

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2017

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P.Nos. 23402 & 30969 of 2016

and

WMP.No.20064, 26836 to 26838 of 2016

Sukraa Hallmarking Centre

Represented by its Proprietor,
70-A, Hanumantharayan Koil Street,
Coimbatore 641 001.
in both W.Ps.

..Petitioner

Vs

The Bureau of Indian Standards

Represented by its Sc.G &
Deputy Director General (South)
Post Box No.8290
CIT Campus, IV Cross Road,
Taramani, Chennai 600 113.

.. Respondent in both W.Ps.

W.P.No.23402 of 2016 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari calling for the records of the respondent in order dated 28.06.2016 in SRO/RHMS/600408.3 and quash the same.

W.P.No.30969 of 2016: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari calling for the records of the respondent in order dated 18.07.2016 in SRO/600408 and quash the same.

For Petitioner : Ms.Naramadha Sampath
in both the writ petitions

For Respondent : Mr.T.S. Rajamohan
in both the writ petitions

COMMON ORDER

Both the writ petitions are filed by the petitioner challenging the orders dated 28.06.2016 and 18.07.2016 respectively, passed by the respondent derecognising the recognition granted to the petitioner. The learned counsel for both sides advanced common arguments in these writ petitions. Therefore, by consent of the counsel for both sides, the writ petitions are taken up together and are disposed of by this common order.

2. The petitioner in these writ petitions is a gold Assaying and Hallmarking centre, recognised by the respondent under Rule 10 (2) of the Bureau of Indian Standards Rules, 1967. During the course of their business, the petitioner received a show cause notice dated 07.04.2016 from the respondent proposing to de-recognise the petitioner's recognition on the basis of alleged failure of samples communicated to the petitioner on 2nd and 12th January 2015. The petitioner submitted their detailed reply on 21.04.2016 and 11.05.2016 contending that they never hallmarked the jewellery of the concerned jewellers from whom complaints have been received by the respondent and therefore, the question of failure on the part does not arise. Pursuant to such objections, the petitioner was directed to appear for a personal hearing on 12.05.2016. The petitioner also appeared on 12.05.2016 and submitted that the complaints given against them are untenable. During the course of such personal hearing, the petitioner was directed to produce certain other documentary evidence. Accordingly, the petitioner produced all the documentary evidence in their possession and requested to drop the proposal to de-recognise the recognition given to them. In spite of the same, by the order dated 28.06.2016, the respondent de-recognised the recognition given to the petitioner and it is challenged in WP No. 23402 of 2016.

3. Subsequent to the order dated 28.06.2016, the respondent has issued a notice dated 18.07.2016 complaining that in spite of the order of de-recognition dated 28.06.2016, the petitioner is continuing to hallmark jewellery and it is in violation of BIS Act, 1986. Therefore, the respondent issued the notice dated 18.07.2016 which is challenged in WP No. 30969 of 2016.

4. The learned counsel for the petitioner would contend that the petitioner has given detailed replies dated 21.04.2016 & 11.05.2016 requesting to furnish relevant particulars relating to the specific complaint against the jewelleries hallmarked by the petitioner. According to the learned counsel for the petitioner, the petitioner have never hallmarked the jewellery of the concerned jewellers from whom complaints were received by the respondent. Even though personal hearing was given to the petitioner on 12.05.2016, according to the learned counsel for the petitioner, the respondent has pre-determined their mind to de-recognise the recognition granted to the petitioner and which resulted in the impugned orders being passed. Further, the impugned orders were passed by the respondent without assigning any reasons or particulars relating to the jewelleries allegedly hallmarked by the petitioner. Thus, according to the learned counsel for the petitioner, the impugned orders have been passed in violation of principles of natural justice. Further, the learned counsel would contend that the impugned orders have been passed without reference to any of the grounds mentioned in Clause 5.11.4.1 of the Lab Recognition Scheme and without complying with the basic principles of natural justice.

5. The learned counsel for the petitioner would further rely upon the record of the personal hearing held on 12.05.2016. As per the record of the meeting, it was recorded that the Chairman gave time for submission of certain records by the petitioner for the period from 01.01.2014 to 31.12.2015 and till such time, the Chairman has deferred the decision on de-recognition. Accordingly, the petitioner produced the documentary evidence by letter dated 27.05.2015 produced all the documentary evidence sought for by the petitioner. Thereafter, without giving any further opportunity of hearing, the respondent has passed the order of de-recognition dated 28.06.2016 and therefore, the learned counsel for the petitioner prayed this Court to allow the writ petitions.

6. The learned counsel for the respondent, by placing reliance on the common counter affidavit in both the cases, would contend that the respondent was given adequate opportunity to putforth their defence and therefore it cannot be said that the orders, which are impugned in these writ petitions, are in violation of principles of natural justice. The decision taken by the respondent to de-recognise the recognition granted to the petitioner was based on sound principles of law and in exercise of powers conferred on the respondent. Even as per the record of the minutes of the meeting dated 12.05.2016, the petitioner could not produce any proof of further investigation done by the petitioner nor submits any documentary evidence being followed in the centre with respect to receipt and delivery of the jewellery. When once the hallmarking centre is recognised in tune with the Rules, the respondent is empowered to de-recognise the recognition after following due procedures which are based on the complaint received by the respondent. In any event, the order dated 28.06.2016 was passed after giving sufficient opportunity to the petitioner and therefore, interference of this Court is not warranted. Accordingly, the learned counsel for the respondent prayed this Court to dismiss both the writ petitions.

7. I heard the learned counsel for both sides and perused the materials placed on record. Pending, writ petition, this court passed an interim order in W.P.No.23402 of 2016 dated 11.07.2016 on the ground that the petitioner has made out a prima facie case for grant of an interim order.

8. Before advertng to the submissions made by the counsel for both sides, it is just and necessary to look into the record of minutes of meeting dated 12.05.2016 wherein it was held as follows:-

In view of the above, Chairman gave time for submission of following for the period 1 Jan 2014 to 31 Dec 2015 in support of their case.

1. Declaration of the Logo of the centre as seen on the jewellery and to also provide clear photograph proof to show that the logo declared was actually used during the period under reference.

2. All records maintained in the receipt and delivery section.
3. XRF records as generated from the test equipment.
4. Reports/evidences of investigations done at the jewellers mentioned at S.No.2,3 and 5 of the table above.

Hence, the Chairman deferred the decision on de-recognition.

9. It is very clear that the decision to de-recognise the recognition granted to the petitioner earlier was ordered to be deferred by the Chairman and therefore, the order dated 28.06.2016 passed by the respondent, de-recognising the recognition given to the petitioner has no force of law or in other words, it is not in existence and cannot be put against the petitioner. Therefore, the consequential order dated 18.07.2016, which was a notice issued by the respondent complaining non-compliance of the earlier order dated 28.06.2016 also no force of law.

10. As regards the merits of the case, even though the petitioner was given an opportunity of hearing, as mentioned above, the petitioner was directed to produce some documentary evidence in support of his defence, which was also duly recorded in the minutes of the meeting dated 12.05.2016. Accordingly, the petitioner produced the documentary evidence by letter dated 27.05.2015. Thereafter, without giving any further opportunity of hearing or to clarify the documentary evidence made available by the petitioner, the respondent has passed the order of de-recognition dated 28.06.2016. Therefore, it is evident that the petitioner was prevented from effectively defending their case and it is in violation of the principles of natural justice. Therefore, this Court is inclined to set aside the impugned orders dated 28.06.2016 and 18.07.2016 and the same are accordingly set aside. The matter is remitted back to the respondent for fresh consideration. The respondent is directed to pass appropriate orders, after giving due opportunity to the petitioner and proceed further in accordance with law. The petitioner is at liberty to produce additional evidences, if any.

11. Accordingly, both the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

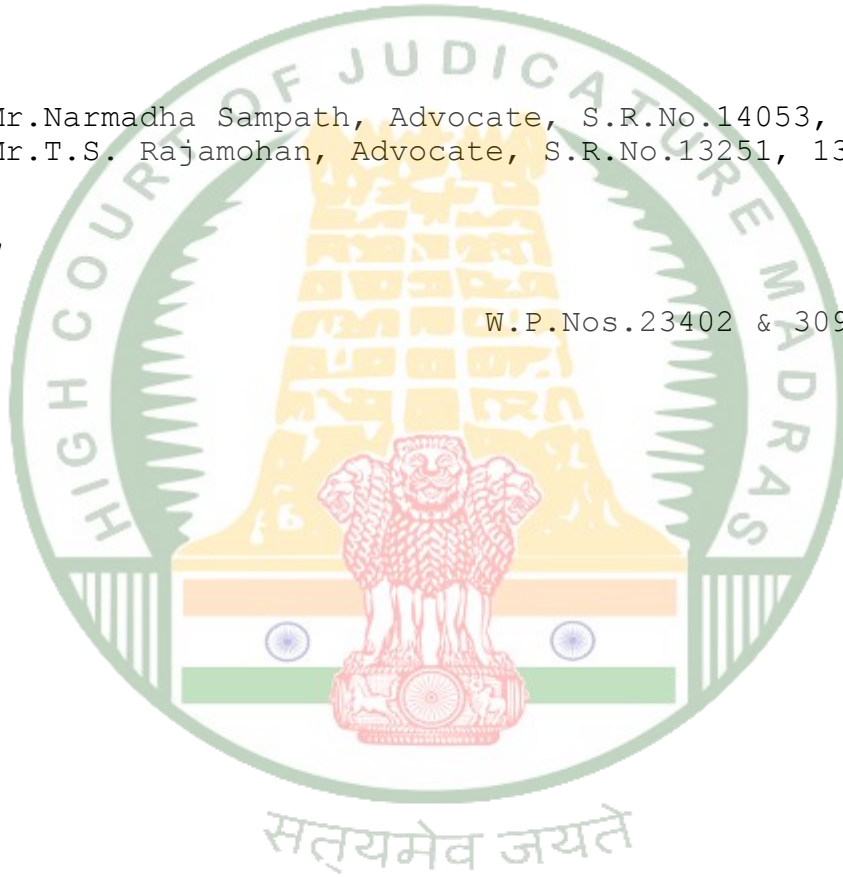
To

The Bureau of Indian Standards
Represented by its Sc.G &
Deputy Director General (South)
Post Box No.8290
CIT Campus, IV Cross Road,
Taramani, Chennai 600 113.

+2ccs to Mr.Narmadha Sampath, Advocate, S.R.No.14053, 13460
+2ccs to Mr.T.S. Rajamohan, Advocate, S.R.No.13251, 13250

NR(CO)
EU 21.4.17

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