

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated ^{1st} July, 2019

Broadcasting Petition No.7 of 2019
(With MA Nos.31 & 77 of 2019)

Veecon Media & Broadcasting Pvt. Ltd.

....Petitioner

Versus

Union of India

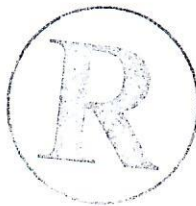
....Respondent

BEFORE:

HON'BLE MR.JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON
HON'BLE MR. A.K. BHARGAVA, MEMBER

For Petitioner : Mr. Amit Sibal, Sr. Advocate
Mr. Nitin Kala, Advocate
Mr. Jibran Tak, Advocate

For Respondent : Mr. Vikramjit Banerjee, Addl. Solicitor General
Ms. Payal Chandra, Advocate
Ms. Anindita Barman, Advocate
Mr. Ashim Sood, CGSC



By **S.K. Singh, Chairperson** – Learned counsel for both the parties have been heard on the merits of the petition for the purpose of final disposal.

2. The petitioner is a broadcaster of a “News & Current Affairs” television channel. At the time of filing of the petition on 21.01.2019, the name of petitioner’s television channel was “Harvest TV”. This name and logo originally belonged to another entity, “Harvest Television Network Pvt. Ltd.” and the petitioner was authorized to use the name and logo under a Memorandum of Understanding, claimed by Harvest Television Network to be effective for a period of two years w.e.f. 01.01.2016. The petitioner chose to apply for change of name and logo from “Harvest TV” to “Tiranga TV” through a formal application dated 26.09.2017 and also paid the requisite fees on subsequent dates.

3. By a letter dated 27.12.2017 the petitioner communicated to the respondent that it had deposited the remaining amount of Rs.75,000/- as processing fees for change of “name and logo”. It sought urgent permission for change so that it could launch a new channel after change of name and logo. It is petitioner’s case that suddenly it received a legal notice from M/s Harvest Network Pvt.Ltd. dated 15.01.2019 calling upon the petitioner to discontinue the use of any mark/logo bearing resemblance to “Harvest TV” otherwise legal action would follow against



the petitioner. It appears that soon thereafter this petition was filed with following prayers along with suitable interim relief:

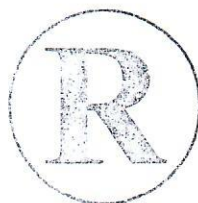
“(a) There that there is no requirement to seek approval and / or permission from the respondent for change of ‘Name & Logo’ of television channel, atleast for cases where there is no change in directorship and shareholding, and that the only action performed by the respondent is merely a ministerial / administrative act of taking on record the changed ‘Name & Logo’;

Without prejudice and in alternative;

(b) Direct the respondent to permit and / or take on record petitioner request for change in ‘Name & Logo’ of its television channel from ‘HARVEST TV’ to ‘TIRANGA TV’;

(c) Pass such order and further orders as may be deemed fit and proper in the facts and circumstances of the case.”

4. From the contents of the petition as well as the submissions, it is obvious that while on one hand seeking urgent permission for change of name and logo as applied for, on the ground that in the event name and logo of “Harvest TV” ceased to be available due to legal action, the petitioner cannot run its television channel without any name and logo; on the other hand petitioner also raised a larger issue that there was no requirement under any law or policy to seek approval and/or permission for change of “name and logo” and the respondent was obliged to accept such a request from a licensee by completing the ministerial task of taking on record the changed “name and logo”.



5. On 22.01.2019, while taking note of petitioner's case, one week's time was granted to learned counsel for the respondent for taking instructions. On 30.01.2019, as pressed on behalf of respondent, ten days' time was granted for filing reply and further ten days for filing rejoinder. On that date, petitioner brought to the notice of this Tribunal that while the petition was pending, on 29.01.2019 the respondent had issued a show-cause notice asking the petitioner to show-cause as to why action be not taken against the petitioner for unauthorized use of name and logo "Harvest TV" for its TV channel. This show-cause was on account of complaint by a person claiming to be the owner of the trade name "Harvest TV". While clarifying that the person claiming to be the owner of the trade name "Harvest TV" was free to seek remedy against the petitioner in accordance with law, this Tribunal observed that till further orders petitioner may continue to telecast its TV channel under the name and logo of "Harvest TV". Further developments were permitted to be brought on record and the petitioner did so by filing MA No.31 of 2019 on 07.02.2019. Anticipating an injunction from the civil court, petitioner pressed for an *ad interim ex parte* order/direction allowing it to change the name and logo of its TV channel from "Harvest TV" to "Tiranga TV".

6. On 12.02.2019 after hearing Mr.Amit Sibal, senior advocate for the petitioner and Mr.Vikramjit Banerjee, learned Additional Solicitor General on



behalf of the respondent, the matter was adjourned to 14.02.2019 because it was conveyed that the interim injunction petition was to be considered by the concerned District Court at the instance of "Harvest TV" on 16.02.2019. By a detailed order passed on 14.02.2019, this Tribunal considered all the relevant materials brought to its notice including an order passed by the respondent against the petitioner on 13.02.2019. Since the order of 14.02.2019 has a direct bearing on the further course of action chosen by the parties, it is deemed proper to extract that order hereinbelow:-

"Heard learned senior counsel for the petitioner and learned Additional Solicitor General for the respondent.

The petitioner is a service provider and it has approached this Tribunal only because petitioner's application for change of name and logo of its channel filed on 26.9.2017 remained pending for a long time and in the meanwhile it faced threat of injunction or possible injunction from a third entity to prohibit it from using the present name of "Harvest TV". Since the channel is a "News and Current Affairs" channel, on 30.1.2019 this Tribunal took note of the relevant facts and recorded that since its application is pending for quite a long time, we expect the respondent to take an appropriate decision in accordance with law at the earliest but till then petitioner cannot be prohibited from using the name "Harvest TV" by the respondent. It was made clear that third party could seek its remedy in respect of right to use the name and logo of "Harvest TV" in accordance with law.

An M.A. bearing No. 31 of 2019 was filed on 7.2.2019. This is under consideration. In this M.A. the petitioner has sought an interim order / direction for change of name and logo of petitioner's TV channel from "Harvest TV" to



“Tiranga TV”. The urgency expressed was on account of a notice from a Civil Court in a suit for injunction filed by the third party.

The matter was taken up on 12.2.2019. After hearing learned senior counsels for both the parties, it was noted that the next date for hearing the interim injunction by the Civil court is 16.2.2019 and hence, a short adjournment was granted as requested on behalf of the respondent.

Today, learned senior counsel for the petitioner has filed a compilation of documents to show that on 12.2.2019 the respondent issued a notice in respect of petitioner’s application for change of name and logo to give an opportunity of personal hearing on the very next date i.e. 13.2.2019 at 11.00 AM. In the notice it was indicated that the petitioner should be ready to explain how the use of the proposed name and logo does not attract any provisions of the Emblems And Names (Prevention Of Improper Use) Act, 1950 (hereinafter referred to as “1950 Act”), Flag Code of India, 2002 or the Trade Marks Act, 1999. In case of non-appearance a decision could be taken on the presumption that petitioner had nothing to say.

A reply of the petitioner dated 13.2.2019 shows that it took objection to a notice of less than 24 hours and explained that the specific provisions of the different Acts have not been pointed out and it would be difficult for the petitioner to explain the entire situation without seeking legal help. However, in paragraph-6 of the reply, the petitioner opted for an arrangement in the interregnum which should be considered by the respondent. The first option was that the Ministry could suggest changes / modifications and the petitioner could with such changes / modifications carry the name and logo – Tiranga TV. In the alternative, it suggested three other names for which the petitioner had already submitted Trade Marks applications.

Petitioner’s representative appeared before the concerned authority in terms of the notice and thereafter an order dated 13.2.2019 has been passed. Instead of considering any of the suggestions in the interregnum, the respondent has chosen to record only the 2nd alternative in paragraph-8 of the order. In



paragraph-9 the relevant facts have been mentioned to show that the concerned Ministry is already engaged in consultation with certain other Ministries and hence, “at this stage, it is not in a position to accept to the request of the petitioner”. The concluding paragraph 10 is as follows:

“Therefore, in view of the hearing and directions of the Ld. Tribunal in the matter on 12.02.2019 and the discussions held with the representative of M/s. Veecon Media & Broadcasting Pvt. Ltd. on 13.2.2019 and the company’s written submission made to this Ministry, the company’s application for use of name & logo **Tiranga TV** is hereby closed. The company is at liberty to submit a fresh application to this Ministry as per the prescribed procedure for a new name & logo, either as suggested by the company in its written submission dated 13.02.2019, or for any other name, which shall be processed by the Ministry accordingly.”

Learned counsel for the petitioner has drawn our attention to prayer no. (a) in the main petition to submit that petitioner has sought for a declaration relating to its legal rights as claimed by it and, therefore, an order dated 13.2.2019 will not make the petition infructuous, as suggested by the other side. He also submitted that the observation of this Tribunal in the order dated 30.1.2019 was only to take an appropriate decision in accordance with the law at the earliest. According to him, it was not a mandate to give a short notice of less than 24 hours which would amount to violation of principles of Natural Justice and the order cannot be treated as one in accordance with law when the respondent has admitted in the order that the process of consultation is still pending. He has, in such circumstances, pressed for an interim order to permit him to use the name and logo as submitted through its application i.e. of Tiranga TV. In reply, learned ASG has drawn our attention to the pictorial representation in the logo of Tiranga TV to point out that all the three colors of national flag have been used therein. According to him, this could raise issues requiring determination, keeping in view the provisions in the 1950 Act and the Flag Code, 2002. He has also pointed out that name Tiranga denotes the national flag and therefore its name is also under scrutiny.

Only for record, we clarify that we never directed or observed anything to warrant any notice to petitioner of such a short duration. However, we have gone



through the relevant provisions of 1950 Act and Flag Code, 2002. Without expressing any final opinion on the issue noticed above, we are of the considered view that the name Tiranga itself is not covered by the Schedule of 1950 Act nor is subject matter of Flag Code. However, this may not strictly apply to the use of the three colors which is there in the emblem of Tiranga TV. We are also aware that petitioner itself had opted for some other name in the interregnum but during submissions, it has been highlighted that change of name may adversely affect the reputation, goodwill and business of the petitioner, and hence Mr. Sibal has submitted that the petitioner voluntarily undertakes not to use the colors on the name and logo but simply use the words "Tiranga TV", as submitted in its application. In other words, he has offered that petitioner will not use the colors saffron and green in the name and logo of Tiranga TV until the issue is finally decided as per the orders of this Tribunal or otherwise in accordance with law.

On the other hand, learned ASG has not raised serious objection to remanding the matter to the concerned authority for further consideration, particularly on account of facts mentioned about the consultation process which is still on. But he has objected to the name of Tiranga TV also and according to him, if an interim direction is necessary then it should be for use of any of the other three names during the interregnum. Having considered the matter from all aspects, we are inclined to accept the submission and concession made by Mr. Sibal and accordingly we pass an interim direction that in case the petitioner chooses to change its name, it can, as an interim measure, use the name Tiranga TV, as submitted to the authorities but without using the saffron and green colors on the name and logo. This interim arrangement shall continue until further orders.

On a careful consideration of the order dated 13.2.2019 and in view of discussions and observations made above, we are of the considered view that the respondent shall be well advised to withdraw that order and grant a further opportunity of hearing to the petitioner giving at least one week's notice for the same. It will be open for the petitioner, if so advised, to seek amendments by way of alternative in its pending application for grant of permission to use any other name in place of Tiranga TV. If so advised, this application should be made by



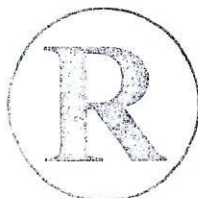
the petitioner at the earliest preferably within one week. The concerned authority of the respondent will be at liberty to consider the entire matter and take a decision in accordance with law. As and when such a decision is taken, either of the parties will have the liberty to bring it to the notice of the Tribunal.

Respondent, if so advised, may file a reply within three weeks. Time for filing rejoinder, if required, shall be granted on the next date.

Post the matter under the same head on 14.3.2019 instead of 5.3.2019, as fixed earlier.

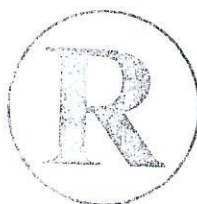
Order Dasti.”

7. On 14.03.2019 the petitioner brought to the notice of this Tribunal that it had acted on the basis of observations in the order passed on 14.02.2019 and had filed an application on 22.02.2019 for amending its earlier application so as to opt for its earlier name and logo of “Tiranga TV” as well as some other alternative name/logo in a descending order of choice. Petitioner raised grievance that respondent had ignored the application filed on 22.02.2019 in its subsequent reply etc. It is noted that in the light of order dated 14.02.2019, the petitioner started telecasting its TV channel under the name “Tiranga TV” but with a changed logo as compared to the original logo submitted for approval. The change was as per petitioner’s offer that it will not use the colours Saffron and Green in the name and logo of “Tiranga TV” until the issue is finally decided as per law.



8. By an order dated 27.03.2019 the respondent claimed to have considered the petitioner's various choices and options. Petitioner was permitted only the last choice and option of using the name and logo of "HTN News". The petitioner brought a copy of the order passed on 27.03.2019 on record through its rejoinder filed on 28.03.2019 and formally challenged the same through M.A.No.77 of 2019 filed on 01.04.2019. The interim arrangement has continued since 14.02.2019 whereunder the petitioner is telecasting its TV channel under the name and logo of "Tiranga TV" but without the use of two colours-Saffron and Green (the name and logo under use is the second choice given by the petitioner through an amendment application dated 22.02.2019). Thereafter the matter was heard on merits between 25.04.2019 and 20.05.2019, when the hearing concluded and orders were reserved.

9. According to learned senior counsel for the petitioner, Mr.Sibal, the reasons assigned for rejecting petitioner's original choice of name and logo as well as two other choices both having the name "Tiranga TV" with different new logos are arbitrary and untenable in law. According to him, the impugned order/letter dated 27.03.2019 suffers from non-application of mind as well as erroneous interpretation of provisions in the Emblem and Names(Prevention of Improper Use) Act, 1950 (the Act of 1950).



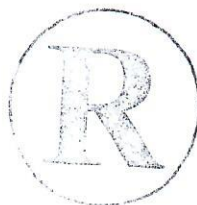
10. On the other hand, learned ASG has submitted that the logo and name both together form a symbol and on that basis the name and different versions of the logo together with the name “Tiranga TV” have been found to be unacceptable because under the provisions of the Act of 1950, even a colourable imitation of the Indian National Flag for commercial purposes is prohibited. In other words, the submission is that the name “Tiranga TV” when seen in conjunction with the logo, the image created in the mind is that of the Indian National Flag, not as it is specified in the Flag Code but definitely as a colourable imitation thereof. The issue is linked with the correct interpretation of provisions of the Act of 1950 and particularly of the term “colourable imitation”. But before going to this crucial issue, out of deference to the learned counsel, the gist of their submissions as well as some of the judgments cited are noted in brief.

11. In the reply affidavit filed on 03.04.2019, the respondent – Ministry of Information & Broadcasting, has placed reliance upon documents such as orders and notices of 2009 and 2017 contained in **Annexure R/1** to show that provision of processing fee on account of change of channel name and some other charges are in place to discourage large number of such requests witnessed in the past. However, there is no policy or guideline governing grant or refusal of such permission. Clearly, in such a situation, there can be wide variation in standards and approach governing such a sensitive matter. Case to case basis approach is



always fraught with risk of arbitrariness. The competent authority would do well to look into this aspect of the matter.

12. The reply also discloses an Office Memorandum dated 27.02.2019 issued by the Ministry of Consumer Affairs, Food and Public Distribution, Department of Consumer Affairs, Emblems Names. By this OM the Department of Consumer Affairs has conveyed its objection to use of the logo "Tiranga TV", under Section 3 of the Act of 1950. This is claimed to be the basis for rejecting the first three choices containing the name "Tiranga TV" with different logos and permitting the petitioner to use only the name and logo "HTN News". Some documents have been annexed to the reply as **Annexure R/3** to show that earlier M/s Pimex Broadcast Pvt. Ltd. had applied for registering the name and logo "Tiranga TV" in its favour under the Trademarks Act 1999. After submitting the application in 2017, it issued a public certificate that it had authorized the petitioner to use that logo and name in view of an agreement and thereafter Primex did not follow its request for registration and as a result the Registrar of Trademarks held on 31.08.2018 that Pimex had abandoned its application. Although a passing reliance was placed on these materials by the learned ASG but it was not pursued seriously and we have no difficulty in holding that an entity which has authorized the petitioner to use the trademark and has later abandoned its efforts to get the



trademark registered in its own favour cannot have any claim against the petitioner nor can such developments have any adverse impact on the petitioner's case.

13. Learned counsel for the petitioner has taken us through the provisions of the Act of 1950 and has submitted that Section 3 of the Act makes a distinction between name and logo. So far as the name "Tiranga TV" is concerned, he has referred to stipulations in respect of name of a Company as per Section 4(2) of the Companies Act and pointed out that there are a large number of companies having the approved name starting with "Tiranga". Such companies include "Tiranga Films Pvt. Ltd.", and one such company has been allocated the name starting with "Tiranga" recently on 07.01.2019 (**Annexure P2** to the rejoinder). He has also referred to the logo of a News channel – "INDIA AHEAD" in which the three colours of the Indian National Flag have been used to depict the second-last letter "A" in the word "AHEAD". The three colours have also been shown to be part of the logo of a TV channel "Sahara Samay" and some other channels of the same group. On the basis of aforesaid materials a case of discrimination and arbitrariness has been urged.

14. Reliance was also placed upon the Schedule in the Act of 1950 to point out that name and emblem have been separately mentioned in the Schedule and there is no entry showing the name "Tiranga". "Indian National Flag", according to



learned senior counsel is a well-defined emblem as is clear from the Flag Code of India 2002, especially the Note under clause 2.1 which refers to the Act of 1950 and shows a 'Note' thereunder which specifies that the Indian National Flag has been specified as an emblem in the Schedule to the Act.

15. According to Mr. Sibal, the reliance placed by respondent upon the OM dated 27.02.2019 is misplaced because such OM has no sanctity under the provisions of the Act of 1950. Secondly, it has been submitted that the objection is only against the logo of the first choice and not the name and it does not refer at all to the other choices/options submitted by the petitioner through the amendment application. He pointed out that the logo in the alternatives submitted for approval through the amendment application, do not have Saffron and Green colours and therefore, respondent is not justified in rejecting those alternative logos with the name "Tiranga" on the grounds that are available only against the original name and logo. He submitted that even in the impugned order the name and logo have been separately dealt with and approved and that has been the consistent practice of the respondent department. Since the Indian National Flag is not mentioned in the Schedule as a name but only as an emblem and nothing has been included in the Schedule as an alias or name of Indian National Flag, the name "Tiranga" is clearly not prohibited by the provisions of the Act of 1950. So far as the logo is concerned, he submits that the use of the colours of the Indian National Flag



cannot be equated with the use of the flag itself because the stripes in the logo of the petitioner's "Tiranga TV" do not at all resemble the shape, size or dimensions of the Indian National Flag nor they contain the *Ashok Chakra* in the middle. According to Mr.Sibal, the Act of 1950 provides a penalty for its violation and it also amounts to a restriction on freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India and therefore, it cannot be construed liberally or widely but must be limited to the express terms and language used in the Act. Liberal construction, according to him, would make people suffer penal consequences on account of not the actual provisions but the legal or wide interpretation thereof and such a situation must be avoided in view of various judgments, such as in the case of **Romesh Thappar Vs. State of Madras; AIR 1950 SC 124.**

16. This aspect need not detain us because in our considered view the Act of 1950 should not be read or interpreted so as to widen its meaning and scope. However, the purpose of the Act is laudable and that must be respected. Colourable imitation of the Indian National Flag for commercial exploitation is prohibited and therefore, the term "colourable imitation" must be interpreted so as to achieve the purpose of the Act. Learned ASG has placed reliance upon **Union of India Vs. Naveen Jindal & Anr.; (2004) 2 SCC 510** to point out that the Hon'ble Supreme Court upheld the right to fly the National Flag as a fundamental

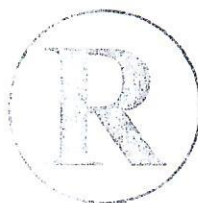


right but also pointed out that such right is not unfettered or unrestricted. It was observed that the courts jealously protect the honour of the National Flag and it cannot be used for commercial purpose. He also relied upon **Balram Kumawat Vs. Union of India & Ors.; (2003) 7 SCC 628** and pointed out that in Paras 34 to 36, the court considered some judgments such as **State of Maharashtra Vs. Natwarlal Damodardas Soni; (1980) 4 SCC 669** and **Balkrishna Chhaganlal Soni Vs. State of West Bengal; (1974) 3 SCC 567** in support of the proposition that even while interpreting a penal statute, sometimes in a given context the Supreme Court have applied the 'Mischief Rule' which requires that the provisions be construed in a manner which will suppress the mischief and advance the object which the legislature had in view.

17. In the present case, learned ASG has raised a contention that the OM from the Department of Consumer Affairs dated 27.02.2019 is not a mere advice or opinion but has the sanction of law under Section 4(2) of the Act of 1950 which empowers a competent authority to refer to the Central Government a question as to whether any emblem is an emblem covered by the Schedule or a colourable imitation thereof. It has further been submitted that the decision of the Central Government which as per Government of India (Allocation of Business) Rules 1961 would in this case mean the OM issued by the Department of Consumer Affairs, needs to be challenged separately by the petitioner and such challenge



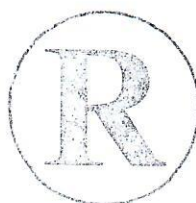
does not lie within the jurisdiction of this Tribunal. For this purpose, he relied upon an observation of the Hon'ble Supreme Court with regard to jurisdiction of this Tribunal in Para 47 of the judgment in **Union of India Vs. Association of Unified Service Providers of India(AUSPI); (2011) 10 SCC 543**. While the scope of Section 14 of the TRAI Act as interpreted in the aforesaid judgment cannot be doubted, in the present case that judgment has no application. The change of name remains the business of the respondent duly impleaded and while the respondent may show respect and rely upon the relevant OM dated 27.02.2019, that order has neither been passed after hearing the petitioner nor has been communicated to it ever. The finality, if available to such order, is only binding on the competent authority who refers the question and not upon others. Further, it has been rightly submitted on behalf of the petitioner that Section 4 uses the term competent authority in the context of registration of a Company, firm etc., registration of a trademark or design or grant of patent and all these three acts relating to a company or trademark or patent are governed by different statutes and hence Section 2(b) of the Act of 1950 defines competent authority as "any authority competent **under any law** for the time being in force to register any company, firm or body of persons or any trademark or design or to grant a patent." In the present case the reference made by the respondent is clearly not in exercise of powers of an authority competent under any law to do the aforesaid tasks. Here the respondent has acted only under execution/administrative capacity while



processing the request for change of name and logo by the petitioner. Such processing is not shown to be by an authority acting under any law for the purposes pointed out in the definition. In the facts of the case, we do not find any substance in the aforesaid objection raised in respect of jurisdiction of this Tribunal.

18. Coming to the crucial issues arising from the prohibition contained in Section 3 of the Act of 1950. On going through the Schedule we are in agreement with the submission on behalf of the petitioner that the name "Tiranga" is not included in the Schedule nor it is a colourable imitation of any name in that Schedule, much less the Indian National Flag which is not a name but an emblem.

19. So far as the logo of "Tiranga TV" is concerned, it consists of the word "Tiranga" along with a colour scheme in which the Saffron and Green colours are intervened by a white space placed diagonally under the name "Tiranga TV". The resultant design of the logo appears to have all the three colours of the Indian National Flag but without meeting any specification of shape and size as mandated for the Indian National Flag. It does not have *Ashok Chakra* in the white column left between the two colours. We have to answer the issue whether this logo which was the first choice of the petitioner is a colourable imitation of the Indian National Flag or not. If the answer is in the affirmative, petitioner cannot be permitted to



use its first choice of “Tiranga TV” with a coloured logo (having all 3 colours of the Indian Flag).

20. For the aforesaid purpose, we have looked to the definition of the term “colourable imitation”. As per Black’s Law Dictionary, colourable imitation is any mark whose resemblance to a registered mark is likely to cause confusion or mistake. The test of colourable imitation has been given as a test for a trademark violation in which a court determines whether an ordinary person who is not allowed to compare two items side by side could recognize the difference between the two. If the difference can be recognized by an ordinary person, it is not a case of colourable imitation. Applying the aforesaid test, there could have been scope of confusion or difference because *prima facie* the colour combination by itself does not lead to any confusion between the logo under consideration and the Indian National Flag although there is marked degree of similarity between the two if the Indian National Flag is seen in a fluttering condition from a distance. But it is not the colours alone which require consideration. A logo is a brand which can be a sign, a letter or symbol or combination of all of these as given in the Oxford Dictionary of Marketing. In the present case the logo under consideration also bears the letters “Tiranga” in large form and the correct question to be answered is whether with the word “Tiranga” and the colour combination in the logo, any illusion of Indian National Flag is created in the mind so as to render the logo a



colourful imitation. As indicated, this is not an easy question to be answered. However, we are largely benefited by a judgment of the High Court of Andhra Pradesh in the case of **Ravikant Shinde Vs. Managing Director, Gujarat Heavy Chemicals Ltd. & Ors.; (2003) 45 SCL 89 (A.P.)**. The High Court was called upon to consider Section 3 of the Act of 1950 for answering the question whether the manufacture of “kitchen salt” under the peculiar emblem and name of “*Dandi*” could be permitted for commercial use. The High Court examined the picture on the emblem and the name “*Dandi*” and in Para 6 the court held that looking at the picture of some people marching with sticks and the name “*Dandi*”, an impression was created that the salt in question has something to do with Mahatma Gandhi. The court found that the pictorial exposition is similar to the picture of Mahatma Gandhi taken at the time of famous *Dandi March* and *Dandi* in itself is associated with Mahatma Gandhi and therefore, respecting the inclusion of name of Mahatma Gandhi in the Schedule, the court held that the manufacturers were in violation of Section 3 of the Act.

21. Further, in Para 7, the court considered the factors that require consideration for deciding the question of deceptive similarity. It noted that weightage to be given to the various factors depends upon facts of each case and the same weightage cannot be given to each factor in every case. Thereafter, the court held



that the need was not to see the dissimilarities but the similarities in such cases. “More the similarities more the chances of deception and causing the confusion.”

22. In the present case the logo includes as the name “Tiranga” which is overwhelmingly associated by all Indians with the Indian National Flag but still the law does not prohibit use of the name “Tiranga” and it has not been included in the Schedule. The three colours, Saffron, White and Green in that order are also readily associated by the Indians with the colours of the Indian National Flag but use of these colours by itself is not prohibited by the Schedule under the Act of 1950. However, colourable imitation of certain emblems and names is prohibited. By applying the tests as applied in the case of **Ravikant Shinde(supra.)** by the Andhra Pradesh High Court, we find that combination of the word “Tiranga” and the three colours of the Indian National Flag do conjure an image of the Indian National Flag and the similarities created by such a logo can be treated as a colourable imitation of the Indian National Flag. Therefore, the impugned decision so far as it refuses permission to the petitioner to use its first choice or option cannot be faulted.

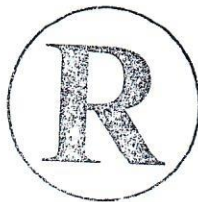
23. However, applying the same principles to the logo of the second option which does not have the colours of the Indian National Flag i.e. Saffron and Green, we have no hesitation in coming to the conclusion that it has absolutely no



ingredient which in total effect can amount to a colourable imitation of the Indian National Flag. Same applies to the other two choices and options which are choices in descending order. In such a situation, we have no option but to hold and declare that the impugned decision contained in order/letter dated 27.03.2019 is bad in law in refusing to allow the petitioner the use of name and logo of "Tiranga TV" opted by the petitioner as its second choice/option which was introduced by an amendment along with two other choices. It is this second choice/option which is without the colours of the Indian National Flag along with the name "Tiranga TV" which is presently being used by the petitioner under the orders of this Tribunal.

24. In the light of discussions made above, the impugned letter/decision dated 27.03.2019 is found correct in respect of name and logo opted as first choice / option but struck-down/set aside in respect of other choices, so as to permit the petitioner the use of name and logo of "Tiranga TV" without the colours Saffron and Green (given as a choice/option having second highest priority as per the amended application dated 22.02.2019). The petition is allowed to the aforesaid extent. There shall be no order as to costs.

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(S.K. Singh, J)
Chairperson



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(A.K. Bhargava)
Member