

(2008) 03 MAD CK 0031

In the Madras High Court

Case No : Writ Petition No. 12271 of 2007 and M.P. No's. 1 to 4 of 2007

Thirumala Aqua Process

APPELLANT

Vs

Bureau of Indian Standards, Southern Regional Office and
Bureau of Indian Standards, Coimbatore Branch Office

RESPONDENT

Date of Decision : 14-03-2008

Acts Referred:

Bureau of Indian Standards Act, 1986 — Section 15, 15(1), 16, 5(5)

Citation : (2008) 03 MAD CK 0031

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : B.B. Sendhilkumar, for the Appellant; P. Subramanian, ACGSC, for the Respondent

Judgement

P. Jyothimani, J.—This writ petition is filed challenging the proceedings of the second respondent, Bureau of Indian Standards, Coimbatore

Branch Office dated 19.3.2007 and consequently, to direct the respondents to renew the licence of the petitioner beyond 15.5.2007, thereby

permitting the petitioner to use 50 litre HDPE Can; 25 litre HDPE Can; 12 litre HDPE Can; 20 litre polycarbonate jar, 20 litre PET, 2 litre PET

and one litre PET and pouches.

2. Under the impugned order, the second respondent has cancelled the licence granted to the petitioner with effect from 17.3.2007, thereby

preventing the petitioner from marking/despatching its product, packaged drinking water as per IS-14543 : 2004 with BIS Standard Mark after

16.3.2007 or from claiming in its advertisements in any other publicity material that it is a licensee to use the ISI mark on its product after

16.3.2007. In the impugned order it is also stated that any publicity materials

such as handbills, pamphlets, letterheads, etc. claiming that the petitioner holds BIS Certification Marks Licence for its product should be destroyed or such markings obliterated/defaced immediately.

3. The petitioner is engaged in the distribution and supply of packaged drinking water from 2004. It has been issued with a licence on 20.4.2004

to use ISI Standard Mark in respect of packaged drinking water. According to the petitioner, the licence has not specified the conditions or

contents or varieties or denominations or packs that can be used by the petitioner for bottling/packing the packaged drinking water. Pursuant to the

licence, the petitioner has been supplying water in the brand name, "Aruvi Plus" and the licence of the petitioner was renewed on 13.10.2005 for

the period from 5.5.2005 to 15.5.2006 and also on 27.8.2006 for the period from 16.5.2006 to 15.5.2007. When the respondents have revised

the specifications restricting the container of packaged drinking water in excess of 5 litres to be colourless and transparent with 85% transparency,

the same were challenged by the Manufacturers' Association, to which the petitioner is a member and there was a stay granted by this Court. By

virtue of the interim order, the second respondent by order dated 19.11.2004 permitted the petitioner to use the cans as above.

3(a). The petitioner, in order to comply with the specifications has submitted a lab test report for 20 litre jar obtained from Vimta Labs, Hyderabad

dated 31.8.2005 and even though it was received and acknowledged by the second respondent, there was no objection from the second

respondent. There is another outside lab test report for Pouch Film sample obtained from Sargam Metals Private Limited, Chennai dated

13.2.2005 and the same has been submitted to the second respondent for which also there was no objection. In the meantime, the writ petition

filed by the Manufacturers' Association was withdrawn and the petitioner has filed W.P. No. 40462 of 2005 in individual capacity and obtained

an order of stay on 20.12.2005 against the revised IS.14543:2004 and the writ petition is pending.

3(b). According to the petitioner, on 21.12.2006 the second respondent's official has inspected the petitioner's place and found certain

deficiencies by observing that 10 cans each of 20 litre pet jar without batch number were available. It is also the case of the petitioner that the

official of the second respondent has also noticed that the petitioner does not have approval for 20 litre pet jar. Thereafter, the second respondent issued a telegram, followed by a letter dated 16.1.2007, giving "stop marking" notice on the basis that the petitioner has misused ISI mark on various varieties not covered in the licence.

3(c). The second respondent has issued another notice dated 7.2.2007 as per Section 5(5)(a) of BIS (Certification) Regulations, 1988 indicating that the second respondent would cancel the petitioner's licence and also calling upon the petitioner to submit explanation within 14 days as to why the licence should not be cancelled. The petitioner has submitted its explanation immediately on 16.2.2007 denying the charges. The petitioner has also sought for special inspection. According to the petitioner, the first respondent in its letter dated 28.2.2007 has given personal hearing to the petitioner on 19.3.2007 at 11.00 am. The petitioner has made arrangements to appear on the said date, however, by another letter dated 14.3.2007, the second respondent has stated that the personal hearing would be held on 16.3.2007 at 2.00 pm. in the office of the second respondent at Coimbatore. The representative of the petitioner has attended the enquiry at Coimbatore. However, according to the petitioner, there was no personal hearing. It was, thereafter the second respondent has issued the impugned order dated 19.3.2007 cancelling the licence of the petitioner with effect from 17.3.2007.

3(d). The said order is challenged on various grounds including that the Bureau of Indian Standards Act, 1986 and the Rules made thereunder do not stipulate any condition for cancellation of licence and the impugned order is arbitrary and the petitioner is a registered SSI unit, commenced its business in 2004 and it has not compromised in the quality of its products and the enquiry was not conducted properly and there is violation of the principles of natural justice and after obtaining opinion from a private agency the petitioner was using 20 litre pet jar which was communicated to the second respondent and therefore, it cannot be said that the petitioner was using it unauthorisedly. It is also specifically stated that u/s 15(1) of Bureau of Indian Standards Act, 1986, though appeal lies to the Central Government, the petitioner has chosen to approach this Court as there is error apparent on the face of record.

4. I have heard learned Counsel for the petitioner and the respondents who have also filed typed-set of papers.

5. The learned Counsel for the petitioner would submit that the petitioner has not filed appeal as per the provisions of the Bureau of Indian

Standards Act for the reason that the order of the second respondent is in violation of the principles of natural justice.

6. On the other hand, the learned Counsel for the respondents would heavily rely upon Sections 15 and 16 of the Bureau of Indian Standards Act,

1986 which contemplate granting of licence and appeal to the Central Government as against the order of cancellation of licence. He would also

submit that the order of cancellation came to be passed only when certain discrepancies were found in the business of the petitioner which fact is

admitted and therefore, the cancellation cannot be said to be opposed to the principles of natural justice.

7. Before considering the legal aspect of availability of appeal provision, it is relevant to point out that even as admitted by the petitioner in the

affidavit, the petitioner was not permitted to use 20 litre pet jar as per the licence granted by the respondents, who are the authorities under the

Bureau of Indian Standards Act, 1986. The petitioner's case is that the petitioner has obtained certificate from private agencies like, Vimta Labs,

Hyderabad and Sargam Metals Private Limited, Chennai and submitted copies of the same to the second respondent. But, the mere submission of

such copies does not mean that the licence has been issued to use 20 litre pet jars. In fact, a perusal of the proceedings of the enquiry dated

16.3.2007 conducted by the respondents in which the petitioner's partner has also participated by signing the proceedings shows that the

petitioner has submitted its explanation stating that ISI Marked 20 litre jars were meant for own use and in the enquiry it was found that a private

test report dated 26.2.2007 was submitted during the personal hearing which was subsequent to the detection of misuse by the petitioner.

8. A reference to the proceedings of the enquiry dated 16.3.2007 makes it clear that in fact an opportunity was given to the petitioner to explain

the show-cause notices issued earlier including one issued on 16.1.2007. By notice dated 16.1.2007, the second respondent has in fact informed

the petitioner that at the time of inspection a serious irregularity was found, viz., the lab was found to be in locked condition at the time of visit and

after opening, it was observed that all the equipments were switched off and there was no evidence of testing and quality control activity in the

laboratory available at the time of visit and attendance regarding appointment of chemist and Microbiologist was not produced and no attendance

register was found available and in spite of this, the production of packaged drinking water with ISI mark was going on. In the light of the gravity of

the charges levelled against the petitioner and the subsequent enquiry conducted as stated above, I do not see any justification in the contention of

the learned Counsel for the petitioner that the principles of natural justice have been violated.

9. As correctly pointed out by the learned Counsel for the respondents, the grant of licence is provided under Sections 15 of the Bureau of Indian

Standards Act, 1986 which is as follows:

15.(1) The Bureau may, by order, grant, renew, suspend or cancel a licence in such manner as may be determined by regulations.

(2) The grant or renewal of the licence under Sub-section (1) shall be subject conditions and on payment of such fees as may be determined by regulations.

Likewise, Section 16 of the said Act provides for an appeal in case of cancellation of licence, which states as follows:

16.(1) Any person aggrieved by an order made u/s 15 may prefer an appeal to the Central Government within such period as may be prescribed.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor:

Provided that an appeal may be admitted after the expiry of the period prescribed therefore if the appellant satisfies the Central Government that

he had sufficient cause for not preferring the appeal within the prescribed period.

(3) Every appeal made under this section shall be made in such form and shall be accompanied by a copy of the order appealed against and by such fees as may be prescribed.

(4) The procedure for disposing of an appeal shall be such as may be prescribed:

Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

When the charge levelled against the petitioner is on the factual issue and when an effective alternative remedy is available, it is not open to the

petitioner to file this writ petition.

10. It is also relevant to note that even in the impugned order, the second respondent has stated that the licence stands cancelled and the petitioner

can always apply for a fresh licence after the penalty period of 15 days after the date of cancellation. The relevant portion of the impugned order is

as follows:

In case you are interested in obtaining fresh licence, Competent Authority has desired that you may submit your application in the prescribed

format only after a penalty period of fifteen days after the date of cancellation.

11. In view of the above said factual and legal position that an alternative remedy of appeal u/s 16 of the Bureau of Indian Standards Act, 1986 is

available, and also the impugned order enables the petitioner to apply for a fresh licence, the writ petition is dismissed giving liberty to the petitioner

to approach the appropriate authority. No costs. Connected miscellaneous petitions are closed.