

OIP-13

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

TMA/6/2021

YAMAHA HATSUDOKI KABUSHIKI KAISHA  
VS  
MR. DEVENDER KUMAR AND ANR.

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 6<sup>th</sup> January, 2026

*Appearance:*  
*Mr. Debnath Ghosh, Sr. Adv.*  
*Mr. Biswaroop Mukherjee, Adv.*  
*Mr. Sudhakar Prasad, Adv.*  
*Mr. N. Banerjee, Adv.*  
*...for the petitioner*  
  
*Mr. Nandlal Singhanian, Adv.*  
*..for the Controller*

The Court:- This is an appeal directed against an order dated 12 March, 2021.

Briefly, the appellant had filed an application for registration of the mark "TRICITY" in class 12 i.e. for motorcycles, scooters, mopeds, three-wheeled motorcycles, three-wheeled scooters, three-wheeled mopeds and parts and fittings thereof on a 'proposed to be used' basis.

Pursuant to such application being filed the First Examination Report was served on 14 January, 2016. The initial response to the First Examination Report was filed by appellant on 21 January, 2016. Thereafter, a detailed response dated 9 May, 2018 was filed by the appellant to the First Examination Report.

By the impugned order, the Senior Examiner of Trademarks has held as follows:

*"The mark applied for registration is identical with/similar to earlier trademarks on record, as mentioned in the Examination report and by similarity of marks as*

*well as similarity of goods and services covered under such marks, there exists a likelihood of confusion in the mind of public. As such the registration of the mark is objectionable under Section 11(1) of the Trade marks Act, 1999.”*

Admittedly, the mark “TRICITY” had already received registration in respect of a different categories of goods. This point was urged and specifically brought to the attention of the Controller. The First Examination Report also discloses the words “TRICITY” being used in a different categories.

It is contended on behalf of the appellant that the impugned order is liable to be set aside on the ground of violation of the principles of natural justice. There are no reasons in the order. The bare conclusion that the applied mark is not registrable is not supported by any reasons whatsoever.

It is now well settled that both judicial and administrative orders must produce speaking orders, that is they ought to contain reasons. In *Uniworth Resorts Limited and Ajay Prakash Lohia vs. Ashok Mittal & Ors. (2008) 1 CalLT 1* it has been held as follows:

*12. Judicial orders of such nature need to meet the twin tests of “why” and “what”. It is the “why” that sustains the “what”. Reasons are the safeguard against the ipsi dixit of the decision-making process. They discuss how the judicial mind has been applied to the matter in issue and convey the nexus between the matters that have been considered and the conclusion based thereon. The justification and the reasonableness of a conclusion depend on the reasons given in support thereof. The order impugned has no element of “why” for the “what” therein to stand on.*

A similar view has been upheld in *Siemens Engg. and Mfg. Co. vs Union of India (1976) 2 SCC 981*, *UPSC v Bibhu Prasad Sarangi (2021) 4 SCC 516* and in an unreported decision in *AID 17 of 2022, Toyo Engineering Corporation & Anr. Vs. The Controller General of Patents, Designs and Trade Marks & Anr.*

In view of the above, the impugned order is unsustainable and set aside. The matter is remanded back to the Controller to hear the subject application afresh in accordance with law.

It is made clear that there has been no adjudication on the merits of the case and all questions are left open for the Hearing Officer to adjudicate upon in accordance with law. The above exercise is to be completed within a period of three months from the date of communication of this order.

With the above directions, TMA/6/2021 stands disposed of.

(RAVI KRISHAN KAPUR, J.)