In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A 17414 of 2021

Kanishk Sinha and another.

Vs.

The Union of India and another

For the petitioners	:	Mr. Kanishk Sinha, Ms. Lipika Das Sinha
For the Union of India	:	Mr. Partha Ghosh Mr. Rahul Sarkar Ms. Dipika Sarkar Mr. Siddhant Srivastava
Hearing concluded on	:	25.03.2022
Judgment on	:	27.04.2022

Sabyasachi Bhattacharyya, J:-

1. The petitioner no.1 is the patentee and petitioner no.2 is the assignee of the Patent No. 254875 dated October 11, 2021. They have challenged, in the present writ petition, an order of the Secretary, Government of India, Ministry of Road Transport and Highways whereby the representations of the petitioner no.1 has been turned down. The said order dealt with two representations of petitioner no.1 dated April 16, 2021 and June 16, 2021 respectively. The crux

of petitioner no.1's request was that a linkage to the VAHAN e-Module for registration of electric vehicles be given to the petitioner no.1 for issuance of NOC (No Objection Certificate) prior to the issuance of registration. In the alternative, the petitioner no.1 sought that the Ministry of Road Transport and Highways collect for and pay the petitioner royalty for each registration so granted, withdrawal of all notifications issued on registration of electric vehicles by the said Ministry and to stop registration of all e-Rickshaws in compliance with the interim injunction granted in favour of the petitioner by the District Court.

2. Upon hearing the petitioners, appearing in person, and learned counsel appearing for the respondents, the moot question which arises for consideration in the writ petition is whether the petitioners are entitled to a patent linkage to the VAHAN e-Module for subjecting the registration of electric vehicles (in particular e-Rickshaws) for issuance of NOC by the petitioner, the patentee, prior to issuance of registration.

3. The petitioners argue that an injunction order had been passed initially in connection with a suit filed by the petitioner no.1, alleging infringement of his patent, by which the Additional District Judge, Thirteenth Court at Alipore had allowed an injunction application of the petitioner no.1, restraining the respondents therein, including the State of West Bengal, from repeating any infringement of the plaintiff's patent till disposal of the suit (Title Suit No.27 of 2018) and further restraining the respondents from registration of Battery

Operated eco-friendly e-Rickshaws till the disposal of the suit. Subsequently, such order was modified to the extent that the respondents were directed to register Battery Operated eco-friendly e-Rickshaws in favour of the assignees of the petitioner no.1. A Special Leave Petition moved against the said order of the Additional District Judge was dismissed by the Supreme Court.

4. The petitioners place reliance on several orders passed in connection with different writ petitions preferred by the petitioners in connection with the patent-in-question. They also rely on recommendation of different State Authorities to the NIC VAHAN, the Organization maintaining the VAHAN website of the Government of India, such as the Governments of Gujarat and Bihar, to consider the patent linkage as sought by the petitioners.

5. Although several challenges have been preferred by different manufacturers and dealers against the patent granted in favour of the petitioner no.1, subsequently assigned to the petitioner no.2, the petitioners submit that such challenges by themselves, do not negate the patent.

6. It is argued by the petitioners that the Secretary, Ministry of Road Transport and Highways erroneously relied on the judgment delivered by the Delhi High Court in *Bayer Corporation and others Vs. Union of India and others*, reported at*2009 SCC OnLine Del 2469*. It is submitted that the said judgment was rendered in the context of the Drug Control Act and the analogy of the Drug Controller cannot be drawn as a parallel to the Motor Vehicles Authorities. As such, it is

contended, the said judgment does not operate as a binding precedent in the present case.

7. It is further submitted that, after being vacated previously, the injunction granted in favour of the petitioner was re-imposed on August 27, 2018, which aspect was overlooked by the Secretary.

8. In the order passed in connection with WP 23967(W) of 2016 by a Co-ordinate Bench, it was recorded that the Road and Transport Authority, and not the Department of Industrial Policy and Promotion, was the appropriate authority to grant such relief to the petitioners as sought herein.

9. As such, it is contended that patent linkage ought to be granted to the present petitioners for the purpose of grant of NOCs by the patentee and/or the assignee, that is, the petitioners.

10. The petitioners place reliance on Rule 2(u) of the Central Motor Vehicles Rules, 1989 (for short, 'the 1989 Rules') which defines a 'battery operated vehicle' as a vehicle adapted for use upon roads and powered exclusively by an electronic motor whose traction energy is supplied exclusively by traction battery installed in the vehicle. The petitioners further rely on Rule 2(xa) of the 1989 Rules which also defines the term of 'portal' to mean a web or electrical based system set up and maintained by the Central Government for the purposes as enumerated therein. It is submitted that the prayers of the petitioners are in tune with the purpose for which such portal was created, being the VAHAN website maintained by the Government of India.

11. By referring to Rule 126 of the 1989 Rules, the petitioners argue that the prototype of every motor vehicle to be manufactured or imported is to be subjected to test by the Vehicle Research and Development Establishment of the Ministry of Defence of the Government of India or the other bodies stipulated therein for the purpose of accreditation, registration and regulation of testing agencies, for granting a certificate by that agency as to the compliance of the provisions of the Act and the Rules. There is sufficient scope for interpreting Rules 126 and 126A, along with other Rules of like nature, which provide for the regulation of the standards of vehicles which are to be registered, to indicate recognition of e-Rickshaws in the 1989 Rules.

12. In view of the petitioners having a valid right to the patent, as per law, that is, the Patents Act, 1970, the patent linkage sought by the petitioners ought to have been granted by the Ministry of Road Transport and Highways, it is submitted.

13. Learned counsel for the respondents submits that the dispute as regards infringement of patent, which is apprehended by the petitioners, can only arise between private parties and the Government of India is not concerned with such disputes in any manner whatsoever.

14. Moreover, it is contended that the petitioner no.1, being the alleged patentee, assigned such patent rights in entirety in favour of the petitioner no.2 and as such, does not have further *locus standi* to maintain the present writ petition, asserting such patent rights.

Learned counsel places reliance on Sections 68 and 69 of the Patents Act, 1970 to elaborate the scope of assignments in this context.

15. Learned counsel also places reliance on *Bayer Corporation* (supra) for highlighting the proposition that patent linkage, as sought by the petitioners, cannot be granted under the framework of a different statute than the Patents Act, 1970.

16. In the present case, the Motor Vehicles Act, 1988 operates in a distinct and different field than the Patents Act and, as such, it is neither the responsibility nor the prerogative of the Government of India to provide patent linkage to the petitioners and/or several patentees for the purpose of granting NOCs.

17. Learned counsel further submits that the VAHAN website is a portal maintained by the Government of India for the purpose of homologation in respect of registration of vehicles in India and is maintained for an entirely different purpose than to provide a handle to individual patentees and technologies to assert their individual and private rights through the Government website.

18. It is submitted that Section 102 of the Patents Act, 1970deals with payment by the Central Government in case of acquisition and inventions of the patents by the Central Government. However, it is contended that the present prayer of the petitioners does not involve any such situation.

19. It is argued that Section 108 of the 1970 Act provides for reliefs in suits for infringements, which is the remedy available before individual patentees and the Government portal, maintained under

the framework of an entirely different Act, that is, the Motor Vehicles Act, 1988 cannot be used by individual patentees to serve their own commercial purposes. The patentees already have sufficient safeguards in the form of remedy and can obtain their reliefs from the court, it is submitted.

20. Upon hearing learned counsel for the parties, it becomes necessary to look into the respective fields of operation of the Motor Vehicles Act, 1988 and the Patents Act, 1970.

21. The Motor Vehicles Act, as evident from its Preamble, is an Act to consolidate and amend the law relating to motor vehicles. The statement of objects and reasons of the said Act entirely deal with control and regulation as well as standards of operation of motor vehicles.

22. On the other hand, the Patents Act is an Act to amend and consolidate the law relating to patents. The development of technological capability in India, coupled with the need for integrating the intellectual property system with international practices and intellectual property regimes, required that the Act be amended to modify the same into a modern, harmonized and user-friendly legislation to adequately protect national and public interests while simultaneously meeting India's international obligations under the TRIPS Agreement, as reflected from the statement of objects and reasons of the Amending Act of 2002 in the context of the Patents Act, 1970. Thereafter further amendments, including that of 2005, were effected, taking into consideration necessary and adequate safeguards

for protection of public interest, national security, bio-diversity and traditional knowledge.

23. The concept of homologation is comparatively modern and is conceptualized as the process of certifying that a particular vehicle is road-worthy and matches certain specified criteria laid out by the Government for all vehicles made or imported into the country. It is primarily to ensure that the vehicle matches the requirements of the Indian market and standards in terms of emission, safety and road-worthiness, in consonance with the Central Motor Vehicles Rules.

24. Rule 2(xa) of the Central Motor Vehicles Rules, 1989 defines a "portal" as a web or electronic based system set up and maintained by the Central Government for the following purposes:-

(i) facilitating, licensing, registration, issuance of certificate of fitness and permits of motor vehicles;

(ii) recording of offences including compounding, impounding, making endorsements, suspension and revocation of licenses and registrations;

(iii) issuance of e-challan;

(iv) preserving, retaining and granting access to machine readable, printable, sharable, verifiable and secure electronic records.

25. Rule 2(u) defines a "battery operated vehicle", whereas Rule 126 of the 1989 Rules recognizes e-rickshaw as a type of motor vehicle. Rule 126A is in similar light, whereas Rule 126C provides for uploading of information regarding vehicle type approval on the VAHAN portal [https:/www.vahan.nic.in/makermodel/:].

26. On the other hand, Section 41, sub-section (4) of the 1988 Act provides that, in addition to other particulars, the Certificate of Registration shall also specify the type of the motor vehicle, being a type as the Central Government may, having regard to the design, construction and use of the motor vehicle, by notification in the Official Gazette, specify. Sub-section (5) of Section 41 provides that the Registering Authority shall enter the particulars of the certificate in a register to be maintained in such form and manner as prescribed by the Central Government. As such, the product in respect of which the present petitioner no. 1 has obtained patent has been sufficiently recognized in the 1988 Act and 1989 Rules. A conjoint reading of the aforementioned provisions clearly indicate that, on the VAHAN website maintained by the Central Government, which is the "portal" as contemplated in Rule 2(xa) of the 1989 Rules, the type of the vehicle, including e-rickshaws and battery operated vehicles, shall be entered from the Certificate of Registration as contemplated in Section 41 of the 1988 Act.

27. On the other hand, Section 48 of the 1970 Act enumerates the rights of a patentee, which includes the exclusive right to prevent third parties, who do not have the patentee's consent, from the act of making, using, offering for sale, selling or importing for those purposes that product in India and from the act using that process, if it is a process and not a product, and from the act of using, offering for sale, etc., in India.

28. Chapter XVIII of the 1970 Act deals with suits concerning infringement of patents. Under the said Chapter, Section 104 stipulates the jurisdiction of Court. Section 108 provides for the reliefs which can be obtained in suits for infringement. Section 109 confers the right on the exclusive licensee of the patents to take proceedings against infringement thereof.

29. However, Section 111 of the 1970 Act restricts the power of the court to grant damages on account of profits or infringement.

30. The Patent Act, 1970 and the Motor Vehicles Act, 1988, clearly have different objects and purposes and operate in distinct and different fields. Although the petitioner's invention may touch both spheres, merely because of the common co-ordinates, the operation and the ambit of both the Acts cannot be mixed up.

31. Whereas the 1970 Act clearly stipulates the recourse available to a patentee and/or his/her exclusive licensee or assignee for infringement of patent rights, the 1988 Act and the 1989 Rules, inter alia, provide for maintenance of the VAHAN website by the Central Government for the purposes of a portal, as indicated clearly in Rule 2(xa) of the 1989 Rules. The said Rules leave sufficient margin for enough information to be provided on the VAHAN website in respect of the types of vehicles registered.

32. In *Sergi Transformer Explosion* (supra), it was held that mere pendency of a challenge against a patent does not invalidate the patent. It was further observed that the assignee of the patentee also has rights collateral with that of the patentee in respect of the patent.

However, such rights are not in exclusion of the patentee's rights. Sections 109 and 110 of the 1970 Act, if read together, reinforce such principle. In the present case, the electronic register of patents have been filed to show an irrevocable assignment agreement being registered in favour of the second petitioner under Section 69 of the 1970 Act. As such, in the present case, both the petitioners, as patentees and his exclusive assignee respectively, have the right to exercise of the rights available to a patentee under the 1970 Act.

33. In *Jasper Motors Private Limited* (supra), rendered by a learned Single Judge of this Court in connection with the same patent which is relied on by the petitioners in the present case, it is reflected that C.S. No.388 of 2014 was filed by the present petitioner no. 1 for infringement of patent, in connection with which G.A. No.3378 of 2014 was also filed.

34. Initially an injunction order was passed on June 17, 2015 in favour of the petitioner no. 1, which was subsequently recalled on July 18, 2018, subject to the conditions imposed in the latter order.

35. However, since the conditions stipulated in the Order dated July 18, 2018, were not complied with, the plaintiff (present petitioner no.1) got the benefit of a subsequent order dated August 27, 2018, by which the injunction was re-imposed and the learned Single Judge held that the plaintiff (petitioner no.1) was enjoying an interim order, which would continue till compliance of the August 27, 2018 order.

36. In the present case, the order of re-imposition of injunction dated August 27, 2018 was suppressed, while mentioning the rest, in the affidavit-in-opposition used by the respondent-authorities.

37. Effectively, such injunction order is still prevailing in favour of the petitioners. However, it is doubtful as to howfar such injunction would help the petitioners in getting the relief sought in the present writ petition.

38. In *Bayer Corporation* (supra) the learned Single Judge of the Delhi High Court rendered an erudite exposition on the scope of patent linkage extensively. Such exposition would not be sufficiently justified by mere paraphrasing. As such, I am tempted to quote some of the paragraphs of the said decision which are germane in the present case as well:

"…
31. The preceding discussion would show that the following points have to be decided by the court:
(1) Whether a combined reading of the Drugs Act and the Patents Act lead to the conclusion that no marketing approval can be granted to applicants for drugs or formulations, of which others are patent owners, by reason of Section 2 of the Drugs Act, read with Sections 48 and 156 of the Patents Act;
(2) Whether drugs or formulations which infringe patents are "spurious drugs" under the Drugs Act.
….
37. A plain juxtaposition of the two enactments highlights distinct, even disparate objectives. The Drugs Act is a public regulatory measure, prescribing standards of safety and good manufacture practices which are to be followed by every pharmaceutical industry, or which are to be satisfied by6 the importer of a drug, to assure that what are marketed are safe. The provisions of the Act manifest Parliamentary concern with public health in ensuring standard practices, and that people do not all prey to adulterated or spurious drugs. There is a general public policy interest in such regulation, just as in the case of other enactments which reflect societal concern in compliance with safety standards whether it is in buildings, equipment and machinery, licensing of medical practitioners and other professional service providers like chartered accountants, lawyers etc. Such concern may also be

seen in regulatory enactments like Prevention of Food Adulteration Act, Standards of Weights and Measures Act, labour law enactments and provisions which provide for safety, hours of work, prevention of hazards at the workplace and public places (fire safety), etc. The Patents Act on the other hand, puts in place a regime containing standards for conferring private monopoly rights in favour of inventors. It requires that processes or products, to claim patents, should involve steps that are "technical advance as compared to the existing knowledge or having economic significance or both"; or which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of the patent application. Of necessity, it covers a wider field than a regulatory law. The Controller of Patents and other officers are experts at judging whether claimed products or processes are patentable. This expertise is not only in respect of pharmaceutical products, but other specialized areas, such as engineering goods, components, accessories and other processes and articles that have industrial applications. This expertise depends upon adjudging, on an objective basis, whether a product or process is novel, or contains an inventive step. Such expertise does not necessarily exist in the case of officials under the Drugs Act, who are required to test the safety of the product, and ensure that it conforms to the therapeutic claim put forward. Whether it involves an inventive step or is novel, is not within the domain of the Drugs Act authorities and officials. To invest these regulatory authorities with functions that are exclusive to other enactments would be beyond intendment of the Drugs Act. Conversely, the authority to police Patent standards is exclusively that of the authorities under the Patent Act; indeed at least two of them are quasi judicial or judicial (Intellectual Property Appellate Board, and the High Courts).

38. There are other problems in accepting Bayer's contention. The existence of patent linkage standards in express legislation, in other parts of the world (like in China, which was relied on, and the "Orange Book" provisions, mandated upon the US Federal Drug Agency, through the Drug Price Competition and Patent Term Restoration Act, 1984, also known as the "Hatch Waxman Act") underscores that courts, in the absence of a Parliament mandated regime, should not blaze into an obviously legislative path. No doubt, courts can, results, at times "fill in" statutory gaps. But in every such instance, the courts further an explicitly discerned legislative intention. It would not be an exaggeration to say that what Bayer wants to achieve is not filling such a gap as much as establishment of an "air-link" where the gulf dividing what is sought for, an what exists on the statute, is of oceanic proportions.

39. The other problem to accepting Bayer's contention is that patent infringement is never assumed, at the askance of the patentee; it has to be established before a court of law, under the Patents Act. Such adjudication is unquestionably beyond the Drug agencies' jurisdiction, or charter, under law. This Court's accepting Bayers' posting on the issue would crucially confer

jurisdiction on the set of agencies, (under the Drugs Act) who do not have it and the wherewithal to exercise it, and simultaneously, denuding the powers, jurisdiction and meaningful role conferred lawfully on another set of specialized statutory authorities, under the Patents Act.

42. It is well settled that courts do not fill gaps in public policy spaces. In Fertilizer Corpn. Kamagar Union Vs. Union of India 1981 (1) SCC 468, the Supreme Court observed as follows:

> *35. …We certainly agree that judicial interference with the administration cannot be meticulous in our Montesquiensytem of separation of powers. The Court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded. If the directorate of a government company has acted fairly, even if it has faltered in its wisdom, the court cannot, is a super auditor, take the Board of Directors to task. This function is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by rules of public administration.*

Similarly, in Premium Granites V. State of T.N. MANU/SC/0466/1944 : 1994(2) SCC 691 it was held that:

> ***54**. It has not the domain of the court to embark upon uncharted ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be.'*
>
> ***
>
> ***92**. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court.*

The Courts' avoidance, in judicial review jurisdiction of executive or legislative policy making was spelt out in Directorate of Film Festivals vs. Gaurav Ashwin Jain MANU/SC/1778/2007 : (2007) 4 SCC 737, as follows:

> *The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of*

> *judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review…*

Another established principle of statutory interpretation that where there is a seeming overlap between provisions in two enactments, the court should not do violence to one, and undermine its purpose; it cannot render such provisions into "useless lumber". The following observations in State of Goa V. Western builders MANU/SC/2967/2006: (2006) 6 SCC 239 are apt, in this context:

> *Whenever two enactments are overlapping each other on the same area then the courts should be cautious in interpreting those provisions. It should not exceed the limit of provided by the statute. The extent of exclusion is, however, really a question of construction of each particular statute and general principles applicable are subordinate to the actual words used by legislature.*

…..

44. The third important reason why Bayer's argument of inferring Drug agencies role in patent policing or enforcement is unacceptable, is that some developed countries, and the European Union cautioned against patent linkages. A preliminary 400 page report dated 28-11-2008, by the competition authorities of the European Union, submitted last year, was based on a sample of medicines under investigation that faced loss of exclusivity in the period 2000 – 2007, and noted that it represented an aggregate post-expiry expenditure of about a, 50 billion over the period (in 17 member states). The report estimated that such expenditure would have been a, 3 billion more, if generic entry expenditure would have been about a, 15 billion higher without generic entry. However, the savings from generic entry could have been about a, 3 billion more, if generic entry had taken place without delay. The report suggested that to delay competition, originator companies had intervened before national authorities "other than patent offices" in a "significant number of cases," (much in the same manner as is sought in this proceeding):

> *Originator companies claimed in their interventions that generic products were less safe, less effective and/or of inferior quality and also argued that marketing authorizations could violate their patent rights, even through marketing authorization bodies may not take this argument into account.*
>
> *The EU Directorate General for Competition noted that*
>
> *Patent linkage refers to the practice of linking the granting of MA (market authorization), the pricing and reimbursement status or any regulatory approval for a generic medicinal product, to the*

status of a patent (application) for the originator reference product. Under EU law, it is not allowed to link marketing authorization to the patent status of the originator reference product.…

…Since the status of a patent (application) is not included in the grounds set out in the Regulation and in the Directive, it cannot be used as an argument for refusing, suspending or revoking Marketing approval (MA)/

…Patent-linkage is considered unlawful under Regulation (EC) No 726/2004 and Directive (EC) No.2001/83.

(Ref.
http://ec.europa.eu/competition/sectors/pharmaceuticals/inquiry/preliminary_report.pdf accessed on 12-7-2009*).*

it is also a matter of concern that such patent linkage would have the following undesirable results:

(1) It clothes regulatory authorities, which are executive bodies solely concerned with scientific quality, efficacy and safety issues, with completely new powers, and into areas lack in expertise, i.e. patent rights policing.

(2) It transforms patent rights which are private property rights, that depend on the owners' promptitude and desire to enforce them, into public rights, whose enforcement is dependent on statutory authorities, who are publicly funded.

(3) Such linkage potentially undermines the "Bolar/Early Working" exception that encourage quick access to the post patent markets for generic medicines. This is a major public policy consideration in India, which faces a host of public health challenges.

(4) Article 27 of TRIPS requires that patents are made available without discrimination by field of technology. As the patent linkage system is not available outside of the pharmaceutical sector, or in the US, even for biologic products, extending it, as is sought, would potentially violate Article 27, without any debate, or mandate of law.

……

48. For the above reasons, it is concluded that Section 2 of the Drugs Act and Section 156 of the Patents Act do not establish the patent linkage, sought for by the petitioner. Issue No.2"

39. In such context, it would be beneficial to extract certain portions of the Division Bench judgment of the Delhi High Court, sitting in appeal against the decision of the learned Single Judge in *Bayer Corporation* (supra) itself. Those are as follows:

"……

17. It is argued that Section 107A(a) of the Patents act, commonly referred to as the "Bolar" provision permits any drug manufacturer to experiment with any patented drug with a view to generating data that could then be submitted to a drug control authority. The aim of this section is to ensure that generic drugs are introduced into the market as soon as the patent expires or is invalidated, so that consumers may benefit from this early entry of affordably priced drugs. Cipla's senior counsel, Shri Arun Jaitley submits that If Bayer's argument were accepted, it would hit at the very essence of the Bolar provision that is aimed at speeding up generic entry into the market and the availability of low cost drugs to the consumer. Cipla argues that Bayer's submissions are premised on the notion that the patent is a valid one and that it is infringed. Cipla states about its intention to challenge the validity of the Bayer's patent. More importantly, neither is the DCGI Authorized by the DCA to make such an assessment nor does it possess the institutional competence to make such an determination. From Section 104, it is only a court of law that can make such an assessment in an infringement suit filed under the Patents Act.

…..

22. It is urged that the Patents Act is a complete code which provides for protection of rights of both the patentee and third parties (including the general public). As a result, in respect of a valid patent, the patentee is free to file a suit for infringement and seek necessary relief towards protection of his rights as provided under Sections 48 and 108 of the Act. On the other hand it is also open to a third party to challenge a invalid patent at various stages such as:

(a) pre-grant opposition [section 25(1)]

(b) post-grant opposition [section 25(2)]

(c) revocation of patent before the intellectual property Appellate Board (Section 64)

(d) revocation through a counter claim in a suit for infringement (Section 64 read with Section 107)

……

28. The DGCI contends that patent rights are private rights and refers to Section 48 of the Patents Act, as well as Section 104, which sets out the jurisdiction of courts in respect of infringement suits. Therefore, the State – the DCGI in this instance – cannot enforce the private rights of a patentee. The DCGI is not the appropriate forum to enforce a patent, which is a private right. It is urged that the Drugs Act too is a self contained code with respect to matters pertaining to import, manufacture, sale and distribution of drugs and cosmetics. Chapter IV of the DCA sets out the provisions relating to standards of quality of drugs and cosmetics that are manufacture, sold and distributed in India and also defines "misbranded drugs" Section 17, "adulterated drugs" Section 17A and 'spurious drugs' Section 17B. It prohibits their manufacture and sale [Section 18] and further penalizes such

prohibited acts Section 27. The further contention is that the objects and reasons of the Drugs and Cosmetics (Amendment) Act, 1982, clarify that the definition of "spurious drugs' was mainly introduced because of the problems of adulteration of drugs and production of spurious and sub-standard as posing a serious threat to the health of the community.

……

30. The Indian Pharmaceutical Alliance (IPA), Applicant in CM.2346/2009 has intervened in these proceedings, and advanced submissions. Its position is supportive of the stand taken by the other respondents, ie. Cipla and the DGCI."

40. The argument of the writ petitioners, that the said judgments delivered in *Bayer Corporation* (supra) are distinguishable from the present case inasmuch as those pertained to the Drug Control Authority, is neither here nor there. Such yardstick is entirely irrelevant in the context. As seen from the paragraphs extracted above, in both the learned Single Judge and the Division Bench judgments, the pros and cons of patent linkage, particularly in the Indian context, have clearly been borne out.

41. The VAHAN portal maintained by the Central Government provides sufficient information for the patentees of different Indian motor vehicle prototypes to gather adequate information for the purpose of pursuing their remedies as provided under the Patents Act, 1970. However, the spectrum of reliefs available to the patentees and/or assignees cannot be broadened further than that provided in the said statute itself, which specifically deals with patents.

42. Providing a patent linkage to the writ petitioners, in whatever form, would give a controlling handle to the writ petitioners beyond the legal remedies available to them, as provided by the Indian Parliament, in its legislative wisdom. As rightly reflected in *Bayer*

Corporation (supra), the Court ought not to transgress the domain of legislation, which reflects the opinion of an elected body of people's representatives, by imposing theories felt prudent by the courts, unless there is specific violation of legal and/or constitutional rights and the boundaries implicit in the basic ethos of the Constitution of India. In the present case, the petitioners have failed to make out any commission or omission on the part of the respondent-authorities, which violates the boundaries of constitutionality and/or legal rights of patentees, to justify granting the reliefs as prayed by the petitioners.

43. That apart, the additional downside of granting patent linkage beyond the contemplation of the existing statutes, apart from those enumerated in *Bayer Corporation* (supra), is that such rights would confer a monopoly and risk abuse by big players in the market, adversely affecting the interests of the general public.

44. The patentees and their exclusive licensees/assignees have sufficient remedies in law by way of infringement suits, where issues raised are decided on adduction of detailed evidence, which falls entirely within the realm of a competent Civil Court. It is beyond the jurisdiction and power of the respondent-authorities to decide such complicated issues. Hence, the reliefs claimed in the writ petition, if granted, would tantamount to judicially introducing reliefsin favour of the petitioners in particular, and patentees in general, beyond those provided by the specific statute in the field, that is, the Patents Act, 1970.

45. In such view of the matter, the writ petition fails. W.P.A. No.17414 of 2021 is dismissed on contest without any order as to costs.

46. It will be open to the petitioners to gather the information permissible under the present law from the VAHAN website and/or ask for legitimate, relevant information to protect their patent rights under the Right to Information Act from the authorities. However, the petitioners will have to take legal recourse to the remedies as provided within the periphery of the Patents Act, 1970 and allied legislation to assert and protect such rights, with the help of such information.

47. Patent linkage to assert prior right of granting 'No Objection Certificate" as a pre-requisite for registration of motor vehicles under the provisions of the Motor Vehicles Act, 1988 and the Central Motor Vehicles Rules, 1989 is, thus, refused.

48. No order as to costs.

49. Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)