
(2007) 07 UK CK 0005

In the Uttarakhand High Court

Case No : Writ Petition No. 245 of 2007 (M/S)

Riverdale High School Society and Others

APPELLANT

Vs

Intellectual Property Appellate Board and Another

RESPONDENT

Date of Decision : 16-07-2007

Acts Referred:

Societies Registration Act, 1860 — Section 3(2)(1)

Citation : (2008) 36 PTC 672

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Advocate : Alok Singh and Mamta Joshi, for the Appellant; Sharad Sharma and Anjali Nauliyal, Learned Counsel for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Verma, J.—This writ petition has been preferred to issue writ, order or direction in the nature of certiorari quashing the impugned judgment/order dated 28.02.2007 passed by Respondent No. 1 (Annexure No. 2 to the writ petition).

2. According to the Petitioners, Petitioner No. 1 is a registered society and is called Riverdale Education and Associate Service Society, which was earlier known as Riverdale High School Society. The Petitioner No. 2 is a School which is run and managed by Petitioner No. 1 and Petitioner No. 3 is the Secretary of the Society. It is alleged that Ms. Jagbala Singh is the Secretary of Respondent No. 2, which runs a Primary School in the name and style of Riverdale School situated at Balbir Road, Dehradun. It is stated that as a result of problems being faced by the parents of students, a new school in the name and style of Riverdale High School was proposed to be opened by the Petitioner No. 3 by a resolution dated 26.11.1993 convened by Board of Governors of Riverdale School Society from Class V to XII. It is also alleged that on 31.12.1993, a meeting of Board of Governors of erstwhile Doon Public School, Society was convened to consider the proposal made by Respondent No. 2 and the Society passed a resolution for changing the name from Doon Public School Society to Riverdale

High School Society in December 1993. Consequently, the Registrar under the Societies Registration Act, 1860 granted permission for change of name and issued certificate showing the new name as Riverdale High School Society vide Annexure No. 3. Riverdale High School came into existence on 1.4.1994. The Manager and Secretary of Riverdale School Society made to demand of Rs. Six lacs for use of the word Riverdale in the school established by Petitioners' society, which was objected to by the Petitioner society, but they agreed to pay Rs. 3,000 per month to Riverdale School Society through Respondent No. 2 and a sum of Rs. 5,000 per month to Surjeet Ahluwalia and till now they have paid a sum of Rs. 2,30,000 to Riverdale School Society and Rs. 3,44,200 to Sri Surjeet Ahluwalia. It is alleged that further, after about six years to blackmail the Petitioner Society and to extract money, Respondent No. 2 made a complaint on 20.5.2002 before the Assistant Registrar Chits and Firms, Dehradun, wherein all sorts of wild and reckless allegations were made against the Petitioner No. 3 and has shown ignorance of existence of Petitioner society. It is alleged that the complaint was motivated for extorting money, a copy of the same has been annexed as Annexure No. 7. The Assistant Registrar asked the Petitioner society to submit reply within fifteen days by letter dated 3.7.2002. Reply was submitted on 24.7.2002 vide Annexure No. 8.

3. Surjeet Ahluwalia in her capacity as President of Riverdale School Society filed a suit bearing Suit No. 4 of 2002 for perpetual injunction for restraining the Petitioner society from using the name "Riverdale" in any manner whatsoever. An application for temporary injunction was filed by the Plaintiff, which was rejected vide order dated 28.5.2003 by the Additional District Judge, F.T.C. II Dehradun. Ultimately, the matter was referred to the State Government. By Government Order dated 19.6.2003 addressed to Registrar, it was stated that the provision of Section 3(2)(1) of the Societies Registration Act is not attracted as the change of name was effected long back and a certificate was also issued to that effect. It was also mentioned in the said Government Order that Riverdale School Society is imparting education from V to Class XII and there is no similarity in the name and work of the two institutions and there is no question of confusion. Accordingly, the complaint made to the Assistant Register was rejected vide order dated 30.7.2003 vide Annexure No. 11. The Riverdale School Society filed an appeal before the Commission Garhwal Division. The appeal was decided on the back of the Petitioners on 23.2.2004 vide Annexure No. 12. The Petitioner filed Writ Petition No. 232 of 2004 (M/s.) before the High Court, which is still pending. Subsequently, the Petitioners applied for change of name to Riverdale Education and Associated Services Society. The Registrar/Assistant Registrar has changed the name vide order dated 5.8.2004 and 6.8.2004. Riverdale School Society preferred an appeal before Commission Garhwal Division, which was registered as Misc. Appeal No. 17 of 2004, and the same was allowed vide order dated 20.1.2005. It was held that the matter is sub-judice before the High Court. The Petitioners preferred Writ Petition No. 55 of 2005 (M/S.) before this Court.

4. The Petitioner filed an application for registration of the trade mark

RIVERDALE and its logo under the provisions of Trade Marks Act, 1999, which was registered as TM Application No. 1057177 and the said trade mark was registered in the Petitioner's name vide Annexure No. 15. The Respondent No. 2 then filed an application for rectification under Sections 47/57/125 of the said Act before the Appellate Board on 5.2.2005 mainly on the ground that they have been using the name RIVERDALE since 1979 and the Respondent No. 2 placed reliance upon alleged agreement dated 22.7.1994. The rectification application was allowed by the Tribunal vide order dated 28.2.2007 impugned in the present writ petition. Counter Affidavit has been filed on behalf of Respondent No. 2.

5. I have heard Learned Counsel for the parties and perused the record. It is not disputed that the impugned order dated 28.02.2007 has been passed by the Intellectual Property Appellate Board Guna Complex, 443, Anna Salai, Teynampet, Chennai-18.

6. In the case of D.D. Dimri v. U.P. State Public Services Tribunal and Ors. 2007 (1) U.D. 371, the Division Bench of this Court has held in paragraph No. 6 as under:

As the impugned judgment dated 26.07.2004 has been passed by a Tribunal, which is not situated within the territorial jurisdiction of the High Court of Uttarakhand, the present writ petition, is, apparently, not maintainable. The Petitioner's apprehension that the impugned judgment dated 26.07.2004, when implemented, would adversely affect the interest of the Petitioner, who is posted in the State of Uttarakhand, would not confer jurisdiction on the High Court of Uttarakhand to entertain a writ petition challenging the judgment passed by the Tribunal, which is not situated within the State of Uttarakhand.

7. In view of the aforesaid Division Bench judgment of this Court, this Court has no jurisdiction to entertain the writ petition. The Petitioners may approach the High Court having jurisdiction. The writ petition is liable to be dismissed at the threshold.

8. The writ petition is dismissed in limine.

9. Interim order dated 3.4.2007 is vacated.