

(2012) 09 KAR CK 0046

In the Karnataka High Court

Case No : Writ Petition No. 45932 of 2011 (GM-RES)

Surya Elevators and Escalators India Private Limited

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 03-09-2012

Acts Referred:

Citation : (2013) 112 CLA 555 : (2013) 177 CompCas 230 : (2013) 121 SCL 23

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : Nagananda, for Murali and Co, for the Appellant; Udaya Holla, for Lex Justicia, K. Srihari, for C/R3 Sri Kalyan Basavaraj, ASG for R1 and R2, for the Respondent

Final Decision : Dismissed

Judgement

Mohan Shantanagoudar

1. The order at Annexure-A, dated 24.11.2011, by which the petitioner herein is directed u/s 22(1)(b) of the Companies Act, 1956 (for short hereinafter referred to as the "Act") to change its name within a period of three months from the date of the impugned order, is called in question in this writ petition. The third respondent-company, i.e., Surya Elevators Private Limited was incorporated on 6.10.2005 with an authorised share capital of Rs. 5,00,000/- which was divided equally between Mr. C. Surendranadha Reddy and Mr. K. Arunachalam (who is presently the Managing Director of respondent No. 3) in the ratio of 2500 shares each. Respondent No. 3 is engaged in the business of manufacturing and sale of passenger and freight elevators.

2. Petitioner is a private limited company incorporated on 29.11.2010 in the name and style "Surya Elevators & Escalators India Private Limited". Mr. Venugopal Reddy and Mrs. Meena Pothireddy are the Directors of the petitioner-company. The petitioner is engaged in the business of manufacturing and sale of elevators and escalators.

3. Respondent No. 3 initiated proceedings u/s 22(1)(i) of the Act against the petitioner before the second respondent for a direction to change the name of the petitioner, by filing the application on 13.11.2011, on the ground that the petitioner-company's name is registered through inadvertence. The petitioner herein filed objections to such application before the second respondent.

4. In the meanwhile, respondent No. 3 instituted the suit in O.S. No. 5275/2011 for injunction alleging "passing off". In the said suit, relief of permanent injunction restraining the petitioner from using the trade/brand name "Surya" is prayed for on the ground that respondent No. 3 is the sole owner of the said trade/brand name "Surya". Application for temporary injunction was filed by respondent No. 3 in the said suit which came to be rejected on 29.9.2011 on the ground that customers of goods of lifts and escalators are not ordinary customers; they cannot be compared with the customers who purchase tobacco or tobacco products at the counters; the elevators are purchased and used by rich people, developers and contractors, etc. The matter in question is considered by the second respondent, after dismissal of the application for temporary injunction by the Civil Court.

5. It is the case of the petitioner (i.e., opponent before the second respondent) that one of the former Directors of respondent No. 3, namely Mr. C. Surendranadha Reddy had got registered a proprietorship concern in the year 2004 under the name and style of "M/s. Surya Elevator Services" at Hyderabad. According to the petitioner, it was Mr. C. Surendranadha Reddy who coined the name "Surya" for his business in the year 2004; in order to expand his business concern, he shifted to Bangalore and incorporated respondent No. 3 company by joining the hands with his college friend Mr. K. Arunachalam, the Managing Director of respondent No. 3 herein; at that point of time, Mr. K. Arunachalam was engaged in the business of reconditioning and resale of photocopying machines under the name and style of "Canon Copier Services", at Bangalore. Subsequently, the authorised share capital of respondent No. 3 was raised to Rs. 40,00,000/- and the paid-up capital was increased to Rs. 32,50,000/- in the month of December, 2010. Mrs. Rajani Challachemala Subramanyam, who is wife of Mr. K. Arunachalam was also appointed as an Additional Director of respondent No. 3 with issue of shares in respondent No. 3 and consequently the share held by Mr. C. Surendranadha Reddy in respondent No. 3-company was reduced to 7.69%; the third respondent herein issued "No Objection Certificate" on 8.12.2010 to Mr. Venugopal Reddy for registration of the petitioner in the name and style "Surya Elevators & Escalators India Private Limited" and accordingly the petitioner-company was registered. Hence, the registration of petitioner-company was not as a result of inadvertence on the part of Registrar of Companies.

6. It is the case of respondent No. 3 herein, (i.e., the applicant before respondent No. 2) that the Directors of the petitioner-company are the family members of Mr. C. Surendranadha Reddy, former Director of respondent No. 3-

company. Mrs. Meena Pothireddy is the wife of Mr. C. Surendranadha Reddy and Mr. Venugopal Reddy is the brother-in-law of Mr. C. Surendranadha Reddy. Mr. C. Surendranadha Reddy individually issued "No Objection Certificate" dated 8.12.2010 to Mr. Venugopal Reddy for incorporation of the petitioner in the name and style of "Surya Elevators and Escalators India Private Limited" and accordingly the petitioner was registered/incorporated inadvertently inasmuch as respondent No. 3 had not issued "No Objection Certificate" in favour of the petitioner-company.

7. After hearing both the parties, the second respondent has passed the impugned order directing the petitioner to change its name within a period of three months from the date of the impugned order.

8. Mr. Naganand, learned senior counsel appearing for the petitioner submitted that the second respondent has totally misdirected himself in exercise of the statutory power u/s 22 of the Act; the object of Section 22 is to remove confusion when names are similar and not to provide an adjudicatory forum for settlement of disputes inter-se particularly when a competent Civil Court is seized of the matter; there are innumerable companies using generic name "Surya" (the Hindu Sun God, who is considered auspicious) and therefore no confusion has resulted. Large number of other companies are having similar sounding names and none of such companies is directed to change its name by the Central Government; respondent No. 2 is not justified in brushing aside the order of the Civil Court passed in O.S. No. 5275/2011; the impugned order has the effect of affecting the goodwill of brand/trade name "Surya" which has been created in the first instance by the third party namely Mr. C. Surendranadha Reddy and the petitioner was granted the right to adopt the generic name "Surya" without causing any harm to the interest of third party or other party whatsoever; neither respondent No. 3 nor the records of Registrar of Companies proved any inadvertence in approval of the name of the petitioner during its incorporation. The second respondent has given undue importance to the arguments of respondent No. 3 that the Registrar of Companies has inadvertently approved the name of the petitioner-company; the second respondent has not given due importance to the observations made by the Civil Court to the effect that there can be no monopoly over the use of the generic name "Surya" and the petitioner is well within its right to use the name "Surya". The second respondent has ignored the fact that the trial Court's proceedings are pending for the same prayer and that two proceedings on the same subject matter should not be permitted to be continued before the two forums; there are about 1500 companies registered under the Act with generic name "Surya". Another company under the same name and style is incorporated in the year 2007 in the State of Maharashtra which is involved in the same business as that of respondent No. 3 and the petitioner; respondent No. 3 has not taken any steps to initiate action against such company existing in the State of Maharashtra, but, has unfairly chosen to target the petitioner only. On these among other grounds, he prays for quashing the impugned order by allowing the

writ petition.

9. Per contra, Mr. Uday Holla, learned senior counsel appearing on behalf of respondent No. 3 opposed the writ petition by contending that Mr. K. Arunachalam, the present Managing Director of respondent No. 3 crafted to float the company by inviting Mr. C. Surendranadha Reddy by offering him 50% of the shares in the company based on the trust reposed on him; Mr. C. Surendranadha Reddy without the knowledge and consent of the Board of third respondent-company, issued "No Objection Certificate" on 8.12.2010 to the Registrar of Companies to incorporate the petitioner-company in the name and style of "Surya Elevators and Escalators India Private Limited", which has been started by none other than Mr. C. Surendranadha Reddy's wife and his brother-in-law; Mr. C. Surendranadha Reddy, the former Director of respondent No. 3 has acted detrimental to the interest of respondent No. 3 by issuing "No Objection Certificate" with mala fide intention; having come to know that "No Objection Certificate" is issued by Mr. C. Surendranadha Reddy, the third respondent in order to protect the interest and intellectual property of respondent No. 3 removed Mr. C. Surendranadha Reddy from the Board in an Extraordinary General Meeting of members held on 22.1.2011 after issuing a special notice u/s 284(2) of the Act. Thereafter, the third respondent-Board passed a resolution to make an application to the Central Government in order to protect the corporate name or trade name. Questioning the order passed by the Civil Court in O.S. No. 5275/2011, respondent No. 3 has approached this Court by filing MFA. No. 9974/2011 and the same is pending consideration; Mr. C. Surendranadha Reddy is neither Director/Promoter nor a shareholder of respondent No. 3-company inasmuch as he has relinquished or surrendered all his rights whatsoever nature to respondent No. 3 while floating the petitioner-company; Mr. C. Surendranadha Reddy during his position as Director of respondent No. 3-company, has issued "No Objection Certificate" to start the petitioner-company which is floated through his brother-in-law Mr. Venugopal Reddy, who was a former senior employee of respondent No. 3; Mr. Venugopal Reddy had technical know-how and research developed at the cost of respondent No. 3; The Directors of petitioner-company have approached the Clientele of respondent No. 3 and took away AMC contracts which were otherwise with respondent No. 3.

It is further submitted that confusion created by the petitioner is not negligible as combination of words used in the name is exactly similar; the law does not permit anyone to carry on the business in such a way as would persuade the customers in believing that the goods or services belonging to some one else are his or are associated therewith; respondent No. 3-company has suffered and is likely to suffer irreparable harm and injury to its corporate name. Because of the fraud played by Mr. C. Surendranadha Reddy on respondent No. 3-company by issuing "No Objection Certificate" without the consent of Board of respondent No. 3-company, the petitioner cannot be allowed to take advantage of the same, more particularly, when the name of the petitioner-company which is subsequently incorporated is identical with or too nearly resembles the name by

which the third respondent-company has been previously registered. The order and the proceedings of the Civil Court in O.S. No. 5275/2011 have no relevance, inasmuch as merely an order of injunction is sought for by the plaintiff in the said suit restraining the defendant (petitioner herein) from using the name and for consequential reliefs; the proceedings in the Civil Court and the proceedings before the Central Government u/s 22 of the Act are totally independent and operate in different fields. On these among other grounds, he argued for dismissal of the writ petition.

10. Before proceeding further, it is beneficial to note the undisputed facts, which are:

i) The third respondent-company is incorporated on 6.10.2005, whereas the petitioner is incorporated subsequently, i.e., on 29.11.2010.

ii) The third respondent-company had two Directors from the date of incorporation. They are Mr. C. Surendranadha Reddy and Mr. K. Arunachalam.

iii) After removal of Mr. C. Surendranadha Reddy, Mr. K. Arunachalam continued as the Managing Director of respondent No. 3-company. Mrs. Rajani Challachemala Subramanyam was appointed as an Additional Director of respondent No. 3-company. The said appointment of Additional Director is not challenged before the Company Law Board, Chennai, as is clear from Annexure-C.

iv) Mr. C. Surendranadha Reddy, prior to his removal from respondent No. 3-company, unilaterally gave "No Objection Certificate" on 8.12.2010 for incorporation of the petitioner-company starting with the name "Surya Elevators and Escalators" or such other similar name. The other Directors of respondent No. 3-company did not join hands with Mr. C. Surendranadha Reddy while issuing "No. Objection Certificate" in favour of the petitioner-company.

v) The petitioner-company has two Directors namely, Mrs. Veena Pothireddy and Mr. Venugopal Reddy, who are the wife and brother-in-law respectively, of Mr. C. Surendranadha Reddy.

11. Copy of the minutes of meeting of Board of Directors of respondent No. 3-company held on 6.10.2005 (date of incorporation of respondent No. 3) at the Registered Office of the company is produced at Annexure-R3 to the statement of objections. The minutes are signed by both the then Directors of respondent No. 3-company namely, K. Arunachalam and Mr. C. Surendranadha Reddy. Paragraph-7 of the minutes reveals that the Director Mr. C. Surendranadha Reddy was carrying on the business in the name of "Surya Elevators Services" in the State of Andhra Pradesh and the Board did not have any objection for the continuation of the same without any future expansion. It was also decided that no future ventures shall be formed by using the word "Surya" and also no Branch Office or place of business of the said establishment shall be opened in any other place without the unanimous consent of the Board. Mr. C. Surendranadha Reddy also agreed that he shall not claim the brand name "Surya" in future irrespective

of his continuation in respondent No. 3-company. The Directors unanimously agreed to develop the brand name "Surya" and it is also unanimously agreed that the brand name "Surya" belongs to respondent No. 3-company and neither the promoters nor their family members or their heirs will claim the said brand. It was further unanimously agreed that since the brand name is going to be developed by respondent No. 3-company, neither the present Directors nor future Directors should issue "No Objection Certificate" in favour of anybody or company for using the said name without the unanimous consent of the Board. Thus, it is clear that none of the then Directors of respondent No. 3-company had got right to give or issue "No Objection Certificate" for using the brand name "Surya" without the unanimous consent of the Board. On the first date of incorporation itself, respondent No. 3-company had decided to develop the brand name "Surya" and had decided not to part with the same without consent of all the Directors.

12. Copy of the minutes of the meeting of Board of Directors of respondent No. 3-company held on 8.11.2008 is produced at Annexure-R4 to the statement of objections. In the said meeting also, it was decided that since brand name "Surya" is mainly created by respondent No. 3-company, the brand name shall not be the property of any of the Directors and can be used only by respondent No. 3-company. It was mutually agreed between the Directors that, either directly or indirectly they should not use the company's name or any other similar name or incorporate a new company with the word "Surya" as the third respondent-company already built up the brand image in that name. Ultimately, the Directors of respondent No. 3-company by passing the resolution agreed not to start any business or venture, which was being carried on by the company and also not to use the word "Surya" in any business to be carried on by them or their family members in future without the written consent of the other Directors. It was further resolved that any future formation of the company or any form of organization with the name "Surya" either directly or indirectly by any of the Directors or their relatives can be done only with the unanimous resolution of the Board.

13. From the above, it is clear that both the then Directors of respondent No. 3-company including Mr. C. Surendranadha Reddy had decided not to use the brand name "Surya" in any business to be carried on by them or by their family members without the written consent of other Directors. In spite of the same, Mr. C. Surendranadha Reddy, without the consent of the other Directors, issued "No Objection Certificate" to the Registrar of Companies for incorporation of the petitioner-company starting with the name "Surya Elevators and Escalators" or such other similar name. Such unilateral issuance of "No Objection Certificate" by one of the Directors of respondent No. 3-company, namely Mr. C. Surendranadha Reddy itself was opposed to the resolutions passed by the Board of Directors of respondent No. 3-company in the year 2005 as well as in the year 2008 (as aforementioned), to which he himself was a party. Taking advantage of such "No Objection Certificate", the petitioner-company is incorporated,

promoted by the family members of Mr. C. Surendranadha Reddy. Mr. C. Surendranadha Reddy should not have ventured to issue "No Objection Certificate" contrary to the resolutions passed by the Board of Directors of respondent No. 3-company, to which he was a party.

14. There cannot be any dispute that fraud vitiates everything, even judgments and orders of the Court. Fraud as a ground for relief is not necessarily moral fraud and often falls far short of the moral obliquity which constitutes fraud in the popular sense. All surprise, trick, cunning, dissembling and other unfair way that is used to cheat anyone is considered as fraud. Fraud in all cases implies a willful act on the part of any one, whereby another is sought to be deprived of by illegal or inequitable means, of what he is entitled to. (See Treatise on the Law of Fraud and Mistake by Mr. Kerr.)

15. In the matter on hand, Mr. C. Surendranadha Reddy, one of the two Directors of respondent No. 3-company though had agreed that neither of the Directors should directly or indirectly use the third respondent-company's name or any other similar name or incorporate new company with the word "Surya", has proceeded to issue "No Objection Certificate" in favour of his wife and brother-in-law. He was a party to the resolutions dated 6.10.2005 and 8.11.2008. He had agreed that neither of the Directors shall start any business or venture, which was being carried on by respondent No. 3-company and also not to use the word "Surya" in the business to be carried on either by the Directors or by their family members without written consent of the other Directors. In spite of the same, fraudulently "No Objection Certificate" is issued in favour of the Directors of the petitioner-company to float new company with the brand name "Surya". Thus, the petitioner-company got the brand name "Surya" pursuant to the fraud played by Mr. C. Surendranadha Reddy, the then Director of respondent No. 3-company. In this view of the matter, Mr. Uday Holla, learned senior counsel appearing for respondent No. 3 is justified in arguing that the petitioner should be non-suited inasmuch as the fraud vitiates everything.

16. Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct. In Black's Legal Dictionary, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part some valuable thing belonging to him or surrender a legal right. Section 17 of the Indian Contract Act defines fraud as an act committed by a party to a contract with intent to deceive another. The fraud arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal.

17. At this stage, it is beneficial to note the provisions of Sections 20 and 22 of the Act, which read thus:

Section 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 forgoing power, a name which is identical with, or too nearly resembles-

- (i) the name by which a company in existence has been previously registered; or;
- (ii) a registered trade mark, or a trade mark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999,

may be deemed to be undesirable by the Central Government within the meaning of sub-section (1).

(3) The Central Government may, before deeming a name as undesirable under clause (ii) of sub-section (2), consult the Registrar of Trade Marks.

Section 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,-

(i) 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, or

(ii) on an application by a registered proprietor of a trade mark, is in the opinion of the Central Government identical with, or too nearly resembles, a registered trade mark of such proprietor under the Trade Marks Act, 1999, such 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:

Provided that no application under clause (ii) made by a registered proprietor of a trade mark after five years of coming to notice of registration of the company shall be considered by the Central Government

(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 thousand rupees for every day during which the default continues.

From the above, it is clear that no company shall be registered by a name which is identical with or too nearly resembles the name by which a company in

existence has been previously registered. Such name is deemed to be undesirable by the Central Government. If in the opinion of the Central Government, through inadvertence or otherwise the company is registered and if the subsequently registered company is identical with or too nearly resembles the name by which a company in existence has been previously registered, then, the registration of the subsequently registered company shall be directed to be changed by the Central Government.

18. According to the Black's Law Dictionary (8th edition, 2004) the principle of *Ejusdem Generis* is where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned. It is a canon of statutory construction, where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated.

The expression "*Ejusdem Generis*" means of the same kind. Normally, general words should be given their natural meaning like all other words unless the context requires otherwise.

The Division Bench of the Calcutta High Court in the case of *Kalpna Polytec India & Others vs. Union of India & Others*, reported in (2001) 106 CC 558 has ruled that the Central Government has been authorised to rectify a mistake which might have been committed by it by way of inadvertence or otherwise; the words "or otherwise" must be considered in the context of the word "inadvertence". In other words, the word "otherwise" must be read *ejusdem generis*.

The words "otherwise" if considered in the context of "inadvertence", it can be safely concluded that the Registering Authority has registered the petitioner-company negligently or carelessly inasmuch as it has not verified as to whether the third respondent has really issued "No Objection Certificate or not.

19. In the matter on hand, the Registrar of Companies while registering the petitioner-company would not have exercised his jurisdiction/power to register the petitioner-company had Mr. C. Surendranadha Reddy not given "No Objection Certificate" for registering the same. So also, had the Registrar of Companies known about the fraud being played by Mr. C. Surendranadha Reddy of unilaterally issuing "No Objection Certificate", he would not have registered the petitioner in its name. Thus, fraud committed by Mr. C. Surendranadha Reddy has resulted in exercise of power by the Registrar of Companies which otherwise would not have been exercised. The non-disclosure of fact by Mr. C. Surendranadha Reddy which was required to be disclosed as per law, amounts to misrepresentation by him which impliedly means the commission of fraud played by him not only on the third respondent, but also on the Registrar of Companies.

Consequently the exercise of jurisdiction/power by the Registrar of Companies was by inadvertence or by similar mistake such as lack of attention, carelessness or negligence.

20. The name of a company may be relevant in construing its memorandum and to see what its main object is. Under Company Law, a company by registering its name gains a monopoly of the use of that name. Even if the company is not registered, the Court will restrain a projected new company which was intended to carry on the same business as the unregistered company and to bear a name so similar to its name. A company on discovering that another company has been or is about to be registered under the same or similar name as itself may have a common law right to prohibit the new comer from the use of that name. The company which has registered itself should need to enjoy the benefit of goodwill created by that company. It is not necessary to prove any fraudulent intention on the part of the petitioner herein. It is sufficient to exercise power u/s 22 of the Act if the name adopted by the petitioner-company is identical with or too nearly resembles the name by which a company in existence is previously registered.

21. The Department of Company Law Administration has formulated certain guiding instructions/guidelines for deciding cases of making a name available for registration under the Act. Though such guidelines are administrative guidelines without having statutory backing, they have some relevance for the purpose of deciding cases by the Central Government or by its delegate. These instructions/guidelines are issued through Circulars from time to time. Few illustrations of closely resembling names are given in guideline No. 18. The examples relating to similarity of the names are only illustrative and not exhaustive. There are certain exceptions when the company is under the same management, which are not relevant for the present purpose. It is further provided that in the case of unregistered companies which have built up reputation over a considerable period, the same principle should be observed as far as practicable. The case of foreign company of repute should also be similarly treated even if there are no branches of such company in India.

As aforementioned, under Instruction/Guideline No. 18, illustrations of closely resembling names are given for guidance. The names as proposed in Column No. 1 will not generally be made available in view of companies in existence as shown in Column No. 2. The names are as under:

Sl. No. Proposed Name Existing company too nearly resembling name

1. Hindustan Motor and General Finance Company Hindustan Motor Limited
2. The National Steel Mfg. Co. Private Limited National Steel Works
3. Trade Corporation of India Limited State Trading Corporation of India Limited
4. Viswakaram Engineering Works Private Limited Viswakaram Engineer (India) Private Limited

5. General Industrial Financing & Trading Co. Ltd. General Financial & Trading Corporation.

6. India Land & Finance Limited Northern India Land & Finance Limited

7. United News of India Limited United Newspapers Limited

8. Hindustan Chemicals and Fertilizer Limited Hindustan Fertilizers Limited

22. In this matter, the comparative table is as under:

Sl. No. Newly Registered Company Existing company too nearly resembling name

1. Surya Elevators & Escalators India Private Limited Surya Elevators Private Limited

The illustrations mentioned supra in the Guidelines are identical to the similarity of the names of petitioner and respondent No. 3.

23. In the present case, the third respondent namely Surya Elevators Private Limited was incorporated on 6.10.2005 by Mr. C. Surendranadha Reddy and Mr. K. Arunachalam holding 50% shares each. The petitioner-company was incorporated on 29.11.2010 in the name and style "Surya Elevators and Escalators India Private Limited". As aforementioned, one of the Directors of erstwhile company alone issued "No Objection Certificate" for incorporation of the petitioner-company despite specific resolution passed by the Board of third respondent-company that none of the two Directors should without the consent of another shall issue "No Objection Certificate" for starting another company under the same or similar name. It is also not in dispute that the petitioner-company has got two Directors, namely, Smt. Veena Pothireddy and Mr. Venugopal Reddy, who are the wife and brother-in law respectively of Mr. C. Surendranadha Reddy. It is also not in dispute that the name and object of the petitioner as well as third respondent are same or similar. The petitioner-company is engaged in the same business as that of the third respondent-company. To determine the question involved u/s 22 of the Act, it is not necessary for the Court to decide as to whether the petitioner has got intention to deceive the clientele of the third respondent or public at large. The jurisdiction of the Court in such matters rests on the determination of question whether the name of a company closely resembling the name under which another company carrying on similar business, is causing injury to the other company affecting its reputation and credit. Thus, the question to be decided in the matter is as to whether the name of the petitioner-company is similar or too nearly resembles the name of the third respondent-company, which has been previously registered and in existence at the time of the registration of the petitioner-company. Looking to the names of the companies in question, it is clear that the name of the petitioner too nearly resembles the name of the third respondent which is already in existence and which has been registered previously. As aforementioned, the concerned authority would not have allowed the petitioner-company to be registered in the name of "Surya Elevators and Escalators India

Private Limited", had the Registering Authority knew about the non-issuance of "No Objection Certificate" by the third respondent-company at an earlier point of time. The confusion is created because of the suppression of material fact by Mr. C. Surendranadha Reddy in issuing "No Objection Certificate" without the consent of another Director of respondent No. 3-company in favour of the petitioner. Had the petitioner not submitted "No Objection Certificate" issued by Mr. C. Surendranadha Reddy at the time of its registration, the Registering Authority probably would not have allowed the petitioner-company to be registered with the name "Surya Elevators and Escalators India Private Limited"; the Registering Authority in such an event would have considered as to whether the name given by the petitioner is likely to mislead or deceive specially when the objectives are same. It is true that at the stage of registration of the company, the Registering Authority will not carry out elaborate investigation. As "No Objection Certificate" purported to have been issued by the existing company (i.e., the third respondent) was submitted by the petitioner-company, the Registrar might not have required the petitioner to get "No Objection Certificate" once again from the existing company. In the matter on hand, since "No Objection Certificate" is issued illegally or unauthorizedly by one of the Directors of respondent No. 3-company, the Registering Authority without further enquiry, registered the petitioner-company based on such "No Objection Certificate". Since no enquiry in that regard need to be held, it seems, no enquiry was held by the Registering Authority at the time of registration as to find out whether "No Objection Certificate" is actually issued or not by the third respondent. The very fact that the petitioner has relied on such "No Objection Certificate" at the time of its registration, itself clearly reveals that the petitioner was of the definite opinion that the name of the petitioner too nearly resembles the name of respondent No. 3-company in existence which has been previously registered. Moreover, curiously or fairly the petitioner herein has not taken definite stand either before the second respondent or in this writ petition that its name does not resemble the third respondent. This itself would go to show that the petitioner also feels that its name too nearly resembles the existing company i.e., respondent No. 3. If the petitioner was of the opinion that the said company is not identical with or does not too nearly resemble the existing company, i.e., respondent No. 3, it would not have ventured to obtain "No Objection Certificate" from one of the Directors of respondent No. 3.

24. As aforementioned, Mr. C. Surendranadha Reddy distorted his fiduciary position of a Director and issued "No Objection Certificate" to start the petitioner-company, which is floated by his wife, namely Mrs. Veena Pothireddy and his brother-in-law Mr. Venugopal Reddy. It is also relevant to note that Venugopal Reddy is a former senior employee of respondent No. 3-company and obviously he had technical know-how and research developed at the cost of respondent No. 3. In this context, the submission of respondent No. 3 that the Directors of petitioner approached the Clientele of respondent No. 3-company and took away AMC contracts which were otherwise with the third respondent, though irrelevant

for the purposes of this case, assumes importance.

25. The combination of words used in the name of the companies in question are almost same or too nearly resemble. Consequently, the same would cause confusion in the minds of the customers of that category, particularly when the people who were with respondent No. 3-company floated the new company. Honesty and fair play are and ought to be the basic policies in the world of business. When a person adopts or intends to adopt a name in connection with his business or services which already belongs to someone else, it results in confusion and propensity of diverting the customers and clients of someone else to himself and thereby resulting in injury.

Except the words "Escalators India", the first two words in the name of the petitioner-company are same, which are "Surya Elevators". To pass an order u/s 22 of the Act, the requirement is that the names of the companies should be identical or too similar. Both the names phonotically resemble each other and the products of both the companies are also same. Therefore, in my considered opinion, there is no reason to hold that the order passed by the Regional Director is bad in the eye of law. The similarity of name is not in one word only, but it is in a combination of name of "Surya Elevators". Since the Registering Authority has failed to verify as to whether "No Objection Certificate" is validly issued by the Board of respondent No. 3 or not while registering the petitioner-company, it has to be held that the authority has inadvertently or negligently approved the name of the petitioner-company. Therefore, under the facts and circumstances of the case, the second respondent has passed the impugned order as per law.

26. May be, the name "Surya" is akin to Sun God. The contention of the petitioner that 1500 companies are registered in the name of "Surya" cannot be accepted in the matter on hand, inasmuch as no single company is said to have been registered in Karnataka with the name "Surya Elevators". It seems, one company is registered in Maharashtra under the said name. It is open for the third respondent to take action against such company, if it so chooses. Merely because another company is registered in Maharashtra State by which respondent No. 3 is not aggrieved, the petitioner cannot be allowed to take advantage of the same. More over, it is contended on behalf of respondent No. 3 that Surya Elevators Private Limited registered in Maharashtra State is doing business only in Maharashtra State and that respondent No. 3 has planned to initiate action against the said company also. As aforementioned, none of the companies having the name of "Surya" manufacture elevators/lifts/escalators in Karnataka, except the third respondent as on the date of its registration. The next company which is registered for the purpose of manufacturing the elevators is the petitioner-company, that too under the above circumstances. The contention of the petitioner that suit is pending before the Civil Court and that therefore, the third respondent should not have initiated proceedings u/s 22 of the Act, deserves to be rejected. Reference to suit is irrelevant. The reliefs claimed before the second respondent and before the Civil Court are entirely

different. Both the matters are dealt with independent of each other.

The applicant will have two independent rights of action against the opponent who may be using corporate name of a previously incorporated company, one u/s 22 of the Act and other seeking the order of injunction restraining the opponent from using the corporate name of the applicant or from using the name bearing close resemblance which may cause or is likely to cause confusion in the minds of the customers or general public in view of the similarity of names. Both the remedies, one u/s 22 of the Act and the other under the common law operate in different fields. u/s 22 of the Act, the Central Government has no jurisdiction to grant injunction against the use of an undesirable name by a company, whereas in a suit for permanent injunction the Court cannot pass an order as could be passed u/s 22 of the Act by the Central Government. The jurisdiction of the Central Government under Sections 20 and 22 of the Act and the jurisdiction of the Civil Court operate in two different fields. Therefore, merely because the suit is filed for injunction restraining respondent No. 3 from using the corporate name bearing close resemblance of the name of the petitioner-company, the jurisdiction of the Central Government under Sections 20 and 22 of the Act is not ousted. {See the judgments in the case of Montari Overseas Limited vs. Montari Industries Limited - ILR 1997 Del 64, in the case of M/s. K.G. Khosla Compressors Limited vs. M/s. Khosla Extraktions Limited & others - AIR 1986 Del 181, and in the case of Kalpana Polytec India Limited & others vs. Union of India & others -(2001)106 CC 558}.

The Regional Director while passing the order u/s 22 of the Act should not exercise jurisdiction of the Civil Court relating to passing-off action. If the Regional Director usurps the jurisdiction of the Civil Court relating to passing-off action, he would be considering the matter on irrelevant factors which are not germane for exercising his jurisdiction u/s 22 of the Act. In the matter on hand, in my considered opinion, the Regional Director has not taken into consideration irrelevant factors relating to "passing-off" action etc., while coming to the conclusion. As aforementioned, the unauthorised issue of "No Objection Certificate" by one of the Directors and has resulted in registering the petitioner company through inadvertence or negligence or carelessness on the part of Registering Authority.

In view of the above, no interference is called for. Accordingly, writ petition fails and the same stands dismissed.