

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

WEDNESDAY, THE 07TH DAY OF APRIL 2021/17TH CHAITHRA,1943

WP(C).No.3057 OF 2021(F)

PETITIONER:

KUNHI MUHAMMED ETAYATTIL,
AGED 47 YEARS, S/O. ABOOBACKER,
THEKKUMMALA, NADUVATTAM,
PALAKKAD DISTRICT, KERALA-679 308.

BY ADVS.
SRI.M.P.SHAMEEM AHAMED
SRI.CYRIAC TOM

RESPONDENTS:

- 1 THE ASST. REGISTRAR OF COMPANIES,
CENTRAL REGISTRATION CENTRE,
MINISTRY OF CORPORATE AFFAIRS,
THE INDIAN INSTITUTE OF CORPORATE AFFAIRS
(IICA), PLOT NO. 6,7,8, SECTOR 5,
IMT MANESAR, MANESAR, HARYANA, PIN-122 050.

- 2 UNION OF INDIA, REPRESENTED BY
ITS SECRETARY, MINISTRY OF CORPORATE
AFFAIRS, 'A' WING, SHASTRI BHAVAN,
RAJENDRA PRASAD ROAD, NEW DELHI-110 001.

BY ADV. SRI.P.VIJAYAKUMAR
BY ADV. P.R.AJITH KUMAR, CGC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 07.04.2021, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

[CR]

J U D G M E N T

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Dated this the 7th day of April, 2021

The petitioner has approached this Court seeking to set aside Ext.P15 rejection letter and to direct the 1st respondent to process Ext.P11 application for incorporation of LLP without raising any dispute on the proposed name “Reef Wellness and Excellence LLP”.

2. The petitioner would submit that he proposes to incorporate a Limited Liability Partnership (LLP) under the Limited Liability Partnership Act, for doing business in Recreation and Wellness Centres, in the name and style “Reef Wellness and Excellence LLP”. The petitioner therefore submitted Ext.P1 Form RUN-LLP for reservation of the name “Reef Center for Wellness and Excellence LLP”, under Rule 18(5) of the LLP Rules. The petitioner’s application was

approved as per Ext.P2 letter dated 22.05.2019, wherein it was stated that the mentioned name is made available for registration of the LLP for new incorporation.

3. On 23.01.2020, the petitioner filed Form FiLLiP for incorporation of the Limited Liability Partnership under the name 'Reef Centre for Wellness and Excellence LLP'. The 1st respondent—Assistant Registrar of Companies, as per Ext.P4, approved the proposed name of the LLP with the remark “No Resemblance found, TM Checked u/c (Under Class) 44,35,41 Name can be given”. However, the 1st respondent noted certain defects in the application.

4. The petitioner rectified the defects and resubmitted the FiLLiP form on 05.02.2020. However, the resubmitted FiLLiP Form was once again sent back by e-mail dated 05.02.2020 stating that the NOC should be provided by the same person in whose name the utility bill was furnished. The petitioner submitted Ext.P6 explanation clarifying that NOC signed by the building owner was already given and telephone bill in the name of Reef Wellness and Excellence was also

submitted.

5. The 1st respondent again rejected Ext.P3 application on 18.02.2020 as per Ext.P7, holding that in the case of proprietorship, NOC should be given on the letterhead duly stamped and signed and further that Business Visa of one of the partners, who is a resident of India, also has to be submitted. The petitioner submitted reply to Ext.P7. As the 1st respondent did not proceed further, the petitioner filed Ext.P8 complaint dated 04.03.2020 to the Escalation Authority under the Ministry of Corporate Affairs.

6. The Escalation Authority, without considering the contentions in Ext.P8, rejected the complaint on 04.03.2020 as per Ext.P9 merely stating that the queries are validly raised. The petitioner again represented before the Escalation Authority that the 1st respondent cannot demand an OCI Card from an Indian Passport holder. Thereupon, by Ext.P10 dated 04.03.2020, the Escalation Authority required the petitioner to file a fresh Form FiLLiP as the maximum number of re-submissions was already over.

7. The petitioner thereupon filed fresh Form FiLLiP dated 12.06.2020 as per Ext.P11. The petitioner was then served with Ext.P12 mail dated 14.06.2020 informing that “proposed names include the word REEF is TM under Class 5”. Hence, it cannot be considered as per Section 15(2) of the Limited Liability Partnership Act, 2008. The petitioner submitted Ext.P13 clarification stating that Class 5 deals with Pharmaceuticals and related products whereas service being provided by the petitioner falls under Class 35.

8. The petitioner as per Ext.P14 mail dated 22.06.2020 was again requested to re-submit, with the remark that Subscriber sheet submitted in FiLLiP is too old. The petitioner accordingly resubmitted the Form. The petitioner’s application was again rejected as per Ext.P15 dated 09.07.2020, this time stating that the proposed name REEF has an existing trademark under Class 5. The petitioner submitted Ext.P18 representation stating that he had reserved the name earlier. Though the period of such reservation was over, in the subsequent communications the petitioner was

informed that the name is available and no objections were raised. Furthermore the already existing trade mark with the word REEF is under Class 5 whereas the petitioner's service falls under Class 35. The said representation did not yield any positive results. Hence this writ petition.

9. Heard.

10. The facts of the case disclose a sorry picture of what can be described as a 'system generated harassment' aggravated by non application of mind by officials who leave everything to be dealt with by the system, thereby putting the common man to an agonising phase of suffering, where he is condemned to deal with faceless men and machines.

11. With the intention of starting an LLP for providing Wellness services, the petitioner filed an application to reserve the name REEF Wellness and Excellence LLP invoking Rule 18(4) and (5) of the Limited Liability Partnership Rules, 2009. After processing the said application the petitioner was informed as per Ext.P2 dated 22.05.2019 that the name is available for registration and this is valid for three

months. The petitioner could apply for incorporation of partnership only after three months, as per Ext.P3 dated 23.01.2020.

12. The petitioner was served with Ext.P4, a system generated mail. By Ext.P4, the petitioner was informed that the name can be given. However, the mail noted following defects in the application:

“1. Address should be visible in the provided utility bill and it should match with Fillip Note-For R/Office address proof provide utility bill (electricity/gas/water/mobile/telephone bill) which should not be older than 2 months. (Private sector bills, Tax invoices, receipts, bank statements, Property tax receipts or revenue department receipts are not considerable for R/O proof).

2. Furnish address proof (utility bill/bank statement with banking transactions) not older than two months of Kunhi Muhammed.

3. Mention Full name of PADINGHARAN ACHIYAVEEDU MOHAMMED FASAL in the subscriber sheet.

4. As the subscriber sheet is signed in INDIA furnish PAN/PAN undertaking, Business visa/OCI card/PIO with proof of arrival i.e. small stamps of PADINGHARAN ACHIYAVEEDU MOHAMMED FASAL”

13. The petitioner was required to re-submit the Form by 07.02.2020, failing which the Form should be treated as invalid. The petitioner was warned that it is a system generated mail and the petitioner should not reply to the mail. The petitioner states that he had given KSEB electricity bill as a Utility Bill. The bill format of KSEB did not contain the complete address of the consumer. Therefore the petitioner obtained a BSNL telephone connection in the name of the proposed LLP and substituted the same as Utility Bill. But this time the respondent came up with another defect as per Ext.P5, namely :

“NOC for registered office is to be provided by the same person or whose name utility bill is furnished if utility bill is on the name of partnership firm than furnished proper deed and name of signing partner should be reflect in the deed.”

The petitioner was again cautioned that it is a system generated mail and the petitioner shall not reply to the mail. The petitioner had already submitted NOC of the building owner. Copy of Partnership Deed cannot be given, as there is

no existing partnership in the name of the proposed LLP. The petitioner therefore submitted Ext.P6 by way of explanation.

14. Thereafter, the petitioner was served with Ext.P7 rejecting the application for the reason that in case of proprietorship Firm, NOC should be given on letterhead duly stamped and signed and that Business Visa/OCI card/PIO of one of the proposed partners who is a non-resident Indian, should be furnished. In fact no one has a case that there is a proprietary Firm. The non-resident partner being Indian Citizen, there is no justification for asking for his Business Visa, OCI card or PIO.

15. Therefore, the petitioner approached the Escalation Authority under the Ministry of Corporate Affairs as per Ext.P8 and explained the situation. Ext.P8 was replied by the Authority holding that “the raised queries are valid and the stakeholder is requested to comply accordingly”. The Authority was again addressed specifically asking as to how OCI card or Business Visa can be demanded from an Indian Passport holder. To the said mail, Ext.P10 reply was received

to the effect that demand for Business Visa/OCI card was made “inadvertently and can be disregarded”. But, Ext.P10 required the petitioner to file a fresh Form with a clarification letter along with a copy of Ext.P10.

16. The petitioner thereupon filed fresh Form FiLLiP as per Ext.P11. To the surprise and predicament of the petitioner, as per Ext.P12, the respondents informed that the proposed name of the LLP include the word “REEF” which is a TM under Class 5 and hence it cannot be considered. The petitioner was also required to submit new Subscriber Sheet as the one submitted is “too old” and to furnish “passport with latest arrival stamp” of the non-resident partner.

17. The petitioner thereupon submitted a fresh FiLLiP Form for the third time, as per Ext.P13, clarifying that the word REEF is a TM given to a Class 5 category whereas the petitioner is in the business of service falling under Class 35. Thereafter, as per Ext.P14, the petitioner was again required to furnish a fresh subscriber sheet. There was no mention of any difficulty or objection as to name of the LLP, in Ext.P14.

The petitioner furnished fresh subscriber sheet as directed. However, the petitioner was served with Ext.P15 rejection letter stating that the proposed name include the word "REEF" which is an existing trade mark under Class 05.

18. From the facts disclosed as above, it is clear that the petitioner had applied for reserving the name REEF Wellness and Excellence LLP and the name was reserved for the petitioner for three months. True, the petitioner could not make an application for registration of LLP within three months. However, the petitioner submitted an application for incorporation of LLP in the said name as per Ext.P3 on 23.01.2020. Defects in the application were noted by the respondents in instalments as per Exts. P4, P5, P7, P9 and P10 and the petitioner was made to file fresh applications time and again.

19. In none of the afore mails, the respondents did point out that the proposed name of the LLP is not available. Furthermore, in Ext.P4 mail pointing out certain defects, the respondents even stated that the proposed name can be

given to the petitioner. Thereafter, the respondents issued Ext.P14 pointing out only one defect relating to Subscribers Sheet. Still the respondents finally rejected the application as per Ext.P15 for the reason that the proposed name of LLP cannot be allowed as it is an existing trade mark.

20. Now let us consider whether the respondents are justified in their Ext.P15 rejection. Section 15 of the LLP Act, 2008 reads as follows:

“(1) Every limited liability partnership shall have either the words “limited liability partnership” or the acronym “LLP” as the last words of its name.

(2) No limited liability partnership shall be registered by a name which, in the opinion of the Central Government is –

(a) undesirable; or

(b) identical or too nearly resembles to that of any other partnership firm or limited liability partnership or body corporate or a registered trade mark, or a trade mark which is the subject matter of an application for registration of any other person under the Trade Mark Act, 1999 (47 of 1999)”

It is therefore evident that an LLP with identical or resembling name is not permitted in view of the regulations made in the Trade Marks Act, 1999. Section 28 of the Trade Marks Act,

1999 reads as follows:

“28 : Rights conferred by registration-

(1) Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the registered proprietor of the trade mark the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark in the manner provided by this Act.”

It is clear from Section 28 that exclusive right to use a trade mark is given to a registered proprietor of a trade mark only in relation to the goods or services in respect of which the trade mark is registered.

21. It is evident from Ext.P16 that the word REEF is now included in the names of entities dealing in Class 05 goods in Fourth Schedule to Trade Marks Rules, 2002, namely, Pharmaceutical, veterinary and sanitary preparations, dietetic substances adapted for medical use, food for babies, plasters, materials for dressings; materials for stopping teeth, dental wax; disinfectants, preparation for destroying vermin; fungicides, herbicides. The petitioner proposes to deal in

services and his activity may fall under Classes 44, 35 or 41 as is evident from Ext.P4 communication of the respondents.

22. The Hon'ble Apex Court considered the issue of registering similar trade name by different entities for difference classes of products, in ***Nandhini Delux v. Karnataka Co-operative Milk Producers Federation Limited*** [AIR 2018 SC 3516]. In the said case, the appellant before the Supreme Court was operating a restaurant under the trade mark NANDHINI and the respondent was selling milk and milk products under the mark NANDINI. The Hon'ble Apex Court held that as the products of the appellant and respondents fall in different classes, there is no question of confusion or deception in the matter of Trade Mark. The Hon'ble Apex Court held that if a trader or manufacturer actually trades in or manufactures only one or some of the articles coming under a broad classification and such trader or manufacturer has no bonafide intention to trade in or manufacture other goods or articles which also fall under the said broad classification, such trader or manufacturer should

not be permitted to enjoy monopoly in respect of all the articles which may come under the broad classification and by that process preclude the other traders or manufacturers from getting registration of separate and distinct goods which may also be grouped under the broad classification.

23. The case of the petitioner in fact stands on a stronger footing. The registration of word mark already granted by the respondents are “REEFLEC’, REEF”, “REEFIT FORTE”, “REEFER (HEMATANIC)” which are all for products falling under Class 05. The petitioner seeks the name “Reef Wellness and Excellence LLP”, not for any product but for a service, and that too which does not fall under Class 05. The name proposed by the petitioner cannot be said to be identical or deceptively similar. When the petitioner sought for a word name for a service which word name is not identical or deceptively similar to other word names already registered for a different class of products, the respondents are not justified in rejecting the application of the petitioner for the reason that the proposed name include the work “REEF” which is existing

trade mark under Class 05.

In the circumstances, the respondents are not justified in declining incorporation of LLP as sought for by the petitioner on the ground of similarity of name. The writ petition is therefore allowed. Ext.P15 is set aside. The 1st respondent is directed to incorporate the LLP without raising any dispute on the name proposed by the petitioner.

Sd/-
N. NAGARESH, JUDGE

aks/16.04.2021

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 COPY OF THE CHALAN SRN M10527299 DATED 21/05/2019.
- EXHIBIT P2 COPY OF THE LETTER DATED 22 MAY 2019 APPROVING THE NAME REEF CENTER FOR WELLNESS AND EXCELLENCE LLP.
- EXHIBIT P3 COPY OF THE FORM FILLIP WITH SRN M13737069 DATED 23/01/2020.
- EXHIBIT P4 COPY OF THE EMAIL COMMUNICATION OF THE 1ST RESPONDENT DATED 23/01/2020.
- EXHIBIT P5 COPY OF THE EMAIL COMMUNICATION DATED 05/02/2020 FROM THE 1ST RESPONDENT'S OFFICE.
- EXHIBIT P6 COPY OF EXPLANATION GIVEN BY PETITIONER TO RESUBMISSION REMARKS DATED 05/02/2020.
- EXHIBIT P7 COPY OF THE COMMUNICATION DATED 18/02/2020 REJECTING THE EXT. P3 APPLICATION.
- EXHIBIT P8 COPY OF THE EMAIL DATED 04/03/2020 SENT BY THE PETITIONER'S CHARTERED ACCOUNTANT TO THE ESCALATION AUTHORITY.
- EXHIBIT P9 COPY OF THE EMAIL RESPONSE DATED 04/03/2020 FROM THE OFFICE OF THE 1ST RESPONDENT.
- EXHIBIT P10 COPY OF THE EMAIL DATED 04/03/2020 SENT BY THE PETITIONER'S CHARTERED ACCOUNTANT TO THE 1ST RESPONDENT ALONG WITH REPLY.
- EXHIBIT P11 COPY OF THE FORM FILLIP WITH SRN M14718829 DATED 12/06/2020 WITH ITS CHALLAN.

- EXHIBIT P12 COPY OF THE EMAIL COMMUNICATION DATED 14/06/2020 FROM THE 1ST RESPONDENT.
- EXHIBIT P13 COPY OF THE FILLIP FORM RESUBMITTED ON 20/06/2020.
- EXHIBIT P14 COPY OF THE EMAIL DATED 22/06/2020 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P15 COPY OF THE LETTER DATED 09/07/2020 REJECTING EXT. P11 APPLICATION.
- EXHIBIT P16 COPY OF THE SCREEN SHOT FROM THE TRADEMARKS REGISTRY SHOWING REGISTRATION OF TRADEMARK CONTAINING REEF FOR DIFFERENT CLASSES.
- EXHIBIT P17 COPY OF THE RULE 8A OF THE COMPANIES INCORPORATION RULES 2014.
- EXHIBIT P18 COPY OF THE REPRESENTATION DATED 07/08/2020.
- EXHIBIT P19 LIST OF TRADEMARK CLASSES AS AVAILABLE ON THE TRADEMARK PORTAL.

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