

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE VIVEK RUSIA**

WRIT PETITION No. 93 of 2024

BETWEEN:-

INBREW BEVERAGES PRIVATE LIMITED THROUGH ITS AUTHORISED SIGNATORY MS RUCHI NEGI A COMPANY INCORPORATED UNDER THE COMPANIES ACT 1956 REGD OFFICE 406 KUSAL BAZAR 32-33 NEHRU PLACE SOUTH DELHI NEW DELHI 110019 (DELHI)

.....PETITIONER

(BY SHRI PIYUSH MATHUR, SENIOR ADVOCATE ASSISTED BY SHRI MAYUR SINGH, ADVOCATE)

AND

**EXCISE COMMISSIONER MADHYA PRADESH COMPOSITE REVENUE
1. BUILDING FOURTH FLOOR, NEEDAM ROAD, NAKA CHANDRAWADNI, LASHKAR, GWALIOR 474009 (MADHYA PRADESH)**

**DEPUTY COMMISSIONER OF EXCISE MADHYA PRADESH
2. COMPOSITE REVENUE BUILDING FOURTH FLOOR, NEEDAM ROAD, NAKA CHANDRAWADNI, LASHKAR GWALIOR (MADHYA PRADESH)**

3. REGENT BEERS AND WINES LTD. MAKSI DIST. SHAJAPUR (MADHYA PRADESH)

.....RESPONDENTS

***(STATE BY MS. ARCHANA KHER, ADDITIONAL ADOVCATE GENERAL)
(RESPONDENT NO.3 BY SHRI SATISH CHANDRA BAGADIYA, SENIOR ADVOCATE ASSISTED BY SHRI KARPE PRAKHAR MOHAN & SHRI PANKAJ CHANDRA BAGADIYA, ADVOCATES)***

Reserved on : 10th January, 2024

Delivered on : 22nd January, 2024

This petition having been heard and reserved for order coming on for pronouncement this day, the court pronounced the following:

O R D E R

The petitioner has filed the present petition seeking quashment

of the order dated 03.10.2023 passed by the Excise Commissioner under Rule 12 of the Madhya Pradesh Beer & Wine Rules made under Section 62 of the M.P. Excise Act, 1915.

02. The petitioner is a private limited company having its registered office at Nehru Place, South Delhi, New Delhi and is engaged in the business of manufacture and sale of beer in the name of 'THUNDERBOLT / BOLT' (registered trademark). Initially, Mount Shivalik Breweries Limited was incorporated on 31.10.1972, thereafter, it was changed to Molson Coors India Private Limited and now it is known as Inbrew Beverages Private Limited.

03. Respondent No.3 / Regent Beers & Wine Limited is also a private limited company registered under the provisions of the Companies Act, 1956 and is engaged in the business of manufacturing and selling beer from its manufactory in Maksi, District – Shajapur.

04. The petitioner, through its predecessors has been brewing, bottling, marketing and selling beer across India under the trade mark 'THUNDERBOLT / BOLT' registered under the Trade Marks Act, 1999. The petitioner is claiming the acquisition of tremendous goodwill and reputation amongst the consumers at large due to the quality of the beer. Therefore, the petitioner is claiming the exclusive right to object to any unauthorized use of trade mark 'THUNDERBOLT / BOLT'. The petitioner is also selling different types of liquors in the name of 'THUNDERBOLT / BOLT', 'THUNDERBOLT SUPER STRONG BEER', 'THUNDERBOLT AQUA' & 'THUNDERBOLT PREMIUM STRONG BEER'.

05. Respondent No.1 is the Excise Commissioner of the Department of Excise (M.P.), a competent authority under Madhya Pradesh Foreign Liquor Rules, 1996 & M.P. Beer & Wine Rules for registration of labels

for the purpose of manufacture, transportation, sale, export and import of beer and wine in the State of Madhya Pradesh. The Beer Manufacturing Unit in Madhya Pradesh is mandatorily required registration of its label/trade mark of beer by respondent No.1 under Rule 12 of M.P. Beer & Wine Rules, in which the provisions of M.P. Foreign Liquor Rules have been made applicable *mutatis mutandis*.

06. Respondent No.3 applied for registration of a label in the name of 'BOLT SUPER STRONG BEER' before respondent No.1. Respondent No.2 issued a public notice dated 24.05.2023 through the website of M.P. Excise Department inviting objections in respect of registration of the aforesaid label.

07. The petitioner submitted an objection in respect of its label and style of 'THUDERBOLT SHINE' claiming to be a similar registered trade mark of the petitioner.

08. Vide the impugned order dated 03.10.2023, the Excise Commissioner turned down the objection and registered a label 'BOLT SUPER STRONG BEER' in favour of respondent No.3. Hence, the present petition is before this Court.

09. Shri Piyush Mathur, learned Senior Counsel for the petitioner submits that sub-rule (4) of Rule 9 of M.P. Foreign Liquor Rules says that on receipt of an application for registration of label/labels, the Excise Commissioner conducts an enquiry and if he is satisfied that the pre-requisites specified in sub-rule (3) have been complied with and there is no objection to such registration, he may register it. If the objection is submitted like in the present case, and the Commissioner finds that label/labels under registration bear similarity or resemblances to any prevalent label of any other manufactory then he shall refuse to register the same. The Excise Commissioner failed to examine the

registered trade mark of the petitioner, in which the predominant word is 'BOLT' with a lightening shine, respondent No.3 has no right to use the word 'BOLT' with the same lightening shine within the letter 'O'. Therefore, it is having similarity and resemblance with the trade mark/label of the petitioner for its product of beer having goodwill in the market. The matter is liable to be remanded back to the Excise Commissioner to conduct a fresh enquiry and pass a reasoned order. In support of his contention, Shri Mathur, learned Senior Counsel has placed reliance upon a judgment delivered in the case of *Cox Distillery & Another v/s Mc Dowell & Company Limited, Madras reported in 2000 (1) M.P.L.J. 33*.

10. Ms Archana Kher, learned Additional Advocate General appearing for respondents No.1 & 2 / Excise Department refutes that there is no similarity and resemblance between the registered trade mark/label of petitioner as well as respondent No.3, which was registered by respondent No.1 on an application submitted by respondent No.3. The petitioner is using the complete word 'THUDERBOLT', whereas respondent No.3 is only using word 'BOLT'. The Commissioner has considered all the objections raised by the petitioner and rejected the same by a reasoned order. This registration of label is only for the purpose of purchasing and selling the product like wine and beer manufactured in Madhya Pradesh. The registration of the label includes various other legends and details of the product, in which the brand is one of them. The dispute between the parties is in respect of trade mark and copyright and is liable to be decided by the competent Civil Court.

11. Shri S.C. Bagadiya, learned Senior Counsel for respondent No.3 argues that the petitioner has already filed a civil suit under the

provisions of the Trade Marks Act, 1999 before the Commercial Court, Indore. The application under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure, 1908 has not been decided till date and if the petitioner succeeds in the aforesaid suit and the learned Court restrains the answering respondent to use BOLT, then the impugned order will automatically go. The issue, whether there is a deception, similarity or resemblance between two labels or trade marks that are liable to be decided in a civil suit on merit, by the learned Commercial Court, hence, this petition is not maintainable and is liable to be dismissed.

12. I have heard learned counsel for the parties at length and perused the record.

13. Admittedly, the petitioner does not have any manufactory as well as a bottling unit in the State of Madhya Pradesh. The petitioner is also not claiming any sale of its product in Madhya Pradesh. The petitioner has not applied for registration of label either under M.P. Beer & Wine Rules or under M.P. Foreign Liquor Rules.

14. Rule 3 of the M.P. Beer & Wine Rules mandates that a brewery or manufactory shall be constructed / or established only with the explicit permission of the State Government under these rules. Any person intending to construct and/or establish a brewery or manufactory shall apply to the State Government through the Excise Commissioner for required permission in Form B – 1. The provision of M.P. Foreign Liquor Rules has been made applicable for the registration and deregistration of labels for beer and wine under Rule 12 of M.P. Beer & Wine Rules. Under the aforesaid provisions, respondent No.3 applied for registration of the label.

15. Rule 9 of the M.P. Foreign Liquor Rules deals with the procedure for registration of labels, which says that no foreign liquor

shall be transported within, imported into, exported from and sold within Madhya Pradesh unless the following legends and details are printed on the labels pasted to the bottles of foreign liquor, therefore, the same labels are liable to be pasted on the beer also. Rule 9 of the M.P. Foreign Liquor Rules is reproduced below:-

“9. Registration of labels. - (1) No foreign liquor shall be transported within, imported into, exported from and sold within Madhya Pradesh unless the following legends and details are printed on the labels pasted to the bottles of foreign liquor:-

- (a) "Consumption of liquor is injurious to health".
- (b) "For sale in Madhya Pradesh only" or "Duty not paid in Madhya Pradesh" as the case may be.
- (c) Batch No., Month and year of manufacture.
- (d) Name and place of distillery, manufactory or bottlery.
- (e) Alcoholic contents and proof strength.
- (f) Brand with contents.
- (g) Registration No. of the brand/label.
- (h) Minimum selling price as directed by the Excise Commissioner.
- (i) “Best within six months form the month of manufacture” on beer bottles.
- (j) 'Bottled in FL-9/FL9-A”
- (k) Other information as directed by the Excise Commissioner.

(2) Only such bottles or cans of foreign liquor, with labels showing legends/details as specified in sub-rule (1) duly registered with the Excise Commissioner in accordance with sub-rules (3) and (4) may be sold in, transported within, imported into, or exported from Madhya Pradesh :

Provided that the labels manufactured by any bottling licensee of Madhya Pradesh that have been approved by the Excise Commissioner before the commencement of these rules, shall be deemed to have been duly registered under sub-rules (3) and (4) :

Provided further that the labels registered for each manufactory or the labels approved by the Excise Commissioner before the commencement of these rules, which shall be deemed to have been duly registered under sub-rules (3) and (4) shall be compulsorily renewed every year. Annual renewal fees for each label/labels shall be such as may be prescribed by the

Government. No label/labels shall be used by any manufacturer unless it has been duly registered or renewed. If any label/labels are cancelled by the Excise Commissioner under rules (6) on the ground that such label/labels has caused or are causing losses to state revenue, then owner of such label/labels shall not be entitled for registration of any new label for a period of one year beginning with the date of cancellation of that label/labels.

(3) Licensee shall make an application to the Excise Commissioner for registration/renewal of label/labels alongwith the fee as prescribed for each kind of label. Three printed copies of the label to be registered and a challan in proof of payment of the prescribed registration fee, deposited in the treasury of the district shall be enclosed alongwith the application. The format of the label shall contain the details mentioned in sub-rule (1). An application for renewal of label/labels shall be filed alongwith the challan of prescribed fee before the end of current year mentioning details of prior registration and renewal.

(4) On receipt of application for Registration of label/labels, the Excise Commissioner, may make such enquiry as he deems proper, if he is satisfied that the pre-requisites specified in sub-rule (3) have been complied with and there is no objection to such registration, he may register it. No such label/ labels shall be registered which bears similarity or resemblance to any prevalent label of any other manufactory.

(5) A label as aforesaid in sub-rule (1) shall not have any figure, symbol, picture, insignia, etc. that looks obscence or that may offend the religious feelings of any particular class or hurts the sentiments or pride of any group, community or institution. In case of a dispute whether a label is obscence, offensive or hurtful, the matter shall be referred to the Excise Commissioner and his decision thereon shall be final and binding.

(6) The Excise Commissioner may order cancellation of registration of a label made under sub-rule (4), if liquor sold under any such registered label is found sub-standard or if he is convinced that the sales under that label are causing financial losses to the State Government or if he is satisfied that the label is obscene, outrageous or hurtful. He shall, however, before passing such an order, given the affected licensee an opportunity to make a representation against such proposed cancellation. Consequent upon such cancellation, the Excise Commissioner may also pass suitable order regarding disposal of the stocks of the cancelled label held by any licensee and the State

Government shall not be liable to pay any compensation to the licensee for any loss or damage. [The procedure regarding the disposal of stocks and for any loss or damage to the licensee in consequence of non renewal of labels, shall be the same as is applicable after cancellation of the label/labels.]”

16. Apart from other legends and details like warning, payment of duty, batch number, date, month and year of manufacturing name of distillery alcohol content, the registration number of the brand/label is required to be printed. As per sub-rule (2) of Rule 9 of M.P. Foreign Liquor Rules, only such bottles or cans of foreign liquor, with labels showing legends/details as specified in sub-rule (1) duly registered with the Excise Commissioner may be sold in, transported within, imported into, or exported from Madhya Pradesh. The rule mandates that on receipt of application, the Commissioner, upon his satisfaction shall register the pre-requisites specified in sub-rule (3). No such label/labels shall be registered that bears similarity or resemblance to any prevalent label of any other manufactory.

17. The petitioner has no manufactory in the State of Madhya Pradesh and has no registration of label/labels under Rule 12 of the M.P. Beer & Wine Rules by the Excise Commissioner. Therefore, only those manufactory whose labels are registered under Rule 12 of the M.P. Beer & Wine Rules or under Rule 9 of M.P. Foreign Liquor Rules, as the case may be, may raise objections in respect of registration of label/labels on the ground of similarity or resemblance and the Excise Commissioner is only required to consider objection from other manufactories who have a license to manufacture beer, wine or foreign liquor in Madhya Pradesh. The petitioner is not claiming itself to be a manufactory in the State of Madhya Pradesh and registration of its label/labels under the aforesaid two Rules. The petitioner has no locus to challenge the order.

18. So far as a dispute about the similarity or resemblance of registered trademarks between the petitioner and respondent is concerned, the petitioner has already filed a civil suit. Any findings given by this Court on this issue would come in the way of parties before the Commercial Court, hence, no case of interference with the impugned order in this Writ Petition is made out.

19. In view of the above, Writ Petition stands dismissed. However, dismissal of the present petition shall not come in the way of deciding the civil suit on merit which is under different provisions of law.

(VIVEK RUSIA)
J U D G E

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