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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C)-IPD 14/2021, CM 2/2021, CM APPL. 29905/2020 &  
CM APPL. 2062/2021

**KAIRA DISTRICT COOPERATIVE MILK PRODUCERS  
UNION LTD & ANR.** ..... Petitioners

Through: Mr. Abhishek Singh, Mr. J.  
Amal Anand, Ms. Alisha Sharma and Mr.  
Elvin Joshi, Advs.

versus

**REGISTRAR OF TRADEMARKS & ORS.** ..... Respondents

Through: Mr. Harish Vaidyanathan  
Shankar, CGSC, Mr. Srish Kumar Mishra,  
Mr. Sagar Mehlawat and Mr. Alexander  
Mathai Paikaday, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE C.HARI SHANKAR**

**JUDGMENT (ORAL)**

% **22.03.2023**

1. The petitioner is the proprietor of a number of trademarks which essentially involve the word "AMUL", on its own as well as accompanied by prefixes and suffixes, both as word marks and device marks, in various classes of the NICE classification.

2. The petitioner is aggrieved at the fact that, despite the existence, and in derogation, of the proprietorial rights held by the petitioner in the said registered trade marks, several persons are applying for registration of marks which include "AMUL" and are, in the submission of the petitioner, deceptively similar to the trademarks in which the petitioner holds registrations.

3. The petitioner has, therefore, filed the present writ petition before this Court, under Article 226 of the Constitution of India, seeking the following prayers:

“It is therefore most humbly prayed that this Hon'ble Court may graciously be pleased to: -

(a) Issue a Writ of Mandamus directing the Respondent to withdraw the acceptance of trademarks identical with or deceptively similar to the Petitioners' “AMUL” trademarks which are at Sr No. 22 to 57 in the Table at Para 26.

(b) Issue a Writ of Mandamus quashing the publication of the trademarks identical with or deceptively similar to the Petitioners' "AMUL" trademarks which are at Sr No. 22 to 57 in the Table at Para 26

(c) Issue a Writ of Mandamus directing the Respondent to cancel the registration of Trademarks which are identical with or deceptively similar to the Petitioners' "AMUL" trademarks which are at Sr No. 1 to 21 in the Table at Para 26 and remove the entries of the same from the Register of Trademarks

(d) Issue a Writ of Mandamus directing the Respondent to pass a reasoned order before accepting or advertising trademarks identical with or deceptively similar to the Petitioners' "AMUL" trademarks

(e) Issue any other Writ/direction as this Hon'ble Court may deem fit in the facts of the case.”

4. Para 26 of the petition sets out, in a tabular statement, 57 registrations with which the petitioner is aggrieved. Of these 57 registrations, prayers (a) and (b) in the writ petition pertain to the 36 registrations at S. Nos. 22 to 57. These are all cases in which the applications, seeking registration of the trade mark concerned, were accepted, advertised, and oppositions invited. Of these 36 registrations, Mr. Abhishek Singh, learned Counsel for the petitioner acknowledges that oppositions, under Section 21<sup>1</sup> of the Trade Marks

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<sup>1</sup> 21. **Opposition to registration.** –

Act, 1999, stand filed by the petitioner before the Registrar of Trade Marks Act in respect of all except the registrations at S. Nos. 22 to 27, 52 and 57.

5. The Trade Marks Act is a comprehensive statute, which provides appropriate and adequate avenues for a person to oppose the registration of a mark during the pendency of the application for registration, under Section 21, as well as seek rectification of the register by cancelling or varying the registrations granted in respect of any particular mark under Section 57<sup>2</sup>. These provisions also set out a

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(1) Any person may, within four months from the date of the advertisement or re-advertisement of an application for registration, give notice in writing in the prescribed manner and on payment of such fee as may be prescribed, to the Registrar, of opposition to the registration.

(2) The Registrar shall serve a copy of the notice on the applicant for registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall send to the Registrar in the prescribed manner a counter statement of the grounds on which he relies for his application, and if he does not do so he shall be deemed to have abandoned his application.

(3) If the applicant sends such counter statement, the Registrar shall serve a copy thereof on the person giving notice of opposition.

(4) Any evidence upon which the opponent and the applicant may rely shall be submitted in the prescribed manner and within the prescribed time to the Registrar, and the Registrar shall give an opportunity to them to be heard, if they so desire.

(5) The Registrar shall, after hearing the parties, if so required, and considering the evidence, decide whether and subject to what conditions or limitations, if any, the registration is to be permitted, and may take into account a ground of objection whether relied upon by the opponent or not.

(6) Where a person giving notice of opposition or an applicant sending a counter statement after receipt of a copy of such notice neither resides nor carries on business in India, the Registrar may require him to give security for the costs of proceedings before him, and in default of such security being duly given, may treat the opposition or application, as the case may be, as abandoned.

(7) The Registrar may, on request, permit correction of any error in, or any amendment of, a notice of opposition or a counter statement on such terms as he thinks just.

<sup>2</sup> 57. **Power to cancel or vary registration and to rectify the register. –**

(1) On application made in the prescribed manner to the High Court or to the Registrar by any person aggrieved, the Registrar or the High Court, as the case may be, may make such order as it may think fit for cancelling or varying the registration of a trade mark on the ground of any contravention, or failure to observe a condition entered on the register in relation thereto.

(2) Any person aggrieved by the absence or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the High Court or to the Registrar, and the Registrar or the High Court, as the case may be, may make such order for making, expunging or varying the entry as it may think fit.

(3) The Registrar or the High Court, as the case may be, may in any proceeding under this section decide any question that may be necessary or expedient to decide in connection with the rectification of the register.

(4) The Registrar or the High Court, as the case may be, of its own motion, may, after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any order referred to in sub-section (1) or sub-section (2).

(5) Any order of the High Court rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

variety of circumstances in which they can be invoked.

6. Section 57(2) permits an applicant, seeking variation of the register of marks by removal or modification, therein, of any registration already granted either, under Section 57(1), where registration has been granted in contravention or failure of any condition entered on the register in relation thereto or, under Section 57(2), where (ii) the registration has been granted without sufficient cause, (iii) the entry is wrongly remaining on the register or (iv) there is any error or defect in the entry in the register [under Section 57(2)].

7. These are compendious and exhaustive provisions, the sweep of which is wide enough to cover all legitimate grounds on which the grant of a registration can be challenged by a person who is aggrieved thereby, both before and after grant.

8. The legislature must be presumed to know its job. Where a statute contains remedies for persons who may be “aggrieved”, it is not for a Court, exercising writ jurisdiction, to fashion additional remedies over and above those provided in the statute. That, which cannot be done directly, cannot be permitted to be done indirectly either. It is for this reason that the Supreme Court has, times without number, cautioned writ courts not to overstep the peripheries of Article 226 of the Constitution of India, in a bid to “set things right”. Lord Scarman’s exordium in *Nottinghamshire County Council v. Secretary of State for the Environment*<sup>3</sup> is regarded, in this context, as *locus classicus*:

“The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in

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<sup>3</sup> (1986) 1 All ER 199 (HL)

pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in the social life'. Wide enough in all conscience is the field of discretion that remains.”

Among the numerous decisions of the Supreme Court which approve and adopt the above dictum of Lord Scarman is *Meerut Development Authority v. Association of Management Studies*<sup>4</sup> which also cites, with approval, the cautionary caveat of Lord Templeman in *R. v. Independent Television Commission*<sup>5</sup> that “where Parliament has not provided for an appeal from a decision maker the courts must not invent an appeal machinery”.

9. Where, however, the Court, on a studied analysis of the facts, feels that the situation before it is one in which the litigant is entitled to seek a remedy for which the legislature has provided no adequate or efficacious provision, relief can unquestionably be granted under Article 226. The Court must not, however, presume, too easily, that the reliefs provided by statute are inadequate or not efficacious. The litigant who so asserts must prove the assertion to the hilt. Mere delay or expense, were the litigant to avail the statutorily provided remedy, cannot constitute justifiable ground for the Court to provide succour under Article 226. Else, Article 226 would cease to confer extraordinary, but would be conferring, instead, alternative, jurisdiction on the Court.

10. Which is what, precisely, in my opinion, the petitioner exhorts this Court, in the present case, to do.

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<sup>4</sup> (2009) 6 SCC 171

<sup>5</sup> 1996 JR 185



11. To a query from the Court as to why, given Section 21 of the Trade Marks Act, this Court should exercise writ jurisdiction where oppositions, filed by the petitioner, are already pending, Mr Abhishek Singh's only submission is that opposition proceedings take considerable time. If this is true, I sympathise, but regret that I cannot, on that ground, usurp the jurisdiction conferred on the Registrar by Section 21. The following critical observations, from the recent decision of the Supreme Court in *Varimadugu Obi Reddy v. B. Sreenivasulu*<sup>6</sup> are, in this context, apt:

“33. This Court in the judgment in *United Bank of India v. Satyawati Tondon and Ors*<sup>7</sup>, was concerned with the argument of alternative remedy provided under the SARFAESI Act, 2002 and dealing with the argument of alternative remedy, this Court had observed that where an effective remedy is available to an aggrieved person, the High Court ordinarily must insist that before availing the remedy Under Article 226 of the Constitution, the alternative remedy available under the relevant statute must be exhausted. Paras 43, 44 and 45 of the said judgment are relevant for the purpose and are extracted below:

“43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition Under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this Rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy Under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

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<sup>6</sup> (2023) 2 SCC 168

<sup>7</sup> (2010) 8 SCC 110

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court Under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the Rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power Under Article 226 of the Constitution.

45. It is true that the Rule of exhaustion of alternative remedy is a Rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed Under Article 226 of the Constitution and pass interim order ignoring the fact that the Petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

34. In the instant case, although the Respondent borrowers initially approached the Debts Recovery Tribunal by filing an application Under Section 17 of the SARFAESI Act, 2002, but the order of the Tribunal indeed was appealable Under Section 18 of the Act subject to the compliance of condition of pre-deposit and without exhausting the statutory remedy of appeal, the Respondent borrowers approached the High Court by filing the writ application Under Article 226 of the Constitution. We deprecate such practice of entertaining the writ application by the High Court in exercise of jurisdiction Under Article 226 of the Constitution without exhausting the alternative statutory remedy available under the law. This circuitous route appears to have been adopted to avoid the condition of pre-deposit contemplated under 2nd proviso to Section 18 of the Act 2002.”

The emphasis, in the afore-extracted passages from *Varimadugu Obi Reddy*<sup>6</sup> is, therefore, on *exhaustion* of alternative remedy before the Court is approached. Exhaustion means exhaustion, and can only follow the culmination of the proceeding. Exhaustion of the alternative remedy, classically and etymologically, cannot be said to have taken place either before the alternative remedy has been availed, or even while the alternative remedy is pending. There may

be cases where the alternative remedy is proving chimerical because of an inordinate length of time being expended in its prosecution and exhaustion, but, even in such cases, the appropriate remedy for a writ court to grant would only be to expedite the alternative remedy proceeding, and not to arrogate, to itself, the jurisdiction of the authority *in seisin* thereof.

**12.** As oppositions in respect of the registrations at S. Nos. 22 to 57, except S. Nos 22 to 27, 52 and 57, have been preferred by the petitioner and are pending before the Registrar of Trade Marks, I see no reason why this Court should, under Article 226 of the Constitution of India, entertain the present petition as a parallel proceeding and adjudicate on the grievances of the petitioner *vis-à-vis* the said registrations.

**13.** Apropos the marks at S. Nos. 22 to 27 and 52 and 57, Mr. Abhishek Singh acknowledges that no opposition was filed within the statutory period of four months from the date of advertisement of the application filed by the concerned applicants, as provided in Section 21(1). If that be so, the petitioner cannot seek to circumvent the stipulated statutory period by approaching the writ court under Article 226 of the Constitution of India. As held in *U.O.I. v. Harnam Singh*<sup>8</sup>, “the law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire”. Any such exercise may, in fact, perilously amount to misuse of Article 226. Article 226 cannot be used as an escape route to circumnavigate statutorily prescribed periods of limitation.

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<sup>8</sup> (1993) 2 SCC 162



**14.** Section 131<sup>9</sup> of the Trade Marks Act empowers the Registrar to extend the time for doing any act stipulated in the Trade Marks Act, subject to conditions which he may deem fit to impose. Needless to say, the discretion as to whether sufficient cause for grant of extension exists, or not, vests in the Registrar under the said provision. Suffice it to state that, in view of Section 131 of the Trade Marks Act, an applicant who may have defaulted in filing an opposition against an application seeking registration of mark within the period of four months envisaged by Section 21(1), may nonetheless seek extension of time. As such, even in respect of such cases, the Trade Marks Act provides an adequate and an efficacious remedy.

**15.** While the discretion on whether to grant extension of time under Section 131 would vest with the Registrar, the Court is sanguine that, while exercising such discretion, the Registrar shall act judiciously and in accordance with the principles of natural justice and fair play.

**16.** As such, even in respect of the registrations at S. Nos. 22 to 27, 52 and 57, I do not see any reason why this Court should exercise the extraordinary jurisdiction vested in it by Article 226 of the Constitution of India, in the face of adequate alternative avenues available to the petitioner in the Trade Marks Act.

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<sup>9</sup> **131. Extension of time. –**

(1) If the Registrar is satisfied, on application made to him in the prescribed manner and accompanied by the prescribed fee, that there is sufficient cause for extending the time for doing any act (not being a time expressly provided in this Act), whether the time so specified has expired or not, he may, subject to such conditions as he may think fit to impose, extend the time and inform the parties accordingly.

(2) Nothing in sub-section (1) shall be deemed to require the Registrar to hear the parties before disposing of an application for extension of time, and no appeal shall lie from any order of the Registrar under this section.

**17.** Prayers (a) and (b) in the writ petition cannot, therefore, be granted, in view of the alternative remedies available under the Trade Marks Act. They are, therefore, rejected.

**18.** Mr. Abhishek Singh does not press prayer (c) in the writ petition. Accordingly, no orders are required to be passed thereon.

**19.** Mr. Abhishek Singh, however, presses prayer (d). Prayer (d) seeks issuance of a writ of mandamus, directing the respondent to pass a reasoned order before accepting or advertising trade marks which are identical or deceptively similar to the registered trade marks of the petitioner.

**20.** I do not see how any such direction can be granted by the Court. The petitioner cannot arrogate, to itself, any greater priority or precedence over other marks which have already stand granted. Equally no separate procedure can be stipulated, exclusive to the petitioner, to be followed by the Registrar of Trade Marks.

**21.** The Trade Marks Act does not require the passing of a reasoned order by the Registrar of Trade Marks before accepting or advertising any trade mark. Sections 18 to 23 set out an exhaustive procedure to be followed by the Registrar while dealing with any application for registration, which include acceptance of the application, advertisement of the application, filing of opposition to the application as well as consideration of the opposition so filed, and ultimate grant or refusal of the registration as sought.

22. Mr. Abhishek Singh has also invited my attention to Rule 33<sup>10</sup> of the Trade Marks Rules, 2017 which deals with the procedure to be followed in initial examination of an application, as well as with any objection to an application seeking registration of a mark. Sub-rule (8) of Rule 33 envisages the passing, by the Registrar, of an “appropriate order” on the reply, by an applicant, to the First Examination Report (FER).

23. In my considered opinion, the scheme to the Trade Marks Act and the Trade Marks Rules do not justify any further interdiction by this Court. Suffice it to state that any order, the passing of which is envisaged in the Trade Marks Act or the Trade Marks Rules, must be reasoned. Grant, or rejection, of trade mark, design, or patent registrations is a serious matter, having serious civil consequences,

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<sup>10</sup> 33. **Examination, Objection to acceptance, hearing. –**

(1) The Registrar shall cause the application to be examined as per provisions of the Act, wherein a search shall also be conducted amongst the earlier trade marks, registered or applied for registration, for the purpose of ascertaining whether there are on record in respect of the same goods or services or similar goods or services any trade mark identical with or deceptively similar to the trade mark applied for. The Registrar may cause the re-examination of the application including research of earlier trade marks at any time before the acceptance of the application but shall not be bound to do so.

(2) If, on consideration of the application for registration of a trade mark and any evidence of use or of distinctiveness or of any other matter which the applicant may or may be required to furnish, the Registrar has any objection to the acceptance of the application or proposes to accept it subject to such conditions, amendments, modifications or limitations as he may think fit to impose under sub-section (4) of Section 18, the Registrar shall communicate such objection or proposal in writing to the applicant in the form of an examination report.

(3) If, on consideration of the application for registration of a trade mark and any evidence of use or of distinctiveness or of any other matter which the applicant may or may be required to furnish, the Registrar accepts the application for registration absolutely, he shall communicate such acceptance to the applicant and cause the application to be advertised as accepted under sub-section (1) of Section 20.

(4) If, within one month from the date of receipt of the examination report, the applicant fails to respond to the communication, the Registrar may treat the application as abandoned.

(5) In case the response to the examination report is received within the aforesaid time, the same shall be duly considered and if the Registrar accepts the application for registration, he shall communicate such acceptance to the applicant and cause the application to be advertised as accepted under sub-section (1) of Section 20.

(6) If the response to the examination report is not satisfactory or where the applicant has requested for hearing, the Registrar shall provide an opportunity of hearing to the applicant and the same shall be conducted as per Rule 115.

(7) In case the applicant fails to appear at the scheduled date of hearing and no reply to the office objection has been submitted by the applicant, the Registrar may treat the application as abandoned.

(8) Where the applicant has submitted his reply to the examination report within the aforesaid period or has appeared in the hearing and made his submissions, the Registrar shall pass an appropriate order.

and the applicant, as well as the opponent opposing the registration, if any, are entitled, as a matter of right, to know why the Registrar has decided, on the application seeking registration, as he has.

24. However, this Court is not agreeable to requiring any further orders to be passed by the Registrar at interlocutory stages of examination of an application or consideration of objections, beyond the orders which are required to be passed by the Trade Marks Act and the Trade Marks Rules. Multiplication of orders and decisions at every stage of prosecution of an application seeking registration of a mark would, in the opinion of this Court, unduly delay the processing of the application and may ultimately prejudice public interest.

25. Prayer (d) in the writ petition is, therefore, disposed of by directing that

(i) while accepting, or advertising, any application seeking registration of a trade mark, the Registrar shall act in the manner envisaged by the Trade Marks Act and the Trade Marks Rules, and

(ii) where the Trade Marks Act and Trade Marks Rules envisages passing, by the Registrar, of any order – including an “appropriate order” under Rule 33 of the Trade Marks Rules – the order would be reasoned and speaking in nature.

26. Mr. Abhishek Singh points out that a coordinate Bench of this Court, in its judgment in *Jai Bhagwan Gupta v. Registrar of Trade Marks*<sup>11</sup> laid down certain guidelines to be followed by the officers in the Registry of Trade Marks while dealing with applications seeking

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<sup>11</sup> MANU/DE/0906/2020

registration. The said order continues to hold the field and, therefore, needless to say, these guidelines would be binding on the Registrar of Trade Marks and the officers functioning within the Registry of Trade Marks. The said order requires a “brief order” to be passed by the Registrar under Section 20(1) of the Trade Marks Act. The said direction would, therefore, supplement the present judgement.

27. One of the grievances voiced by Mr. Abhishek Singh is that, in certain cases, the marks have been accepted and advertised in violation of the guidelines laid down in *Jai Bhagwan Gupta<sup>II</sup>*. Without going into the merits of the said submission, I may only observe that the guidelines cannot, quite obviously, operate retrospectively. They would, however, bind the authorities in the office of the Registrar in respect of all applications accepted and advertised after they were issued.

28. I have already observed that the appropriate remedy that the petitioner would have to exhaust, in such cases, would have to be under Section 21 of the Trade Marks Act. Needless to say, all grounds on which the petitioner may seek to oppose the registrations of the concerned marks in the said opposition proceedings would remain available to the petitioner, including the grounds of compliance or non-compliance with the directions contained in *Jai Bhagwan Gupta<sup>II</sup>*. All such objections, if raised, shall be considered and dealt with, in accordance with law.

29. This writ petition stands disposed of accordingly, with no order as to costs.



- 30.** Pending miscellaneous applications, if any, also stand disposed of.
- 31.** Let a copy of this judgment be uploaded on the website of this Court within 24 hours.

**C. HARI SHANKAR, J.**

**MARCH 22, 2023**

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