

(2009) 03 IPAB CK 0007

In the Intellectual Property Appellate Board

Pullambath Hameed, Trading As Sagar Travels	APPELLANT
Vs	
Naranath Chalil Mahamood, Trading As Sagar Travels And Business Corporation And The Registrar Of Trade Marks, Trade Marks Registry	RESPONDENT

Date of Decision : 31-03-2009

Acts Referred:

Trade Marks Act, 1999 — Section 127(c)

Citation : (2009) 03 IPAB CK 0007

Hon'ble Judges : Z.S. Negi, J;S. Usha, Technical Member

Bench : Division Bench

Final Decision : Dismissed

Judgement

S. Usha, Technical Member

1. This Miscellaneous Petition No. 184/2008 is filed by the Review Petitioner to effect substituted service on the respondent No. 1 by way of

publication in the Newspaper. The petitioner herein being unable to serve the respondent No. 1 in the Review Petition has moved this instant

miscellaneous petition seeking direction of this Appellate Board to effect service by publication.

2 . The Review Petitioner herein had filed two rectification applications in ORA/101&102/2007/TM/CH praying that the impugned trade mark be

removed/cancelled from the register of Trade Marks under the provisions of the Trade Marks Act, 1999 (in short the Act). The Original Rectification

Applications were heard and the matters were disposed of on merits on 22nd February, 2008. Aggrieved by the said order, the Petitioner herein has

filed an application for review of the order dismissing the Rectification Applications. The service in the Review Petitioner could not be completed and

hence this application for substituted service.

3 . Before deciding the miscellaneous petition for substituted service, we shall deal with the maintainability of the Review Petitions. The main issue will be whether this Appellate Board has the jurisdiction or power to review its own decision or orders.

4. It is worth quoting the observation of the Supreme Court in the case of *Grindlays Bank v. Central Government* MANU/SC/0308/1980 whether the Tribunal has any power to do an act when it is not so provided so by the statute in the Act or the rules:

It is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any statutory prohibition.

The expression, "review", it was held by the Supreme Court, in the above case is used in two distinct senses, namely "(1) a procedural review which is either inherent or implied in a Court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record.

5 . The Apex Court in the case of *Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji* MANU/SC/0433/1977 has also held that a review has on merits unless a statute provides for it. When a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected to prevent the abuse of its process and such powers inhere in every Court or Tribunal.

6. In the case on hand, the Petitioner is seeking review of the order on merits. The review itself does not lie as has been observed by the Supreme Court. The Act or the rules does not confer any power on this Appellate Board to review its own decision or orders. The rule only prescribes and the Form No. 6 in which an application may be made and also prescribes the fees. As

per the provisions of Sub-clause (c) of Section

127 of the Act, the Registrar of Trade Marks is conferred with the powers of review and therefore the Registrar may on an application review his

own orders.

7 . In view of the above, we are of the opinion that this Appellate Board has no jurisdiction to review its own orders on merits except for procedural

defects. We, therefore, hold that the Review Petitions are themselves not maintainable. In such circumstances the Miscellaneous Petitions also does

not lie and therefore are dismissed. No costs.