

Thakar Singh
v.
 State of Punjab
 and others
 —————
 Falshaw, C.J.

that even the technical objection raised by the learned counsel for the petitioner would have been met if a slightly different form of words had been used and the validating provision had provided that orders passed by the delegate of the State Government under Section 21(4) of the Act should be, and should be deemed always to have been, passed by the Assistant Director as such, or by any officer under the Act within the meaning of section 42. However, the effect is exactly the same and I am, therefore, of the opinion that the validating provisions in section 11(a) must itself be held to be valid and to have validated all orders passed by the delegate of the State under section 42 of the Act.

A large number of cases were put up along with this Writ petition including some Letters Patent Appeals as well as writ petitions. All of them may now be decided by the appropriate Benches including this Writ Petition itself in case any other points arise in it.

Harbans Singh, J.

HARBANS SINGH, J.—I agree.
 B.R.T.

CIVIL ORIGINAL

Before Shamsher Bahadur, J.

LAKHBIR SINGH,—*Petitioner.*

versus

MESSRS SARDAR TRADING CO., AND OTHERS,—

Civil Original Case No. 9-D of 1963

Patents and Designs Act (II of 1911)—S. 2(5)—“Design”—Meaning of—Essentials for its registration indicated—Carton in which shoulder pads are packed—Whether can be registered.

Held, that the object of protection is any particular shape, configuration, pattern or ornament “which in the finished article” are the striking features appealing to the

1964

May, 1st.

human eye, as is clear from the definition of "design" in section 2(5) of the Indian Patents and Designs Act, 1911. A carton in which the shoulder pads are packed is certainly not a finished article and consequently there could be no registration of the drawing, figures or letters on the five sides of the carton. The impugned designs which were got registered by the respondent firm have no reference at all to the finished products and there is certainly nothing new or novel in the design of the five facets of the carton in which the shoulder pads are packed. It is noticeable that there must be something striking to the eye in the finished products before the Controller should be asked to register a design. It is certainly not an article which is capable of being registered under the Act. The object of the Act is to protect from piracy original concepts and ideas of a design in the final products. By no stretch of imagination can the drawings on the carton be called design as defined in the Act. A registrable design must be some feature or aspect which catches the human eye and has become the characteristic of the finished article itself.

Petition under Section 51-A of the Indian Patents and Designs Act (Act II of 1911) for cancellation of Design and praying that the registration of the four designs mentioned in para 8 of the petition may be cancelled.

ANOOP SINGH, ADVOCATE, for the Petitioner.

SARDAR SINGH, ADVOCATE, for the Respondent.

JUDGMENT.

SHAMSHER BAHADUR, J.—This petition was filed originally by Thakur Dass and his son Lakhbir Singh as partners of Messrs. Fancy Shoulder Pad Makers under section 51-A of the Indian Patents and Designs Act, 1911 (hereinafter called the Act), for cancellation of the designs which the first respondent, Sardar Trading Company, got registered on the 13th of November, 1961. Thakur Dass died during the pendency of this petition and his name was struck off from the array of parties.

Shamsher
Bahadur, J.

Lakhbir Singh
v.
 Messers Sardar
 Trading Co.
 and others
 ———
 Shamsheer
 Bahadur, J.

Both the petitioner firm and the first respondent, manufacturer shoulder/pads which are used for padding in the tailoring of coats, and there is hardly anything in the finished products to distinguish one from the other. The label of the petitioner's pad is styled as—

“JANTA
 SHOULDER PAD”

and these words are inserted underneath the pictorial representation of a lion. “Janta Shoulder Pad” is described in the label to be “Fast to wash and dry clean—Best selection of tailors and drapers”. The label is registered as a trade-mark. A number of these pads are placed in a carton, which is a cardboard box, on two sides of which there is a pictorial representation of a lion on which is written the expression “Trade Mark”. Adjacent to this pictorial representation is the word “JANTA” written in big block letters. No claim is made for registration of these words or pictorial representations on the two sides of the carton. The cover of the petitioner's carton, which was registered as a design on the 4th of March, 1960, consists of three or four features. On the top of it is a pictorial representation of a lion which is described as a trade-mark. On the right side is the picture of a dressed person to show the utility of the shoulder pad. On the left side is the picture of the pad with the words “JANTA SHOULDER PAD” written on it. The product is described as “JANTA SHOULDER PAD—Fast to wash and dry clean—Best selection of tailors and drapers.” It is claimed that the respondents got their designs, which are imitative of the petitioner's, registered with the Controller of Designs, Calcutta, on the 13th November, 1960.

The respondents also manufacture shoulder pads and on their label the words “AJANTA SHOULDER PAD” are inscribed. The pictorial representation of

the lion is not on this label. The petitioner complains that the respondents carton, in which numerous shoulder pads can be packed, has identically similar designs as are to be found on the petitioner's carton. The respondent firm got these designs on five sides of the carton registered, as I have said before, on the 13th November, 1961. The petitioner in the first instance filed a suit for infringement of trade-mark in a Court at Delhi and when on the 6th February, 1963 during the pendency of that suit the designs on the carton of the respondent were shown to have been registered with the Controller of Designs, Calcutta, the petitioner felt obliged to bring the present action for cancellation of those designs under section 51-A of the Act.

Lakhibir Singh
v.
Messrs Sardar
Trading Co.
and others

Shamsher
Shamsher, J.

“Design” is defined in sub-section (5) of section 2 of the Act to mean “only the features of shape, configuration, pattern or ornament applied to any article by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical advice, and does not include any trade mark as defined in section 2(1) (u) of the Trade and Merchandise Marks Act, 1958 (43 of 1958):” It is necessary also to notice the definition of “article” in sub-section (2) of section 2 of the Act. Article “means” any article of manufacture and any substance artificial or natural, or partly artificial and partly natural.” Part II of the Act provides the machinery for registration of designs and under sub-section (1) of section 43 “The Controller may, on the application of any person claiming to be the proprietor of any new or original design not previously published in India, register the design under this part.” Section

Lakhbir Singh
 v.
 Messers Sardar
 Trading Co.
 and others

 Shamsheer
 Bahadur, J.

51-A, under which this application is moved, says that——

“Any person interested may present a petition for the cancellation of the registration of a design——

(a) at any time after the registration of the design, to the High Court on any of the following grounds, namely :—

* * * * *
 “* * * * *

(iii) that the design is not a new or original design;

* * * * *

Though the point has not been specifically raised in the petition, it is contended by Mr. Anoop Singh in the first instance that the Controller could only register designs and what the respondent firm got registered were merely drawings on the carton in which the shoulder pads were packed. The “article” in this case is the shoulder pad and what can be protected under the Act is any design on it. The definition of “design” is clear on the point that the object of protection is any particular shape, configuration, pattern or ornament “which in the finished article” are the striking features appealing to the human eye. A carton in which the shoulder pads are packed is certainly not a finished article and consequently there could be no registration of the drawing, figures or letters on the five sides of the carton. The impugned designs which were got registered by the respondent firm have no reference at all to the finished products and there is certainly nothing new or novel in the design of the five facets of the carton in which the shoulder pads are packed. It is noticeable that there must be something striking to the eye in the finished products before the Controller should be asked to register a design.

Mr. Anoop Singh has cited three English authorities in support of his contention. The first is the decision of the Court of Appeal in *Dover Ltd. v. Nurnberger Colluloidweren Fabrik Wolff* (1). Lord Justice Buckley, who delivered the judgment of the Court of Appeal, observed at page 503 of the report—

Lakhbir Singh
 v.
 Messrs Sardar
 Trading Co.
 and others

 Shamsheer
 Bahadur, J.

“A design means something which is applicable to an article by printing, painting, etc., or any other means whatever, manual, mechanical or chemical. Design means, therefore, a conception or suggestion or idea of a shape or of a picture or of a device or of some arrangement which can be applied to an article by some manual, mechanical, or chemical means. It is a conception, suggestion, or idea, and not an article, which is the thing capable of being registered.”

It is argued that there must be some suggestion or idea which is appealing to the eye which can be called a design. It is certainly not an article which is capable of being registered under the Act. The object of the Act is to protect from piracy original concepts and ideas of a design in the final products. By no stretch of imagination can the drawings on the carton be called design as defined in the Act. A similar view was expressed by Parker, J. in *Pugh v. Riley Cycle Company Ltd.* (2). He said at page 202—

“A design to be registerable under the Act must be some conception or suggestion as to shape, configuration, pattern or ornament. It must be capable of being applied to an article in such a way that the article to which it has been applied, will show to

(1) 27 R.P.C. 498.

(2) 29 R.P.C. 196.

Lakhbir Singh
v.
 Messrs Sardar
 Trading Co.
 and others

Shamsher
 Bahadur, J.

the eye the particular shape, configuration pattern, or ornament, the conception or suggestion of which constitutes the Design.”

The last case relied upon by the learned counsel for the petitioner is an authority of the House of Lords in *King Features Syndicate Incorporated and Frank Cecil Betts v. O.&M. Kleeman Ltd.* (3). Reference may be made to Lord Romer’s judgment of page 222, where it was observed by his Lordship that—

“It is quite plain that the drawings are not themselves designs capable of registration under the Patents and Designs Act. No one could rightly say that these drawings the author had applied features of shape or configuration to any article by some industrial process or means.”

These English authorities show clearly and indeed the matter is placed beyond any shade of controversy by the definition of “design” itself that a registerable design must be some features or aspect which catches the human eye and has become the characteristic of the finished article itself.

The cogency and reasoning of Mr. Anoop Singh’s contentions are not denied by the learned counsel for the respondent. All that is submitted on behalf of the respondent is that the plea is not definitely raised in the petition and the petitioner has himself registered a design which is hit by the provisions of the Act. The objection raised by Mr. Anoop Singh is of fundamental importance and can certainly be raised. The counsel, however, frankly concedes that if the design of the respondent cannot be registered, that of the petitioner is also liable to cancellation. I need not refer to

(3) 58 R.P.C. 207.

the second point raised by Mr. Anoop Singh that there is nothing new, original, or novel about the design of the respondent as I am inclined to agree with him that the registration did not relate to designs as defined in the Act. In this view of the matter, this petition must succeed and the registered design of the first respondent would stand cancelled. It is not for me to cancel the registered design of the petitioner also as I am not called upon to do so in these proceedings. This could be done in appropriate proceedings. I would leave the parties to bear their own costs.

Lakhbir Singh
 Messrs Sardar
 Trading Co.
 and others
 Shamsheer
 Bahadur, J.

B.R.T.

REVISIONAL CIVIL

Before Inder Dev Dua and Daya Krishan Mahajan, JJ.

CHANDER BHAN,—*Petitioner.*

versus

MAHA SINGH AND ANOTHER,—*Respondents.*

Civil Revision No. 393-D of 1957

Part C States (Laws) Act (XXX of 1950)—S. 2—Power to extend laws prevailing in other States—Whether empowers Central Government to extend other State laws amending Central Acts to Part C States—Extension of the Indian Stamp (East Punjab Amendment) Act (XXVII of 1949) to Delhi State by notification of the Central Government—Whether valid.

1964

May, 4th.

Held, that the scheme of section 2 of the Part C States (Laws) Act, 1950, is that Central Acts applicable to Part C States have to be left alone. The Central Government is not given the power by the Parliament, in any way, to amend or modify the Central Acts applicable to Part C States. Parliament is the legislature for Part C States and is competent to make laws for such States. For this reason, no power was conferred on the Central Government, either to amend or alter a Central Act. That