

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.07.2015

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THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.4662 of 2014
& M.P.No.2 of 2014

S.M.Anand Vel

...Petitioner

Vs

1.Union of India,
Ministry of Commerce & Industry
Department of Industrial
Policy & Promotion,
Represented by its Secretary,
Udyog Bhavan, New Delhi-110 011.

2.Controller General of Patents, Designs &
Trade Marks, Bhoudhik Sampada Bhavan,
Antop Hill, S.M.Road,
Mumbai-400 037.

3.Controller of Patents & Designs,
Patent Office, Intellectual
Property Building,
G.S.T. Road, Guindy, Chennai-32.

4.Assistant Controller of Patents & Designs,
Patent Office, Intellectual
Property Building,
G.S.T. Road, Guindy, Chennai-32.

.. Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records relating to the Order of the fourth respondent dated 09.03.2012 relating to Patent Application No.2519/CHE/2007 on the file of the third respondent, quash the same and consequently, direct the respondents to decide the application of the petitioner on merits and pass appropriate orders.

For Petitioner	: Mr.Niranjan Rajagopalan for M/s G.R.Associates
For Respondents	: Mr.L.Murugan, CGSC R1 to R4

O R D E R

Heard Mr.Niranjan Rajagopalan, learned counsel appearing for the petitioner and Mr.L.Murugan, learned Central Government Standing Counsel appearing for the respondents and the writ petition itself is taken up for disposal.

2. The petitioner seeks to quash the order passed by the fourth respondent dated 09.03.2012. By virtue of the said order, the petitioner's Patent Application No.2519/CHE/2007 was found to be not in order and was directed to put in order within the prescribed time as stipulated under the Patent Act, 1970, which is said to have been expired on 30.11.2011 and therefore, the petitioner's patent application is deemed to be abandoned under the provisions of the Patent Act, 1970.

3. The petitioner has challenged the impugned order on the ground that the effect of the impugned order is, in fact, a rejection of the application for the grant of patent, which could be done in consonance with Sections 14 and 15 of the Patent Act, 1970 (hereinafter referred to as the "Act") and only after hearing the petitioner, the respondents can pass a speaking order as per Section 15 of Act. Further, it is submitted that First Examination Report was issued by the fourth respondent on 30.11.2010 and thereafter, the petitioner filed a petition under Rule 137 of Patent Rules to amend the claim made on 25.05.2011. Consequent thereto, the fourth respondent re-examined the matter and submitted a Examination Report on 02.08.2011. In the said Report, certain queries were raised, giving an opportunity to the petitioner to put forth his objections. Accordingly, the petitioner put forth his objections by a communication dated 06.08.2011 followed by further communication dated 09.08.2011, which was received by the Patent Office on 10.08.2011 and the seal was also affixed on the said communication. Once again, another Examination Report dated 13.10.2011 was submitted by the fourth respondent. On a perusal of the said Report, it is seen that the objections pointed out in the said Report are new set of objections, which did not find place in the Examination Report dated 02.08.2011. On receipt of the same, the petitioner put forth his submissions vide reply dated 13.12.2011, which also contained an annexure. Thereafter, the impugned proceeding has been passed by the fourth respondent on 09.03.2012.

4. The submission of the learned counsel appearing for the petitioner is that the application could not have been rejected on the ground of abandonment under Section 21(1) of the Act, especially, when the Examination Reports dated 02.08.2011 and 13.10.2011 contained two sets of fresh objections and not the same

objections and therefore, the petitioner's application could not have been rejected as abandoned.

5. To support his contention, the learned counsel appearing for the petitioner has drawn the attention of this Court to the decisions of the High Court of Delhi in FERID ALLANI V. UNION OF INDIA (UOI) AND OTHERS [2008 (37) PTC 448(Del) and TELEFONAKTIEBOLAGET LM ERICSSON (PUBL) V. UNION OF INDIA AND OTHERS (W.P.(C)No.9126 of 2009) dated 11.03.2010.

6. The learned Standing Counsel appearing for the respondents submitted that in terms of Section 21(1) of the Act, the fourth respondent was fully justified in rejecting the application as abandoned on the ground that re-representation was not done within the time permitted.

7. I have heard the learned counsel appearing for the parties and perused the materials placed on record.

8. It is seen that the very same issue arose for consideration in the decisions of Delhi High Court in FERID ALLANI V. UNION OF INDIA (UOI) AND OTHERS [2008 (37) PTC 448(Del) and TELEFONAKTIEBOLAGET LM ERICSSON (PUBL) V. UNION OF INDIA AND OTHERS in (W.P.(C)No.9126 of 2009) dated 11.03.2010, wherein also an identical issue was arose and the application was rejected as abandoned. The High Court of Delhi, after examining the issue in detail and considering the provisions of Rules framed therein, held that the case therein was a case in the Patent application and the petitioner did not respond to the objections nor failed to comply with the requirement of the Act. In such circumstances, the High Court of Delhi held that the petitioner should be deemed to have abandoned its application in terms of Section 21(1) of the Act and accordingly, set aside the order impugned and remanded the matter to the concerned respondent therein to pass a reasoned order under Section 15 of the Act. The facts of the instant case is also identical to that of the cases dealt with by the High Court of Delhi cited above. Taking into consideration the objections raised by the petitioner on 06.08.2011, 09.08.2011 and 13.12.2011, it is clear that the petitioner's application could not have been brought under the deeming fiction as abandonment under Section 21(1) of the Act. Accordingly, following the law laid down by the High Court of Delhi in the cases cited above, I have no hesitation to hold that the impugned order calls for interference and the same is set aside.

9. Accordingly, the writ petition is allowed and the matter is remanded to the fourth respondent for a fresh consideration and for passing a reasoned order under Section 15 of the Act as expeditiously as possible. The petitioner shall be given an opportunity of personal hearing before passing an order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary, Union of India,
Ministry of Commerce & Industry
Department of Industrial Policy & Promotion,
Udyog Bhavan, New Delhi-110 011.
- 2.The Controller General of Patents, Designs &
Trade Marks, Bhoudhik Sampada Bhavan,
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MSM(CO)
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