

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE MS JUSTICE J.UMA DEVI

Writ Appeal No.1544 of 2017

JUDGMENT: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

Heard Sri V.Hari Haran, learned counsel for the appellants.

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.28498 of 2017 dated 15.09.2017. The appellants herein are the petitioners in the writ petition wherein they sought a mandamus to declare the action of the respondents, more particularly respondents 1 to 3, in seeking to procure flow control valves for use in Mission Bhagiratha programme in the State of Telangana under the name and style of "Household Flow Control Valve", pursuant to tender notice dated 01.03.2017 issued by the 2nd respondent for rate contract for manufacture, supply and delivery of taps and appurtenances in respect of flow control valves, as illegal and arbitrary.

In the order under appeal, the Learned Single Judge noted the submission of the appellant-writ petitioners that the flow control valve, sought to be procured by respondents 1 and 2, was identical to the patented product manufactured by the appellant-writ petitioners; and the appellant-writ petitioners, besides filing W.P.No.7305 of 2017 before the Madras High Court, had also filed O.S.Nos.734 and 735 of 2017 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad seeking an injunction against respondents 5 and 6 not to manufacture the patented product. The Learned Single Judge also noted the submission, made on behalf of the 3rd respondent in his counter-affidavit, that the pictorial representation and the sectional

view, as stated by the appellant-writ petitioners, was different from the products and material used by the Government of Telangana; and the tender offered by the Government of Telangana, to manufacture and supply the products, was completely different from that of the appellant-writ petitioners.

The Learned Single Judge, thereafter, took note of Section 47 of the Patents Act, 1970 (for short “the Act”), and observed that the action of the State Government could not be held to be, *prima facie*, bad in view of Section 47 of the Act; and, since the appellant-writ petitioners had the remedy under the Act itself and they had already invoked it by filing O.S.Nos.734 and 735 of 2017, the writ petition was liable to be dismissed leaving it open to the appellant-writ petitioners to pursue their remedies, in accordance with law, in the pending suits or elsewhere.

Sri V.Hari Haran, learned counsel for the appellant-writ petitioners, would submit that the Learned Single Judge had merely noted Section 47 of the Act, and had not considered Sections 48 and 99 of the said Act; the Government of Telangana was seeking to procure a product identical to the product for which the appellant-writ petitioners had a patent; and, while the suits filed by them were against respondents 5 and 6 for infringement of their patent, mere pendency of the said suits would not bar them from questioning the action of the Government of Telangana in independent legal proceedings i.e by way of a writ petition before this Court.

Section 47 of the Act provides that the grant of patents shall be subject to certain conditions. Section 48(a) of the Act relates to rights of patentees and stipulates that, subject to the other provisions contained in the Act and the conditions specified in Section 47, a patent granted under the Act shall confer upon the patentee, where

the subject matter of a patent is a product, the exclusive right to prevent third parties, who do not have his consent, from the act of making, using, offering for sale, selling or importing for those purposes that product in India.

With regards the product over which the appellant-writ petitioners claim to have a patent, Section 48(a) of the Act confers on them the exclusive right to prevent others from using the said product for sale etc without their consent. The 3rd respondent, however, disputes that the product, which they intend to use for Mission Bhagiratha, is the product for which the appellant-writ petitioners have a patent. It is only if the product, which is being used by the Government of Telangana, is found to be the product for which the appellant-writ petitioners have a patent, would Section 48(a) confer on them the right to prevent others from using the said product.

Section 99(1) of the Act stipulates that, for the purposes of Chapter XVII, an invention is said to be used for the purposes of Government, if it is made, used, exercised or vended for the purposes of the Central Government, a State Government or a Government undertaking. Section 99(3) of the Act stipulates that nothing contained in Chapter XVII shall apply in respect of any such importation, making or using of any machine, apparatus or other article or of any such using of any process or of any such importation, using or distribution of any medicine or drug, as may be made by virtue of one or more of the conditions specified in Section 47.

All that Section 99(1) of the Act stipulates is that an invention is said to be used for the purpose of the Government, if it is used by the State Government. It is only if it is established that the product,

which the Government of Telangana is using, is the very same product for which the appellant-writ petitioners have a patent, can they be heard to contend that they have exclusive rights over such a patented product. The fact, however, remains that the 3rd respondent has, in his counter-affidavit, denied that the product, for which tenders have been invited, are those over which the appellant-writ petitioners have a patent.

While Sri D.Venkat Reddy, learned counsel appearing on behalf of the 4th respondent, would submit that, even if the subject product is held to belong to the appellant-writ petitioners, Section 48(1) of the Act confers a right on the Government of Telangana to make use of the said product for its own purpose, it is wholly unnecessary for us to consider this issue, in as much as the stand of the 3rd respondent, in the counter-affidavit filed by him before this Court, is that the product for which they have invited tenders, is not the product for which the appellant-writ petitioners have a patent.

Since the entire case of the appellant-writ petitioners is based on the premise that the product, for which the tender notice has been issued, is the very same product for which the appellants have a patent, and as this disputed question of fact would not, ordinarily, be adjudicated in proceedings under Article 226 of the Constitution of India, we find no error in the order of the Learned Single Judge in relegating the appellant-writ petitioners to the remedy under the Act or otherwise. In an intra-court appeal, under Clause 15 of the Letters Patent, interference is justified if only the order under appeal suffers from a patent illegality. We find no such infirmity in the said order passed by the Learned Single Judge.

The Writ Appeal fails and is, accordingly, dismissed.
Miscellaneous Petitions pending, if any, shall also stand dismissed.
There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

25th October, 2017
JSU



**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
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Date: 25.10.2017

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