

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

WRIT Petition NO.2324 OF 2017

Dinesh Parmar

S/o Sh. Bhagubhai Parmar

: Petitioner.

Versus

The Controller General of Patents,

Designs and Trade Marks and anr.

: Respondents.

Mr.Hiren Kamod i/by Mr. Ashwin V Sarkolkar for the Petitioner.

Mr. A S Khandeparkar a/w Mr. Shivraj R Patil for the Respondent Nos.1 and 2.

**CORAM : R. M. SAVANT &
K. K. SONAWANE, JJ.**

DATE : 23rd AUGUST 2018

P.C.

1 The writ jurisdiction of this Court is invoked for a declaration that the correct answer to Question No.27 of Paper I Set-C of the Patent Agent Examination, 2016 is Option (b) therein.

2 The examination in question is the Patent Agent Examination, 2016 which was conducted by the Respondent No.1 on an all India basis in the year 2016. The Petitioner registered for the said examination, which comprised of Paper I and Paper II which were of 100 marks. In so far as Paper I is concerned, the said paper was of objective type and, in so far as Paper II is concerned, the said paper was in respect of the answers which were to be written in essay form. It is only those candidates who secured fifty percent marks in Paper I and Paper II who were entitled to be called for viva voce

which was to be of fifty marks, and the candidates who had secured sixty marks over all, out of two hundred fifty marks were selected.

3 It is required to be noted that the Respondent No.1 received representation in respect of Question No.49 and Question No.27 of Paper I of the said examination to the effect that the answer options were erroneous. In so far as Question No.49 is concerned, the Respondent No.1 accepted the fact that the answers which were appearing in the options were erroneous and accordingly corrected the results of the examination by adding additional two marks in respect of the candidates who had all appeared at the said examination.

4 In so far as Question No.27 is concerned, it appears that the Petitioner herein went on representing to the Respondent No.1 against the answer options to the said Question No.27. Ultimately the Petitioner has filed the instant Writ Petition for the relief sought which we have already adverted to herein above.

5 The learned counsel for the Petitioner would contend that having regard to Section 39 of the of the Patents Act, Option (b) in the answers is the correct answer. The learned counsel would contend that the Option (d) in the answers which according to the Respondent No.1 is the correct answer is

erroneous having regard to Section 39 of the Patents Act. The learned counsel for the Petitioner would seek to draw our attention to the judgment of the Apex Court reported in (1983) 4 SCC 309 in the matter of Kanpur University, Through Vice-Chancellor and others v/s Samir Gupta and others in support of this contention that this Court rule upon the correctness of the answers in the options on the basis of the accepted text-book on patents. It was therefore contended by the learned counsel for the Petitioner that if the submission of the Petitioner is accepted, the Petitioner would be entitled to two additional marks which make his overall total as 150 and thereby the Petitioner would be entitled to be selected as a Patent Agent.

6 On behalf of the Respondent No.1 an affidavit in reply has been filed wherein the claim and contentions raised by the Petitioner in the above Writ Petition have been dealt with. In the affidavit the scheme of the examination has been set out, as also the qualifying marks required by a candidate to qualify himself as a Patent Agent. However, in the context of the challenge raised in the above Writ Petition, the averments made in paragraph 6 of the affidavit in reply assume importance. It has been stated in paragraph 6 that in view of the representation made by the Petitioner as regards Question No.27 of the examination, the said Question No.27 was referred to the committee members who had finalized the Question Paper. It is further stated that the answer option (d) to the said question is the correct answer and that

the Petitioner wrongly contends that the answer to Question No.27 is incorrect. Thereafter in paragraph 8 of the affidavit in reply Sections 35, 39 and Rule 71 have been referred to which according to the Respondent No.1 are relevant for the purpose of considering whether the Option (d) to Question No.27 is correct. It is concluded in paragraph 9 that having regard to Sections 35, 39 and Rule 71 an Indian resident can file an application outside India before first filing the same in India by way of taking permission in Form 25. It is submitted that this situation of law is established and well clarified under Section 39(1) r/w Rule 71. In view thereof, it would be appropriate to contend that an established law can't be considered as a special circumstance. It is lastly stated that the Patents Act, 1970 does not testify any special circumstance in any manner or in any event.

7 At this stage, it would be relevant to refer to Question No.27 and its four options which are appearing in the key to the said Question No.27. The same are reproduced herein under for the sake of ready reference :-

“Q 27 : As per the Indian Patents Act, a resident in India:

- a. Is free to file an application for patent in a foreign country without first filing an application for patent for the same invention in India.
- b. Can file an application for patent in a foreign country without first filing an application for patent for the same invention in India, only under certain special circumstances.

- c. Can file an application for patent in a foreign country only after filing a PCT application on same Subject matter.
- d. None of the above.”

According to the Petitioner Option (b) is the correct answer and according to the Respondent No.1 Option (d) is the correct answer.

8 It would therefore be apposite to refer to Section 39(1) of the Patents Act which is relevant in the context of the said Question No.27. The same therefore reproduced herein under for the sake of ready reference :

“Section 39 :- Residents not to apply for patents outside India without prior permission –

(1) No person resident in India shall, except under the authority of a written permit sought in the manner prescribed and granted by or on behalf of the Controller, make or cause to be made any application outside India for the grant of a patent for an invention unless-

(a) an application for a patent for the same invention has been made in India, not less than six weeks before the application outside India; and

(b) either no direction has been given under sub-section (1) of section 35 in relation to the application in India, or all such directions have been revoked.”

9 A reading of Section 39(1) of the Patents Act therefore discloses that no person resident in India shall, except under the authority of a written

permit sought in the manner prescribed and granted by or on behalf of the Controller, make or cause to be made any application outside India for the grant of a patent for an invention. Hence the said provision discloses that it is only under the written permission sought in the manner prescribed and granted by the Controller, that the application can be filed outside India without an application being filed in India. Hence the mandate of the statute which postulates a permission to be granted by the Controller of Patents cannot be said to be a special circumstance which is appearing in Option (b) in the key to Question No.27. The learned counsel for the Petitioner by an inferential process of reasoning endeavoured to demonstrate how Option (b) was the correct answer. That in our view would not be a correct approach. Hence the contention of the Petitioner that Option (b) is the correct answer cannot be accepted and the view of the Respondent No.1 that Option (d) in the said key is the correct answer cannot be found fault with.

10 Now coming to the judgment of the Apex Court in Kanpur University's case (supra), no doubt the Apex Court in the said case referred to the standard text books to arrive at the correct answers. In the said case the Apex Court was concerned with the issue as to which is the correct answer to Question No.24 in the Chemistry paper, Question No.23 in the Zoology paper and Question No.66 in the Botany paper, out of the options given as answer to the said questions. The papers were in English and Hindi. The High Court

accepted the contention of the candidates i.e. the Respondents that there was a marked difference in the English and Hindi version of Question No.24 of the Chemistry paper. The Apex Court upheld the finding of the High Court that the correct answer to the Hindi version was the first option in the answer options. In so far as Question No.23 of Zoology paper is concerned, the Apex Court agreed with the conclusion of the High Court that the answer to the Question No.23 was the answer as contended by the Respondents and not the expert. In so far as the answer to Question No.66 of Botany paper is concerned, the Apex Court did not find fault with the High Court that the key answer is not the correct answer to Question No.66. The said conclusion the Apex Court reached as the case of the University was demolished by its own expert. No doubt in the said case the Apex Court has referred to the standard text books, as the said case concerned answers to questions in Chemistry, Zoology and Botany and in so far as the Chemistry question was concerned, involved the correct meaning of a word. However, in the instant case the provisions of Section 39 of the Patents Act have a bearing in so far as the correct answer to Question No.27 is concerned. Hence the facts of the present case are distinguishable from the facts in the Kanpur University's case. In our view, therefore, the judgment of the Apex Court in Kanpur University's case (supra) would not aid the Petitioner in so far as the present case is concerned.

11 It is trite that in the writ jurisdiction, this Court cannot substitute

its views for that of the experts unless the view expressed by the experts is against the provisions of law. In the instant case, we do not find the view of the experts to be such. In an objective type of test usually the answers in the options are formulated in such a manner that making a choice is made difficult and tricky and it is therefore a real test of making the right choice. The answer options to Question No.27 can be said to be one such case. In that view of the matter no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[K. K. SONAWANE, J]

[R.M.SAVANT, J]

Laxmikant
Gopal
Chandan

Digitally signed
by Laxmikant
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Date:
2018.08.28
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