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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **05.12.2024**

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THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P. (IPD) No.24 of 2024

Department of Atomic Energy,
Constituted Power of Attorney Holder,
Anushakti Bhavan,
C.S.M Marg,
Mumbai,
Maharashtra - 400 001. .. Petitioner

-vs-

1.Assistant Controller of Patents and Designs,
Patent Office,
Intellectual Property Building,
G.S.T. Road,
Guindy,
Chennai - 600 032.

2. Controller of Patents,
The Patent Office,
IPO Building,
Antop Hill,
S.M. Road,
Mumbai - 400 037. .. Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India to issue a writ of certiorari to call for the records of the order / decision, issued by the respondent No.1 on 15.03.2024, refusing the petitioner's patent application No.201921029932 under Section 15 of the Patents Act, 1970,

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quash the same.

For Petitioner : Mr.Adarash Ramanujan

For respondents : Mr. S. N. Parthasarathy
CGSC

JUDGMENT

This writ petition has been filed, challenging the impugned order passed by the first respondent dated 15.03.2024, refusing to process the petitioner's patent application No.201921029932, on the ground that the petitioner did not submit the power of attorney within three months from the date of filing the application in accordance with Rule 135 (1) of the Patents Rules 2003 and they also did not file any application seeking to condone the delay.

2. The learned counsel for the petitioner submits that by total non application of mind, the impugned order has been passed. According to him, only for the first time, as seen from the first hearing notice, the first respondent had informed the petitioner about their contention that the power of attorney filed by the petitioner has been filed belatedly beyond the stipulated period as fixed under Rule 135 (1) of the Patents Rules 2003. He

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also submitted that in the first hearing notice dated 11.01.2024 issued to the petitioner, the petitioner was permitted to substitute a fresh power of attorney as per the prescribed Form- 26 Para 2 and in accordance with the said requirement, the petitioner had also substituted a fresh power of attorney on 09.02.2024 and the same was also accepted by the second respondent.

3. However, according to the learned counsel for the petitioner the fresh power of attorney submitted by the petitioner, as per the requirement of the respondent, has been received and accepted by the respondent but despite the same, the impugned order came to be passed by total non application of mind. The petitioner has challenged the impugned order on the ground that the order has been passed by total non application of mind and in violation of principles of natural justice.

4. The learned standing counsel appearing for the respondents is not sure as to whether the substituted power of attorney was received and accepted by the respondents or not. However, as seen from the first hearing notice issued to the petitioner dated 11.01.2024, it was stated that the power

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of attorney submitted by the petitioner at the first instance is not as per the procedure contemplated under the Rules. But, as seen from the subsequent document produced by the petitioner before this Court, the substituted power of attorney has been accepted by the respondents.

5. Eventhough, the learned standing counsel appearing for the respondents would now submit that he is not sure whether the respondents have received and accepted the same or not, this Court is of the considered view, since only a technical objection has been raised by the respondents in the impugned order, it has to be presumed that the fresh power of attorney submitted by the petitioner has been received and accepted by the respondents as contended by the learned counsel for the petitioner before this Court. Only on technical grounds, the respondents have refused to process the petitioner's patent application. On a *prima facie* consideration, this Court also finds that the impugned order has been passed by total non application of mind and by violating the principles of natural justice.

6. For the foregoing reasons, the impugned order dated 15.03.2024 passed by the first respondent has to be quashed and a direction will have to

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be issued to the first respondent to process the petitioner's patent application No. 201921029932 in accordance with law.

7. Accordingly, the impugned order dated 15.03.2024 passed by the first respondent is hereby quashed and this petition is allowed by directing the first respondent to process the petitioner's patent application No. 201921029932 afresh in accordance with law. No Costs.

05.12.2024

ab
Index: Yes/No
Speaking/Non Speaking Order
Neutral Citation Case: Yes/No

To
1.Assistant Controller of Patents and Designs,
Patent Office,
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G.S.T. Road, Guindy,
Chennai - 600 032.

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ABDUL QUDDHOSE,J.

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