

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.11.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.Nos.15553 & 15557/2020
& WMP.Nos.19412 & 19415/2020

V.Venkata Sivakumar . Petitioner in both WPs

Versus

- 1.Institute of Cost Accountants of India
represented by the Secretary,
No.12, Suddar Street
Kolkatta 700 016.
- 2.Union of India
Ministry of Corporate Affairs
represented by Joint Secretary
5th Floor, A-Wing, Sastri Bhavan
Dr.Rajendra Prasad Road
New Delhi 110 001.
- 3.Institute of Chartered Accountants of India
represented by the Secretary
ICAI Bhawan, Indraprastha Marg
Post Box 7100, New Delhi 110 002.
- 4.Mr.Atul Gupta
President of ICAI
ICAI Bhawan, Indraprastha Marg
Post Box 7100, New Delhi 110 002.

... Respondents
in both WPs

Prayer in WP.;No.15553/2020:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the 3rd and 4th respondents to perform their duty to protect the interest of the profession by initiating appropriate civil and criminal proceedings against the 1st respondent as provided under Section 15A[3] and 24A of the Chartered Accountants Act, 1949, as amended for misrepresenting the general public and students willfully by using the acronym ICAI which is owned and registered in the

name of the 3rd respondent under the Trade Marks Act, 1999.
Prayer in WP.;No.15557/2020:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the 2nd respondent to perform its duties as a regulator of the 1st and 3rd respondents impartially and in accordance with law by directing the 1st respondent to use the acronym ICAOI complying strictly with Sec.2[2] of the Cost and Works Accountants Act, 1959, and desist from encroaching into the domain earmarked for the members of the 3rd respondent.

For Petitioner : Mr.V.Venkata Sivakumar
Party-in-person

COMMON ORDER

[Order of the Court was made by M.SATHYANARAYANAN]

- (1)Both the writ petitions are taken up together and are disposed of by this common order as the issue to be decided, is one and the same.
- (2)The petitioner/party-in-person, on an earlier occasion, filed WP.No.30203 of 2016 against the very same respondents, praying for issuance of a writ of mandamus, directing the 1st respondent, viz., the Institute of Cost Accountants of India, Kolkatta, to comply with Section 2[2] of the Cost and Works Accounts Act, 1959, as amended and desist from encroaching into the domains earmarked for the 3rd respondent [Chartered Accountants] and further direct the 2nd respondents, viz., Union of India, Ministry of Corporate Affairs, New Delhi-1, to ensure that the Acronym ICAOI be used in stead of the Acronym ICAI which belongs to the 3rd respondent [Chartered Accountant] as per the decisions of the Hon'ble Supreme Court in Sathyam Infoway Vs. Sifynet Solutions Private Limited.
- (3)The writ petition was entertained and it was dismissed on 20.12.2018 as not maintainable. It is relevant to extract paragraphs No.18, 19 and 22 of the said order:-

'18.Hence, from the above stand taken by the first respondent, there can be no difficulty in holding that till the name of the first respondent is changed as proposed by them, as stated supra, if they continue to use the acronym ''ICAI'' and if the third respondent is aggrieved against such usage in view of the registration of such trademark by the 3rd respondent in their favour as discussed supra, certainly, it is for the 3rd respondent to initiate appropriate legal action before

the appropriate forum by filing appropriate application under the Trademarks Act. Certainly the 3rd respondent's support to the petitioner in this proceedings cannot be equated with such appropriate proceedings under the Trademarks Act. Under such circumstances, certainly the present writ petition cannot be maintained that too, at the instance of the petitioner, who is only a member of the 3rd respondent more particularly, when the 3rd respondent has not chosen to challenge such alleged infringement before the competent Court of law so far.

19. Needless to state that the Trademark right is a proprietary right and therefore, only such owner of the Trademark, if aggrieved against any infringement of such trademark, has locus standi and consequently, a cause of action to initiate appropriate proceedings before the appropriate forum against such infringement and to seek the appropriate relief thereunder. Such proprietary right of trademark is a right in personam and not a right in rem. Therefore, the petitioner, though a member of the 3rd respondent, cannot be called as an aggrieved person, even to initiate the proceedings before such appropriate forum against the alleged infringement.

...

22. It is true that the learned counsel appearing for the 1st respondent made a submission before the learned Judge, who previously heard this matter on 13.07.2017, that the 1st respondent in principle is agreeing with the request made by the petitioner and would also consider the representation made by the 3rd respondent with regard to the change in the nomenclature. However, when the counter affidavit is filed before this Court by the 1st respondent, it is categorically stated therein that the said submission made by their counsel was without any instruction from the 1st respondent in writing and that the 1st respondent had never consented or in principle agreed to the proposal of the petitioner. In any event, as this Court has come to the conclusion that this is not the matter to be considered in a writ petition and that the parties have to resort to the remedies available only before the appropriate forum under the Trademarks

Act, the above concession shown by the learned counsel for the 1st respondent before this Court on the previous occasion, that too, without the consent of the 1st respondent, cannot be taken advantage of by the petitioner or the 3rd respondent to sustain the present writ petition. Therefore, I reject the contention of the petitioner as well as the 3rd respondent on this aspect as well.'

(4) The petitioner/party-in-person, aggrieved by the dismissal of the writ petition as not maintainable, filed WA.No.696 of 2018 and it was entertained. The Hon'ble First Bench of this Court vide judgment dated 20.02.2018, has considered the materials and on appreciation of the rival submissions, in paragraph No.11, held that 'Therefore, we concur fully with the findings of the learned Judge in the impugned order that the appellant/petitioner does not have locus standi and that the writ petition was not maintainable, at his instance.' In paragraph No.12 of the said judgment, the Division Bench has also taken note of the relevant statutory provisions and held that 'in these circumstances, no case is made out for the exercise of the discretionary jurisdiction on account of the use of acronym ICAI. Such question would have to be decided in appropriate legal proceedings initiated by the 3rd respondent.' During the course of arguments in the writ appeal, the petitioner/party-in-person had also invited the attention of the Court to the Letter dated 17.06.2020 sent by the Ministry of Corporate Affairs wherein, it has advised the 1st respondent that it is not desirable for the 1st respondent to use the Acronym ICAI and by a subsequent Letter dated 26.06.2020, the said Letter was modified and in paragraph No.7, which dealt with the non-desirability of using of Acronym ICAI, was withdrawn by the Ministry of Corporate Affairs. The petitioner/party-in-person, by placing reliance upon those letters, prays for appropriate orders and after considering the same, the Division Bench concluded in paragraph No.13 that 'this correspondence was exchanged after the writ petition was filed and in the light of the conclusion that we have set out above, we do not propose to issue any such direction.'

(5) Now, the petitioner/party-in-person came forward to file these writ petitions, by drawing the attention of this Court to the representation dated 25.06.2020 submitted by the 1st respondent to the 2nd respondent and would point out that despite such a representation, the 2nd respondent is not at all performing the duties properly.

(6) In the considered opinion of the Court, under the guise of filing these two writ petitions, the petitioner/party-in-person wants to re-argue the entire issue which was the subject matter of the writ petition in WP.No.30203 of 2016 as well as WA.No.696 of 2018, which came to be decided against the petitioner/party-in-person.

(7)The petitioner/party-in-person, under the garb of this litigation, wants to reopen the issue which has already been concluded in the order passed in WP.No.30203 of 2016 which came to be confirmed by the judgment in WA.No.696 of 2018 and as such, this Court is unable to come to the aid of the petitioner/party-in-person. If the petitioner/party-in-person is so advised and if it is available to him under law, he is at liberty to invoke the provisions of the Right to Information Act, before the concerned Public Information Authority to know about the fate/stage of the representation dated 25.06.2020 submitted by the 1st respondent.

(8)In the result, the writ petitions stand dismissed at the admission stage itself, subject to the above observations. No costs. Consequently, the connected miscellaneous petitions are closed.

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Assistant Registrar(CS)

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Sub Assistant Registrar

To

- 1.The Secretary
Institute of Cost Accountants of India
No.12, Suddar Street
Kolkatta 700 016.
- 2.The Joint Secretary
Union of India
Ministry of Corporate Affairs
5th Floor, A-Wing, Sastri Bhavan
Dr.Rajendra Prasad Road
New Delhi 110 001.
- 3.The Secretary
Institute of Chartered Accountants of India
ICAI Bhawan, Indraprastha Marg
Post Box 7100, New Delhi 110 002.
4. President of ICAI
ICAI Bhawan, Indraprastha Marg
Post Box 7100, New Delhi 110 002.

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SSD (CO)
VS 19.12.2020