

**HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

**W.P.No.25741 of 2017**

**ORDER:**

This Writ Petition is filed seeking a Writ of Mandamus to declare the orders dt.20-04-2017 passed in F.No.11(43) Sec. 16/(Telangana)/RD(SER)/2016/274 by the 2<sup>nd</sup> respondent as arbitrary, illegal, null, void and unconstitutional and sought consequential direction to the respondents not to interfere with the petitioner's Business.

2. Heard Sri Gopal Rao Amancharla V, learned counsel for the petitioner, Sri N.Rajeswara Rao, learned Assistant Solicitor General, appearing for respondent Nos.1 and 2 and Smt. Sundari R Pisupati, learned counsel for the 3<sup>rd</sup> respondent.

3. It has been contended by the petitioner that it is a registered company under the Companies Act, 1956, registered on 07-10-2008 and since then it has been carrying on its business activities without any complaints from anyone. The 3<sup>rd</sup> respondent has approached the 2<sup>nd</sup> respondent under Section 22 of the Companies Act, 1956 (now Section 16 of the new Companies Act, 2013) disputing the name and logo of the petitioner as the same is resembling with the 3<sup>rd</sup> respondent's name and logo on 27-07-2012. It has been further contended that the 2<sup>nd</sup> respondent without furnishing the copy of the application submitted by the 3<sup>rd</sup> respondent, has straight away issued notices to the petitioner. Petitioner has submitted

a detailed explanation on 22-12-2014 and thereafter, gave another representation to the 2<sup>nd</sup> respondent on 10-03-2017. But the 2<sup>nd</sup> respondent without considering any of the objections raised by the petitioner has mechanically passed the impugned orders on 20-04-2017. Challenging the same, the present Writ Petition is filed.

4. Learned counsel for the petitioner has contended that the 2<sup>nd</sup> respondent ordered the name of the petitioner's company be changed suitably by deleting the word 'GSK' from its existing name within a period of three months from the date of that order. He has further contended that as per Section 16 of the Companies Act, there is limitation of three years to raise any objection with regard to name/logo. Admittedly, the complaint filed by the 3<sup>rd</sup> respondent before the 2<sup>nd</sup> respondent was on 27-07-2012, whereas the petitioner-company was incorporated on 07-10-2008 which would mean the complaint filed by the 3<sup>rd</sup> respondent is barred by limitation as the complaint was filed after more than three years.

5. The learned counsel for the petitioner has further contended that Section 35 of the Trade Marks Act, 1999 (for brevity 'the Act, 1999') reads as follows:

**"Section 35:**

*Saving for use of name, address or description of goods or services, - Nothing in this Act shall entitle the proprietor or a registered user of a registered trade mark to interfere with any bona fide use by a person of his own name or that of his place of business, or of the name, or of the name of the place of business, of any of his predecessors in*

*business, or the use by any person of any bona fide description of the character or quality of his goods or services.”*

Learned counsel for the petitioner has further contended that the 2<sup>nd</sup> respondent ought to have considered Section 35 of the Act, 1999 and without applying Section 35 of the said Act, he has mechanically passed the orders in favour of the 3<sup>rd</sup> respondent. He has further contended that the 3<sup>rd</sup> respondent has filed O.S.No.1141 of 2013 before the Delhi High Court, New Delhi and the said suit was decreed *ex parte* on 02-11-2016 against the petitioner for change of name of the petitioner-company and the petitioner has taken steps to set aside the *ex parte* decree and the same is pending before the Delhi High Court. The petitioner company was incorporated on 07-10-2008 and after nearly five years, the 3<sup>rd</sup> respondent has approached the 2<sup>nd</sup> respondent and the 2<sup>nd</sup> respondent has entertained the said complaint of the 3<sup>rd</sup> respondent and without taking into consideration the limitation prescribed under Section 16 (1) (v) of the Companies Act, 2013 and without having jurisdiction, has mechanically allowed the application filed by the 3<sup>rd</sup> respondent on 20-04-2017. Therefore, the orders passed by the 2<sup>nd</sup> respondent are liable to be set aside as they are contrary to Section 16 (1) (v) of the Companies Act, 2013 and also contrary to Section 35 of the Trade Marks Act, 1999.

6. Per contra, learned Assistant Solicitor General appearing for respondent Nos.1 and 2 had contended that Section 22 of the Old Companies Act, 1956 is nothing but Section 16 of the new Companies Act, 2013. As per Section 22 of the Companies Act, 1956, the

limitation was five years and the 3<sup>rd</sup> respondent has filed an application before the 2<sup>nd</sup> respondent well before the stipulated time of five years. Further, the 2<sup>nd</sup> respondent after issuing notice to the petitioner only has passed the impugned orders i.e. 20-04-2017 and the 2<sup>nd</sup> respondent has come to proper conclusions that the name of the petitioner is resembling to that of third respondent's name and the 2<sup>nd</sup> respondent has accordingly passed the orders directing the petitioner to change the name with suitably deleting the word "GSK" from its existing name within a period of three months. Therefore, the 2<sup>nd</sup> respondent has rightly passed the orders in favour of 3<sup>rd</sup> respondent and the 2<sup>nd</sup> respondent has given cogent reasons while considering the application of the 3<sup>rd</sup> respondent and passed a reasoned order that too after giving opportunity to the petitioner.

7. Learned counsel for the 3<sup>rd</sup> respondent has contended that the 3<sup>rd</sup> respondent has filed CSOS No.1141 of 2013 before the Delhi High Court and the same was decreed vide orders dt.02-11-2016 and thereafter petitioner has also filed I.A.Nos.5568/5569 of 2017 to set aside the *ex parte* decree and the same was also dismissed by orders dt.05-07-2018 for non-prosecution of the case. Hence, the 2<sup>nd</sup> respondent has rightly passed orders in favour of 3<sup>rd</sup> respondent. Therefore, there are no merits in the Writ Petition and the same is liable to be dismissed. .

8. Learned counsel for the 3<sup>rd</sup> respondent has further contended that the application was filed before the 2<sup>nd</sup> respondent

under Section 22 of the Companies Act, 1956. As per the said Section, the period of limitation was five years and accordingly, the 3<sup>rd</sup> respondent has rightly filed application under Section 22 of the Companies Act, 1956 within the stipulated period of time and that the corresponding Section in the new Companies Act is Section 16 and the 2<sup>nd</sup> respondent has rightly passed orders in favour of the 3<sup>rd</sup> respondent on 20-04-2017 directing the petitioner to suitably delete the word 'GSK' from its existing name within a period of three months. Insofar as Section 35 of the Trade Marks Act, 1999 is concerned, the petitioner has not pleaded before the 2<sup>nd</sup> respondent but it is not made clear as to whether the petitioner-company is a registered company under the Trade Marks Act, 1999. Without disclosing the said fact, the petitioner cannot rely on Section 35 of the Act, 1999 and contend that the orders passed by the 3<sup>rd</sup> respondent are contrary to Section 35 of the said Act. Therefore, there are no merits in the Writ Petition and the same is liable to be dismissed.

9. This Court, having regard to the rival submissions made by the counsel for the parties, is of the considered view that the 2<sup>nd</sup> respondent has rightly passed orders directing the petitioner to change the name suitably by deleting the word 'GSK' from its existing name as it is similar to that of 3<sup>rd</sup> respondent and 3<sup>rd</sup> respondent is widely known as GSK for a long time even before incorporation of the petitioner-company and the petitioner has also suffered decree in C.S.O.S.No.1141 of 2013 before the Delhi High Court vide orders

dt.02-11-2016 and application filed to restore the suit by setting aside the *ex parte* decree was also dismissed on 05-07-2018.

10. The two contentions raised by the learned counsel for the petitioner viz., the application filed by the 3<sup>rd</sup> respondent before the 2<sup>nd</sup> respondent is barred by limitation; and the order passed by the 2<sup>nd</sup> respondent is contrary to Section 35 of the Trade Marks Act, 1999.

11. With regard to the first contention about period of limitation is concerned, the 3<sup>rd</sup> respondent has filed an application under the old Act i.e. under Section 22 of the Companies Act, 1956, where the period of limitation was five years and the petitioner's company was incorporated on 07-10-2008, whereas the 3<sup>rd</sup> respondent has filed an application before the 2<sup>nd</sup> respondent on 27-07-2012 which would mean that the 3<sup>rd</sup> respondent has filed well within the period of limitation. Hence, the contention of the petitioner in respect of period of limitation is rejected.

12. With regard to the second legal contention that the orders passed by the 2<sup>nd</sup> respondent is contrary to the Trade Marks Act, 1999 is concerned, the petitioner could not produce any material to show and demonstrate that the petitioner is registered under Trade Marks Act, 1999 and the said plea was not even raised before the 2<sup>nd</sup> respondent. Even on this legal ground also, the petitioner has failed to satisfy the Court as to how Section 35 of the Trade Marks Act, 1999 is being violated, more so, the petitioner itself was not registered under

the Trade Marks Act, 1999. Hence, the second legal contention is also rejected.

13. Looking from any angle, the 2<sup>nd</sup> respondent has rightly passed orders on 20-04-2017 in favour of the 3<sup>rd</sup> respondent. Therefore, this Court is not inclined to interfere with the case of the petitioner and the Writ Petition is liable to be dismissed.

14. Accordingly, the Writ Petition is dismissed. No costs.

15. Miscellaneous petitions, if any, pending in this writ petition, shall stand closed.

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**JUSTICE ABHINAND KUMAR SHAVILI**

Date: 20-04-2021  
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