

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
(Intellectual Property Rights Division)

IPDPTA/21/2022

VMI HOLLAND B.V. (SR. NO. 47/2020/PT/KOL)
VS
DEPUTY CONTROLLER OF PATENTS AND DESIGNS AND ORS

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 16th June, 2025.

Appearance:
Mr. Debnath Ghosh, Sr. Adv.
Mr. Biswaroop Mukherjee, Adv.
Mr. Subesh Banerjee, Adv.
Ms. Madhumanti Chakraborty, Adv.
...for petitioner.

The Court: This appeal is directed against an order dated 9th March 2020, whereby the Deputy Controller of Patents and Designs has rejected the subject application on the ground that the same lacked inventive steps.

Briefly the subject invention titled “Assembly for and method of making a tyre component” has a priority date of 16th October 2006 and an international filing date of 26th September 2007.

The invention pertains to a product as well as a process patent.

In brief, the assembly layout of the proposed invention comprised of the following steps;

a) A first conveyor device for conveying a first tyre component;

b) A first building unit having a first building drum wherein the first building drum is placed in an operative position for picking up the first tyre component conveyed by

the first conveyor device, wherein, the first building drum has a first axis of rotation;

c) A second conveyor device for conveying a second tyre component, wherein, the second tyre component differs from the first tyre component;

d) A second building unit having a second building drum, wherein, the second building drum is placed in an operative position for picking up the second tyre component conveyed by the second conveyor device, wherein, the second building drum has a second axis of rotation; wherein, at least one of the building drums is linearly vertically movable and at least one of the building drums can be placed in an operative position in which the axis of rotation of one building drum is out of line, but parallel to the axis of rotation of the other building drum placed in an operative position, wherein, the said building drum is vertically movable, transverse to its axis of rotation, to an operative position in question immediately above an end of the corresponding conveyor belt.

It is contended on behalf of the appellant that the impugned order is an unreasoned order and the conclusion that the subject invention lacked inventive steps is unsupported. Significantly, corresponding patents originating from an identical application had been granted in Europe, Japan, Korea, Russia, Taiwan and Brazil. All such materials were totally ignored in passing the impugned order.

Pursuant to the filing of the above application, a First Examination Report dated 28th June 2017 was issued by the Controller. The appellant had responded to such a First Examination Report on 22nd September 2017 and consequently amended the claims to meet all requirements. The revised claims in support of the specification as originally filed were also before the Controller. All the essential features and steps of the assembly and the method according to the invention which are required for achieving the desired result were defined as independent claims in the application filed by the appellant. In addition, the subsidiary and preferred features and aspects of the subject invention were also highlighted in their claim.

Despite written arguments being filed dealing with all the steps of the subject claims, the Controller has disregarded all the materials relied on by the appellant and cursorily passed the impugned order without any reasons whatsoever. In support of such contention, the appellant relies on *Dolby International AB v. Assistant Controller of Patents and Designs: 2023 SCC Online Del 1521*, *Uniworth Resorts v. Ashok Mittal: 2007 SCC Online Cal 535* and *Kranti Associates Private Limited & Anr. v. Masood Ahmed Khan & Ors.: (2010) 9 SCC 496*.

It is fairly submitted on behalf of the respondent Controller that the impugned order cannot be supported or added to.

A perusal of the impugned order would demonstrate that after enumerating the features of all the prior arts, the Controller has concluded that “*the argument of the applicant is not persuasive and the objection regarding lack of inventive steps remains yet to be complied with. Having considered all the*

facts, submissions made by the applicant during the hearing and as well as all the documents on record and also in view of my above findings, I hereby refuse the application for patent number 1485/KOLNP/2009 under section 15 of the Patents Act 1970.”

There are no other reasons recorded in the impugned order.

It has been repeatedly reiterated that such orders must have the fundamental requisites of an adjudication and cannot be passed in an arbitrary manner. There is simply no finding on the merits. The impugned order also does not also deal with the technical or scientific data relied on by the appellant. In *Kranti Associates Private Limited and another versus Masood Ahmed Khan and others*, (2010)9 SCC 496, it is been held as follows;

“12. The necessity of giving reason by a body or authority in support of its decision came up for consideration before this Court in several cases. Initially this Court recognised a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of this Court in A.K. Kraipak v. Union of India¹.

14. The expression "speaking order" was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of the writ of certiorari, referred to orders with errors on the face of the record and pointed out that an order with errors on its face, is a speaking order. (See pp. 1878-97, Vol. 4. Appeal Cases 30 at 40 of the Report).

15. This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the "inscrutable face of a sphinx".

The impugned order has been mechanically passed and is devoid of any reasons. There has been no application of mind in passing the impugned order. The well settled principles for deciding inventive steps have not even been adverted to nor referred to in the impugned order.

In view of the above, the impugned order is unsustainable and set aside, the matter is remanded back to the respondent authority for reconsideration. Needless to mention, there has been no adjudication on the merits of the case and all questions are left open to be decided within a period of three months from the date of communication of this order and after giving a right of hearing to the appellant.

With the above directions, IPDPTA/21/2022 stands disposed of.

(RAVI KRISHAN KAPUR, J.)

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