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Home / Judgments / Delhi High Court / 2021 / 2021 DHC 3 / 2021 DHC 3 Decision Date: 05.01.2021 Case No. C.O. (COMM.IPD-TM) 7/2020 Judge: PRATEEK JALAN, J. Parties: Petitioner: Tata Sons Limited Respondent: Vistara Flexible Services Pvt. Ltd. Court: Delhi High Court Year: 2021 Case Type: Commercial Dispute Outcome: Petition allowed, impugned order set aside, Respondent's application for rectification of the trade mark dismissed, and the trade mark registration of the Respondent stands rectified by deletion of the impugned mark. Keywords: Trade Mark, Rectification, Deceptive Similarity, Phonetic Similarity, Dominant Part, Prior Use, Bona Fide Adoption, Honest Concurrent Use, Section 12(1)(b) of the Trade Marks Act, 1999, Section 57(1) of the Trade Marks Act, 1999, Section 57(2) of the Trade Marks Act, 1999, Section 57(3) of the Trade Marks Act, 1999, Section 57(4) of the Trade Marks Act, 1999, Section 57(5) of the Trade Marks Act, 1999, Section

Speech (original will be set forth by the respondents. Firstly, the judgement of the High Court of Bombay does not consider the large timeline of Tribunals in the NGT and the Supreme Court. It does not also not refer to the judgements of the Hon'ble Supreme Court in C. Chandra Kumar (supra) wherein Hon'ble Supreme Court had clearly stated that the Tribunals established under Constitutional challenge cases of the statutory provisions or rules of the subordinate legislation. Of course such Tribunals are subject to the jurisdiction of the Hon'ble Supreme Court. Secondly, the Hon'ble Supreme Court clearly stated that the Tribunal has power of the judicial review and cases vested with the powers of the Civil Courts or a lean wide jurisdiction including the power of judicial review. There are other judgements from other High Courts which have stated that the Tribunals are the Plenary Jurisdiction Authorities in Cases of NGT of Tribunals. Thirdly, Hon'ble Supreme Court in Indian Medical Association v. Union of India (supra) wherein the Hon'ble Supreme Court has clearly stated that the Tribunal has power of the judicial review and cases vested with the powers of the Civil Courts or a lean wide jurisdiction including the power of judicial review. There are other judgements from other High Courts which have stated that the Tribunals are the Plenary Jurisdiction Authorities in Cases of NGT of Tribunals. These High Courts have specifically referred to the Tribunals and judgements of cases involving challenge to the Tribunals issued to exercise of subordinate legislation with regard to some pollution, plastic bags and other such laws. In this regard, one may refer to the judgements of the Hon'ble Supreme Court in the case of Ms. Ajay Pharma Industries Association v. Govt. of NCT of Delhi, Writ Petition No. 767 of 2017 decided on 2 December, 2018. The division Bench of the High Court while rejecting the contentions of Chandra Kumar (supra) of the Hon'ble Supreme Court of India and the provisions of the Schedule Tribunals Reform Act, 2021 and the Tribunals Reform Rules, 2021 and the judgements of the Hon'ble Supreme Court of India in

is eliminated in the final notification. The construction of built up area upto area of 20,000 sq. meter upto 1,50,000 sq. meter which were otherwise covered under the Act of 1986 now have been brought under the State Laws without specifying them in the draft notification. The draft Notification specifically mentions that the exclusion/amendment benefits mentioned in the draft Notification are not intended for hospitals whereas the final notification clearly excludes hospitals from the purview of the EIA Notification, 2006 and Environment (Protection) Act, 1986. It is at substantial variance as the hospitals fall under red category under the Central Pollution Control Board categorization dated 7 March, 2016. So, provision of dealing with the environmental conditions of hospitals falling under the environmental norms.

(C). Addition of Appendix XV, accreditation of environmental auditor (Qualified Building Environment Auditor).

(D). Addition of Appendix XVI, Environmental Cell at the level of local authority.

46. On the above premises, it is contended that on the one hand, there is substantial difference between the draft and the final notifications while on the other hand Applicants were deprived of the right to file objections on these aspects. Reliance is placed on the judgement of the Hon'ble Supreme Court of India in the case of State of Punjab v. Tehal Singh, AIR 2002 SC 533 wherein the Supreme Court held that Principle of Natural Justice to subordinate legislation may be applied but where the legislature provides an opportunity of hearing and filing objections then it must be adhered to senso stricto.

47. From the records before the Tribunal, it is clear that there are variations even of substantial nature between the draft and the final Notification dated 9 December, 2016 issued by the respondent. One of the significant failures of the same is that the applicants or public at large has lost substantive right to file objections on these aspects to the draft Notification. They have also lost the right to be heard in terms of **Rule 5(3) of the Rules of 1986. Incorporation of such provisions** from the draft Notification into the final Notification would not be permissible.

48. Some of the portions of the impugned Notification; particularly, relating to granting of exemption from the application of Water and Air Acts; Rendering the provisions of the central law for taking action, penalizing defaulters and offenders of the environmental law being rendered ineffective; ambiguity and deficiencies in constitution of the Environmental Cell are some of the patent features of the impugned Notification which dilutes the environmental impacts on the one hand, while on the other, they are in derogation to India's international commitments to the Rio Declaration, 1992 and Paris Agreement, 2015. If principle 15 to 17 of the Rio Declaration is read along with clauses of the Paris Agreement, 2015, particularly, in face of precautionary approach, preventing irreparable damage forming definite environmental impact assessment to examine adverse impact on the environment, reduction on the growth of is carbon emission and to adopt best practices and achieve the ambitious targets between the stipulated time then the adopting cumulative effect of the Notification dated 9 December, 2016 would have some element of derogation. The Notification also ignores some essential features like source of water, source of raw material, urban ecology, provision of no development zone and construction face impacts. These aspects have a direct bearing on protection of environment and keeping in line with the Principle of Sustainable Development. It is important that there should be development and particularly, when the development is guided by the social cause but that development should not be permitted to cause irreparable loss to the environment and ecology. Sustainable development has to be the ultimate criteria. The Hon'ble Supreme Court in the case of N.D Dayal v. Union of India, (2004) 9 SCC 362 deliberated upon the Doctrine of Sustainable Development and while comparing with the economic growth and well being held as under:

"24. The right to development cannot be treated as a mere right to economic betterment or cannot be limited to as a misnomer to simple construction activities. The right to development encompasses much more than economic well being, and includes within its definition the guarantee of fundamental human rights. The 'development' is not related only to the growth of GNP. In the classic work - 'Development As Freedom' the Nobel prize winner Amartya Sen pointed out that 'the issue of development cannot be separated from the conceptual framework of human right'. This idea is also part of the UN Declaration on the Right to Development. The right to development includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of peoples' well being and realization of their full potential. It is an integral part of human right. Of course, construction of a dam or a mega project is definitely an attempt to achieve the goal of wholesome development. Such works could very well be treated as integral component for development.

25. Therefore, the adherence of sustainable development principle is a sine qua non for the maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right. On the other hand right to development is also one. Here the right to 'sustainable development' cannot be singled out. Therefore, the concept of 'sustainable development' is to be treated an integral part of 'life' under Article 21. The weighty concepts like intergenerational equity (State of Himachal Pradesh v. Ganesh Wood Products, (1995) 6 SCC 363), public trust doctrine (MC Mehta v. Kamal Nath, (1997) 1 SCC 388 and precautionary principle (Vellore Citizens), which we declared as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development.

26. To ensure sustainable development is one of the goals of Environmental Protection Act, 1986 (for short 'the Act') and this is quiet necessary to guarantee 'right to life' under Article 21. If the Act is not armed with the powers to ensure sustainable development, it will become a barren shell. In other words, sustainable development is one of the means to achieve the object and purpose of the Act as well as the protection of 'life' under Article 21. Acknowledgment of this principle will breath new life into our environmental jurisprudence and constitutional resolve. Sustainable development could be achieved only by strict compliance of the directions under the Act. The object and purpose of the Act-"to provide for the protection and improvement of environment" could only be achieved by ensuring the strict compliance of its directions. The concerned authorities by exercising its powers under the Act will have to ensure the acquiescence of sustainable development. Therefore, the directions or conditions put forward by the Act need to be strictly complied with. Thus the power under the Act cannot be treated as a power simpliciter, but it is a power coupled with duty. It is the duty of the State to make sure the fulfilment of conditions or direction under the Act. Without strict compliance, right to environment under Article 21 could not be guaranteed and the purpose of the Act will also be defeated. The commitment to the conditions thereof is an obligation both under Article 21 and under the Act. The conditions glued to the environmental clearance for the Tehri Dam Project given by the Ministry of Environment vide its Order dated July 19, 1990 has to be viewed from this perspective".

49. Despite the above shortcomings of the Notification and some clauses suffering from legal infirmity, the impugned Notification has certainly good and effective aspects as well. As already noticed by us, it brings into effect a social cause of providing affordable housing to the poor strata of the society. It also proposes to decentralize and bring authorities granting environmental clearance and those granting building permission together under a single window system so as to address environmental concerns. The concept of one window system is sought to be introduced. The Notification specifically provides for emphasis on the aspects that are required to be considered by the environmental cell with special focus on energy use, energy generated on site from on site renewable energy sources, water use and waste water generated, treated on site, waste segregated and treated on site, waste segregation and treated on site, tree plantation and maintenance. These are the few good features of the Notification which also do not suffer from element of illegality. 'Housing for all by 2022' is a purpose and object in conformity with the constitutional mandate. There would be collective and coordinated effort by the Environmental Cell, local and other authorities at the State level to expeditiously deal with environmental clearance.

ORDER/DIRECTIONS

50. The object of the Notification is laudable that is providing housing to the poor. The provisions of the existing regime under the Regulation/Notification of 2006 are sought to be liberalized and expanded for obtaining that object. Some of the provisions of the Notification are being amended to provide for decentralized regulation in relation to building projects. Certain specified building and construction projects of specified area are proposed to be exempted from the rigours of the Notification. But these amendments would have to be in consonance with the law, where certain provisions of the amended Notification dated 9 December, 2016 are in consonance with the provisions of the Act of 1986 and do not suffer from the vires of illegality. Thus, some other provisions of the same Notification exfacie suffer from legal infirmities and are incapable of being implemented in accordance with the scheme of federal structure under the Constitution of India. Out of them, some provisions are directly opposed to the Principle of Non-regression as they considerably dilute the existing environmental laws and standards to the prejudice of the environment. Thus, in the facts and circumstances of the present case, the Tribunal can safely take recourse to the doctrine of severability to declare some of the provisions of the Notification as ultra-vires or ineffective while holding the other part of the Notification as legally sound and sustainable.

51. In view of the above, we pass the following order/directions:

1. We hold and declare that this Tribunal has jurisdiction to examine the legality, validity and correctness of a Notification issued by the competent forum in exercise of its power of subordinate legislation with regard to acts stated in Schedule-I to the National Green Tribunal Act, 2010.

2. We hold and declare that **(i) clause 14(8), (ii) the provisions** relating to exclusion of Consent to Operate and Consent to Establish under Water (Prevention and **Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 in clause 14** of the impugned Notification; (iii) Appendix-XVI relating to constitution and functioning of Environmental Cell, cannot be sustained and are liable to be quashed for the reasons afore-stated. Thus, we direct MoEF&CC to re-examine its Notification dated 9 December, 2016 and take appropriate steps to delete, amend and rectify the clauses of the said Notification in light of this judgement.

3. As a result of the above, the byelaws amended by the DDA vide its Notification dated 22 March, 2016 can also not be given effect to, unless the Notification dated 9 December, 2016 is amended in terms of this judgement.

4. Till the time the Ministry comply with the above directions and notify the amended provisions of Regulations of 2006, it will not implement the impugned Notifications. However, once the amended regulations are notified, MoEF&CC/SEIAA/Local Authorities can give effect to that, without any further reference to the Tribunal.

5. MoEF&CC shall, particularly take care that the laudable social cause of 'providing Housing to the poor' does not get defeated by business, economic profitability with reference to 'ease of doing business', while particularly protecting the environment.

52. With the above order/directions, the Original Applications No. 677 of 2016, 01 of 2017, 07 of 2017, 55 of 2017 and 67 of 2017 stand disposed of, with no order as to costs.

53. All the Miscellaneous Applications No. 148 of 2017, 03 of 2017, 445 of 2017, 879 of 2017 and 620 of 2017 have become infructuous and are accordingly disposed of.

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