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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ C.A.(COMM.IPD-TM) 50/2024

SHENZHEN HOTTECH ELECTRONICS CO LTD .....Appellant

Through: Mr. Sharabh Shrivastava with Ms. Anushka Aman and Ms. Taaniyaa Dograa, Advocates.
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versus

THE REGISTRAR OF TRADEMARKS, TRADE MARKS REGISTRY, NEW DELHI .....Respondent

Through: Ms. Saumya Tandon, CGSC.

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

O R D E R

% 06.09.2024

1. The present appeal has been filed under Section 91 of the Trade Marks Act, 1999 and The Trade Marks Rules, 2017 assailing the refusal order dated 06th March, 2024 in respect of *application no. 4555517* under Class 9 for the mark 

"H HOTTECH (DEVICE)", passed by the Examiner of Trade Marks, pursuant to the Show Cause Hearing, which was scheduled to be held on 29th February, 2024.

2. The premise for filing the present appeal is that the Show Cause Notice of hearing was never served upon the appellant, on account of which

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the appellant could not appear for the hearing before the Examiner of Trade Marks.

3. As per facts on record, the appellant filed application no. 4555517 seeking registration of its mark i.e., 

"H HOTTECH (DEVICE)", in Class-09. Pursuant thereto, the respondent raised objections under Section 9 and 11 of the Trade Marks Act, 1999 vide Examination Report dated 28th July, 2020. In response to the examination report, the appellant filed a detailed reply.

4. Subsequently, during the routine follow-up qua the application no. 4555517 on 29th February, 2024, the appellant came across a Show Cause Hearing Notice dated 21st February, 2024 uploaded on the website of the Trade Marks Registry. However, the said Show Cause Notice did not reflect any proper dispatch date nor was the appellant duly served. Thus, it is submitted that no prior intimation was given to the appellant regarding the hearing, which was scheduled before the Trade Marks Registry on 29th February, 2024.

5. Thereafter, the appellant issued a letter dated 29th February, 2024 addressing its grievance to the respondent. However, without taking into consideration the genuine grievance of the appellant, the respondent passed the impugned order, thereby refusing registration to the appellant.

6. Ms. Saumya Tandon, learned counsel appearing for the respondent at the outset submits that in view of the submissions made by learned counsel appearing for the appellant that no opportunity of hearing was given, the respondent is ready to grant an opportunity of hearing to the appellant.

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7. Enunciating the Principles of Natural Justice, Supreme Court in the case of ***Manohar Versus State of Maharashtra and Another***, ***(2012) 13 SCC 14***, has held s follows:-

> *"xxx xxx xxx*
>
> ***19.*** *In Kranti Associates (P) Ltd. v. Masood Ahmed Khan [(2010) 9 SCC 496 : (2010) 3 SCC (Civ) 852] the Court dealt with the question of demarcation between the administrative orders and quasi-judicial orders and the requirement of adherence to natural justice. The Court held as under: (SCC pp. 510-12, para 47)*
>
> > *"47. Summarising the above discussion, this Court holds:*
> >
> > *(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
> >
> > *(b) A quasi-judicial authority must record reasons in support of its conclusions.*
> >
> > *(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
> >
> > *(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
> >
> > *(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.*
> >
> > *(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*
> >
> > *(g) Reasons facilitate the process of judicial review by superior courts.*
> >
> > *(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.*

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(i) Judicial or even quasi-judicial opinions these days can be as different as the Judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision-making process.

*(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the Judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro, "In Defence of Judicial Candor" [(1987) 100 Harv L Rev 731-37] . [**Ed.**: Essays Commemorating the One Hundredth Anniversary of the Harvard Law Review, "In Defence of Judicial Candor by David L. Shapiro (pp. 731-750).])*

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR at p. 562, para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,
'adequate and intelligent reasons must be given for judicial decisions'.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of 'due process'."

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xxx xxx xxx

23. ***Thus, the principles of natural justice have to be read into the provisions of Section 20(2). It is a settled canon of civil jurisprudence including service jurisprudence that no person be condemned unheard. Directing disciplinary action is an order in the form of recommendation which has far reaching civil consequences. It will not be permissible to take the view that compliance with principles of natural justice is not a condition precedent to passing of a recommendation under Section 20(2).***

24. *In Udit Narain Singh Malpaharia v. Board of Revenue, Bihar [AIR 1963 SC 786]* ***the Court stressed upon compliance with the principles of natural justice in judicial or quasi-judicial proceedings. Absence of such specific requirement would invalidate the order.*** *The Court, reiterating the principles stated in the English Law in R. v. Electricity Commissioners, ex p London Electricity Joint Committee Co. (1920) Ltd. [(1924) 1 KB 171 : 1923 All ER Rep 150 (CA)] , held as under: (Udit Narain case [AIR 1963 SC 786] , AIR pp. 788-89, para 8)*

> *"8. … The following classic test laid down by Lord Justice Atkin, as he then was, in R. v. Electricity Commissioners, ex p London Electricity Joint Committee Co. (1920) Ltd. [(1924) 1 KB 171 : 1923 All ER Rep 150 (CA)] and followed by this Court in more than one decision clearly brings out the meaning of the concept of judicial act: (KB p. 205)*
>
> *'Wherever anybody of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs.'*
>
> *Lord Justice Slesser in R. v. London County Council, ex p Entertainments Protection Assn. Ltd. [(1931) 2 KB 215 (CA)] dissected the concept of judicial act laid down by Atkin, L.J., into the following heads in his judgment: (KB p. 243)*
>
> *'Wherever anybody of persons (1) having legal authority (2) to determine questions affecting rights of subjects and (3) having the duty to act judicially (4) act in excess of their legal authority—a writ of certiorari may issue.'*
>
> ***It will be seen from the ingredients of judicial act that there must be a duty to act judicially. A tribunal, therefore, exercising a judicial or quasi-judicial act cannot decide against the rights of a party without giving him a hearing or***

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> ***an opportunity to represent his case in the manner known to law. If the provisions of a particular statute or rules made thereunder do not provide for it, principles of natural justice demand it. Any such order made without hearing the affected parties would be void. As a writ of certiorari will be granted to remove the record of proceedings of an inferior tribunal or authority exercising judicial or quasi-judicial acts, ex hypothesi it follows that the High Court in exercising its jurisdiction shall also act judicially in disposing of the proceedings before it."***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

8. Accordingly, it is well settled that Principles of Natural Justice demand that right of hearing has to be given, unless it is excluded by law.

9. In view of the aforesaid, the impugned order dated 06th March, 2024 is set aside and the matter is remanded back to the Registrar of Trademarks.

10. A fresh hearing notice shall be issued by the respondent to the appellant, whereafter, due opportunity of hearing shall be granted to the appellant.

11. The Registrar of Trademarks shall pass an appropriate order after granting due opportunity of hearing to the appellant.

12. Considering the fact that the matter is remanded back, it is directed that the matter shall be taken up for hearing by some other officer, than the one who has passed the impugned order dated 06th March, 2024.

13. The Registry is directed to supply a copy of the present order to the Office of the Controller General of Patents, Designs and Trade Marks of India, on E-mail Id: llc-ipo@gov.in for compliance.

14. With the aforesaid directions, the present appeal is disposed of.

MINI PUSHKARNA, J

SEPTEMBER 6, 2024/ c

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