



JURISDICTION AND DUE PROCESS FOR FILING TRADE MARKS RECTIFICATION PETITIONS

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INTRODUCTION

A recent judgment of the Kerala High Court has clarified the proper forum for adjudicating trade marks rectification petitions. In *PAS Agro Foods v. KRBL Limited & Ors* [2025], the Court held that jurisdiction lies exclusively with the High Court that exercises appellate authority over the Office of the Trade Marks Registry where the mark is registered.

BRIEF BACKGROUND

KRBL (based in Delhi), owner (by assignment) of the trade mark "INDIA GATE" filed a suit before the District Court, Tis Hazari Courts, New Delhi against PAS Agro Foods (based in Kerala) for infringement of its registered trade mark on 14th January 2025. The District Court on 21st January 2025 granted temporary injunction against the use of the "INDIA GATE" trade mark by PAS Agro Foods and ordered to seize all infringing goods as well as other incriminating materials from the PAS Agro Foods' business premises.

PAS Agro Foods filed the present 'Special Jurisdictional Case' before the Kerala High Court under Section 57 read with Sections 124 and 125 of the Trade Marks Act, 1999 ('Act') to cancel the trade mark registration of "INDIA GATE" owned by KRBL. Further, PAS Agro Foods filed an application before the District Court, New Delhi seeking stay of proceedings pending the final disposal of the case filed before the Kerala High Court. The said application was pending for consideration before the District Court, New Delhi.

ARGUMENTS AND ANALYSIS

KRBL challenged the maintainability of the case on grounds of:

Issue 1: Lack of territorial jurisdiction, and

Issue 2: The case being premature.

Findings on Issue 1

KRBL contended that rectification petition under Section 57 of the Act is to be filed before the High Court which is exercising appellate jurisdiction over the Trade Marks Registry where the trade mark was registered i.e., Delhi High Court. PAS Agro Foods, on the other hand, contended that a part of the cause of action had arisen within the territorial jurisdiction of the

Kerala High Court, as its business operations were disrupted and its goods were seized in the State of Kerala. On this basis, PAS Agro Foods argued that the rectification petition was maintainable before the Kerala High Court.

KRBL further argued that there will be jurisdictional chaos, conflicting orders and great uncertainty if an aggrieved party is allowed to file trade marks rectification petitions on the basis 'dynamic effect' of the registration or otherwise.

Note: The concept of the 'dynamic effect' of the impugned registration affecting the applicant was first deliberated and upheld in *Girdhari Lal Gupta v. M/s. K. Gian Chand Jain & Co.* [AIR 1978 Del 146]. In this case, the Delhi High Court held that applications under Sections 47, 57, and 124(1)(ii) of the Act may be filed not only before the High Court that has jurisdiction over the Trade Marks Registry which issued the impugned registration, but also before the High Court where the 'dynamic effect' of that registration is experienced. However, a Single Judge of the Madras High Court in the case of *M/s. Woltop India Pvt. Ltd. (2025)* held that the power of rectification is exercisable only by the High Court exercising appellate jurisdiction over the appropriate office of the Trade Marks Registry, wherein the entry relating to the impugned mark was made. The Madras High Court further held that if the invitation to file multiple rectification petition with respect to the same trade mark before several High Courts are allowed, there is every chance of different High Courts passing conflicting orders.

The Madras High Court's judgement was upheld in the present case by the Kerala High Court.

Regarding the first issue, the Kerala High Court concluded that since KRBL's trade mark was registered by the Office of the Trade Marks Registry, Delhi, only the Delhi High Court had the jurisdiction to entertain the rectification petition. Therefore, PAS Agro Foods' 'Special Jurisdictional Case' was not maintainable.

Findings on Issue 2

Regarding the second issue of the case being premature, KRBL contended that an issue regarding the invalidity of the trade mark registration must have been framed by the District Court, New Delhi as per Section 124(1)(ii) of the Act.

Section 124 of the Act was analysed by the Kerala High Court and the Court observed two (2) situations with reference to a trade mark infringement suit. The first scenario is where a rectification petition is already pending at the time the infringement suit is instituted. In such cases, Section 124(1)(i) mandates that the suit must be stayed until the rectification proceedings are finally disposed of. The second scenario arises when no rectification petition is pending at the time the infringement suit was instituted. In such cases, a party cannot directly file a rectification petition without complying with the procedure prescribed under Section 124(1)(ii). This requires the party to first raise a plea challenging the validity of the trade mark registration, and the Court must find this plea to be *prima facie* tenable. Only then can the Court frame the issue on validity and adjourn the proceedings for a period of three (3) months to enable the aggrieved party to file the rectification petition.

In the present case, KRBL contended that PAS Agro Foods did not follow the due process as per Section 124(1)(ii) of the Act.

The Kerala High Court held that PAS Agro Foods cannot file the present 'Special Jurisdiction Case' under Section 57 of the Act seeking cancellation of the trade mark registration granted to KRBL without framing an issue regarding the invalidity of the registration in the suit pending before the District Court, New Delhi as per Section 124(1)(ii) of the Act.

GENERAL COMMENTS

With the enactment of the Tribunal Reforms Act, 2021, the Intellectual Property Appellate

Board was replaced by the High Courts. This transition left several questions unanswered regarding the appropriate appellate forum and the proper enforcement of trade marks rights. The present case clarifies the scope of appellate jurisdiction concerning trade marks rectification matters.