

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2016

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND

The Hon'ble MR.JUSTICE R.MAHADEVAN

W.P. No.21392 of 2013

and

M.P.No.1 of 2013

- 1.The Controller of Patents & Designs,
Intellectual Property Buildings,
G.S.T. Road,
Guindy, Chennai-600 032.
- 2.The Deputy Controller of Patents and Designs,
Intellectual Property Buildings,
G.S.T. Road,
Guindy, Chennai-600 032. ... Petitioners

-vs-

- 1.The Deputy Registrar,
Intellectual Property Appellate Board,
Annexe-I, Guna Complex, II Floor,
443, Anna Salai,
Teynampet, Chennai-600 018.
- 2.Dr.P.Parikumar,
The Light Eye Hospital,
39-D, Bye Pass Road,
Dharmapuri-636 701.
- 3.Dr.Samuel JK Abraham,
C-16, N.S.K. Salai,
Vadapalani, Chennai-600 026. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari calling for the records of first respondent and quash the order passed by the first respondent in O.A.No.60 of 2012/PT/CH dated 23.01.2013.

For Petitioner : Mr.C.V.Ramachandra Murthy

For Respondents : Mr.Giridhar Sai for R2 & R3

O R D E R

(Order of the Court was made by The Hon'ble Chief Justice)

The Controller of Patents and Designs has preferred this petition assailing the impugned order of the Intellectual Property Appellate Board (IPAB) dated 23.01.2013, which had allowed the appeal of respondent Nos.2 and 3 against the rejection of the patent application on the ground that it was not in the proper format and the fee paid was insufficient.

2. The first question examined was in respect of the time period of 31 months having elapsed and respondent Nos.2 and 3 having re-submitted the application, which was rejected on 04.05.2011. The linked question was payment of requisite fee for each of the claims in excess of 10 claims, and the fee deposited was only qua 17 of the claims.

3. The IPAB has opined that the Controller had the discretion to refuse the application or require the application/specification or other documents to be amended to his satisfaction before proceeding with the application and refuse the application on failure to do so. However, this discretion had not been exercised by the Controller. The plea of respondent Nos.2 and 3 was that had they been informed, they would have deleted 3 of the claims and the fee already submitted would have been adequate for examination of the other 17 claims. The right to do so, respondent Nos.2 and 3 claim, was on the basis of Section 57(6) of the Patents Act, 1970. The finding of the IPAB is that the Controller ought to have stated that the fee paid is adequate only for 17 claims and ought to have afforded an opportunity to respondent Nos.2 and 3 to delete the remaining 3 claims, a finding with which we can hardly find any error. This is more so in view of the willingness expressed by the learned counsel for respondent Nos.2 and 3 before the IPAB to delete 3 claims.

4. The IPAB also found that the Controller's rejection of the application on the last date only on the ground of insufficient fee appears to be unreasonable since respondent Nos.2 and 3 had not been granted opportunity to rectify the mistake, once again, a finding which cannot be faulted.

5. The matter in terms aforesaid was remitted back to the Controller.

6. As we have observed aforesaid, there is hardly any ground made out to interfere with the impugned order and it does appear that the Controller has not taken the order of the Appellate

Authority in the right spirit and thus preferred the present petition.

7. The writ petition is dismissed. No costs. Consequently, M.P.No.1 of 2013 is also dismissed.

8. At request of the learned counsel for respondent Nos.2 and 3, we clarify that for certain steps to be taken by respondent Nos.2 and 3, including filing of the request for examination, the time period from institution of the appeal before the IPAB to the date of the decision today would be excluded.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Controller of Patents & Designs,
Intellectual Property Buildings,
G.S.T. Road, Guindy,
Chennai-600 032.
- 2.The Deputy Controller of Patents and Designs,
Intellectual Property Buildings,
G.S.T. Road, Guindy,
Chennai-600 032.
- 3.The Deputy Registrar,
Intellectual Property Appellate Board,
Annexe-I, Guna Complex, II Floor,
443, Anna Salai, Teynampet,
Chennai-600 018.

1 cc to Mr.C.V.Ramachandramoorthy, Advocate, sr.47090

W.P.No.21392 of 2013

scd co
kra 06/09/2016