

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Syed Hasan Azhar Rizvi

Civil Petition No.1496-K of 2021

(Against judgment dated 15.7.2021 passed by the
High Court of Sindh at Karachi in M.A.No.10
of 2004)

M/s Tri-Star Industries (Pvt.) Limited

...Petitioner

Versus

***TRISA Burstenfabrik AG Triengen &
another***

...Respondents

For the Petitioner	: Mr. Muhammad Umar Lakhani, ASC Mr. Tahir Ahmed, Director, Tri- Star Industries
For the Respondent No.1	: Mr. Hassan Irfan Khan, ASC <i>(Via video link from Islamabad)</i> Ms. Amna Salman, ASC Mr. Ghulam Rasool Mangi, AOR
For the Respondent No.2	: S. Atta Muhammad Shah, Assistant Registrar, Trade Mark
Date of Hearing	: 27.04.2023

JUDGMENT

MUHAMMAD ALI MAZHAR, J:- This Civil Petition for leave to appeal is directed against the judgment dated 15.07.2021 passed by the Sindh High Court, Karachi Bench ("**High Court**") in M.A. No.10 of 2004 whereby the Miscellaneous Appeal filed by the respondent was allowed and the impugned decision of the Registrar of Trademarks dated 18.08.2003 was set aside.

2. According to the chronicles of the subject matter, the petitioner has been a manufacturer of tooth brushes and hair brushes in Pakistan since 1983 and allegedly improved and enhanced the quality of its

products and now holds a position in the market with the trade mark "TRISA" in Class No.21 under Trade Mark No. 86913 which was registered on 14.07.1985 for tooth brushes, nail brushes, shaving brushes and hair brushes. It is further alleged that the respondent No.1 has no right to the petitioner's registered trade mark but it was trying to usurp the trade mark "TRISA". Due to such illegal actions, the petitioner filed Civil Suit No.863/1997 in the Sindh High Court and obtained an injunctive order on 10.03.1999 against which the respondent No.1 preferred HCA No.83/1999, however the HCA was disposed off by consent on 09.08.2005 without modifying or setting aside the aforesaid injunctive order. The respondent No.1 filed an application for registration of trade mark in Class-21 in respect of household or kitchen utensils and other articles including brushes (except paint brushes). According to Section 15 (2) of the Trade Marks Act, 1940 read with Rule 30 of the Revised Trade Mark Rules, 1963 ("**Revised Rules 1963**"), a time-limit of two months is prescribed for filing opposition (Form TM-55) from the date of publication of advertisement in the Trade Mark Journal. The petitioner sought time to file TM-55 i.e. opposition to the registration of the respondent No.1's alleged trademark, and the Registrar of Trade Marks, after hearing the petitioner and the respondent No.1, passed a decision on 18.08.2003 allowing the petitioner's request for extension of time to file opposition and condoned the delay of 108 days. The respondent No.1 challenged the aforesaid decision in the High Court by dint of M.A. No.10/2004 and *vide* the impugned judgment the appeal was allowed and the decision dated 18.08.2003 passed by the Registrar, Trade Marks was set aside.

3. The learned counsel for the petitioner argued that the impugned judgment has been passed without appreciating the law and the rules applicable. It was further averred that the learned Single Judge failed to consider that there is no vested right in procedure. He further contended that the decision of Registrar was based on the premise that the petitioner was never issued or received a notice prior to the publication of the respondent No.1's application as the search was not carried out properly under Rule 23 of the Revised Rules 1963. It was further avowed that it is a settled rule of interpretation that no one has a vested right in procedure, coupled with the principle that, since no penal consequences have been prescribed in Rule 30 of the Revised

Rules 1963, the same cannot be treated as mandatory. It was submitted that the use of the word "shall" does not make Rule 30 mandatory or the time prescribed therein unimpeachable, more so when Rule 76 of the Revised Rules 1963 grant a special jurisdiction to the Registrar of Trade Marks to extend time for doing any act or taking any proceeding under the Revised Rules 1963, subject to satisfaction of the Registrar on proper justification. He further contended that the learned Single Judge failed to appreciate that the Registrar of Trade Marks could exercise his authority based on objective criteria at his discretion and satisfaction and the facts of this case fully justified the grant of extension.

4. The learned counsel for the respondent No.1 argued that the application for registration of the Trade Mark was submitted on 23.04.1997 after complying with all requisite formalities advertised in Trade Mark Journal No.598 for the month of November 2000, so any person could oppose the registration by filing a notice of opposition within the stipulated period of two months from the date of advertisement as provided in the Revised Rules 1963, but no opposition was filed till 10.03.2003 despite the fact that the statutory period of two months expired on 22.11.2002 and no request for extension was filed by the petitioner. However, on 11.03.2003, the petitioner at one time filed four applications for extension in time which were heard by the Registrar together and, after the hearing, the Registrar Trade Marks through decision dated 18.08.2003 condoned the delay of 108 days without any lawful justification and said action was in violation of the powers vested in the Registrar for exercising the discretion of granting an extension of time which should have been based on concrete and justifiable grounds rather than in a slipshod manner. The learned counsel further argued that the learned High Court has considered all the aspects of the case in a proper manner and rightly set aside the decision of Registrar which was based on an incorrect exposition of law.

5. Heard the arguments. There is no dispute or disagreement between the parties that all four separate requests for extension of time (TM-55) were sent on same date (i.e. on 11.3.2003) and were late by 108 days. The Registrar Trade Marks condoned the delay of 108 days and the Notice of opposition (TM-55) was brought on record. According to Section 15 of the Trade Marks Act, 1940, opposition to the registration

of a trade mark may be filed when an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions or limitations, and the Registrar shall, as soon as may be after acceptance, cause the application as accepted, together with the conditions and limitations, if any, subject to which it has been accepted to be advertised in the prescribed manner, and compliant with Sub-section (2), any person may, within the prescribed time from the date of advertisement of an application, give notice in writing in the prescribed manner to the Registrar for opposition to the registration and, in line with Sub-section (3), the Registrar is obligated to serve a copy of the notice on the applicant in the prescribed manner, and, within the prescribed time, the applicant shall send to the Registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application and, if he does not do so, he shall be deemed to have abandoned his application.

6. The stratagem and guiding principle for tendering a notice of opposition is articulated under Rule 30 of the Revised Rules 1963 which robustly sets down the precondition that a notice of opposition to the registration of a trade mark should be given within two months from the date of advertisement of the application for registration in the Journal which shall be on Form TM-55. Indeed, the bone of contention here relates to the nitty-gritties and enforceability of Rule 76 of the Revised Rules 1963 which is germane to the grant of extension of time by the Registrar Trade Marks. For the ease of convenience, Rule 76 of the Revised Rules 1963 is reproduced as under:-

76. Extension of time: If in any particular case the Registrar is satisfied that the circumstances are such as to justify an extension of time for doing any act or taking any proceedings under these rules, not being a time expressly provided in the Act or prescribed by rule 55 or 59, he may extend the time upon such notice to other party, if necessary, and upon such terms as he may direct, and extension may be granted though the time for doing the act or taking the proceeding has already expired. An extension granted under this rule shall not exceed a period of more than one month at a time, provided that the total period of such extensions shall not exceed six months against each statutory period prescribed. An application for extension of time shall be made in Form TM-55, on payment of the prescribed fee.

7. In order to comprehend the true spirit of any provision, whether it is mandatory or directory, the conception, acumen and stratagem of the Act and the enabling Rules should be considered for proper resolution.

If we virtually converse in the differentiation and eccentricity flanked by 'mandatory' and 'directory' provisions, then we have to scrutinise the pith and substance and not exclusively the form. Sometimes a provision in the legislation seems to be mandatory, but substantially it is directory and, inversely, sometimes a provision seems to be directory but in quintessence it is found to be mandatory for compliance therefore, for all practical purposes, it is the fundamental nature which counts and should take preference and affinity more than the form. If a provision gives a power as well as a duty, it is mandatory and the enabling text of law and rules should be interpreted as obligatory so that the underlying principle and *raison d'être* is not contravened or flouted.

8. In an attempt to depict the delineation and comparison of Rule 76 of the Revised Rules 1963, it would be expedient to refer to Section 148, of the Code of Civil Procedure, 1908 ("**CPC**") also which provides that where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by the CPC, the Court may in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired. It is a well settled statutory tenet and resilience of this Section that the Court in its discretion from time to time may enlarge the time even though the time originally fixed or granted for such particular purpose or compliance has expired. The benchmark of adjudging the acuity of fairness is that the set of circumstances should be taken into consideration and the Court retains its jurisdiction to reevaluate the modification or deviation of situations which may be the cause of extension of time. A perusal of Rule 76 clearly expounds that, while exercising power to grant the extension of time, the Registrar must be satisfied that the circumstances are such as to justify an extension of time with a further rider that the extension granted shall not exceed a period of more than one month at a time, provided that the total period of such extensions shall not exceed six months against each statutory period prescribed. The exactitudes of the aforesaid rule accentuate that before granting extension, the Registrar should act with proper application of mind inasmuch as the powers conferred by the Rule do not permit the Registrar to entertain and grant extension in a mechanical or perfunctory manner, rather he should be satisfied that the extension is justified. It is clearly manifesting from the decision of the Registrar

Trade Marks that the petitioner filed four requests for extension of time in one go and on the same date. The petitioner attached all four requests with C.M.A No.839-K/2022 which shows that stereotypical applications for extension of time were filed without providing any justification or reason for extension. All four requests were transmitted by post on one and the same date i.e. 11.03.2003, and in every application a one month extension was sought. The first request was dated 22.11.2002, second is dated 22.12.2002, third is dated 22.1.2003, last one is dated 22.2.2003 and all requests were sent to the Registrar by post on 11.03.2003 and he condoned the delay of 108 days without adverting to the ground reality and without adhering to statutory compliance that extension of time could not exceed a period of more than one month at a time, provided that the total period of such extensions shall not exceed six months. The jurisdiction and powers to grant extension up to six months period is not an automatic or unstructured exercise but it should be justiciable and rational coupled with the precondition of "satisfaction" of the Registrar before granting any extension. According to the assiduousness of the aforesaid Rule, no extension could be accorded longer than a month at a time which reckons that the extension should have been sought on a monthly basis and after satisfying himself the Registrar could consider the grant of extension or refuse the same. Neither it is the intention of the Rule making authority that since outer limit of six months is provided under the rules, therefore, without complying with the provisions of contained under Rule 76, the Registrar may entertain delayed requests *ipse dixit* and/or allow all requests for extension in one go or all at once and grant the requests, nor that the person seeking extension may apply for antedated extensions without incorporating plausible reasons for extension, nor can he dispatch all applications or requests simultaneously without being sensitized to the insinuated rudiments for applying extension on monthly basis consistent with the precisions of Rule 76. The Registrar downrightly failed to consider that neither any satisfactory reason was assigned in the applications for extension except that "more time is required to prepare opposition application", nor extension was applied for promptly on a monthly basis, despite that antedated extension was accorded by the Registrar by dint of his decision which was rightly set aside by the learned High Court.

9. The connotation and import forming the constituents of the word "satisfied" has been used in various laws and interpreted and deciphered in a number of judgments of our own as well as foreign jurisdiction. On close appraisal and scrutiny of numerous judgments, the true meaning and import of this expression is deducible as under:-

1. Word "satisfied" in R. 32, requires "stronger" ground for action than mere suspicion. Existence of reasonable grounds is essential under S. 3(2)(x) - Mere declaration of "satisfaction" not sufficient (Defence of Pakistan Ordinance, 1965).

2. The words "if satisfied" are not preceded by any qualifying adverb, such as, "reasonably". It is the satisfaction of the arresting officer that forms the basis of the arrest of the detenu. The legislature has omitted the word "reasonably" which would have enabled Courts of law to examine the sufficiency of the reasons for the satisfaction of the arresting authority (Punjab Public Safety Act).

3. Discretionary decision is to be made according to rational reasons which means that there be findings of primary facts based on good evidence and decisions. Actions which do not meet these threshold requirements are arbitrary and might be considered as a misuse of powers.

4. The word "satisfied" means existence of mental persuasion much higher than mere opinion; a mind not troubled by doubt; 'a mind which has reached a clear conclusion.

5. The word 'satisfied' is a term of considerable expansiveness.

6. The term 'satisfied' has been understood to mean, free from anxiety, doubt, perplexity, suspense or uncertainty.

7. In the context, it is synonymous with 'convince the understanding or convince beyond a reasonable doubt.'

8. The word 'satisfied' in S.23 of the Hindu Marriage Act 1955, must mean satisfied on preponderance of probabilities and not satisfaction beyond reasonable doubt.

9. The word 'satisfied' has been defined in Shorter Oxford English Dictionary, 3rd edn, p 1792, as to furnish with sufficient proof of information, to set free from doubt or uncertainty, to convince

10. to answer sufficiently (an objection, question), to fulfill or comply with (a request), to solve (a doubt, difficulty):

11. to answer the requirements of (a statement of things, hypothesis, etc.); to accord with (condition).

12. The word "satisfied" does not mean "satisfied beyond reasonable doubt"

13. The nature and gravity of an issue necessarily determines the manner of attaining reasonable satisfaction of the truth of the issue and because the presumption of innocence is to be taken into account.

14. The phrase "is satisfied" means, in my view, simply "makes up its mind"; the court on the evidence comes to a conclusion which, in conjunction with other conclusions, will lead to the judicial decision.

[Ref: M/s. Inbox Business Technologies Ltd. v. Pakistan (2018 PTD 621 = SBLR 2019 Sindh 244); Malik Ghulam Jilani v. Government of West Pakistan (PLD 1967 SC 373); Muhammad Hayat v. Crown (PLD 1951 FC 15); Director Food, NWFP v. M/s Madina Flour and General Mills (Pvt.) Ltd. (PLD 2001 SC 1); Sohail Butt v. Deputy Inspector General of Police (North) National Highway and Motorway Police (2011 SCMR 698); Faqir Chand v. Bhana Ram (AIR 1957 Punj 303); Somasekharan Nair v Thenkamma ((1989) 1 Civ LJ 104, p 106 (Ker) (DB) = AIR 1994 SCW 2946 = (1994) 3 SCC 1 = (1994) 2 JT (SC) 215); S R Bommai v Union of India (AIR 1994 SC 1918, pp 1969-1970); Blyth v. Blyth ([1966] 1 All E.R. 524); Judicial Dictionary by K. J. Aiyar, 15th Edition, Volume 2, 2011]

10. Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law without deviating from the prescribed procedure, and where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. It would be a misconceived notion that grant of extension is merely a matter of procedure and hence it cannot be challenged. The Registrar has been vested with the power to grant the extension within a prescribed procedure and parameters that should be adhered to while considering applications for extension. The discretion is not unbridled but it is controlled by the ambiance of rule purposely and due to deviation and noncompliance of it in *stricto sensu*, the other side had rightly invoked the appellate jurisdiction of the High Court. It is a fundamental canon of interpretation and understanding that the statute should be read in its mundane, natural and grammatical meaning in order to give effect with proper construction. If the language of the statute is plain and instantly recognizable then there should be no question of its construction or interpretation by the Court. A construction which diminishes the statute to a futility has to be avoided rather it should be construed as a workable instrument. It is the foremost sense of duty of the Court to figure out the intention of the legislature through word for word meaning and if it admits only one meaning, no further interpretation is required except that meaning which should be put into effect in view of the legal maxims '*absoluta sententia expositore non indiget*' (clear and unambiguous text should be read according to its plain meaning rather than with reference to secondary sources of interpretation) and '*ut res magis valeat quam pereat*' (An enacting provision or a statute has to be so construed to make it effective and operative); *A verbis legis non recedendum est.* (A provision of the law shall not depart or from the words of law, there must be no departure). If a statute provides for a thing to be done in a particular manner, then

it has to be done in that manner and in no other manner, the same elucidation of law is virtually enlightened and deducible from the following judicial precedents:

1. Chaudhry Shujat Hussain v. The State (1995 SCMR 1249). It is well-settled principle of interpretation of statute that where any provision couched in negative language requires an act to be done in a particular manner then it should be done in the manner as required by the statute otherwise such act will be illegal.

2. Khalid Saeed v. Shamim Rizvan and others (2003 SCMR 1505). It is time and again held by this Court that if a method is prescribed to do a thing in a particular manner, it must be followed in letter and spirit.

3. State Life Insurance Corporation of Pakistan thr. Chairman and another v. Director-General, Military Lands and Cantonments, Rawalpindi and others (2005 SCMR 177). When the statute specifically requires a public functionary to act in a particular manner, it must act in that manner and the Courts have all the power to see as to whether it acted in that manner or not.

4. Muhammad Akram v. Mst. Zainab Bibi (2007 SCMR 1086). When the law requires a thing to be done in a particular manner then it would be a nullity in the eyes of law, if not performed in that very prescribed manner.

5. Province of Punjab thr. Secretary, Excise and Taxation Department, Lahore and others v. Murree Brewery Company Limited and another (2021 SCMR 305). This Court referred to some foreign precedents that the test to determine whether a provision is directory or mandatory is by ascertaining the legislative intent behind the same. The general rule expounded by this Court is that the usage of the word 'shall' generally carries the connotation that a provision is mandatory in nature. However, other factors such as the object and purpose of the statute and inclusion of penal consequences in cases of non-compliance also serve as an instructive guide in deducing the nature of the provision. If the provision is couched in prohibitive or negative language, it can rarely be directory, the use of peremptory language in a negative form is per se indicative of the interest that the provision is to be mandatory.

6. Federation of Pakistan through its Secretary, Finance, Islamabad and another v. E-Movers (Pvt.) Limited and another (2022 SCMR 1021). The Constitution of the Islamic Republic of Pakistan is the fountainhead of the rule of law in Pakistan. *'To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen.'* The rule of law constitutes the bedrock of governance. When the law stipulates that something has to be done in a particular manner that is how it should be done. And any person who exercises authority must do so in accordance with law.

7. Nazir Ahmad v. King Emperor [1936 SCC OnLine PC 41] It is well settled that if a particular procedure in filling up the application form is prescribed, the application form should be filled up following that procedure alone. This was enunciated by Privy Council "that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden."

8. Chandra Kishore Jha v. Mahavir Prasad & Ors. [(1999) 8 SCC 266]. It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. (See with advantage: Nazir Ahmad v. King Emperor [(1935-36) 63 IA 372 : AIR 1936 PC 253 (II)] , Rao Shiv Bahadur Singh v. State of V.P. [AIR 1954 SC 322 : 1954 SCR 1098] , State of U.P. v. Singhara Singh [AIR 1964 SC 358 : (1964) 1 SCWR 57]

11. In the view of the above discussion, we do not find any illegality or perversity in the impugned judgment passed by the learned Sindh High Court. Consequently, this petition is dismissed and leave is refused.

JUDGE

JUDGE

Karachi
27.04.2023
Khalid
Approved for reporting