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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 7th August 2019

+ W.P.(C) 5105/2017

ANURAG MISHRA

..... Petitioner

Through: Mr. Abhishek Sharma & Mr. Ajay K.
Tyagi, Advs.

Versus

REGISTRAR OF COMPANIES

..... Respondent

Through: Mr. Anil Soni, CGSC

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

D.N. PATEL, CHIEF JUSTICE (ORAL)

1. This writ petition has been preferred with the following prayers:

“a) Issue a writ in the nature of certiorari or any other appropriate writ/writs, order/orders quashing email/order dated 25.04.2017, 02.05.2017, 03.05.2017 and 11.05.2017; and

b) issue a writ in the nature of mandamus or any other appropriate writ/writs, order/orders directing the respondent to register the proposed "PANDIT ANURAG MISHRA (OPC) PRIVATE LIMITED" as per rules; and

c) issue appropriate writ/writs, order/orders declaring Rule 8 (2) (a) (ii) of The Companies (Incorporation) Rules, 2014 to be ultra vires of Articles 14 and 19(1)(g) of the Constitution of India; and/or

d) pass such other/further direction(s) as this Hon'ble Court may deem fit and proper in the interest of justice."

2. Counsel appearing for the petitioner submits that the petitioner applied for registration of a one person company in the name and style of "**Pandit Anurag Mishra (OPC) Private Limited**". The application for registration of the company is made by way of e-application. It is submitted that the respondent has outsourced the legal functions to certain companies and without giving any opportunity of being heard, they are refusing the registration for no valid reasons. It is further submitted by counsel for the petitioner that the respondent had refused the application for registration of the company of the petitioner under the pretext that the word "**Pandit**" is a registered trademark. Even the letter of refusal was without any signature.

3. It is further submitted by counsel for the petitioner that a generic word like "**Pandit**" cannot be trademarked and this aspect of the matter has not been properly appreciated by the respondent. It is further submitted by counsel for the petitioner that there are as many as 116 companies which are registered having a word "**Pandit**" in the name of the company (one such list is given at page 20 of the memo of this writ petition) but the respondent had refused the registration of only the petitioner's company in the name and style of "**Pandit Anurag Mishra (OPC) Private Limited**".

4. It is further submitted by counsel for the petitioner that the discretion given to the Registrar of Companies (ROC) for registration of a company is extremely wide, and is not regulated by any guidelines or regulations and therefore for few companies, registration is granted, but for few unfortunates, such registration is denied. Thus, unbridled powers are given to the Registrar of Companies (ROC) without any guidelines or regulations

which lead to discrimination. The Companies (Incorporation) Rules, 2014, especially Rule 8(2)(a)(ii) deals with the registration of companies, specifically regarding registration of names of companies sought to be registered. Counsel for the petitioner submits that for no justifiable reasons, the Registrar of Companies (ROC) has rejected the registration of the petitioner company and submits that there must be guidelines/regulations in place, governing the Registrar of Companies (ROC) for registration of companies.

5. It is further submitted by counsel for the petitioner that in fact there is no registered trademark by any person for the word “**Pandit**” and moreover ‘generic terms’ cannot be registered as a trademark. It is submitted by the petitioner that there are only two logos/pictorial marks having the word “**Pandit**”, both registered under Class No.35, one bearing Application No.2150205 regarding ‘advertising, business, management, business administration and office functions’ and the other with Application No.2098061 regarding ‘advertising, marketing, sales, promotion and distribution of Agarbattis’, which are reproduced at page 8 of the memo of this writ petition. Thus, there is no registered trademark by anyone having a generic word “**Pandit**”.

6. Counsel for the petitioner submitted that there are several complaints against the working style and usage of powers by the Registrar of Companies (ROC). Companies, such as that of the petitioner, are normally in hurry to get their business up and running, and have re-applied with different name after rejection of their previous registration application. The petitioner too, had to re-apply with another name, which has been registered. The previous application of this petitioner was rejected due to abuse of the

discretionary powers of the Registrar of Companies (ROC) and a fresh application was preferred by giving another name of the company.

7. Thus, the counsel for the petitioner submitted that rejection by the Registrar of Companies (ROC) of registration of the name of petitioner's company in the name and style of "**Pandit Anurag Mishra (OPC) Private Limited**" is against the provisions of law and submits that the respondent may be directed by this Court to register the name of the petitioner company as "**Pandit Anurag Mishra (OPC) Private Limited**" only.

8. We have heard the counsel appearing for the respondent who has submitted that the word "**Pandit**" is registered trademark and therefore the name of the petitioner company ought to have been changed because word "**Pandit**" is sought to be used by this petitioner. It is further submitted by the counsel for the respondent that now in different name, petitioner's company has already been registered and therefore this petition does not survive. Moreover, it is submitted that the name of the petitioner/applicant was only 'Anurag Mishra' according to his PAN card and Aadhar card, thus 'Pandit Anurag Mishra' is not even his actual name.

9. Having heard both sides and looking into the facts and circumstances of the case, it appears that the petitioner wants its company to be registered in the name and style of "**Pandit Anurag Mishra (OPC) Private Limited**" and therefore an application was preferred to the respondent, in accordance with law with proper fees etc. There is no procedural error pointed out by the respondent in the petitioner's preferred application. The Registrar of Companies (ROC) has rejected the petitioner's application only for the reason that the word "**Pandit**" is a registered trademark. Looking at the

arguments canvassed by the counsels for both sides, it is not disputed that there is no such registered trademark with the word “**Pandit**”. This aspect of the matter has not been properly appreciated by the respondent - Registrar of Companies (ROC).

10. Moreover, there cannot be registration for a generic word such as “**Pandit**” as trademark. In fact, as submitted by the petitioner, only two logos/pictorial marks have been registered as trademark, as mentioned aforesaid, having the word “**Pandit**”. Merely because these logos/pictorial marks have been registered as a trademark, Registrar of Companies (ROC) cannot reject the name of the petitioner company intended to be registered as “**Pandit Anurag Mishra (OPC) Private Limited**”.

11. Powers given to Registrar of Companies (ROC) for registration or otherwise, of a company, are coupled with duty to act fairly without any discrimination.

12. It ought to be kept in mind by Registrar of Companies (ROC) that whenever they are rejecting the registration, especially finding fault in the name of the company, the applicant ought be heard so that the points which are referred to in this writ petition could have been pointed out to the Registrar of Companies (ROC), especially against grounds, like already existing 116 registered companies having word “**Pandit**” in their company name. The greater the discretion given to the Registrar of Companies (ROC), greater is the responsibility of the Registrar of Companies (ROC).

13. In view of the aforesaid facts and reasons, the action of the respondent in not registering the name of the petitioner company in the name and style of “**Pandit Anurag Mishra (OPC) Private Limited**” is hereby quashed and

set aside. In the light of the aforesaid observations, Registrar of Companies (ROC) is directed to pass fresh order, after giving due consideration to all the contentions raised by the petitioner in the instant writ petition, if at all, this petitioner wants to register his company in the name and style of "**Pandit Anurag Mishra (OPC) Private Limited**" only.

14. With the aforesaid observation, this writ petition stands disposed of.

CM APPL. 21842/2017 (Stay)

15. In view of the order passed in W.P.(C) 5105/2017, this application also stands disposed of.

CHIEF JUSTICE

C.HARI SHANKAR, J

AUGUST 07, 2019
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