Singh J.

(1) The existing and future right of music ..... composer and lyrics in their respective works as defined in the Act is capable of assignment subject to the conditions mentioned in section 18 of the Act as also in section 209
19 of the Act which requires an assignment to be in writing, signed by the assigner or by his duly authorised agent. [215 D-E]

(2) The interpretation of clause (f) of section 2 which is not exhaustive leaves no room for doubt when read in conjunction with section 14(1)(c)(iii), that the term cinematograph film includes a sound track associated with the film. [220 D]

(3) A harmonious and rational instead of mechanical construction of s. 34, s. 14(1)(a)(iii) and s. 14(1)(c)(ii) will be:

(A) Once the author of a lyric or a musical work parts with a portion of his copyright by authorising a film producer to make a cinematograph film in respect of his work and thereby to have his work incorporated or recorded in sound track of a cinematograph film, the latter.acquires by virtue of section 14(1)(c) of the Act on completion of the cinematograph film a copyright which gives him the exclusive right, inter alma, of performing the work in public that is, to cause the film in so far as it consists of visual images to be seen in public and in so far as it consists of the acoustic portion including a lyric or a musical work to be heard in public without securing any further permission of the author (composer) of the lyric or a musical work for the performance of the work in public. A distinct copyright in the aforesaid circumstances comes to vest in the cinematograph film as a whole which relates both to copying the film and to its performance in public.

(B) If an author (composer) of a lyric or a musical work authorises a cinematograph film producer to make a cinematograph film of his composition by recording it on the sound track or a cinematograph film, he cannot complain of the infringement of his copyright if the author (owner) of the cinematograph film causes the lyric or the musical work recorded on the sound track of the film to be heard in public and nothing contained in section 13(4) of the Act can operate to affect the rights acquired by the author (owner) of the film by virtue of section 14(1)(c) of the Act.

(C) The composer of a lyric or musical work retains the right of performing it in public for profit otherwise than as a part of cinematograph film and he cannot be restrained from doing so. In other words, the author (composer) of a lyric or musical work who has authorised a cinematograph film producer to make a cinematograph film of his work and thereby permitted him to appropriate his work by incorporating or recording it on the sound track of a cinematograph film cannot restrain the author (owner) of the film from causing the acoustic portion of the film to be performed or projected or screened in public for profit or from making any record embodying the recording in any part of the sound track associated with the film by utilising such sound track or from communicating or authorising the communication of the film by radio diffusion, as section 14(1)(c) of the Act expressly permits the owner of the copyright of a cinematograph film to do all these things. In such cases the author (owner) of the cinematograph film cannot be said to wrongfully appropriate anything which belongs to the composer of the lyric or musical work.

Any other construction would not only render the express provisions of clause (f), (m), (y) of section 2, section 13(1)(b) ,red section 14(1)(c) of the Act otiose but would also defeat the intention of the legislature which in view of the growing importance of the cinematograph film as a powerful media of expression and the highly complex, technical and scientific process and heavy capital outlay involved in its production has sought to recognise as a separate entity and to treat a record embodying the record-

ing in any part of the sound track associated with the film by utilising such sound track as something distinct from a record as ordinarily understood. [220 G-H; 221 A-G]

(4)Clauses (d), (v), (f), (m), (v) and (y) of section 2, section 13(1) and 14(1)(c), provisos (b) and (c) to section 17 and section 22 and 26 of the Act abundantly make it clear that protectable copyright (comprising a bundle of exclusive rights mentioned in section 14(1)(c) of the Act comes to

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vest in a cinematograph film on its completion which is said to take place when the visual portion and audible portion are synchronized. [221 H; 222 A]

(5) The rights of music ..... composer or lyricist can be defeated by the producer of a cinematograph film in the manner laid down in proviso (b) and (c) of section 17 of the Act. In both the. cases falling under clauses (b) and (c) of s. 17, a cinematograph film producer becomes the. first owner of the copyright and no copyright subsists in the composer of the lyric or music so composed unless there is a contract to the contrary between the composer of the lyric or music on one hand and the producer of the cinematograph film on the other. [222 D-F]

Wallerstein v. Herbert (1867) Vol. 16, Law Times Reports 453, quoted with approval.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 967 of 1975.

(From the judgment and order dated 13-2-1974 of the Calcutta High Court in Copyright No. 2/73).

A.K. Sen, E.P. Skons James, J. 1. Mehta, J. Roy Choudhary, S.K. Mehta, K.R. Nagaraja and P.N. Puri, for the appellant.

S. Chaudhury, R.K. Bachawat, D.K. Sinha, H.S. Parihar and I. N. Shroff, for respondents 1-5 and 12 and 22.

J.C. Bhat, Atul Munim and B.R. Agarwala, for respondents 6-8.

B. Sen, B.K. Bachawat, D.K. Sinha, H.S. Parihar and I. N. Shroff, for respondents 12 and 22.

J.L. Nain, Atul Munim and B. R. Agarwala, for respondent No. 19.

The Judgment of the Court was delivered by Jaswant Singh, 3., V.R. Krishna Iyer, J. also gave a separate opinion.

JASWANT SINGH, J. This appeal by certificate granted under Article 133(1) of the Constitution by the High Court of Judicature at Calcutta which is directed against its judgment dated February 13, 1974, raises the following substantial question of law of general importance :--

> "Whether in view of the provisions of the Copyright Act, 1957, an existing and future rights of music ..... composer, lyricist is capable of assignment and whether the producer of a cinematograph film can defeat the same by engaging the same person."

The facts giving rise to the appeal are: The Indian Performing Right Society Ltd. (hereinafter referred to for the sake of brevity as 'the IPRS'), the appellant before us, was incorporated in the State of Maharashtra on August 23, 1959, as a company limited by guarantee, for the purpose of carrying on business in India of issuing or granting licences for performance in public of all existing and future

Indian Musical works in which copyright subsists in India. The incorporation of the IPRS was in terms of section 2(r) of the Copyright Act,
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1957 (Act 14 of 1957) (hereinafter referred to as 'the Act') which was enacted after taking into consideration the Report of the (British) Copyright Committee,1952, the suggestions of the various Ministries of the Government of India and the State Governments, the Indian Universities and certain interested industries and associations who were invited to send their comments on the subjects of copyright. The IPRS has amongst its members the composers of musical works, authors of literary and dramatic works and artists. In accordance with the provisions of section 33 of the Act, the IPRS published on September 27, 1969 and November 29, 1969 in the 'Statesman' and the Gazette of India respectively a tariff laying down the fees, charges and royalties that it proposed to collect for the grant of licences far perform-ance in public of works in respect of which-it claimed to be an assignee of copyrights and to have authority to grant the aforesaid licences. A number of persons including various associations of producers of cinematograph films who claimed to be the owners of such films including the sound track thereof and the Cinematograph Exhibitors Association of India filed objections in respect of the aforesaid tariff in accordance with the provisions of section 34 of- the Act repudiating the claim of the IPRS that it had on behalf of its members authority to grant licences for. performance in public of all existing and future musical works which are incorporated in the sound track of cinematograph films in which copyright may subsist in India or the right to collect in relation thereto any fees, charges or royalties. The association of producers averted inter alia that their members engaged composers and sound writers under contracts of service for composing songs to be utilised in their films; that the musical works prepared by the composers of lyric and music under contract of service with their mem-bers-producers of the cinematograph films--having been utilised and incorporated in the sound track of the cinemat-ograph films produced by the latter, all the rights which subsisted in the composers and their works including the right to perform them in public became the property of the producers of the cinematograph films and no copyright sub-sisted in the composers which they could assign to and become the basis of the claim of the IPRS under section 33 of the Act; that their members i.e. the producers of cine-matograph films being the authors and first owners of the copyright in the cinematograph films produced by them had the exclusive right inter alia to cause the said films in so far as the same consisted of sounds (which include musical works) to be heard in public as also the exclusive right to make records embodying the sound track of the films produced by them (including any musical work incorporated therein) and to cause the said records to be beard in public; that in the making of a cinematograph film as contemplated by the Act a composer composes a lyric or music under a contract of service or for valuable consideration which is substantial a music director sets it to tunes and imparts music to it and a singer sings the same but none of them nor any one of their aforesaid works can and have any separate copyrights; that motion picture is the combination of all arts and music in the sound track which cannot be detached from the film itself; that the purpose of making a motion picture is not only to complete it but also to publicly exhibit it through-out the world; that having regard to the provisions of the

Act the' copyright in the case of
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a cinematograph film vests in the owner of the film as defined in section 2(d) (v) of the Act; and that in the premises any assignment purporting to have been made in favour of the IPRS was void and of no effect and was incapable of conferring any rights whatsoever in such musical works on the IPRS.

The Cinematograph Exhibitors Association of India also filed objections challenging the right of the IPRS to charge fees and royalties in respect of performance in public of the musical works incorporated in the sound track of the films. Besides raising contentions identical to those raised by various associations of producers they averred that copyright in a cinematograph film which vested in the producers meant copyright in the entirety of the film as an integrated unit including the musical work incorporated in the sound track of the film and the right to perform the work in public; that in accordance with the agreement with the distributors of films the exhibition of cinematograph film includes the right to play in public the music which is an integral part and parcel of the film; that the producers lease out copyrights of public performance of the films vested in them to the distributors who give those rights to the exhibitors an agreement and that when an exhibitor takes a licence for exhibition, it is complete in all respects and a third party like the IPRS cannot claim any licence fee from the exhibitors.

On the aforesaid objections being referred to it for determination under section 35 of the Act, the Copyright Board expressed the view that in the absence of proof to the contrary, the composers of lyrics and music retained the copyright in their musical works incorporated in the sound track of cinematograph films provided such lyrical and musical works were printed or written and that they could assign the performing right in public to the IPRS. The Copyright Board further held that the tariff as published by the IPRS was reasonable and the IPRS had the right to grant licences for the public performance of music in the sound track of copyrighted Indian cinematograph films and it could collect fees, royalties and charges in respect of those films with effect from the date on which the tariff was published in the Gazette of India.

Aggrieved by the decision of the Copyright Board, the objectors preferred an appeal under section 72 of the Act to the High Court which allowed the same holding that unless there is a contract to the contrary, a composer who composes a lyric or music for the first time for valuable consideration for a cinematograph film does not acquire any copyright either in respect of film or its sound track which he is capable of assigning and that under proviso. (b) to section 17 of the Act, the owner of the film at whose instance, the composition is made, becomes the first owner of the copyright in the composition. The High Court further held that "the composer can claim a copyright in his work only if there is an express agreement between him and the owner of the cinematograph film reserving his copyright". The High Court also held that "though section 18 of the Act confers power to make a contract of assignment, the power can be exercised only when
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there is an 'existing or future right to be assigned and that in the circumstances of the present case, assignment, if any, of the copyright in any future work is of no effect". Dissatisfied with this decision, the IPRS has,as

already stated, come up in appeal to this Court.

The copyright law in our country being fairly complicated because of the involved language in which some of its provisions are couched and the case being of first impression, learned counsel for the parties have tried hard to help us in solving the knotty points by advancing copious and able arguments. Appearing on behalf of the appellant, Mr. Ashok Sen has urged that the author (composer) of a literary or musical work has copyright which includes inter alia the exclusive right (a) to perform the work in public 'and (b) to make any cinematograph film or a record in respect of the work; that copyright in a literary or musical work is infringed by any person if without a licence granted to him by the owner of the copyright, he makes a cinematograph film in respect of the work or performs the work in public by exhibiting the cinematograph film; that if a person desires to exhibit in public a cinematograph film containing a musical work, he has to take the permission not only of the owner of the copyright in the cinematograph film but also the permission of the owner of the copyright in the literary or musical work which is incorporated in the cinematograph film, as according to section 1. 3 (4) of the Act, the copyright in a cinematograph film or a record does not affect the separate copyright in any work i.n respect of which or a substantial part of which, the film, or as the case may be, the record is made; that the provisions of section 17(b) of the Act have no application to a literary or musical work or the separate copyright therein and do not take away the copyright in a literary or musical work embodied in a cinematograph film; that the only modes in which the author of a literary or musical work ceases to be the owner of copyright m the work are (a) by assignment, '(b) by relinquishment and (c) by the composer composing the work in 'the course of his employment under a contract of service with an employer in which case, the employer becomes the owner of the copyright in the musical work; that in the case of an assignment of copyright in future work and the employment of the author to produce a work under a contract of service, the question of priorities will be decided according to the principle "where equities are equal, the first in time shall prevail".

Mr. Sachin Chaudhary, learned counsel for respondents 1, 2 and 3, as well as Mr. J.C. Bhat, learned counsel for respondents 6, 7 and 8, and Mr. J.L. Nain, learned counsel for respondent 19, who followed Mr. Chaudhary have on the other hand submitted that the dispute in the instant case, according to the petition of appeal, the judgment of the Copyright Board and the judgment of the Calcutta High Court is confined to the sound track associated with a cinematograph film (which expression, according to Copinger and Skone James on COPYRIGHT, means "any record of sounds which is incorporated in any print, negative, tape or other article on which the film or part of it, in so far as it consists of visual images, is recorded, or which is issued by the maker

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Of the film for use in conjunction with such an article"); that the contention advanced on behalf of the appellant that copyright in a literary or musical work incorporated in the sound track of a cinematograph film vests in the composer of literary or musical work and when the cinematograph film is performed i.e. exhibited in public, the composer is entitled to fee or royalty in that behalf and since the appellant is the assignee of the copyright from the composers, it has the right to collect the fee or royalty is entirely unfound-

ed; that unlike (the law) in England, in India unless a music is notationally written, printed or graphically reproduced, it is not musical work within the meaning of the Copyright Act and there is no copyright 'in songs or orchestral pieces sung or played directly without its notation being written' that since a 'cinematograph film' is defined in section 2(f) of the 'Act as including the sound track and the 'cinematograph' is required to be construed to include any work produced by any process analogous to cinematography, the owner of the cinematograph film is the firt owner of the copyright therein including the right of the composer of the literary or musical work incorporated in the sound track of the film; that in the case of the film in which a lyric (which literally means a short poem directly expressing the poet's own thoughts and sentiments in stanzas falling within the purview of the expression "literary work" as defined in section 2(0) of the Act) has been plagiarised, there will be copyright in the film vesting in the producer; that the Act confers a separate copyright on a cinematograph film as a film, its author under section 2(d)(v) of the Act being the owner of the film at the time of its completion; that in the case of a lyric or music incorporated in the sound track of a cinematograph film, since under section 2(f) of the Act, cinematograph film includes its sound track and section 13(1)(b) of the Act confers copyright on the cinematograph film and section 14(c) (ii) of the Act confers on the owner of copyright the. right to cause the film in so far as it consists of visual images to be seen in public and in so far as it consists of songs to be heard in public, it is not necessary for the owner of the cinematograph film to secure the permission of the composer of the lyric or of the music incorporated in the sound track of a cinematograph film for exhibiting or causing the exhibition of the sound portion of the film in public or for causing the records of the sound track of the film to be heard in public. They have further urged that it is not correct to say that under section 17, proviso (b) in order that the producer of the cinematograph film should have copyright in the literary or musical work incorporated in it, the making of the entire film should be commissioned. According to counsel for respondents section 17 proviso (b) will equally apply if someone is commissioned to make any component part of a cinematograph film such as a lyric or musical work i.e. when such component of the film is made at the instance of a film producer for valuable consideration, the copyright for such component shall as well vest in the producer; that as the Act confers a separate copyright on a cinematograph film as a film, the producer can exercise both the rights conferred on him under section 14(1).(c)(ii) of the Act and all that section 13(4) of the Act (when applicable) provides is that the rights created by section 14(1)(a) and (b) shall co-exist with those created by section 14(1)(c) and (d) of the Act, e.g. under clause (a), the

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copyright in a literary work such as a novel entitles its author to make a cinematograph film in respect of the work, and to exercise the remaining rights created by section 14(1)(a) of the Act. But once he has licensed someone to make a cinematograph film, the licensee shall have the rights provided in clauses (c) and (d) of section 14(1) of the Act in respect of the film.

We have given our earnest consideration to the submissions made by learned counsel for the parties. So far as the first part of the question reproduced above is con-

cerned, there is no dispute between the parties. Both sides are agreed that in view of the provisions of section 18 of the Act, the material portion of which lays down that--"(1) the owner of the copyright in an existing work-or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof; provided that in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence, (2)where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of copyright and the provisions of this Act shall have effect accordingly", the first part of the question should be answered in the affirmative. It is accordingly held that an existing and future right of music ..... composer and lyricist in their respective 'works' as defined in the Act is capable of assignment subject to the conditions mentioned in section 18 of the Act, as also in section 19 of the Act which requires an assignment to be in writing, signed by the assignor or by his duly authorised agent.

It is the second part of the question which has been a hot bed of controversy between the parties that has got to be tackled. The main point for determination in regard to this part of the question is whether the composer of lyric or musical work (which in terms of section 2(p) of the Act means only a notationally written, printed or graphically produced or reproduced music) retains a copyright in the lyric or musical work if he grants a licence or permission to an author (owner) of a cinematograph film for its incorporation in the sound track of a cinematograph film. For a proper appreciation and determination of the contentions raised before us, it is necessary to notice certain provisions of the Act.

The terms 'author', 'Cinematograph film', 'exclusive licence', 'infringing copy', 'musical work', 'performance' performing rights society', 'radio-diffusion' and 'work' are defined in clauses (d), (f), (j), (m), (p), (q), (r), (v) and (y) respectively of section 2 of the Act as under :--

> "(d) author means,--
> (i) in relation to a literary or dramatic work, the author of the work;
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> (ii) in relation to a musical work, the composer;
> (iii) ** ** **
> (iv) ** ** **
> (v) in relation to a cinematograph film, the owner of the film at the time of its completion; and
> (vi) in relation to a record, the owner of the original plate from which the record is made, at the time of the making of the plate".
>
> "(f) cinematograph film includes the sound track, if any, and "cinematograph" shall be construed as including any work produced by any process analogous to cinematography."
>
> "(j) exclusive licence means a licence which confers on the licensee or on the licensee and persons authorised by him. to the

exclusion of all other persons (including the owner of the copyright), any right comprised in the copyright in a work, and "exclusive licensee" shall be construed accordingly."

"(m) infringing copy means,--

(i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematograph film;

(ii) in relation to a cinematograph film, a copy of the film or a record embodying the recording in any part of the sound track associated with the film;

(iii) ** ** **

(iv) ** ** **"

"(p) musical work means any combination of melody and harmony or either of them, printed, reduced to writing or otherwise graphically produced or reproduced".

"(q) performance includes any mode of visual or acoustic presentation including any such presentation by the exhibition of a cinematograph film, or by means of radiodiffusion, or by the use of a record, or by any other means and, in relation to a lecture, includes the delivery of such lecture".

"(r) performing rights society means a society, association or other body, whether incorporated or not, which carries on business in India of issuing or granting licences for the performance in India of any works in which copyright subsists".

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(v) radio-diffusion includes communication to the public by any means of wireless diffusion whether in the form of sounds or visual images or both".

"(y) work means any of the following works, namely--

(i) aliterary, dramatic, musical or artistic work;

(ii) a cinematograph film;

(iii) a record".

Section 13 of the Act provides as follows :--

"13. Works in which copyright subsists.--(1) Subject to the provisions of this section-and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,--

(a) original literary, dramatic musical and artistic works;

(b) cinematograph films; and

(c) records.

(2) ** ** **

(3) Copyright shall not subsist--

(a) in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work;

(b) in any record made in respect of a literary, dramatic or musical work, if in making the record, copyright in such work has been infringed.

(4) The copyright in a cinematograph film or a record shall not affect the separate

copyright in any work in respect of which or a substantial part of which, the film, or as the case may be, the record is made.
(5) ** ** **
Section 14 of the Act which contains the meaning of the expression "copyright" is to the following effect :--
"14. Meaning of copyright."--(1) For the purposes of this Act: "copyright" means the exclusive right, by virtue of, and subject to the provisions of, this Act,--
(a) in the case of literary, dramatic or musical work, to do and authorise the doing of any of the following acts, namely--
(i) to reproduce the work in any material form;
(ii) to publish the work;
(iii) to perform the work in public;
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(iv) to produce, reproduce, perform or publish any translation of the work;
(v) to make any cinematograph film or a record in respect of the work;
(vi) to communicate the work by radio-diffusion or to communicate to the public by a loud-speaker or any other similar instrument the radio-diffusion of the work;
(vii) to make any adaptation of the work;
(viii) to do in relation to a translation or an adaptation of the work any of the acts specified in relation to the work in clauses (i) to (vi):
(b) ** ** **
(c) in the case of a cinematograph film, to do or authorise the doing of any of the following acts, namely-
(i) to make a copy of the film;
(ii) to cause the film, in so far as it consists of visual images, to be seen in public and, in so far as it consists of sounds, to be heard in public;
(iii) to make any record embodying the recording in any part of the sound track associated with the film by utilising such sound track;
(iv) to communicate the film by radio-diffusion;
(d) in the case of a record, to do or authorise the doing of any of the following acts by utilising the record, namely--
(i) to make any other record embodying the same recording;
(ii) to cause the recording embodied in the record to be heard in public;
(iii) to communicate the recording embodied in the record by radio-diffusion.
(2) Any reference in sub-section (1) to the doing of any act in relation to a work or a translation or an adaptation thereof shall include a reference to the doing or that act in relation to a substantial part thereof".
Section 17 of the Act which relates to ownership of copyright provides 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--
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(a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary. be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;
(b) Subject to the provisions of clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made. for valuable consideration at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;
(c) in the case of a work made in the course of the
author's employment under a contract of service or
apprenticeship, to which clause (a) or clause (b)
does not apply, the employer shall, in the absence of
any agreement to the contrary, be the first owner of
the copyright therein;
(d) ** ** **
(e) ** ** **

Sections 22 and 26 of the Act which deal with the term of copyright in musical and other works and cinematograph films are to the following effect :--

"22. Term of copyright in published literary, dramatic musical and artistic works.--Except as otherwise hereinafter provided, copyright shall subsist in any literary, dramatic, musical or artistic work (other than a photograph) published within the lifetime of the author until fifty years from the beginning of the calendar year following the year in which the author dies.

Explanation.--In this section, the reference to the author shall, in the case of a work of Joint authorship, be construed as a reference to the author who dies last .

"26. Term of copyright in cinematograph films. In the case of a cinematograph film, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the film is published".
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Section 30 of the Act which deals with

grant of licences by owners of copyright runs thus :--

"30. Licences by owners of copyright.--The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the right by licence in writing signed by him or by his duly authorised agent:

Provided that in the case of a licence relating to copyright in any future work, the licence shall take effect only when the work comes into existence.

Explanation.--When a person to whom a licence relating to copyright in any future work is granted under this section dies before the work comes into existence, his legal representatives shall, in the absence of any provision to the contrary in the licence, is entitled to the benefit of the licence".

The interpretation clause (f) of section 2 reproduced above, which is not exhaustive, leaves no room for doubt when read in conjunction with section 14(1)(c)(iii) that the term "cinematograph film" includes a sound track associated with the film. In the light of these provisions, it cannot be disputed that a "cinematograph film" is to be taken to include the sounds embodied in a sound track which is associated with the film. Section 13 recognises 'cinematograph film' as a distinct and separate class of 'work' and declares that copyright shall subsist therein throughout India. Section 14 which enumerates the fights that subsist in various classes of works mentioned in section 13 provides that copyright in case of a literary or musical work means inter alia (a) the right to perform or cause the performance of the work in public and (b) to make or authorise the making of a cinematograph film or a record in respect of the work. It also provides that copyright in case of cinematograph film means. among other rights, the right of exhibiting or causing the exhibition m public of the cinematograph film i.e. of causing the film in so far as it consists of visual images to be seen in public and in so far it consists of sounds to be heard in public. Section 13(4) on which Mr. Ashok Sen has leaned heavily in support of his contentions lays down that the copyright in a cinematograph film or a record shall not affect the separate copyright in any work in respect of which or a substantial part of which, the film, or as the case may be, the record is made. Though a conflict may at first sight seem to exist between section 13(4) and section 14(1) (a) (iii) on the one hand and section 14(1) (c) (ii) on the other, a close scrutiny and a harmonious and rational instead of a mechanical construction of the said provisions cannot but lead to the irresistible conclusion that once the author of a lyric or a musical work parts with a portion of his copyright by authorising a film producer to make a cinematograph film in respect of his work and thereby to have, his work incorporated or recorded on the sound track of a cinematograph film, the latter acquires by virtue of section 14(1)'(e) of the Act on completion of the cinematograph film a copyright which gives

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him the exclusive right inter alia of performing the work in public i.e. to cause the film in so far as it consists of visual images to be seen in public and in so far as it consists of the acoustic portion including a lyric or a musical work to be heard in public without securing any further permission of the author (composer) of the lyric

or a musical work for the performance of the work in public. In other words, a distinct copyright in the aforesaid circumstances comes to vest in the cinematograph film as a whole which in the words of British Copyright Committee set up in 1951 relates both to copying the film and to its performance in public. Thus if an author (composer) of a lyric or musical work authorises a cinematograph film producer to make a cinematograph film of his composition by recording it on the sound track of a cinematograph film, he cannot complain of the infringement of his copyright if the author (owner) of the cinematograph film causes the lyric or musical work recorded on the sound track of the film to be heard in public and nothing contained in section 13(4) of the Act on which Mr. Ashok Sen has strongly relied can operate to affect the rights acquired by the author (owner) of the film by virtue of section 14(1)(c) of the Act. The composer of a lyric or a musical work, however, retains the right of performing it in public for profit otherwise than as a part of the cinematograph film and he cannot be restrained from doing so. In other words, the author (composer) of lyric or musical work who has authorised a cinematograph film producer to. make a cinematograph film of his work and has thereby permitted him to appropriate his work by incorporating or recording it on the sound track of a cinematograph film cannot restrain the author (owner) of the film from causing the acoustic portion of the film to be performed or projected or screened in public for profit or from making any record embodying the recording in any part of the sound track associated with the film by utilising such sound track or from communicating or authorising the communication of the film by radio-diffusion, as section 14(1)(c) of the Act expressly permits the owner of the copyright of the cinematograph film to do all these things. In such cases, the author (owner) of the cinematograph film cannot be said to wrongfully appropriate anything which belongs to the composer of the lyric or musical work. Any other construction would not only render the express provisions of clauses (f), (m), (y) of section 2, section 13(1)(b) and section 14(1)(c) of the Act otiose but would also defeat the intention of the Legislature, which in view of the growing importance of the cinematograph film as a powerful media of expression, and the highly complex technical and scientific process and heavy capital outlay involved in its production, has sought to recognise it as a separate entity and to treat a record embodying the recording in any part of the sound track associated with the film by utilising such sound track as something distinct from a record as ordinarily understood.

On a conspectus of the scheme of the Act as disclosed in the provisions reproduced above particularly clauses (d)(v), (f) (m), (v)and (y) of section 2, sections 13(1) and 14(1)(c), provisos (b)and (c) to section 17 and sections 22 and 26 of the Act, it is, therefore, abundantly clear that a protectable copyright (comprising a
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bundle of exclusive rights mentioned in section 14(1)(c) of the Act) comes to vest in a cinematograph film on its completion which is said to take place when the visual portion and audible portion are synchronized.

This takes us to the core of the question namely, whether the producer of a cinematograph film can defeat the right of the composer of music .... or lyricst by engaging him. The key to the solution of this question lies in provisos (b) and (c) to section 17 of the Act reproduced above which put the matter beyond doubt. According to the first of

these provisos viz. proviso (b) when a cinematograph film producer commissions a composer of music or a lyricst for reward or valuable consideration for the purpose of making his cinematograph film, or composing music or lyric therefore i.e. the sounds for incorporation or absorption in the sound track associated with the film, which as already indicated, are included in a cinematograph film, he becomes the first owner of the copyright therein 'and no copyright subsists in the composer of the lyric or music so composed unless there is a contract to the contrary between the composer of the lyric or music on the one hand and the producer of the cinematograph film on the other. The same result follows according to aforesaid proviso (c) if the composer of music or lyric is employed under a contract of service or apprentice.ship to compose the work. It is, therefore, crystal clear that the rights of a music composer or ....lyricst Can be defeated by the producer of a cinematograph film in the manner laid down in provisos (b) and (c) of section 17 of the Act. We are fortified in this view by the decision in Wallerstein v. Herbert (1867) Vol. 16, Law Times Reports 453, relied upon by Mr. Sachin Chaudhary where it was held that the music composed for reward by the plaintiff in pursuance of his engagement to give effect to certain situations in the drama entitled "Lady Andley's Secret", which was to be put on the stage was not an independent composition but was merely an accessory to and a Fart and parcel of the drama and the plaintiff did not have any right in the music.

For the foregoing reasons, we do not find any justification to interfere with the order of the High Court. Consequently, the appeal fails and is dismissed but in the circumstances of the case without any order as to costs.

KRISHNA IYER, J.---The judgment just delivered is on behalf of the Court, which makes this footnote, in a sense, otiose. But I do append the abbreviated opinion solely to belight a slightly penumberal area of the law and to voice a need for legislative exploration to protect a category now left in the cold.

A cinematograph is a felicitous blend, a beautiful totality, a constellation of stars, if I may use these lovely imageries to drive home my point, slurring over the rule against mixed metaphor. Cinema is more. than long strips of celluloid, more than miracles in photography, more than song, dance and dialogue and indeed, more than dramatic story, exciting plot, gripping situations and marvellous acting. But it is that

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ensemble which is the finished product of orchestrated performance by each of the several participants, although the components may, sometimes, in themselves be elegant entities. Copyright in a cinema film exists in law, but s. 13(4) of the Act preserves the separate survival, in its individuality, of a copyright enjoyed by any 'work' notwithstanding its confluence in the film. This persistence of the aesthetic 'personality' of the intellectual property cannot cut down the copyright of the film qua film. The latter right is, as explained earlier in my learned brother's judgment, set out indubitably in s. 14(1)(c). True, the exclusive right, otherwise called copyright, in the case of a musical work extends to all the sub-rights spelt out in s. 14(1)(a). A harmonious construction of s. 14, which is the integral yoga of copyrights in creative works, takes us to the soul of the subject. The artist enjoys his copyright in the musical work, the filmproducer is the master of his combination of artistic pieces and the two can happily co-

exist and need not conflict. What is the modus vivendi ?

The solution is simple. The film producer has the sole right to exercise what is his entitlement under s. 14(1)(c) qua film, but he cannot trench on I the composer's copyright which he does only if the 'music' is performed or produced or reproduced separately, in violation of s. 14(1)(a). For instance, a film may be caused to be exhibited as a film but the pieces of music cannot be picked out of the sound track and played in the cinema or other theatre. To do that is the privilege of the composer and that right of his is not crowned in the film copyright except where there is special provision such as in s. 17, proviso (c). So, beyond exhibiting the film as a cinema show, if the producer plays the songs separately to attract an audience or for other reason, he infringes the composer's copyright. Anywhere, in a restaurant or aeroplane or radio station or cinema theatre, if a music is played, there comes into play the copyright of the composer or the Performing Arts Society. These are the boundaries of composite creations of art which are at once individual and collective, viewed from different angles. In 'a cosmic perspective, a thing of beauty has no boundary and is humanity's property but in the materialist plane on which artists thrive, private and exclusive estate in art subsists. Man, the noblest work of the Infinite Artist, strangely enough, battles for the finite products of his art and the secular law, operating on the temporal level, guardians material works possessing spiritual values. The enigmatic small of Mona, Lisa is the timeless heritage of mankind but, till liberated by the prescribed passage of time, the private copyright of the human maker says, 'hands off'.

The creative intelligence of man is displayed in multiform ways of aesthetic expression but it often happens that economic systems so operate that the priceless divinity which we call artistic or literary creativity in man is exploited and masterS, whose works are invaluable, are victims of piffling payments. World opinion in defence of the human right to intellectual property led to international conventions and municipal laws, commissions, codes and organisations, calculated to protect works of art. India responded to this universal need by enacting the Copyright Act, 1957.

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Not the recommendations in conventions but provisions in municipal laws determine enforceable rightS. Our copyright statute protects the composite cinematograph work produced by lay-out of heavy money and many talents but does not extinguish the copyrightable component parts in toto. The music which has merged, through the sound track, into the motion picture, is copyrighted by the producer but, on account of this monopoly, the music composer's copyright does not perish. The twin rights can co-exiSt, each fulfilling itself in its delectable distinctiveness. Section 14 has, in its careful arrangement of the rights belonging to each copyright, has a certain melody and harmony to miss which is to lose the sense of the Scheme.

A somewhat un-Indian feature we noticed in the Indian copyright Act falls to be mentioned. Of course, when' our law is intellectual 'borrowing from British reports, as admittedly it is, such exoticism is possible. 'Musical work', as defined in s.2 (p) reads:

> "(p) musical work means any combination of melody and harmony or either of them printed, reduced to writing or otherwise graphically

produced or reproduced."

Therefore, copyrighted music is not the soulful tune, the superb singing, the glorious voice or the wonderful rendering. It is the melody or harmony reduced to print, writing or graphic form. The Indian music lovers throng to listen and be enthralled or enchanted by the nada brahma, the sweet concord of sounds, the rags, the bhava, the lava and the sublime or exciting singing. Printed music is not the glamour or glory of it, by and large, although the content of the poem or the lyric or the song does have appeal. Strangely enough, 'author', as defined in s.2(d), in relation to a musical work, is only the composer and s. 16 confies 'copyright' to those works which are recognised by the Act. This means that the composer alone has copyright in a musical work. The singer has none. This disentitlement of the musician or group of musical artists to copyright is un-Indian, because the major attraction which lends monetary value to a musical performance is not the music maker, so much as the musician. Perhaps, both deserve to be recognised by the copyright law. I make this observation only because act in one sense, depends on the ethos and the aesthetic best of a people; and while universal protection of intellectual and aesthetic property of creators of 'works' is an international obligation, each country in its law must protect such rights wherever originality is contributed. So viewed, apart from the music composer, the singer must be conferred a right. Of course, law-making is the province of Parliament but the Court must communicate to the lawmaker such infirmities as exist in the law extant.

S.R. Appeal dismissed.

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