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

+ **W.P.(C) 2879/2016 & C.M.Nos.12068-12069/2016**

ER SQUIBB & SONS, LLC

..... Petitioner

Through Mr.Pravin Anand with Ms.Archana
Shanker, Mr.Nisschal Anand,
Ms.Priyanka Dubey and Mr.Aman,
Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through Mr.Amit Mahajan, CGSC with
Mr.Kunal Dutt, Advocate for UOI.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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04.04.2016

Present writ petition has been filed challenging the order dated 27th November, 2015 passed by respondent No.2-Department of Atomic Energy and order dated 4th December, 2015 passed by respondent No.4-Deputy Collector of Patent and Design, whereby petitioner's patent application was refused on the ground that the invention relates to Atomic Energy and therefore ineligible for grant of patent under Section 4 of the Patents Act, 1970 and Section 20 of the Atomic Energy Act, 1962.

Mr.Pravin Anand, learned counsel appearing for the petitioner contends that subject matter of petitioner's patent application is a Biotechnology Invention useful for diseases like cancer and has no connection with Atomic Energy. He states that the impugned orders are non-speaking and have been passed without taking into account

the true nature and subject matter of the invention. He further states that the petitioner is willing to withdraw the Claim no.31 filed along with the petitioner's patent application.

On the other hand, Mr.Amit Mahajan, learned CGSC appearing for UOI raises a preliminary objection as to the maintainability of the present writ petition on the ground of territorial jurisdiction. He states that the petitioner's application had been filed in Kolkatta and the impugned letter has been issued from Mumbai and the Office of Deputy Collector of Patent and Design is also situated in Kolkatta. He further states that respondent nos. 1 and 3 have been wrongly impleaded in the present writ petition.

This Court is of the view that as the order dated 27th November, 2015 does not give any reason, it would be appropriate if the petitioner is given an opportunity to file a detailed representation with the Department of Atomic Energy clearly stating its case as to why the petitioner's patent has no connection with the atomic energy. In the said application, the petitioner shall also specifically state that it is withdrawing its Claim no.31. The said representation is directed to be filed within a period of two weeks. Thereafter, the Department of Atomic Energy is directed to dispose of the same as expeditiously as possible preferably within a period of eight weeks. However, the issue of territorial jurisdiction is left open.

In view of the aforesaid observations, the present writ petition and the applications stand disposed of.

MANMOHAN, J

APRIL 04, 2016
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