* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 08.01.2026
Judgment delivered on: 23.01.2026

\+ **C.A.(COMM.IPD-PAT) 233/2022**

JESAL VIMAL JETHA .....Appellant

Through: Ms. Deepshikha Malhotra & Mr. Dhavish Chitkara, Advocates.

versus

CONTROLLER GENERAL OF PATENTS, DESIGNS AND TRADE MARKS .....Respondent

Through: Ms. Arunima Dwivedi, CGSC along with Ms. Priya Khurrana & Ms. Himanshi Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J.

1. The present appeal has been filed under Section 117A(ii) of the Patents Act, 1970 (hereinafter referred to as "*the Act*") by the appellant impugning the order dated 07.10.2020 of the learned Controller of Patents refusing the Patent Application No. 20181101422, stated to have been passed at the stage of examination of the Patent Application on the ground that the objection regarding Section 2(1)(ja) of the Act is still not met.

2. The facts in brief are as under:

a) The appellant submitted its Patent Application No. 20181101422 with the Patent Office, New Delhi, on 12.04.2018, under the title "*A Comforter System Having an Application in Conjunction with a Supporter.*" It is stated that the said Patent Application was published on 01.06.2018. An application for request for examination under Form 18A

of the Act was filed by the agent/attorney of the applicant on 06.01.2020. It is stated that the First Examination Report (hereinafter referred to as "*FER*") was issued by the Patent Office on 10.01.2020.

b) The present invention pertains to a comforter system with a supporter for therapeutic use, providing support and comfort to users in various settings, including institutional and domestic use, such as hospitals, nursing homes, clinics, chairs, beds, recliners, sofas, or seats of vehicles, aircraft, or ships. The invention addresses issues such as backache, slip disc, cervical, and improper posture, and offers customization to suit individual users' needs, allowing for adjustments to components such as head, neck, independent left and right shoulder and other parts of the body. These components can be independently adjusted by the user, either manually or electronically, to provide therapeutic and recreational benefits.

The invention overcomes limitations of prior arts, which are mass-produced with a "*one-size-fits-all*" approach and offer limited customization, typically restricted to parameters like temperature, pressure, and vibration. In contrast, the present invention allows for extensive customization, considering factors such as:

i. Weight, Height, Build and Posture of user

ii. Individual/multiple muscles needing attention/support

iii. Incremental support for specific areas, such as vertebrae

iv. Place of use such as bed, chair, seat and standing, etc.

v. Users with different spinal curves, different head shapes and different weight distribution in their body

vi. Provide stimulus to paralyzed users or otherwise

vii. Portability and user-friendliness, allowing operation without

assistance

viii. Users with different shoulder widths

ix. Gender of the user

x. Use for transporting/storing equipment/ items requiring care

As per the appellant, the invention's customization capabilities enable it to cater to diverse user needs, such as cervical relief for a tall person lying in bed, lower-back pain for a small child standing, or support for a person with a dislocated shoulder sitting in a chair. Additionally, the invention can benefit users with skin ulcers/other skin concerns, thereby creating an indentation to reduce pressure on affected areas and promote blood flow and circulation.

c) The appellant further submitted that the invention contains a plurality of compartments positioned according to the structure of the human body such that the compartments can be moved laterally and longitudinally. It is claimed that the compartments may also be adjusted in the vertical plane by adjusting the pressure within the compartment in order to take the shape of the varied size or height of the persons. It is also claimed that the compartment may exist as a single layer or a multiple layer or as multiple layers, as per requirement. The other features of applicability of the said invention have been succinctly mentioned in paras 18 to 20 of the memo of appeal and need not be reproduced *in extenso* hereunder.

d) The appellant states that on 10.01.2020, the FER was issued by the Patent Office. Thereafter, the appellant on 12.04.2020 filed the reply. A hearing notice was issued on 08.06.2020 and thereafter another hearing notice was issued on 04.07.2020, rescheduling the hearing on 29.07.2020, in accordance with Section 14 of the Act. It is claimed that

the said first hearing notice cited additional prior art documents that were not mentioned in the FER, namely, documents D-3, D-4 and D-5.

e) On 29.07.2020, a hearing was conducted in which the appellant participated and filed its reply to the said hearing notice. The appellant has submitted reply to the hearing notice on the same day. Consequent thereto, *vide* the second hearing notice dated 19.08.2020 another hearing was scheduled on 11.09.2020. Appellant claims to have submitted a detailed reply/response on 11.09.2020, with particular focus on the objections regarding prior art document D-3, to the second hearing notice dated 19.08.2020. The hearing is claimed to have been held on 11.09.2020.

f) After the aforesaid hearing, the learned Controller passed the impugned order under Section 15 of the Act on 07.10.2020 refusing the Patent Application No. 20181101422 on the ground that the objection regarding Section 2(1)(ja) of the Act is still not met.

g) The present appeal has been filed challenging the impugned order dated 07.10.2020.

3. Ms. Deepshikha Malhotra, learned counsel appearing for the appellant submitted that the impugned order is unsustainable on the grounds of, (i) violation of principles of natural justice; (ii) impugned order having been passed without application of mind, and in a mechanical manner and; (iii) without considering the detailed technical responses submitted by the appellant to the first hearing notice as also the second hearing notice. She states that on such grounds the impugned order be quashed and set aside and the matter be remanded for fresh reconsideration of the Patent Application.

4. Ms. Malhotra submitted that though the FER dated 10.01.2020 confined itself to prior art D-1 and D-2 in respect of novelty and inventive step, however,

in violation of the prescribed procedure and rules, the first hearing notice dated 08.06.2020 referred to further additional prior art documents namely, D-3, D-4 and D-5 which ought to have ordinarily formed part of the FER itself. According to her, the hearing notice itself does not prescribe any such procedure as adopted in the present case by the respondent Patent Office. She submitted that the hearing notice ordinarily is restricted only to convey the date of hearing in support of the Patent Application *qua* the objections contained in the FER to the appellant. She submitted that the procedure adopted by the respondent is unknown to the statute or the rules prescribed thereunder.

5. Nevertheless, she contended that the appellant did in fact file its detailed response dated 29.07.2020 to the first hearing notice. According to her, the said response was not considered by the learned Controller, while passing the impugned order at all. Rather, the learned Controller, instead of directing the Patent Office to generate a Second Examination Report (hereinafter referred to as "*SER*") after re-examination of the detailed response, actually issued a second hearing notice. This, according to her, was in direct contravention of the provisions of Section 13(3) of the Act, which, as per her, envisages generation of a SER by the patent office once the applicant has submitted its detailed response to the first hearing notice. In particular, she strongly urged that this issue is more significant in view of the fact that the reference to the prior art documents D-3, D-4 and D-5 were brought out and relied upon by the Patent Office, only in the first hearing notice. She also relied upon the provisions of Rules 28, 29 and 30 of the Patents Rules, 2003, to contend violation of the said provisions.

6. While referring to the impugned order, Ms. Malhotra would urge that a plain reading of the entire order would bring to fore the complete non-application of mind as also complete non-consideration of the detailed

responses dated 29.07.2020 and 11.09.2020 submitted by the appellant. In fact, while referring to the penultimate portion of the impugned order, she would contend that the learned Controller has clearly noted that the decision has been made on the basis of the reply dated 11.09.2020. In other words, she claimed that the response dated 29.07.2020 to the first hearing notice, where for the first time reliance was placed on prior art documents D-3, D-4 and D-5, is conspicuous by the absence of any mention at all, muchless any consideration of the technical responses contained therein. According to her, even without examining the merits, the violation of principles of natural justice is writ large, which must entail quashing and setting aside of the impugned order.

7. On the point of non-consideration of the detailed technical response dated 29.07.2020, she would submit that grave prejudice has been caused to the appellant inasmuch as the said response contained the appropriate response to the objections raised by the Patent Office predicated on prior art documents D-3, D-4 and D-5. According to her, the non–consideration by the learned Controller in the impugned order dated 07.10.2020 would clearly be in violation of principles of natural justice, requiring remit of the matter back to the Patent Office for reconsideration.

8. *Per contra*, Ms. Arunima Dwivedi, learned Central Government Standing Counsel (hereinafter referred to as "*CGSC*") appearing for the respondent seriously refutes the submissions urged on behalf of the appellant. Contrary to what Ms. Malhotra had argued, learned CGSC submits that a holistic reading of the impugned judgment would bring to fore that the learned Controller had not only considered the responses submitted by the appellant but also had complied the said responses in respect of whether it involved any inventive step.

9. Learned CGSC stoutly urged that there is no violation of principles of natural justice or non-compliance thereof at all, inasmuch as before the impugned order was passed, the learned Controller had issued the first hearing notice as also a second hearing notice and only after giving a personal hearing was the impugned order passed. She submitted that the allegation that once the prior art D-3, D-4 and D-5 were considered while issuing the first hearing notice and not made a part of the FER, or that after having issued the first hearing notice, the patent application ought to have been considered as a fresh application, is not supported by any provision of the Act or the Rules made thereunder. Referring to Section 13(3) of the Act, she submitted that the said Section does not envisage any SER. However, in accordance with Section 14 of the Act, not only was the appellant provided with a proper opportunity to respond to the first hearing notice providing an opportunity to respond to prior art D-3, D-4 and D-5, but was also afforded a personal hearing. Moreover, even after the second hearing notice was issued, the response dated 11.09.2020, submitted by the appellant, was also duly noted; considered and impugned order was passed after a personal hearing. Predicated on the above facts, learned CGSC would contend that all parameters of principles of natural justice, as applicable to the quasi judicial authorities, have been scrupulously complied with. Additionally, she would submit that there is no infraction of the procedure or manner in which the patent application was considered by the learned Controller.

10. On merits, learned CGSC submitted that the learned Controller, after having considered and examined the technical details and specifications as also the responses to the hearing notices, has held that, in view of the prior art D-1 to D-5, the application does not disclose any inventive step. In the context of the allegation that the responses of the appellant were not considered, learned

counsel invited attention to page 38 of the appeal paper book, which is the impugned order particularly to paras A, B and C to emphasize that all the relevant responses to the objections have categorically been considered and disagreed with. She submitted that the learned Controller is a subject matter expert who has examined all the responses in detail and has concluded that the claims 1-10 are not inventive in view of the cited documents D-1 to D-4. The impugned order also concludes that the amended claims 1-10 failed to comply with the requirements of Section 2(i)(ja) of the Act. In that view of the matter, learned CGSC submitted that the appeal is bereft of merits and the same may be dismissed. She also further submitted that the learned Controller has, after an overall examination and consideration of the patent application and responses to the hearing notices concluded that the subject invention's objective is not inventive and that it is obvious to person skilled in the art. It is further contended that the prior art documents D-1 to D-4 disclose similar technical features and as such, there is no inventive step involved.

Analysis and Conclusion

11. The subject patent application has been rejected on the basis of lack of inventive step.

12. Upon the perusal of the records, it emerges that the FER predicates its objections on the lack of novelty and inventive step, as also grounded in the prior art documents D-1 and D-2, with D-1 being posited as the closest prior art document. In contrast, the learned Controller, in issuing the first hearing notice dated 08.06.2020, had also cited prior art documents D-3, D-4, and D-5 to impugn the inventive step of the patent application, thereby broadening the scope of the objections. Notwithstanding the aforesaid, the second hearing notice dated 19.08.2020 ostensibly confined its purview to the lack of inventive step, omitting any reference to the objection pertaining to lack of novelty, as

initially raised in the FER, thereby giving rise to an inference that the learned Controller had implicitly acquiesced to the appellant's contentions on novelty.

13. It is apposite to note that the said hearing notice exclusively adverted to the objection predicated on document D-3, thereby circumscribing the appellant's response dated 11.09.2020 to address solely the objections pertaining to only D-3. Furthermore, the appellant's reply to the FER dated 21.03.2020, was limited to addressing the objections raised in relation to D-1 and D-2, as also leaving the objections based on D-3 unaddressed. In this context, the detailed reply submitted by the appellant on 29.07.2020 assumes pivotal significance, as it constitutes a comprehensive rejoinder to the objections raised in the FER. This omission, in the considered opinion of this Court, constitutes a jurisdictional infirmity, vitiating the impugned order, insofar as it pertains to the issue of novelty. Moreover, the impugned order merely acknowledges the submissions made by the appellant in the reply dated 29.07.2020, thereby exhibiting a conspicuous failure to advert to the submissions canvassed in the reply dated 29.07.2020, which amounts to a denial of natural justice. It is, therefore, observed that the learned Controller's decision suffers from a patent infirmity, as also warranting interference by this Court, as it violates the principles of natural justice and procedural fairness.

14. It is also relevant to note that while in the FER, the closest prior art to the subject invention is stated to be prior art D-1 in the impugned order, prior art D-3 is stated to be the closest.

15. This Court also observes that in the entire impugned order there is no reference at all to the submissions/response dated 29.07.2020, which are highly technical in nature and were in response to the objections raised on the basis of prior arts documents D-3, D-4 and D-5. In the absence of such consideration, it

is unfathomable how the learned Controller could have concluded against the appellant.

16. It is observed that the impugned order states that all the technical features of the present invention claimed in the patent application are cited in document D-1, however, contrary to this, the impugned order while referring to document D-1 only discusses the disclosure of the plurality of the compartment, a plurality of pipes and a medium filled inside the plurality of compartments and a controlled units to control the pressure of the medium of the plurality of compartments. It is also observed that the learned Controller has wrongly noted that "*any of the compartments can be positionally re-arranged at a time*" whereas, the cited document D-3 does not mention this. This issue has not been addressed appropriately by the learned Controller, nor has this aspect been properly explained by learned counsel for the respondent**.**

17. Another relevant aspect is in respect of Figure 12 of the prior art D-3. The abstract of D-3 read with the Figure 12 indicates that the sacks are installed in a parallel array while the Figure 1 of the specifications furnished by the appellant and mentioned at page 87 of the paperbook, when considered compositely, indicates that, so far as the subject invention of the appellant is concerned, in particular, the independent claim 1 states "*characterized in that the plurality of compartments can be arranged or re-arranged in any spatial manner including possible multilayer stacking of some compartments*", demonstrates that this particular aspect is a novel feature/inventive component of the subject invention. When this aspect is juxtaposed against the conclusion of the learned Controller, based on Figure 12 of D-3, which shows that the stacks are installed in linear and parallel array, indicating that there is no scope for disconnecting air sacks at varying special arrangements or as required specifically to treat special needs of a person. It is clear that there has been a

failure to address this aspect. In fact, the impugned order based on the Figure 12, states that "*any of the compartments can be positionally rearranged at any time*", which is contrary to the record.

18. Another contention which may need consideration is in respect of the applicability of Section 13(3) of the Act to a SER. Typically, the need for the SER may arise after the applicant amends the specification, which may prompt the learned Controller to re-examine the patent application in terms of the aforesaid Section afresh for the purposes of compliance with patentability criteria. Though, there is nothing in the Act or the Rules prescribed thereunder providing for SER, particularly in cases like the present one, however, keeping in view the fact that the entire issue of patentability is a quasi-judicial proceeding, the procedural fairness may require that an SER be furnished to an applicant on a case to case basis, so as to ensure that all the objections which are to be met in a composite manner by the applicant are put to it before it can respond to the same. That, in the considered opinion of this Court, would be in consonance and conformity to the provisions of Section 13(3) of the Act.

19. In the view of the above, the impugned order dated 07.10.2020 is set aside and the matter is remanded back to the respondent for consideration afresh.

20. It is clarified that the merits of the case have not been examined, and the learned Controller shall decide the subject application in accordance with law without being influenced by any observation made in the present decision on merit, with due expedition.

21. The appellant shall be granted a fresh opportunity of hearing before deciding the subject application.

22. Accordingly, the appeal is disposed of with the aforesaid directions.

23. A copy of the order shall be sent to the learned Controller General of Patents, Design and Trademark at llc-ipo@gov.in for the necessary administrative actions.

TUSHAR RAO GEDELA
(JUDGE)

JANUARY 23, 2026/*yrj/rl*