
(1985) 07 DEL CK 0038

In the Delhi High Court

Case No : Civil Writ Petition No. 1509 of 1985

Janak Mathuradas

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 15-07-1985

Acts Referred:

Citation : AIR 1987 Delhi 11

Hon'ble Judges : Yogeshwar Dayal, J; S. Ranganathan, J

Bench : Division Bench

Advocate : A.B. Saharya, with S. sh. Kamlesh K. Bucher and Ram Babu Gupta, for the Appellant; R.K.Mehra for Nos. 1 and 2, Arun Mohan with S/sh. P.N. Sewak and D.L. Frey for No. 3, for the Respondent

Final Decision : Dismissed

Judgement

S. Ranganathan, J.—The petitioner has sought by this writ petition orders restraining the Union of India from permitting the third respondent to manufacture razor blades in collaboration with the fourth respondent and marketing the same in India under a foreign brand name. According to the petitioner the Government of India has granted a licence to the third respondent and also taken a decision allowing the use of "foreign brand name 7 O"Clock" either per se by itself or in combination and/or conjunction with other names as a prefix or suffix" in the manufacture of the blades by the third respondent. The Union of India has filed a counter" affidavit in which it has been stated that no individual manufacturer has approached the Government for grant of permission for the use of a foreign brand name nor has 7O" Clock" brand name been granted. It is further stated that the petitioner"s assumed threat in this regard is imaginary and misconceived. Respondent No. 3 in its reply affidavit has referred to the foreign collaboration agreement entered into by it with the fourth respondent and the terms of the Government"s approval to the said agreement. Reference has been made to a memorandum of the Government dt. 18th Dec, 1982 by which the Government of India took on record the collaboration

agreement as amended by the third respondent in pursuance of the directions issued by the Government earlier on 8th November, 1982. By letter dt. 8th Nov., 1982 the Government had directed the amendment of the collaboration agreement inter alia in the following respect. Clause 10(2) of the agreement was to be amended to read as follows :

JV Company will use a new Indian Brand name (to be decided upon between the parties hereto) consisting of a distinctive Indian or other name in conjunction with the 7"0 Clock trade mark in order to characterise it clearly as an Indian brand name.

This amendment has been duly carried out between the third and fourth respondents and the amended collaboration agreement with clause 10(2) as substituted in accordance with the Government's direction has been taken on record by the Government. Respondent No. 3, in its counter affidavit, has submitted that foreign brand names in conjunction with the Indian names have been permitted on large scale by the Government and it has also filed a long list of such mixed brand names which are used by Indian Companies in respect of products marketed in India. This was in order to show that there was no policy of the Government of India to completely exclude brand names which were a mixture of Indian and foreign names. In respect of this detailed list the petitioner has not filed any reply or rejoinder. But this was perhaps because on 5th July, 1985 counsel had stated that he would file a rejoinder affidavit to the affidavit of respondent No. 3 after CM. 2221/85 (referred to later) is decided.

2. On behalf of the petitioner it is contended that the counter affidavit filed on behalf of the Union of India does not set down the correct position and that the Government has approved a foreign brand name being used by the third respondent. Counsel submits that this has happened subsequent to 18th of Dec, 1982. He, therefore, filed C.M. No. 2221/85 calling for the records of the Union of India and permitting inspection of the same by the petitioner. In this context it may be mentioned that this application was considered necessary because in the counter affidavit filed by the Union of India it had claimed privilege of the record under S. 123 of the Indian Evidence Act.

3. In the writ petition the short point urged on behalf of the petitioner is that under the guidelines promulgated by the Government of India for grant of licences to new manufacturers, one of the most important conditions insisted upon by the Government is : "the foreign use of brand names will not be permitted for internal sales". It is on the basis of this clause that the petitioner contends that the grant of licence to third respondent to manufacture blades under the brand name "7" O" Clock" even with an Indian prefix or suffix would be arbitrary, discriminatory and liable to be quashed by this Court.

4. At this stage we do not think it necessary to consider the detailed list submitted by the third respondent and whether and in what circumstances the use of the several mixed brand names listed have been permitted by the

Government of India in practice. Equally, so far as the application for inspection is concerned, we see no grounds on which any claim of privilege or confidentiality for the records can be sustained in view of recent decisions of the Supreme Court. However, we do not consider it necessary to look into these records at the present stage.

5. We are not satisfied that the petitioner has made out any prima facie case for interference at this stage. What is relied upon by the petitioner are only guidelines promulgated by the Government for the help of entrepreneurs who wish to establish industries in India. The particular guideline on which emphasis is placed is intended to enable the Government to frustrate attempts of such persons to use foreign brands for their goods so that customers may be tempted to purchase them without being aware of their real origin. It cannot be read as a condition disabling the Government from granting a licence or creating a right in a third party to insist on the denial of a licence where the trade name is not of such a type. The third respondent has filed the collaboration agreement and after examining the same in terms of the guidelines and other aspects the Government has permitted the use of a brand name which is such as to make it clear that the product marketed is of Indian origin. In fact, as has been stated earlier the letters of the Government dated 8th November and 18th Dec., 1982 make it clear that what they are permitting is only an Indian brand name. In other words the Government has taken the view that what are prohibited are only foreign brand names pure and simple which are likely to dupe the customers. We do not think the guidelines stand in the way of such a view. Moreover, in our opinion the petition is also premature. There is nothing in the petition to substantiate the contention that a completely foreign brand name has been allowed to be used. At worst, it is only a mixed name as indicated above. Even according to the petitioner, the respondents intend to manufacture blades under the name "Poddar : 7 O" Clock" which is a mixed name. But that apart, the respondents have not started their manufacturing activities. Even the brand name under which it proposes to market the goods has not been decided upon. In these circumstances, the petition is premature.

6. For the above reasons, we think that the writ petition is both not maintainable and also premature. The notice issued is therefore discharged and the writ petition is dismissed in limine. The interim applications also stand disposed of as the writ petition is itself dismissed.