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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2025

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THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE

Writ Petition No.2943 of 2022

M/s.Haldor Topsoe A/S,
represented by its Power of Attorney R.R.Nair,
Haldor Topsoes Alle 1,
DK- 2800 Kgs. Lyngby,
Denmark. Nationality: Denmark ... Petitioner

Vs

Controller of Patents & Designs,
Government of India, Patent Office,
Intellectual Property Rights Building,
GST Road, Guindy,
Chennai - 600 032. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the records of the respondent culminated in the impugned order dated 09.03.2021 in Patent Application No.297/CHE/2012 and quash the same and consequently, direct the respondent to pass orders afresh based on the documents and after hearing the petitioner.

For Petitioner : Mr.P.V.Balasubramaniam

For Respondent : Ms.Aarthi, Standing Counsel

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ORDER

This writ petition has been filed challenging the impugned order on the ground of violation of principles of natural justice and also on the ground that by total non-application of mind, the impugned order has been passed.

2. The petitioner had sought for patent in respect of their claimed invention before the respondent, which has been rejected under the impugned order dated 09.03.2021. The petitioner claims that since the impugned order is an order passed under Section 21 of the Patents Act and is an abandonment order, the question of filing an appeal against the said order does not arise and only a writ petition is maintainable as the impugned order is not an appealable order. According to the petitioner, by total non-application of mind, the impugned order has been passed. According to the petitioner, only hearing notice was received by them and no second examination report was submitted by the respondent. However, by total non-application of mind, in the impugned order, the respondent has observed that there was a second examination report. The petitioner also claims that

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they were not served with the copy of the impugned order at the first instance and only on a request made by them, the order copy was served and therefore, there is no delay on their part in filing this writ petition.

3. A counter affidavit has been filed by the respondent in this writ petition denying the contentions of the petitioner. According to them, even though the operative portion of the impugned order refers to Section 21 of the Patents Act, 1970, the impugned order is a refusal order passed under Section 15 of the Patents Act, 1970 and only on merits, the patent application submitted by the petitioner was refused under Section 15 of the Patents Act, 1970. Therefore, the only remedy available to the petitioner is to file an appeal, if so aggrieved by the impugned order and therefore, the present writ petition is not maintainable.

4. Learned Senior Counsel appearing for the petitioner referred to various documents/orders/notices filed along with this writ petition as well as to the impugned order and would submit that by total non-application of mind and despite the fact that replies to the objections were

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filed by the petitioner before the respondent, the respondent has passed an order under Section 21 of the Patents Act, 1970, treating the petitioner's patent application as abandoned. Learned Senior Counsel also drew the attention of this Court to the request made by the petitioner to the respondent for production of the impugned order and only on receipt of the same, at a later date, the petitioner was able to file this writ petition and therefore, there is no delay on the part of the petitioner in filing this writ petition.

5. On the other hand, learned Standing Counsel appearing for the respondent, drawing the attention of this Court to the impugned order, would submit that only after giving due consideration to the merits of the petitioner's patent application and by referring to the prior documents referred to therein, the respondent has refused to grant patent to the petitioner. Learned Standing Counsel would submit that even though the impugned order refers to Section 21 of the Patents Act, 1970, the order was passed only under Section 15 of the Patents Act, 1970, as the objections submitted by the petitioner to the first examination report was considered

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and only thereafter, the petitioner's patent application was rejected. There is delay on the part of the petitioner in approaching this Court and the only remedy available to the petitioner is to file an appeal and not to file a writ petition.

6. Admittedly, in the impugned order, while rejecting the petitioner's patent application, there is a reference only to Section 21 of the Patents Act, 1970. Section 21 of the Patents Act, 1970, deals with abandonment of the patent application. Section 15 of the Patents Act, 1970, is a provision under which a patent application can be refused to be granted. Even though learned Standing Counsel appearing for the respondent would submit before this Court that the impugned order is an order passed under Section 15 of the Patents Act, 1970, the order, in fact, talks about only Section 21 of the Patents Act, 1970, which deals with abandonment of any patent application. Though the impugned order discusses certain aspects of the patent application submitted by the petitioner which includes prior art documents, the contentions raised by the petitioner in this writ petition have not been considered fully. In this writ petition, the petitioner had contended

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that there was no second examination report submitted by the respondent. The petitioner has also contended that the objections raised to the first examination report have also not been considered properly. The petitioner, who is claiming an invention, should not be left high and dry and the benefit of doubt should also be given to a person, who is claiming an invention with regard to the grounds that have been raised by them in this writ petition. No prejudice will be caused to the respondent if the patent application of the petitioner is considered afresh on merits and in accordance with law. If at all, there are any objectors to the claimed invention of the petitioner or any party having any objection, they always have the right to file their opposition before the respondent. Since the impugned order has been passed by the respondent only under Section 21 of the Patents Act, 1970, which does not provide for an appeal remedy, this Court is of the considered view that the present writ petition is maintainable. The petitioner has also given sufficient reasons for not filing this writ petition immediately after the date of the impugned order. The petitioner has produced documentary evidence before this Court to prove that they have received the copy of the impugned

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order only in July'2021. This writ petition was filed in July'2021 itself. However, the same got numbered in the year 2022.

7. This Court is satisfied with the reasons given by the petitioner for the delay and it is clear that the petitioner cannot be faulted for the said delay. Since the impugned order has been passed under Section 21 of the Patents Act, 1970 and it is not an appealable order, necessarily the only remedy available to the petitioner is to file a writ petition. Therefore, as observed earlier, this writ petition is maintainable.

8. Admittedly, there was no second examination report. It is surprising as to how the hearing notice issued to the petitioner was treated as a second examination report by the respondent. The petitioner ought to have been granted an opportunity to raise all objections and only if a proper second examination report was submitted, they would have been granted with such an opportunity. Since proper second examination was not conducted, the respondent ought not to have passed the impugned order, which is in violation of principles of natural justice.

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9. The impugned order is unsustainable both on the ground of violation of principles of natural justice and on the ground of non-application of mind. The impugned order could not have been passed under Section 21 of the Patents Act, 1970, which is an abandonment order since the petitioner has already raised all objections to the first examination report.

10. For the foregoing reasons, the impugned order has to be quashed. Accordingly, the order passed by the respondent dated 09.03.2021 is quashed. The matter is remitted back to the respondent for fresh consideration on merits and in accordance with law on the petitioner's patent application. However, a direction is issued to the respondent to appoint a different Assistant Controller for adjudicating the petitioner's patent application than the Assistant Controller, who had passed the impugned order.

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This writ petition is disposed of with the above direction. No costs.

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Neutral Citation: Yes/No
Index: yes/no
Speaking Order/Non-Speaking Order
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To

The Controller of Patents & Designs,
Government of India, Patent Office,
Intellectual Property Rights Building,
GST Road, Guindy,
Chennai - 600 032.

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ABDUL QUDDHOSE, J

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