

of use (private use; criticism or review) it allows all the acts contemplated by section 14, but it limits what would otherwise be a very broad exception by stipulating that any use permitted under the section must be fair. That's why language of the section explicitly mentions the words 'fair dealing'.

A7 Section 52 (1) (i) not only limits the uses permitted, and their protagonists, (sic 'a teacher' and 'a pupil') it also limits their use to one specific permitted act: reproduction - as contrasted with publication, communication, issuing copies, performance etc. and therefore the words "fair dealing" are not required. Fairness is in-built in the nature of the permissible use as stipulated in the said sub-section.

- A.8 Section 52 (1) (i) is specific to "a teacher" - as contrasted with an 'educational institution', 'staff', 'library' etc as in, for example, Section 52 (1) (j).
- A.9 Section 52 (1) (i) is specific to "a pupil" - as contrasted with 'students' and 'general public' etc.
- A.10 Section 52 (1) (i) is specific to 'in the course of instruction' - as contrasted with 'intended for instructional use', 'activities of an educational institution' etc.
- A.11 Section 52 (1) (i) is extremely restrictive in its application to when compared with for example 52 (1) (j) or other sub-sections.
- A.12 The specified uses by the specified protagonists in section 52 (1) (i) have to be restricted in their application only to the act of reproduction, and no other act.

B SUBMISSIONS OF THE RESPONDENTS

B.1 Arguments put forth on behalf of Respondent no. 4 -Society for Promoting Educational Access and Knowledge (SPEAK):

- The 'course packs' are focused material, intelligently designed for maximum educational value. The 'course packs' expose students to wide-ranging material aimed to provide a comprehensive overview of the subject/course in the semester concerned
- The 'course packs' apart from copyrighted material of the Appellants also contain copyrighted/non-copyrighted material from other sources.

The Respondent failed to provide an example where non-copyrighted material/teachers inputs have been inserted in the 'course packs'.

- These 'course packs' are important considering India's socio economic condition, as access to knowledge (especially in case of expensive books of foreign publishers) is a huge challenge. (Lawrence Liang and Prof. Basheer's article cited). Most of the students are not in a position to purchase these books and a majority of them probably would not even purchase them even if they did not have access to these course packs. Mr. Kaul also submitted that that there is a considerable difference in the purchasing power of people living in the north as compared to the people living in the south.
- The target audience of the course packs is limited to students. The sales of the books are in no way affected. It is not a competing with the copyrighted work. The person who is really interested in purchasing the books will purchase it nonetheless.
- The words 'course of instruction' should not be narrowly construed. Course of instruction precedes a teacher coming into the classroom and succeeds to the point where a student collates all the material together.

- Photocopying is just a technical advancement which assists in the process of 'cost effective' dissemination of knowledge. There is nothing in the statute to read an express prohibition on photocopying.
- The overall impact of 'course packs' is very different from that of a text book. A 'course packs' acts as a prelude to what will be taught in the class. A student interested in deeper knowledge of the concerned subject will still require a text book and hence, 'course packs' do not supplant the original book. Normally, the extracted portions do not form the dominant portion of the book.
- The colour of (h) cannot be spilled over on (i) because (h) is meant for general instructional use (eg: instruction manual of a washing machine) and not meant for educational class. While (h) contemplates general commercial instructional use by any publisher, (i) is a specific provision meant for 'educational class' and hence no restrictions can be read into (h).
- Section 52(1)(h) specifically carves out provisions for non-copyrighted material, publication and instructional use. Section 52(1)(h) contemplates a commercial activity. If the legislature, which amended it as late as in 2012, so wanted all these restrictions of passages etc. could have been provided or Section 52(1)(i) could have been subsumed in Section 52(1)(a). These are two separate categories.
- It is important for the University to engage an intermediary such as the photocopy shop, else it will be impractical. The statute does not place any restriction in engaging the services of an intermediary.
- The defendant put forth a threefold argument as regards the IRRO. Firstly that the educational institutions have a statutory right and hence the question of a licence does not arise. Secondly, experience worldwide suggests that RROs, pursuant to recognition of their rights and the licensing mechanism, adopt a dictatorial approach. Thirdly, considering that the 'course packs' also contain material owned by non-members of the IRRO, a license from IRRO will not be suffice.
- The Appellant publishers have acquiesced and in fact waived their right to object to the concerned activity as the same has been going on within and outside the campus of Delhi University for decades.
- The publishers were in Delhi since 2000 and visited the premises of the photocopy shop in 2012 but only started vigorously pursuing litigation since 2013.
- The Respondent placed reliance on *Longman Group Ltd. V. Carrington Technical Institute Board of Governors*¹ to support the argument that the expression 'in the course of instruction' includes out of classroom use.
- These are benevolent provisions which have to be given an expansive construction. Dehors section 52(1)(a), fairness is inbuilt into Section 52(1)(i).
- Mr Kaul supplemented his arguments by citing the following case laws:
 - Cambridge University Press v. Becker (2012)
 - CCH Canadian Ltd. V. Law Society of Upper Canada
 - Ontario Ltd., Operating as Blacklock's Reporter, V. Canada (Attorney General)²
 - Entertainment Network (India) Ltd. v. Super. Cassette Industries Ltd.³
- Upon being specifically asked about the final conclusion, Mr. Kaul stated that in the present case, repeated nature of the syllabus, year after year, is immaterial.

¹ [1991] 2 NZLR 574

² 2016 FC 1255

³ 2008 (9) SCR 165

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B.2 Arguments put forth on behalf of Respondent no 3-Association of Students for Equitable Access to Knowledge (ASEAK):

- Mr. Anup Bhambhani started his arguments by describing the nature of study provided at the DSE. He submitted that DSE is a PG institute. The instructions provided in the institute are not based on classroom teaching. It is based on reading, research, analysis and discussion.
- The 'course packs' are specifically designed by a council of teachers every year.
- Unlike a text book these course packs do not follow a particular rhythm and are specifically designed for what will be taught in class, in the concerned college. The 'course packs' therefore have no relevance for somebody outside of the concerned college and therefore cannot supplant the market for the original text books. It is a primer and a precursor to what would transpire in a class as part of the course.
- The Delhi University does not allow the concerned photocopier to work in a commercial manner and controls how the 'course packs' are made and sold to students, including the price to be charged from students.
- R1 provides a centralised compilation of the prescribed material. R1 operates under a license entered into with the university. He is not just any other photocopy shop as he is exclusive to the Ratan Tata library. As per the agreement, R1 charges a standard rate of 40 p per page. There are various factors which act as limitation to access to such books such as:
 - availability of books,
 - limitation on the number of copies available,
 - cost,
 - some books are reference books and thus can't be issued etc.
- It cannot be disputed that if students wish to make photocopies of chapters of textbooks themselves, the same would amount to non-infringing use. The university is merely facilitating this process for students.

This argument however does not take into account the fact that individual copying by students may also be 'unfair' if found to run contrary to the factors of 'fair dealing'. A student in even in order to copy chapters from textbooks for 'private study' will have to satisfy S.52(1)(a).

- Section 52 (1) (h), (i) and (j) are three facts of the same broad concept. While restrictions on the amount of use are placed in (h) and restrictions are placed in (j) by insertion of the words 'staff', 'non-paying audience', no such restrictions are placed in (i).
- Mr. Bhambhani then cited the *Longman* judgment to point out that copying is a part of and arising out of course of instruction. Also, there is no restriction on creating multiple copies.
- Mr. Bhambhani then cited *Chancellor Masters of Oxford v. Narendra Publishing House* to point out that these are transformative works.
- If the intention of the legislature was to restrict the scope of (i) to simultaneous instruction, the legislature would have used the word 'lecture' which is defined under the act.
- Mr. Bhambhani finally submitted that a narrow interpretation of the statutory provisions would seriously detriment the interest of the students and hamper their learning.