
(2016) 05 SHI CK 0053

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 4788 of 2015

Dr. Kuldeep Chand Maria

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 02-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 2 SimLC 1019

Hon'ble Judges : Mr. Mansoor Ahmad Mir, C.J. and Mr. Tarlok Singh Chauhan, J.

Bench : Division Bench

Advocate : Mr. Vinay Kuthiala, Senior Advocate, with Ms. Vandana Kuthiala, Advocate, for the Appellant; Mr. Ashok Sharma, Assistant Solicitor General of India, with Mr. Ajay Chauhan, Advocate, Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan, Mr. Romesh Ver

Final Decision : Disposed Off

Judgement

Mansoor Ahmad Mir, C.J.(Oral) - Mr. Ashok Sharma, learned Assistant Solicitor General of India, filed reply in the open Court in the lead case being CWP No. 4788 of 2015 and stated at the Bar that the reply filed in the lead case be treated as reply in all the writ petitions. His statement is taken on record. Ordered accordingly.

2. Ms. Vandana Kuthiala, learned counsel for the petitioner(s), stated at the Bar that the exercise made by the authorities and the orders made by them were in terms of the directions made by a learned Single Judge of Delhi High Court, which action was subject matter of subsequent writ petitions, being WP (C) No. 6968 of 2011, titled as Indian Radiological and Imaging Association (IRIA) v. Union of India and Anr. and other connected matters, came to be determined by a Division Bench of the Delhi High Court in terms of judgment, dated 17th February, 2016. Further stated that the judgment, dated 17th February, 2016, made by the Division Bench of the Delhi High Court squarely applies to the cases in hand and the orders passed by the authorities merit to be quashed. Her

statement is taken on record. She has also made available copy of the judgment made by the Delhi High Court in WP (C) No. 6968 of 2011 and other connected matters across the Board, made part of the file.

3. We have gone through the judgment made by the Delhi High Court in batch of writ petitions, lead case of which is WP (C) No. 6968 of 2011 and perused all the writ petitions. The issue involved and the dispute raised before the Delhi High Court is identical to the issue involved in these writ petitions. We are also of the same view, as has been taken by the Delhi High Court in the judgment (supra).

4. It is apt to record herein that the Apex Court in a latest judgment in the case titled as Neon Laboratories Limited v. Medical Technologies Limited and others, reported in (2016) 2 Supreme Court Cases 672, has directed that every High Court must give due deference to the law laid down by other High Courts. It is profitable to reproduce para 7 of the judgment herein:

"7. The primary argument of the Defendant-Appellant is that it had received registration for its trademark ROFOL in Class V on 14.9.2001 relating back to the date of its application viz. 19.10.1992. It contends that the circumstances as on the date of its application are relevant, and on that date, the Plaintiff-Respondents were not entities on the market. However, the Defendant-Appellant has conceded that it commenced user of the trademark ROFOL only from 16.10.2004 onwards. Furthermore, it is important to note that litigation was initiated by Plaintiff-Respondents, not Defendant-Appellant, even though the latter could have raised issue to Plaintiff-Respondents using a similar mark to the one for which it had filed an application for registration as early as in 1992. The Defendant-Appellant finally filed a Notice of Motion in the Bombay High Court as late as 14.12.2005, in which it was successful in being granted an injunction as recently as on 31.3.2012. We may reiterate that every High Court must give due deference to the enunciation of law made by another High Court even though it is free to charter a divergent direction. However, this elasticity in consideration is not available where the litigants are the same, since Sections 10 and 11 of the CPC would come into play. Unless restraint is displayed, judicial bedlam and curial consternation would inexorably erupt since an unsuccessful litigant in one State would rush to another State in the endeavour to obtain an inconsistent or contradictory order. Anarchy would be loosed on the Indian Court system. Since the Division Bench of the Bombay High Court is in seisin of the dispute, we refrain from saying anything more. The Plaintiff-Respondents filed an appeal against the Order dated 31.3.2012 and the Division Bench has, by its Order dated 30.4.2012, stayed its operation."

(Emphasis added)

5. In view of the above, all these writ petitions are to be disposed of in view of the judgment made by the Delhi High Court in WP (C) No. 6968 of 2011 and other connected matters and the action drawn by the authorities including conducting of examination is to be quashed. Ordered accordingly. The judgment

(supra) shall form part of this judgment also. Pending applications, if any, are also disposed of accordingly.