
(2019) 06 UK CK 0100
In the Uttarakhand High Court
Case No : Special Appeal No. 628 Of 2019

Indian School Society

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 24-06-2019

Acts Referred:

Emblems And Names (Prevention Of Improper Use) Act, 1950 — Section 2(a), 3, 8, 9
Emblems And Names (Prevention Of Improper Use) Rules, 1982 — Rule 2(a), 2(c),
2(d), 3, 8
Constitution Of India, 1950 — Article 226

Citation : (2019) 06 UK CK 0100

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Tapan Singh, Prabha Naithani

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. Tapan Singh, learned counsel for the appellant-writ petitioner and Mrs. Prabha Naithani, learned Brief Holder for the State Government and, with their consent, the Special Appeal is disposed of at the stage of admission.

2. This appeal has been preferred against the order passed by the learned Single Judge in Writ Petition (M/S) No. 905 of 2018 dated 1.04.2019. The appellant-writ petitioner invoked the jurisdiction of this Court, under Article 226 of the Constitution of India, seeking a direction to quash the letter dated 10.07.2017, issued by the third respondent, whereby the appellant-writ petitioner's Society was directed to remove the word "Indian" from its name; a writ of mandamus commanding the third respondent to renew the registration of the appellant-writ petitioner's Society, as they had already moved an application on 18.04.2017 for renewal of the registration.

3. Facts, to the limited extent necessary, are that the appellant-writ petitioner, a

registered Society with the name of "Indian School Society", was established in the year 1982 with the objective of imparting education to the weaker sections of society. The appellant-writ petitioner was registered, as a Society with the second respondent on 20.04.1982, and the registration was renewed periodically. The last such renewal was on 21.04.2012, which was for a period of five years. The appellant-writ petitioner applied for renewal of the registration certificate on 18.04.2017, pursuant to which the third respondent issued letter dated 10.07.2017 pointing out certain shortcomings. While the appellant-writ petitioner claims to have complied with the shortcomings, pointed out in Serial Nos. 3 to 8, it is their grievance that, at Serial No. 1, the objection was for continuation of the name of the appellant-writ petitioner's Society using the word "Indian". The appellant-writ petitioner, on being called upon to remove the word "Indian" from the name of its Society, submitted its reply on 10.07.2017; and, since the third respondent did not take any action pursuant thereto, they made an application to the first respondent on 02.01.2018 requesting him to permit them to retain the name of "Indian School Society". The appellant-writ petitioner contended that, while the word "India" cannot be used in the name, the appellant-writ petitioner had used the word "Indian", and not "India"; and, consequently, the Emblems and Names (Prevention of Improper Use) Act, 1950 (for short the "Act") did not prohibit the use of such a name. As no action was taken by the first respondent, the appellant-writ petitioner invoked the jurisdiction of this Court resulting in the order under appeal being passed.

4. In the order under appeal, the learned Single Judge, after referring to Section 2(a), Section 3 and Entry 7 of the Schedule to the Act, observed that, while the appellant-writ petitioner may have used the word "Indian" and not "India", Entry 7 of the Schedule to the Act uses the words "suggest, calculated and patronage"; prohibition of the use of the word "Indian" is because it conveys the impression, to the public at large, that it happens to be one of the wings of the Government of India, and is not an entity independently registered under the Societies Registration Act; use of the word "Indian" suggests and conveys an impression that the body, which is registered under the Societies Registration Act, enjoys the patronage of the Government of India; and it has the support of the Government of India for the activities it is engaged in.

5. While accepting the submission, urged on behalf of the appellant-writ petitioner, that there is a distinction between the use of the word "India" and "Indian", and while there may be a bar for use of the word "India" there is no specific bar for using the word "Indian", the learned Single Judge observed that, in the light of Entry 7 of the Schedule to the Act, use of the word "Indian", by the appellant-writ petitioner's Society, conveyed a message, to the public at large, that it enjoyed the patronage of the Government of India. While upholding the action of the respondents, in imposing the restriction in clauses (1) and (2) of the impugned order, the learned Single Judge dismissed the writ petition.

6. Mr. Tapan Singh, learned counsel for the appellant-writ petitioner, would draw

our attention to the guidelines, framed under Item 7 of the Schedule to the Act, to contend that, in terms thereof, the appellant-writ petitioner, a registered Society, is entitled to use the words "Indian" and "India"; and the learned Single Judge has, without taking into consideration these guidelines, erroneously upheld the action of the respondents in prohibiting the appellant-writ petitioner's Society from using the word "Indian".

7. Before examining these contentions, it is necessary to refer to the relevant provisions of the Act and the Rules made thereunder. The object of the Act is to prevent the improper use of certain emblems and names for professional and commercial purposes. Section 2(a) of the Act defines "emblem" to mean any emblem, seal, flag, insignia, coat-of-arms or pictorial representation specified in the Schedule. Section 3 of the Act relates to prohibition of improper use of certain emblems and names and thereunder, notwithstanding anything contained in any law for the time being in force, no person shall, except in such cases and under such conditions as may be prescribed by the Central Government, use or continue to use, for the purpose of any trade, business, calling or profession, or in the title of any patent, or in any trade mark or design, any name or emblem specified in the Schedule or any colourable imitation thereof without the previous permission of the Central Government or such officer of the Government as may be authorised in this behalf by the Central Government. Section 8 of the Act confers power on the Central Government to amend the Schedule, and Section 9 confers power on the Central Government, by notification in the Official Gazette, to make Rules to carry out the purposes of the Act. The Schedule to the Act prohibits certain names or emblems from being used. Entry 4 of the Schedule prohibits the name, emblem or official seal or emblem of the Government of India or of any State, or any other insignia or coat-of-arms used by any such Government or by a Department of any such Government. Entry 7(i) of the Schedule stipulates that any name, which may suggest or be calculated to suggest the patronage of the Government of India or the Government of a State, shall not be used.

8. In the order under appeal, the learned Single Judge held that, in the light of Entry 7(i) of the Schedule to the Act, the respondents were justified in calling upon the appellant-writ petitioner's Society to delete the word "Indian" from its name.

9. In exercise of the powers conferred by Section 9 of the Act, the Emblems and Names (Prevention of Improper Use) Rules, 1982 (for short the "Rules") were made. Rule 2(a) of the Rules defines "Act" to mean the Emblems and Names (Prevention of Improper Use) Act, 1950. Rule 2(c) defines "designated officer" to mean an officer designated by the Central Government under Rule 3; and Rule 2(d) defines "Schedule" to mean the Schedule to the Act. Rule 3 of the Rules enables the Central Government, for the purposes of the Rules, to designate an officer, who shall not be below the rank of a Group 'A' officer of the Central Government, as the designated officer. Rule 8 of the Rules stipulates that no

person shall use or continue to use, for the purpose of any trade, business, calling or profession, or in the title of any patent, or in any trademark or design, any name or emblem specified in the Schedule or any colourable imitation thereof without the previous permission of the Central Government or of such officer of the Government as may be authorised in this behalf by the Central Government. While Rule 8 carves out certain exceptions, it is unnecessary for us to refer thereto, since the appellant-writ petitioner, admittedly, does not fall within any of them. Use of the name "Indian School Society" does create an impression, and conveys the suggestion, that the appellant-writ petitioner's Society has the patronage of the Government of India and, in view of Section 3 of the Act read with Rule 8 of the Rules, the respondents were justified in imposing such a restriction on the appellant-writ petitioner. We are satisfied, therefore, that the learned Single Judge was justified in upholding the action of the respondents in calling upon the appellant-writ petitioner's Society to delete the word "Indian" from its name.

10. Since reliance is placed by Mr. Tapan Singh, learned counsel for the appellant-writ petitioner, on sub-clauses (iii) and (iv) of Clause No. III of the Guidelines, it is useful to make a brief reference thereto. Before doing so, however, it is also necessary to refer to sub-clauses (2) and (4) of Clause No. I of the said Guidelines. Sub-clause (2) of Clause I of the Guidelines stipulates that the name would attract the provisions of the Act, under Item 7 of the Schedule, if it gives the impression of the patronage of the Central Government or the State Government. By way of an example, the clause stipulates that any name beginning with the words "Indian Council of" may mislead the public that it is patronized by the Government since the Indian Council of Agricultural Research (ICAR) is a registered body under the Ministry of Agriculture and Cooperation.

11. Sub-clause (4) of Clause I of the Guidelines stipulates that the name would attract the provisions of the Act, under Item 7 of the Schedule, if it connotes Government's participation or patronage unless circumstances justify it. The said clause stipulates that the words in a name may give the impression of the Government's patronage and, by way of an illustration, certain words are referred to, which also include the words "Indian Institute of". The name of the appellant-writ petitioner's Society is "Indian School Society", and does convey the impression of Government patronage, and that it is a Society registered with the patronage of the Government of India.

12. Sub-clauses (iii) and (iv) of Clause III of the guidelines read thus:

"(iii) The usage of word "India" by companies and small-scale units engaged in real economic activities such as production, manufacturing, and service providing etc. may not be restricted. A distinction has to be drawn between trust/societies/ charitable institutions, which are primarily fund raising agencies and agencies involved in real productive activities (for instance names like "Bajaj India" or "Reliance India Mobile" etc. may not attract the provisions of the Act).

(iv) The words such as 'India', 'National' or 'State' may not be allowed in the name of a body engaged in commercial, semi-commercial activities in public dealings or for products being marketed if the consumer is likely to gather a misleading impression that the organization has been sponsored by the Government."

13. Sub-clause (iii) of Clause III of the Guidelines would apply to Society/Charitable Institutions which are primarily fund raising agencies; and sub-clause (iv) deals with bodies engaged in commercial and semi-commercial activities. Mr. Tapan Singh, learned counsel for the appellant-writ petitioner, is, therefore, justified in contending that neither sub-clause (iii) nor sub-clause (iv) of Clause III of the guidelines are applicable to the appellant-writ petitioner. While we find considerable force in this submission of Mr. Tapan Singh, learned counsel for the appellant-writ petitioner, the fact remains that, in terms of sub-clauses (2) and (4) of Clause I of the Guidelines, any name which conveys the impression of Government's participation or patronage is prohibited; and, in as much as its name does give an impression that the appellant-writ petitioner's Society has the patronage of the Government of India, though it does not, the respondents were justified in calling upon it to delete the word "Indian" from the name of its Society, and to change it accordingly.

14. We are satisfied, therefore, that the learned Single Judge was justified in exercising his discretion not to interfere with the action of the respondents in calling upon the appellant-writ petitioner to change the name of its Society. The scope of interference, in an intra-Court appeal, is extremely limited. It is only if the order under appeal suffers from a patent illegality, would interference be justified. We find no such infirmity in the order under appeal.

15. The Special Appeal fails and is, accordingly, dismissed. No costs.