

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION*

WRIT PETITION NO. 100 OF 2019

Panacea Biotec Limited

.. Petitioner

Vs

Union of India and others

.. Respondents

Mr.Venkatesh Dhond, Senior Advocate with Mr.Gautam Panchal, Ms.Sultana Shaikh and Mr.Vivek Singh i/b Gautam & Co., for Petitioner.

Mr.Rajiv Chavan, Senior Advocate with Ms.Priyanka Chavan, Ms.Anupama Pawar and Ms.Sumangala Yadav i/b Devesh Tripathi, for Respondent Nos.1, 2 and 3.

Mr.Janak Dwarkadas, Senior Advocate with Ms.Nirali Sanghavi and Ms.Neha Sonawane i/b Anand And Anand And Khimani, for Respondent No.4.

Mr.Ravi Kadam, Senior Advocate with Ms.Nirali Sanghavi and Ms.Neha Sonawane i/b Anand And Anand And Khimani, for Respondent No.5.

***CORAM : NARESH H. PATIL, C.J. &
N.M.JAMDAR, J.***

Date : 13 February 2019.

P.C. :

Under the scheme of the Patents Act 1970, when a grant of patent is challenged, a panel of experts, called Opposition Board,

is constituted. The Board sends its recommendations. Then the matter is heard by the adjudicatory authority. The Petitioner contends that in its case the Opposition Board has given a completely flawed recommendation and seeks a direction to the Controller General of Patents to constitute a new Opposition Board.

2. The Petitioner is a manufacturer of medicines and vaccines. The Petitioner applied for a patent in respect of vaccine, stated to have been developed by the Petitioner. The Patent – IN '351 was published in favour of the Petitioner in the Patent Office Journal, on 1 April 2016. The Respondent No.4 and 5 objected to the grant of a patent to the Petitioner by filing their oppositions on 30 March 2017 and 31 March 2017. The Controller General of Patents constituted an Opposition Board as per the provisions of the Patents Act, 1970. The Controller of Patents circulated the copies of the recommendations received from Board to the Respondent Nos.3 and 4 and the Petitioner. On 3 December 2018, the Petitioner wrote to the Controller General, complaining that the recommendations suffer from glaring lacunae and they be discarded and new board be constituted. The Respondent Nos.4 and 5 opposed this request .

3. There was no response from the Controller General and since the matter would now be heard further by the Controller of Patents, the Petitioner has approached this Court invoking the power under Article 226 of the Constitution of India.

4. Mr. Chavan, the learned Senior Advocate, appearing for Respondent Nos.1 to 3 placed before us the response of Controller General dated 21 January 2019 to the representation of the Petitioner. The Controller General has expressed that it will not be proper to issue any such administrative directions when the Controller is in midst of *quasi-judicial* proceedings. The Controller General of Patents clarified that the Petitioner can take all such contentions available in law and fact about the recommendation in the pending proceedings.

5. Mr. Dhond, learned Senior Advocate appearing for the Petitioner took us through various provisions of the Act and the rules framed therein. He submitted that the Recommendation of the Board is pivotal in adjudication. He relied on the decision of the Supreme Court in the decision of *CIPLA Limited Vs. Union of India and others - (Civil Appeal No(s). 8479 – 8480 of 2012 dated 27 November 2012)*. Mr.Dhond submitted that the Board is under obligation to consider the case of both the sides and then submit a report. Mr.Dhond sought to demonstrate that only the version of Respondent Nos.3 and 4 have been referred in the Recommendation not the reply of the Petitioner. He submitted that if the report of the Board is contrary to the procedure, then there is no remedy for the Petitioner. Mr.Dhond submitted that in such circumstances, the Controller General has ample powers to reconstitute another Board.

He relied on Section 73 of the Act for that purpose.

6. Mr. Dwarkadas and Mr. Kadam, learned Senior Advocates appearing for Respondent Nos.4 and 5 submitted that there is nothing novel about Petitioner's patent and it is only a mixture. The learned counsel submits that the grant, opposition, setting aside the patents are a domain of experts in the subject and the Act has a self-contained mechanism for resolving such issues, and no interference is warranted as the Petitioner has remedies available under the Act. According to these Respondents the petition is only an attempt to delay the proceedings to enjoy the exclusivity that a patent confers.

7. The main question in this case is whether we should examine this case in our extraordinary jurisdiction under Article 226 of the Constitution of India in midst of the proceedings pending under the Act. The answer is No. A self-contained scheme of expert adjudication is provided for under the Act and Rules.

8. To elaborate the procedure, the Chapter V of the Act regulates the procedure for opposition to grant of patents. Section 25(1) covers the contingency before the grant of patents. Section 25(2) is in respect of the opposition after the grant of patents. Once a notice of opposition to a patent is given, the Controller notifies the patentee. On receipt of notice of Opposition, the Controller

constitutes a Board which is known as 'Opposition Board.' The Controller refers to the notice of Opposition along with the documents to the Board. The Opposition Board proceeds as per the prescribed procedure. Rules 56 to 60 of the Patents Rules 2003, prescribe the procedure in the Opposition Board. Section 25(4) states that on receipt of the recommendation of the Opposition Board and after giving the patentee and an opponent an opportunity of being heard, the Controller can either maintain, amend or revoke the patent. After such an order is passed an appeal lies to the appellate board.

9. The subject of patents is specialized one. We cannot issue a direction merely because the petitioner says that the recommendation is flawed. A bare look at the recommendation in question shows that to observe that it is faulty, we will have to enter into the merits of the recommendation. For that we will have to sit in appeal to assess the merits of the expert recommendation.

10. The Petitioner cannot straightaway make the dicta of the Supreme Court in *CIPLA* as a foundation to seek interference in writ jurisdiction in the midst of the proceeding. The factual matrix in *CIPLA* will have to be seen for that purpose. In this case the patent was finally revoked without giving a copy of the recommendation to the patentee. Further proceeding ensued at the Appellate authority and the High Court. The Supreme Court held that not furnishing

recommendations violated the principles of natural justice. Such a situation does not exist in the present case. Here the matter is yet to be concluded. A copy of the recommendation is given to the Petitioner. Whether to revoke, amend or maintain the patent will be decided by the Controller after given an opportunity of being heard. If an appeal is filed then by the Appellate Authority.

11. There is nothing improper when the Controller General of Patents observes that he will not issue administrative directions when a *quasi-judicial* authority is seized with the proceedings. Controller General has made it clear that the Petitioner can argue all issues about the recommendation of the Opposition Board before the Controller of Patents.

12. It will thus be appropriate to refrain from issuing any directions, letting the parties to get their rights adjudicated before the forum provided under the Act.

13. Considering these circumstances, no interference is warranted. Writ Petition is rejected. We make it clear that we have not expressed any opinion on the merits of the pending dispute.

N.M.JAMDAR, J.

CHIEF JUSTICE