

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO: 462 OF 2009

MRC Logistics Private Limited)
A Company incorporated under the)
Companies Act, 1956 and having its)
registered office at 108, Tirupati Udyog)
1B Patel Road, Western Express Highway))
Goregaon (E), Mumbai 400 063.).. Petitioner

Versus

- 1) Regional Director)
Western Region, Ministry of)
Corporate Affairs, 5th Floor)
Everest, 100, Marine Drive)
Mumbai 400 002.)
- 2) MRC Logistics (India) Pvt. Ltd.)
A Company incorporated under)
the Companies Act, 1956 and)
having its registered office at)
81, Transport Nagar, Nigadi)
Pune 411 044.).. Respondents

Mr. Shekhar Shetty i/b Mr. Ramesh Saroagi for the
Petitioner.

Mr. H.K. Vardhan for Respondent No.1.

Mr. Manoj Wed with Mr. V.P. Sawant and Mr. P.M. Jadhav
for Respondent No.2.

**CORAM: SWATANTER KUMAR, CJ, AND
S.C.DHARMADHIKARI, J**

**JUDGMENT RESERVED ON : 6TH MAY 2009
JUDGMENT PRONOUNCED ON : 10TH JUNE 2009**

JUDGMENT (Per Chief Justice)

Rule. By consent, Rule called out and heard finally at the admission stage.

2. The petitioner - MRC Logistics Private Limited was incorporated under the provisions of the Indian Companies Act, 1956, by the Registrar of Companies, Mumbai, who issued the Certificate of Incorporation No. 46309 MH 2006 PTC 161579 dated 3.5.2006. The Directors of this company were the partners of the registered partnership firm viz; Mumbai Road Carriers which was formed on 1st April, 1998 and was engaged in the business of logistics and mainly, transportation.

3. The petitioner company made an application for registration of the trademark to the Registrar of Trade Mark, which is still pending with the competent authority.

4. Respondent no.1 the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai, in exercise of his powers under Section 22 of the Companies Act, issued a notice to the petitioner to show cause as to why the directions as mentioned in that section should not be issued, as, the respondent no.2 MRC Logistics (India) Private Limited, which was duly incorporated on 25th September, 2002, had made an application to the Regional Director on 21st March, 2007, complaining that the name of the petitioner company was identical to that of its company which was registered with the Registrar of Companies much prior in time and that direction be issued to the petitioner company to change its name in accordance with law.

5. The then Regional Director Shri V.S.Rao passed an order dated 29th October 2007. It was noticed that the application for registration of the trade mark of both the companies i.e. the petitioner and the respondent were pending with the Registrar of Trade Mark. It was also noticed that the petitioner company had been registered on

3.5.2006 and the respondent no.2 - complainant / company moved the application on 21st March, 2007. The report from the office of Registrar was received on 20th June, 2007 and the period of 12 months was over. Thus, it was held that it was not fit case to exercise his powers under Section 22 of the Act and to interfere at that juncture.

6. The order dated 29th October 2007, was challenged by the Respondent No.2 company by filing Writ Petition No.1009 of 2008, which was disposed of by the Division Bench of this Court. In order dated 22nd August, 2008, this Court noticed that all the parties agreed that the impugned order be set-aside dispensing with reasons in support of this order by consent of parties and the matter be remitted back for consideration afresh. This Court further granted three months' time to decide the matter in accordance with law.

7. In furtherance to the order passed by the Division Bench of this Court, the matter was again heard by the Regional Director. The Authority examined the oral and

written submissions made by the parties and came to the conclusion that the name of the petitioner company resembles too nearly with the name of the respondent company, that the Registrar of Companies, Mumbai, had allowed the name to the petitioner company by mistake and he was bound to consider the matter in terms of section 22 of the Act. The Authority also noticed the fact that the parties had agreed for remand of the matter to it. While holding that the earlier order dated 29th October, 2007, was correct as far as limitation was concerned, it relied on the judgment of the Calcutta High Court in *Sen & Pandit Electronics Limited v/s Union of India and Ors*, **AIR 1999 Calcutta 289**, wherein such an approach was accepted. It was held that in view of the order of remand, the provisions of Order 41 Rule 23 of the Code of Civil Procedure, 1908, the question of limitation could not arise and it was expected to consider the case on merits. Upon this discussion, the Regional Director issued the following directions:

"10. Now, therefore, in exercise of power conferred on by clause (b) of sub-section (1) of Section 22 of the Companies Act, 56, read with

Govt. of India, Ministry of Industry, Department of Company Affairs, Notification No. GSR 288 (E) dated 31.5.91, I hereby direct M/s. MRC Logistics Pvt. Ltd., respondent company to change its name as per the procedure under the Companies Act, 1956, within 3 months from the date of this direction."

The petitioner M/s. MRC Logistics Private Limited has now challenged this order on the above referred grounds.

8. Before we discuss the merits or otherwise of the above-referred contentions, it will be useful to reproduce section 22 of the Companies Act as follows:

"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."

9. The provisions of section 22 expressly provides for the institution and disposal of an application filed by an aggrieved party. It also states that the Central Government can form an opinion that the names of two companies are

identical or nearly resembles the registered name of another company. The registration of a company may be under the Companies Act or any previous company law. The purpose obviously is to ensure that two companies of similar nature or identical names should not be registered and if registered by inadvertence or otherwise the Central Government can issue the directions requiring the subsequently registered company to change its name within three months from the date of direction or any such period as may be allowed by the Central Government. This jurisdiction can be invoked by the aggrieved company by moving an application.

10. Thus, the scheme of section 22 can be dissected into two aspects. In terms of section 22(1)(i) the Central Government has to form its opinion which could be suo motu and without any person invoking that authority of the Central Government. Under that provision the subsequently registered company having identical or nearly resembling name to the name of previously existing registered company may, by passing ordinary resolution and with the approval of the Central Government, can change its name or give new

name in terms of section 22(1)(a) of the Act. Where the Central Government has formed an opinion, it can issue directions in terms of section 22(1)(b) within a period of 12 months to change the name of a subsequently registered company or by adopting a new name within three months from the date of direction. In this event, such a company shall have to carry out the directions issued by the Central Government, failing which such a company would invite penal consequences as contemplated under Section 22(2) of the Act. But the jurisdiction to be exercised by the Central Government under Section 22(1)(b) of the Act has to be exercised within twelve months of first registration or registration by its new name of such company or twelve months from the date of commencement of the Act, whichever is later. The Act came into force on 15th September, 2003.

11. The other aspect is the right given to a party (previously registered existing company), which is a registered proprietor of a trade mark, to make an application to the Central Government which thereupon will consider

such application and dispose of the same in accordance with law. If in the opinion of the Central Government, the names are identical or nearly resembles with the registered trade mark under the Trade Marks Act, 1999, such a company will and can take recourse to the provisions of section 22(1) and if the direction is issued by the Central Government under section 22(1)(b) it shall carry-out the direction of changing its name by passing ordinary resolution and with the approval of the Central Government. In default, it also faces penal consequences. But another additional restriction that is imposed by proviso is that no application under section 22(1)(2) can be made by the registered proprietor of a trade mark after 5 years of having notice of the registration of the company and the Government will not consider such an application on expiry of such period. As already noticed, in the present case none of the companies i.e. previously registered company or the subsequently registered company had registered trade mark. However, it has been averred by the respondent no.2 that MRC Transolutions Private Limited - previously known as Maharashtra Road Carrier Limited - which was incorporated after fulfilling all the requirements

and obtaining NOC from the flagship company had applied for trade mark in the year 1998 with the word "MRC" and its logo claiming the usage for more than 10 years. The company subsequently applied for registration of the logo under the Trade Marks Act, 1999 in the year 2002 claiming usage from 1985. However, the application in the name of the respondent no.2 company was made in the year 2006. It was pleaded before the authorities by the respondent no.2 that MRC Transolutions and its predecessors are prior adaptors, owners and users of the trade mark "MRC" in different forms since 1985.

12. It is well settled principle that under section 22(1)(i) of the Act the Central Government can exercise the powers *suo motu* or at the instance of an aggrieved party. Here the competent authority of the Central Government has exercised powers definitely on the application filed by the respondent no.2 company. The powers to be exercised by the Central Government in either of these two events have to be in conformity with the provisions of clause (b) of Section 22 of the Act. The Government can issue a direction to the

subsequently registered company within 12 months of its first registration or registration by a new name. Once that period lapses the Government loses its authority to issue such a direction. The intention of the Legislature is to restrict or control the powers of the Central Government and not to provide limitation for filing an application. It is an embargo on exercise of the powers and not remedy as such. The powers under section 22 are discretionary powers, which, as already noticed, can be exercised *suo motu* or on an application filed by an aggrieved person. This view was also taken by the Calcutta High Court in *Sen & Pandit Electronics (P) Ltd. And others v. Union of India and others*, **AIR 1999 Cal 289**. At the same time, section 22 does not in any way interferes or bars the remedies available under different Acts including initiation of any action or passing off action under the Trade and Merchandise Act. The powers are to be exercised in accordance with the principles of natural justice and as per the procedure stated under the Act.

13. The period of 12 months is, therefore, essence of invocation of powers in terms of section 22 vested in the

appropriate Government. As far as section 22(1)(i)(2) is concerned, said provisions are not attracted in the facts of the present case.

14. The learned Counsel appearing for the petitioner, while relying on the judgment of the Calcutta High Court in *Sen & Pandit Electronics Private Limited Company (supra)* argued that the limitation stated in section 22 on the powers on the exercise by the Central Government is not absolute bar. We are not able to appreciate this contention, inasmuch as, on that proposition of law the case before the Calcutta High Court was totally different on the facts and on the principle decided in that case. The Calcutta High Court in the above case was concerned only with the question whether the period during which the proceedings before the Central Government were stayed should be excluded or not. We are not concerned with the said issue or question in the present case. Suffice it to say that there was no stay of any proceedings in this case and the dates of registration of both the companies and the presentation of an application before the Government are not in dispute before us. Thus, in our

view, the learned Counsel for the petitioner cannot derive much advantage from the judgment of the Calcutta High Court.

15. It was also argued that in the event the bar of period stated in section 22 is enforced as it is, it will render the applicant remediless. In that event, the case would not fall under clause (2) of section 22(1)(i) of the act. This is again misconceived. The applicant in such a case is not remediless, inasmuch as, he can always invoke the jurisdiction of the civil court under special or general law. The jurisdiction of the civil court is much wider in its scope and an appropriate remedy in law is available to an applicant. In the case of *M/s. K.G. Khosla Compressors Ltd. v. M/s Khosla Extraktions Ltd. and others*, **AIR 1986 Delhi 181**, the Court took a similar view and held that it is not and it cannot be disputed that the civil court has jurisdiction to entertain the suit. The Central Government has no powers to grant an injunction but can issue a direction to change name of the company which is much narrower jurisdiction than the jurisdiction vested in the civil court in terms of the provisions

of the Specific Relief Act, 1963 and Order 39 of the Code of Civil Procedure. It can also be usefully noticed that such a provision is not unknown provision of law prevalent in different enactments in force. For instance, the provisions of the Industrial Disputes Act, 1947 are a clear example of this kind. Under section 25-O of the Industrial Disputes Act, 1947 the Government and even the competent authority lose their jurisdiction when the period specified in the said provision lapses. The Full Bench of this Court in the case of Britannia Industries Ltd. v. Maharashtra General Kamgar Union and another, (Writ Petition No. 2659 of 2005) decided on 16th April 2009 observed as under :-

“37. The decision of the State Government to close down the industrial unit is revisable only within one year from the date of the decision after which the government loses jurisdiction to permit invocation of remedy as contemplated under Section 25-O(5) of the Act. Section 25-O(5) being a Code in itself is further controlled strictly by limitations and the period specified under the Act. Reference in this regard can also be made to a judgment of the Supreme Court in Vazir Glass Works Ltd. v. Maharashtra General Kamgar Union, AIR 1996 SC 1282.. ..”

16. In *Vazir Glass Works Ltd. v. Maharashtra General Kamgar Union*, **AIR 1996 SC 1282**, the Supreme Court held as under :-

“30. Since the decision made on an application for permission for closure is to remain operative only for a year, in our view, it will be only proper to hold that an order by way of review either on the aggrieved party's application or on own motion of the State Government, must be made within the said period of one year. Otherwise, the right to make fresh application for permission to close after expiry of one year from the date of rejection of permission for closure will lose its relevance. It also appears to us that anomalous situation may arise if the application for review, when presented within the said time frame of one year is allowed to be decided even after the expiry of the said time frame of one year when the order passed by the State Government has already ceased to be operative. As an illustration, it may be indicated that a party aggrieved makes an application for review of the order of the State Government within a year during which the order is operative, but for some reason, such application is not disposed of within one year. After expiry of one year, the aggrieved party makes a fresh application for permission to close and on such application an order is made by the State Government or the party obtains a

deemed order. This order on a fresh application, subject to any review of the same, will remain in force for one year. If the State Government is permitted to pass order on the review application made against the first order when the right to make fresh application and to obtain an order has already accrued, any order on review to be enforceable must conform to the order passed or deemed to have been passed on suspended application for permission to close. Any other order is not conceivable because an order by way of review supersedes the order reviewed but not the subsequent order on a fresh application made and such subsequent order being operative for the next one year cannot be by passed by any order of review of the earlier order.

31. Although it has not been expressly indicated within what period a review application validly made is to be disposed of, but the provision that order on an application for closure would remain in force for one year and in the absence of any embargoed to make fresh application for such permission after expiry of one year even if a review application remains pending, makes it abundantly clear that in the scheme of Section 25(O), the review application is to be made before expiry of the said time frame of one year and such application is to be disposed of within such time frame otherwise such review application will become infructuous. The argument that a party should not be made to suffer simply on account of failure on the part of a statutory authority to dispose of review application within a time frame

and thereby rendering it infructuous, is not tenable because after expiry of the said time frame of one year, the party aggrieved has a right to make a fresh application by incorporating all the material factors germane for consideration of its application for permission to close, including the factors indicated in review application. Neither the general principle of retaining jurisdiction to dispose of review application validly made nor the principle that an authority if clothed with the power of review will not become functio officio after expiry of the time frame of one year but it will retain its authority to dispose of the pending review application will arise in the context of the scheme of Section 25 (O).

32. xxxxx xxxxx xxxxx

33. In the aforesaid facts, the impugned decision to the effect that the State Government would cease to have jurisdiction to review its order on the application for closure of an industrial unit after expiry of one year from the date of rejection of the application for permission to close, is correct.”

17. Thus, the Legislature in its wisdom has enacted similar provision under different laws where an authority, Tribunal or the Forum loses its jurisdiction to pass an order after lapse of given period. The legislative intent in such

matter is apparent in such provision where expeditious decision is required to be taken and the scheme of the law framed makes it mandatory that the decisions are taken within the specified time in the larger public interest and keeping in view the effect and impact of such remedy and the directions or orders to be passed by the competent forum.

18. In the present case, in the first round of litigation between the parties the competent authority had taken the view that the orders could not be passed after lapse of twelve months period but that order by consent was set-aside and the matter was remanded keeping all the contentions of the parties open. Now, the authority has arrived at the conclusion that the petitioner company is required to change its name. Thus, the subsequently registered company has approached this Court. We are of the considered view that the Central Government had lost its jurisdiction to pass appropriate order and to give direction as admittedly the period of twelve months had lapsed on the date of passing such order.

19. For the reasons above-stated, the writ petition is allowed and the Rule is made absolute. The impugned order is hereby quashed while leaving the parties to bear their own costs.

CHIEF JUSTICE

S.C. DHARMADHIKARI, J.