

(1961) 01 BOM CK 0005

Bombay High Court

Case No: Misc. Petition No. 443 of 1958

J.L. Mehta and Another

APPELLANT

Vs

Registrar of Trade Marks

RESPONDENT

Date of Decision: Jan. 11, 1961

Acts Referred:

- Trade Marks Act, 1940 - Section 46(4), 6(D)

Citation: AIR 1962 Bom 82 : (1961) 63 BOMLR 642

Hon'ble Judges: Shah, J

Bench: Single Bench

Advocate: H.M. Seervai, General, K.S. Shavaksha and L.B. Desai, for the Appellant; S.V. Gupte, for the Respondent

Judgement

(1) A short but rather an interesting question has been raised on this petition and the question is as to whether the word "Sulekha" which was registered as a trade mark by the Registrar of Trade Marks as far back as on 4th May 1953, in connection with fountain pens, nibs, etc, which were being manufactured by the petitioners means "good writing" so that it amounts to a description of the fountain pens and other materials manufactured by the petitioners, in which event, that word would not be registrable as a trade mark.

(2) It appears that the petitioners started the business of manufacturing fountain pens and other materials some time in 1951. They dealt in these fountain pens and other materials as "Sulekha" fountain pens and materials. On 8th January, 1952 the petitioners applied to the Registrar of Trade Marks for registration of the word "Sulekha" as a trade mark in connection with the fountain pens and other materials that they were manufacturing and dealing in. After the necessary enquiry under the Trade Marks Act by an order dated 4th May, 1953, the application made by the petitioners was granted and the word "Sulekha" was registered as a trade mark in connection with the petitioners' fountain pens and other connected materials. It

may be noted that in the application that was made for the registration of the trade mark, the petitioners had stated that "Sulekha" was the name of a female and at the hearing of the application evidence was led to show that that word had attained a distinctive character in relation to their fountain pens and other materials. No contention then appears to have been raised either by the Registrar of Trade Marks, or by any member of the public that the word "Sulekha" was in any way or in any sense descriptive of the pens that were being manufactured by the petitioners so as to indicate their nature or quality. The Registrar, apparently, was satisfied that the word was in vogue as the name of a female person and also that it had obtained a distinctive character by reason of the petitioners having dealt in the pens and other materials manufactured by them under that name. It was only after the Registrar was thus satisfied that he had passed the order for registration of the word "Sulekha" as a trademark in connection with the petitioners' fountain pens and other connected materials.

(3) On 6th February, 1956, however, it appears, the Registrar of Trade Marks, who apparently was not the same gentleman who had ordered the registration of the trade mark in 1953 gave a notice to the petitioners calling upon them to show cause as to why the register of trade marks should not be rectified by expunging therefrom the entry relating to the trade mark No. 152234 in relation to the word "Sulekha" in exercise of his powers u/s 46(4) of the Trade Marks Act, for the reason that in his opinion the word "Sulekha" meant "good writing" and that it was not adopted to distinguish goods in respect of which it was registered, namely, fountain pens, pencils, pen-holders, and parts thereof. In answer to this notice, the Petitioners appeared before the Registrar and after hearing the contentions advanced on their behalf, he came to the conclusion, that although there was no doubt that the word was in vogue as the name of a female person it also meant "good writing" according to three of the six dictionaries of the languages in vogue in India and that, therefore, the word offended against the provisions of Section 6 of the Trade Marks Act as being descriptive of the pens, pencils, nibs etc., which were being manufactured by the petitioners and, therefore, he ordered the register of trade marks to be rectified by expunging the entry therefrom as stated above. It is against this order passed by the Registrar of Trade Marks that the present petition has been filed in this Court by the petitioners.

(4) Mr. Advocate General who appeared for the petitioners urged that the word "Sulekha" being a personal name could not be and was not defined in any of the dictionaries, and that though the word "sulekha" by itself had a several meanings including "a streak" or "a line" and also including "writing" in so far as that word carried the meaning "writing", according to Monier's Dictionary, on which he relied, that meaning was the one adopted by the Lexicographers and according to them it was a meaning which although given in native Lexicons had not been met with in any published text. In other words, the Advocate-General contended that although the word "lekha" might mean "writing" that was not how it was commonly

understood by the people in this country. He accordingly urged that even if the Registrar of Trade Marks was justified in holding the word "Sulekha" to be a combination of the words "Su" and "Lekha", he was certainly in error in construing it to mean "good writing" and holding it to be directly descriptive of the petitioners goods. It is true that the word "Sulekha" is not to be found in any dictionary whatsoever. It is the word "Lekha" alone which has been defined by Monier as having "writing" as one of its meanings, and it is with reference to this meaning that it has been said that the word "lekha" was not found in any published text. Mr. Advocate-General submitted that u/s 6 of the Trade Marks Act, what one had to consider was as to whether the word "Sulekha" was at all directly descriptive of the goods in question. He urged that inasmuch as the word "Sulekha" was not to be found in any dictionary at all and inasmuch as it was admitted by the Registrar of Trade Marks that "Sulekha" was the name of a female person in vogue among the people, that word should not be construed to mean "good writing" and as such "directly" descriptive of the goods in question.

(5) On the other hand, Mr. Gupte the learned counsel for the Registrar of Trade Marks, contended that although it was true that the word "Sulekha" was not to be found in any of the dictionaries, it was certainly a combination of two words "Su" and "lekha" and that, therefore, if the meaning of the word "Sulekha" to be derived from the meaning of the word "Su" and the word "lekha" amounted to "good writing", then the word "Sulekha" would be directly descriptive of the goods in question and that, therefore, the Registrar was perfectly right in making the order that he had passed. It was further contended by Mr. Gupte that even if there were several meanings attached to the word "lekha" by the different dictionaries, so long as that word was assigned the meaning "writing", that meaning should be accepted in preference to all others and that it should accordingly be held that the word "Sulekha" meant "good writing" and as such was descriptive of the Petitioners' goods. It was also contended by Mr. Gupte that the word that was registered with the Registrar of Trade Marks was spelt in English as "Sulekha", that it might properly be pronounced as "Sulekha" and that because there could be no question that the word "Sulekha" meant "good writing", even if the word was pronounced as "Sulekha" it would only be an equivalent of the word "Sulekha" and that by having recourse only to such a pronunciation the provisions of the Trade Marks Act could not be contravened.

(6) Several other contentions were also raised by Mr. Gupte which I need not set out for the simple reason that in my opinion for the reasons I will presently set out the word "Sulekha" is not at all directly descriptive of the petitioners' goods so as to be debarred from being registered as a trade mark.

(7) Now, turning to the different dictionaries which have defined the word "lekha", the first and the foremost is the Sanskrit dictionary by Apte, Mr. Gupta has tendered a sheet of paper containing the meanings of the words "Su" and "Lekha" and other

derivatives from the word "Likh" from several dictionaries and the Advocate-General had no objection to its being tendered in evidence. This paper shows that in Apte's Dictionary the word "Su" has been defined both as an adjective as well as an adverb. It is, however, not disputed by Mr. Gupte that that word almost invariably is used as a pre-fix to indicate the quality or attributes of anything indicated by some other word. Now, the meaning of this word is almost uniform in all the dictionaries and there is no quarrel over this meaning both as an adjective as well as an adverb. Then coming to the word "lekha", in Apte's Dictionary, there are as many as 7 meanings assigned to that word, (1) a line, streak; (2) a stroke, furrow row, stripe; (3) writing, drawing lines, delineation, painting; (4) The moon's crescent, a streak of moon; (5) a figure, likeness, an impression, a mark; (6) Hem, border edge, sketch; and (7) the crest. It will thus appear that the word "lekha" does inter alia mean "writing", but it must be noted that "writing" is not the only meaning attached to it in clause (3). It is followed by the words "drawing lines, delineation, painting". Accordingly the word "writing" must be construed in the light of the words following it. At best therefore, the word "writing" can only have a reference in regard to making or drawing of lines or delineation of any lines or in respect of any painting which might all consist of lines and nothing more. What is important to note in this connection is that the word "writing" as used in Apte's Dictionary, as one of the meanings of the word "lekha" does not mean what is written in the shape of figures or letters or alphabets of any language. Mr. Gupte, however, contended that even if the Registrar of Trade Marks in his notice to show cause stated that the word "Sulekha" meant "good writing" and that, therefore, the trade mark was liable to be expunged from the register of trade marks, the Registrar could not be debarred from also raising a contention at the hearing of the notice and coming to a conclusion that although the word "Sulekha" might not mean "good writing", even so far as the word included drawing of lines it would be directly descriptive of a pen, because a pen would undoubtedly be used for drawing lines as well. In my opinion, this contention is too far-fetched. The registrar, in the first instance, did not call upon the petitioners to show cause as to why the word "Sulekha" should not be expunged from the Register of Trade Marks because in his opinion the word "Sulekha" meant something different from what was in terms stated therein. viz., "good writing". The only contention which the petitioners were called upon to meet was that the word "Sulekha" meant "good writing" and, therefore in my opinion. Mr. Gupte would not be right in his contention that in spite of the Registrar of Trade Marks having so stated in his notice to show cause he would be entitled to devise any other ground for his conclusion that the word "Sulekha" was directly descriptive of the goods in question. Secondly I do not find any foundation for Mr. Gupte's argument at all, because the Registrar of Trade Marks in course of his rather long judgment has found that the word "Sulekha" did mean "good writing" on the basis of certain of the dictionaries which he referred to in his judgment and that for that reason the word "Sulekha" as a trade mark was liable to expunged from the register of trade marks. Mr. Gupte might have thought to support the judgment of the

Registrar by advancing the argument as aforesaid. I am, however, afraid, the judgment in a matter such as this could not be supported except on the ground which was primarily taken up and eventually decided by the Registrar of Trade Marks. It was the question of one type of interpretation put by the Registrar upon the word "Sulekha" and it was upon the basis of that interpretation that he ultimately decided the matter against the petitioners. In a challenge to his order therefore, all that the petitioners have to show is that the word "Sulekha" does not carry the meaning which was attached to it by the Registrar and, in my Opinion, if they succeeded in so doing the order of the Registrar must be set aside. Accordingly, I do not think that I should examine the merits of the contention raised by Mr. Gupte, that although the word "Sulekha" might not mean "good writing" it might mean "good lines" in reference to drawing and painting and that, therefore, in so far as such lines could be drawn with the pens manufactured by the petitioners, the word "Sulekha" was directly descriptive of those pens and that, therefore that word could not be registered as a trade mark.

(8) It was then contended by Mr. Gupte that at least the word "lekh" as defined in Apte's Dictionary meant "a written" or "an article" or "a document". He urged that there was nothing to prevent the word "Su" being prefixed to the word "lekh" and if it was so prefixed, it would mean a good article or a good writing. According to him it was then only the question of making the word "Sulekha" into one of the feminine gender and that was what had been done in this case by the petitioners in order to suit the feminine gender of the word "pen". I am afraid this contention also can neither be allowed nor accepted. In the course of his judgment, the Registrar of Trade Marks has clearly stated that the word "Sulekha" was a combination of the words "su" and "lekha" and not of the words "su" and "lekh" in the feminine gender and meant "good writing". Therefore, according to him, there was no question of first interpreting the word "Su", then the word "lekh", then the word "Sulekha" and then making it into a word of the feminine gender as "Sulekha". Assuming however, that the contention that was raised by Mr. Gupte could be allowed to be raised, I am not inclined to accept it. The reason is that the word "lekha" and the word "lekh" are distinctly defined in each of the dictionaries and assigned different meanings. Even Apte in his Sanskrit Dictionary has made a clear distinction between the word "lekh" and "lekha". If the word "lekh" which is a noun could be made into one of the feminine gender, one could expect the author of the dictionary to have done it. As a matter of fact, there is nothing to warrant Mr. Gupte's contention that the word "lekh" could ever be changed into and used in the feminine gender as "lekha". I do not know what it would really mean if the word "lekh" were to be changed into one of the feminine gender. The obvious meaning of the word "lekh" is an article or a writing and I cannot conceive what the feminine gender of an article or writing would be. It was, however, contended by Mr. Gupte that the word "lekh" was made into one of the feminine gender by reason of the feminine gender of the word "pen" and that, therefore, whatever meaning could be attached to the word "Sulekha"

should be attached to the word "Sulekha" with the only difference that the word "Sulekha" when used in conjunction with the word "pen" would be an adjective instead of being a noun of the feminine gender. To my mind, all this argument is too intriguing and too complicated for the purpose of considering as to whether a particular word of which registration as a trade mark is sought is descriptive in any manner of the goods with which it is associated. I do not think one would for such purpose be justified in delaying deep into the root from which the particular word has been derived, or into the question as to whether a particular meaning could be attached to that word by combining the meanings of two different words of which it is made, or whether it could be said to be a noun of the feminine gender made out of another noun of the masculine gender and then used as an adjective to qualify another noun. In my opinion, one must only consider the plain and popular meaning of the word concerned unless it is a pure invention and decide as to whether in the light of such meaning, it is directly descriptive of the goods with which it is associated.

(9) A reference was also made by Mr. Gupte to other dictionaries in connection with the meaning of the word "lekha" and I may refer to them shortly. In the Hindi-English Dictionary by Bhargava the word "lekh" is defined as "writing, essay writing, script, letter and handwriting", whereas the word "lekha" is defined to mean "reckoning, account, estimation, calculation, record, exact estimation, connection". It will appear from these meanings of the two words "lekh" and "lekha" that irrespective of their Sanskrit origin, they have been differently defined and understood by Hindi-speaking people in this country. According to this dictionary, too, the word "lekh" is not shown to be capable of being changed into one of the feminine gender having the same meaning as the word itself. Then turning to the Marathi English School Dictionary the word "lekh" is defined as "a writing, an epistle, handwriting", but curiously enough the word "lekha" is not to be found in this dictionary at all. This means that although originally the word "lekha" might have been derived from the Sanskrit word "likh" so far as Marathi language is concerned, and Mr. Gupte, frankly admitted it, the word "lekha" is not known to the Marathi-speaking people at all. That is precisely the reason why the word "lekha" does not find any place in the Marathi-English Dictionary. Then turning to the Gujarati-English Dictionary by M. B. Belsare, the word "lekh" is defined as "a writing, anything written, a document, a written contract; 2. A statement a mention made of ; 3. Handwriting", whereas the word "lekha" is defined to mean "a streak, a line". No other meaning is given to the word "lekha" by this dictionary. The position, therefore, on these three dictionaries is that whereas according to the Hindi-English dictionary the word "lekha" means something entirely different from the word "lekh" and the same holds good with reference to the Gujarat-English dictionary, among the Marathi-speaking people, it appears from the Marathi-English dictionary, the word "lekha" is not in vogue at all and, therefore, that word may not mean anything to such people. There are two other dictionaries which have been referred

to by Mr. Gupte. One of them is the Students Dictionary of Bengali words and phrases by Benimadhav Ganguli. The word "lekha" is defined in the hat dictionary to mean "writing, handwriting, delineation, a painting, a line, a mark crow; fate, anything written, a composition, style of writing, a note, a letter". In the Telugu-English Dictionary by P. Sankaranarayana also the word "lekha" is defined to mean "a writing, letter, note, epistle; manuscript, document". According to these two dictionaries, therefore, the word "lekha" means "a writing or handwriting" as understood by Bengalis in Bengal and the Telugu people in the south. It must be noted, however, as already pointed out above, that the word "Sulekha" is not to be found in any of these dictionaries.

(10) The question now is as to whether when a word is given a meaning in some parts of the country, which might amount to being descriptive of the goods in respect of and in relation to which it is used whereas it conveys an entirely different meaning in other parts of the country, such a word could be said to be directly descriptive of the goods with which it is associated within the meaning of S. 6 of the Trade Marks Act. It is undoubtedly true, as Mr. Gupte pointed out, that the Trade Marks Act is an All India Act and whenever any word is sought to be registered as a trade marks, that word should in no event be descriptive of the goods in respect of which it is sought to be registered as a trade mark. The question, however, is as to what happens when a word is one which has different meanings in different parts of the country. Can it then be said that the word is directly descriptive of the goods in question for all the people in the country? The question becomes more interesting when the same word is popularly used as the personal name of a female. To my mind, the standard to be applied in all these cases would be as to what a common man in the street would think of the particular word. According to the application made by the petitioners in this case for registration of the word "Sulekha" as the trade mark, in the first instance, the word was described by them as being the name of a female person and it is significant to note that the Registrar of Trade Marks in this case himself has admitted that that word is certainly in vogue among the people as the name of a female. If between the two different kinds of meaning of a particular word, one is universally popular and the other is not, in my opinion, the meaning which is universally popular should be accepted and if such meaning does not amount to any description of the goods in respect of which that word is used, there could possibly be no objection to such word being registered as a trade mark under the Trade Marks Act

(11) I may point out that the word "lekha" is almost interchangeable with the word "rekha".

"Rekha" means "streak or a line". "Sulekha" means "well proportioned, handsome". "Sulekha" means "a female with well proportioned body". "Lekha" also means "a streak or a line" and, therefore, "Sulekha" might as well mean the same as "Sulekha". Both the words "Sulekha" as well as "Sulekha" in the Hindu society are in

vogue as being the names of female persons, but I very much doubt as to whether "Sulekha" is at all known as meaning "good writing". I agree with Monier when he says that the word "lekha" means "a writing" as being a derivative of the word "likh", but that it was never found to have been used in that sense in any of the publications, either Sanskrit or otherwise. If this is the kind of meaning of the word "lekha", there is no wonder that none of the people knows about it and, therefore, as there is a certain amount of obscurity about that meaning, the word "lekha" cannot be interpreted to mean "writing" so as to be descriptive of the goods in question. The obvious meaning of the word "lekha", as pointed out above and as recognised by majority of the dictionaries, is only "a line or a streak" corresponding with the meaning of the word "rekha", and "Sulekha" as much as "Sulekha" in common parlance would only mean a female with well-proportioned body, and yet the word "lekha" as such does not seem to be known to all classes of people in the country. If it were, Mr. Gupte the learned counsel for the Registrar of Trade Marks, could have certainly known it, but he frankly admitted that in the Marathi language, he had never heard the word "lekha" being used at all and that is corroborated by the fact that the Marathi-English dictionary also does not refer the word "lekha". The reference to any word or words descriptive of the goods as used in S. 6 of the Trade Marks Act would, in my opinion, only mean such word or words as would be known to the people all over the country and not only to some sections of the people or in some parts of the Country. Both "Sulekha" and "Sulekha" to my mind are well known in the country as personal names of females, whereas the word "Sulekha" is far more unknown than the word "Sulekha" itself as meaning "good writing". In these circumstances, I am of the opinion that the Registrar of Trade Marks was not justified in attempting to discover the meaning of the word "Sulekha" by splitting it into "Su" and "lekha" and then finding out the meanings thereof from the several dictionaries and then coming to the conclusion only on the basis of three of the several dictionaries referred to above that the word "Sulekha" meant "good writing". He might have been so justified if all the dictionaries had supported that meaning, but as stated above, one of the dictionaries does not refer to the word "lekha" at all as a word in vogue and some of the others define it in quite a different way from the rest. In this state of things, there would be hardly any justification for assigning such meaning to the word "Sulekha" as would fall under the prohibition of S. 6 of the Trade Marks Act and not the one which would be quite in conformity with the provisions of that section. Again, it is pertinent to note that the Registrar of Trade Marks before whom the original application for registration of the word "Sulekha" as a trade mark was made, had gone deep into the matter himself and made all necessary enquiries before deciding as to whether that word should be registered as a trade mark or not. He was convinced that the word was not in any way descriptive of the goods in respect of which it was sought to be registered as a trade mark. He was convinced that the word was used only in relation to a female and further he was convinced that it had attained a distinctive character by reason of its being associated with the Petitioners' goods for more than a year. It was only after

he was completely satisfied in all these respects that then Registrar passed the order for registration of the word "Sulekha" as the trade mark in connection with the petitioners' pens and other goods. In that view of the matter I very much doubt if any other Registrar of Trade Marks could go behind the finding of fact arrived at by his predecessor and reopen the enquiry by assigning to the word a different meaning altogether from the one which was accepted by his predecessor. This is not a case in which the petitioners had succeeded in getting the mark registered by any fraudulent or dishonest means. The petitioners had placed all their cards on the table and the Registrar had full opportunity of examining each of them. The simple question before the then Registrar was as to whether the word "Sulekha" could be interpreted to convey any sense which might be characterised as descriptive of the goods in respect of which it was sought to be used as a trade mark and he decided that question on whatever evidence was produced before him as a question of fact. It may be, that he might not have looked into the dictionaries for finding out the root of the word "Sulekha" from which it was derived and the meaning thereof, but I do not think that in these cases it is ever necessary to look into the dictionaries to find out the root meaning of the word in question. After all, one has to decide as to whether the word in respect of which registration as a trade mark is sought has in its popular sense any direct bearing upon the merits or quality of the thing or article to which it is to be attached. If in the popular sense the word does not describe the goods in any sense at all, then there should not be any objection to such word being adapted and registered as a trade mark, provided of course that the applicants prove to the satisfaction of Registrar that that word had attained a distinctive character by reason of its association with the thing in question upto the time of the application. In my opinion, the Registrar in this case could have well refrained from taking any action in this matter and allowed the trade mark to continue as before. I am, however, informed that the Registrar went into the matter only as a matter of principle and he wanted this Court eventually to decide as to whether the principle on which he acted in this matter was justified or not. I am, however, unable to see what principle was involved in this matter. The pure and simple question was as to whether the word "Sulekha" meant anything in the nature of description of the petitioners' pens, pencils and other materials. The question was already decided by his predecessor and I do not think it was open to him to reopen the question which was essentially a question of fact. Just because the Registrar in this case happened to find the root meaning of the word "Sulekha" to be different from the meaning which was accepted by his predecessor, no question of principle as such is involved. Even on the question that he raised himself, if he in one place accepted that the word "Sulekha" was well in vogue with reference to personal names of females which undoubtedly meant that it was the popular meaning of the word "Sulekha" and that was how it was popularly used, he should not have really gone to the extent of differentiating the meanings given to the word "lekha" in different dictionaries and contrary to the popular meaning came to the conclusion that the word "Sulekha" meant "good writing" because, three out of the six dictionaries he

consulted assigned the meaning "writing" to the word "lekha". In my opinion, the discretion which the Registrar used in this case in giving altogether a different meaning to the word "Sulekha" does not seem to be warranted even by the terms of the section itself. There is no warrant under the section for adopting any meaning other than the popular meaning of the word concerned. I am unable to see that the section warrants any examination of dictionaries for the purpose of finding out the meaning of any particular word. Either the word for which application is made has or has no popular meaning. It may be a word which may be absolutely unknown. In the event, also there could not be any objection to the registration of the word provided its distinctive character has been proved by the applicants by its fairly long association with the particular goods.

(12) In this view of the matter, I have not thought it necessary to call upon Mr. Gupte to address me on the other points raised by him in support of the order passed by the Registrar of Trade Marks. I am firmly of the view that the word "Sulekha" as it stands has no bearing on, nor is it directly or indirectly descriptive of the merits, quality or nature of the pens, pencils and other goods manufactured by the petitioners. All that it means, if at all, is that it is the name of a female person. If it does not mean that, it means nothing. Even then, there could not be any objection to its being registered as a trademark.

(13) In the result, the petition is allowed. The order passed by the Registrar of Trade Marks is set aside and the entry in the Registrar of Trade Marks if expunged, should be restored. Each party to bear its own costs.

(14) Petition allowed.