

(1996) 09 AP CK 0059

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15989 of 1996

Sidhvi Constructions (India) (P.) Ltd.

APPELLANT

Vs

Registrar of Companies and Others

RESPONDENT

Date of Decision : 18-09-1996

Acts Referred:

Companies Act, 1956 — Section 20, 22
Constitution of India, 1950 — Article 226

Citation : (1997) 90 CompCas 299

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : V.S. Raju, for the Appellant; R.S. Murthy and M. Krishna Mohan, for the Respondent

Judgement

G. Bikshapathy, J.—The writ petition is filed for issuance of a writ of mandamus or any other appropriate order or direction declaring the action of the first respondent in allowing and registering the company of Sidhvin Constructions (India) Pvt. Ltd. as illegal and arbitrary.

2. A few relevant facts are necessary for deciding the issue.

3. The petitioner-company (Sidhvi Constructions (India) Pvt. Ltd.) was incorporated as a private limited company on December 21, 1993, having its registered office at Kakinada. The principal activities and objects of the company are for carrying on business as designers, builders, contractors and engineers. The third respondent company was incorporated on September 14, 1994, with the name of Sidhvin Constructions (India) Pvt. Ltd. with similar objects. The dispute that cropped up consequent on the incorporation of the third respondent-company is the resemblance of the name. As already noticed, the name of the petitioner-company is Sidhvi Constructions (India) Pvt. Ltd., while the name of the third respondent is Sidhvin Construction (India) Pvt. Ltd. On account of this similarity and identical resemblance and with similar objects, the petitioner complained that its business interests are adversely affected. It is the case of the

petitioner that it made representations to the first respondent and also issued a lawyer's notice on July 16, 1996, to take steps to direct the third respondent company to change its name. It is also submitted that the registering authority ought not to have registered the name with almost similar and identical name. However, the second respondent by his letter dated July 25, 1996, informed that the time for filing objections u/s 22 of the Companies Act was only one year and it had expired on September 13, 1995, and, therefore, expressed his inability to entertain the application. However, the second respondent advised the first respondent to persuade the third respondent to change the name. Since there is no response, the present writ petition has been filed.

4. The writ petition was admitted and interim direction was issued on August 8, 1996. Now the third respondent has filed counter for vacating the interim directions. Learned counsel for the petitioner and also the respondents represent that the submissions in W.V.M.P. No. 2073 of 1996 in W.P.M.P. No. 19623 of 1996 and the main writ petition are similar and requested this court to dispose of the writ petition finally. Hence, the matter is being disposed of on the merits.

5. In the counter filed by the third respondent, it is stated that the petitioner-company was incorporated on December 21, 1993, by three persons, namely, Sri V.A. Ramarao, Sri V.V.R.V. Rao and Sri P.V.S. Ravi Babu, At the time of incorporation of the company, Sri Ravi Babu was the joint managing director who is now the managing director of the petitioner-company. Differences arose in July, 1994, between these persons. Thereafter on September 14, 1994, the third respondent-company was incorporated under the name and style of Sidhvin Constructions (India) Pvt. Ltd. and Sri V.A. Rama Rao is the managing director of the said company. In fact there was an agreement between these persons on February 4, 1994, wherein they have mutually agreed between Sri V.A. Rama Rao and Sri P.V.S. Ravi Babu to the effect that there are no claims between Sidhvi Constructions (India) Pvt. Ltd. and Sidhvin Constructions (India) Pvt. Ltd. and these two companies shall not interfere with the work of each other. It was also agreed that Mr. V.A. Rama Rao of Sidhvin Constructions (India) Pvt. Ltd. can also obtain orders in favour of Sidhvi Constructions (India) Pvt. Ltd. Therefore, there was no clash of interest. Since the third respondent started getting a number of orders that created jealousy in the petitioner-company and, therefore, the present writ petition has been filed.

6. It is also the case of the third respondent that u/s 22 of the Companies Act, it is open to the Central Government to direct the company to change its name within 12 months from the date of incorporation, if in its opinion, the name closely resembles the name of the already registered-company. Since the period stipulated in the said provision had already expired, it is not open to the official respondents to take cognizance of any complaint from the petitioner-company.

7. The question that falls for consideration is whether the petitioner is entitled to seek a writ of mandamus for appropriate directions ?

8. It is not in dispute that the petitioner-company and the third respondent-company were registered under the provisions of the Companies Act. While the petitioner was incorporated in December, 1993, the third respondent company was incorporated on September 14, 1994.

9. Learned counsel for the petitioner submits that u/s 20 of the Companies Act, no company shall be registered with a similar name or with a name which is identical and resembles the name of an existing company. Therefore, u/s 22 of the Act, it is open to the Central Government to direct the later incorporated company to change its name. However, a period of limitation has been prescribed as 12 months from the date of the incorporation of the later company. Learned counsel further submits that for the mistakes committed by the authorities, the petitioner cannot be allowed to suffer loss. At the stage of registering the name or the company, the Registrar of Companies is required to take all possible steps to see that there is no company with a similar name. He relies on the judgment of the Bombay High Court reported in Dnyaneshwar Sitram Soholkar Vs. Surekha Dnyaneshwar Soholkar, . On the other hand, learned counsel for the third respondent, Mr. Ramachandra Rao, submits that the time limit fixed u/s 22 of the Companies Act cannot be extended by this court and, therefore, the official respondents cannot entertain any application from the petitioner company. He relied on the judgment of the Supreme Court in Hope Textiles Ltd. and Another Vs. Union of India (UOI) and Others, . For proper appreciation of the case, it is necessary to extract the provisions of sections 20 and 22 of the Companies Act, which read as follows :

"20. Companies not to be registered with undesirable names. -

(1) No company shall be registered by a name which, in the opinion of the Central Government, is undesirable.

(2) Without prejudice to the generality of the foregoing power, a name which is identical with, or too nearly resembles, the name by which a company in existence has been previously registered, may be deemed to be undesirable by the Central Government within the meaning of sub-section (1).

22. Rectification of name of company. - (1) If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a name which, in the opinion of the Central Government, is identical with, or too nearly resembles, the name by which a company in existence has been previously registered, whether under this Act or any previous companies law, the first mentioned company -

(a) may, by ordinary resolution and with the previous approval of the Central Government signified in writing, change its name or new name : and

(b) shall, if the Central Government so directs within twelve months of its first registration or registration by its new name, as the case may be, or within twelve months of the commencement of this Act, whichever is later, by ordinary

resolution and with the previous approval of the Central Government signified in writing, change its name or new name within a period of three months from the date of the direction or such longer period as the Central Government may think fit to allow.

(2) If a company makes default in complying with any direction given under clause (b) of sub-section (1), the company, and every officer who is in default, shall be punishable with fine which may extend to one hundred rupees for every day during which the default continues."

A careful reading of the above said provisions clearly indicates that it is not open to the registering authority to register the name of a company with a name similar to the existing company or if it resembles closely, such names should be avoided. But, however, the Registrar, while registering the company at the initial stage need not make a thorough investigation at the time of registering the company. But, however, if such an issue is brought before the Registrar of Companies within the time stipulated u/s 22 of the Act, it is open to the Central Government to direct the later company to change its name. Even learned counsel for the petitioner submits that, as per the provisions of the agreement entered into on February 4, 1995, the petitioner cannot make such a grievance. Admittedly, in the instant case, no such representation was made by the petitioner-company within one year of registration or incorporation of the third respondent company. Therefore, the limitation prescribed u/s 22 of the Act has expired. There is no other provision for the company to have recourse to direct the third respondent company to change its name. That is the reason why the second respondent had advised the petitioner-company that there is no provision to issue directions to the third respondent company to change its name after a period fixed u/s 22 of the Act expired. Therefore, he only informed that the first respondent suitably be advised to persuade it to change its name. When the limitation prescribed by the statute had expired, it would not open to this court to extend the same by exercising the powers under article 226 of the Constitution of India. This court cannot compel respondents Nos. 1 and 2 to pass orders in violation of statutory provisions which have the effect of extending the period of limitation under the Act. The judgment of the Supreme Court in *Hope Textiles Ltd. and Another Vs. Union of India (UOI) and Others*, is directly on this issue where the Supreme Court has held that "the writ of mandamus can be issued to a statutory authority to compel it to perform its statutory duty, but it cannot be issued to compel the authority to pass an order in violation of statutory provisions". Though learned counsel for the petitioner vehemently submits that it is open to this court to issue appropriate directions in the interest of justice, even though the limitation had already expired, I am unable to persuade myself on this issue. It is also curious to note in this connection that the petitioner company is having full knowledge of the incorporation of the third respondent company. The fact that an agreement was reached on February 4, 1995, itself, establishes that the petitioner-company has sufficient knowledge. It did not make any representation or complaint to the Central Government within

the period prescribed in section 22 of the Companies Act. It is not the case of the petitioner that it never knew of the incorporation of the company till the expiry of one year. Having known that such a company is registered and having entered into an agreement, within one year of incorporation of the third respondent company, I am satisfied that the company cannot make out a grievance at this later stage also.

10. Under these circumstances, I do not find any merit in the writ petition. Accordingly, the writ petition is dismissed. No costs.