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W.P.Nos.4122, 4124 & 4129 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2023

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THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Writ Petition Nos.4122, 4124 & 4129 of 2023

Galatea Ltd.
Rep. by its Authorised Signatory
Manoj Kumar
Having its Registered Office at
Dalton Industrial Park
Dalton 1381000
Israel.

.. Petitioner in
all W.Ps.

Vs.

1. The Registrar General
High Court of Judicature at Madras
Chennai 600 104.

2. State of Tamil Nadu
Rep. by its Secretary
Law Department and Legal Affairs

3. State of Tamil Nadu,
rep. By its Secretary to Government,
Home Department, Fort St. George
Chennai 600 009.

.. Respondents in
all W.Ps.

(R3 impleaded suo motu by order
of the Court dated 07.03.2023)



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Prayer: Writ Petitions under Article 226 of the Constitution of India praying for a writ of Mandamus

(i) directing the first respondent to consider the petitioner's representation dated 28.07.2022;

(ii) directing the respondents to frame and implement appropriate rules to transfer pending cases from the erstwhile Intellectual Property Appellate Board, Chennai; and

(iii) directing the first respondent to register and list the petitioner's case bearing no.OA/1/2021/PT/CHN, which was pending adjudication before the erstwhile Intellectual Property Appellate Board, Chennai, that was abolished under the Tribunal Reforms Act, 2021, as on 04.04.2021 before the appropriate Bench of this Hon'ble Court.

For the Petitioner : Mr.Karthik Sundaram

For the Respondents : Mr.Fakkir Mohideen
for Respondent-1

Mr.J.Ravindran
Additional Advocate General
Assisted by
Mr.P.Muthukumar
State Government Pleader
for Respondent-2

ORDER

(Made by the Hon'ble Acting Chief Justice)

These writ petitions have been filed seeking a writ of



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Mandamus to direct the first respondent to consider the representation of the petitioner dated 28.07.2022, to frame Rules to transfer pending cases from the erstwhile Intellectual Property Appellate Board, Chennai and to register petitioner's case bearing No.OA/1/2021/PT/CHN, which was pending adjudication before the erstwhile Intellectual Property Appellate Board, Chennai, as on 04.04.2021 and list it before the appropriate Bench of this Hon'ble Court.

2. Since these matters involve levy and collection of Court fee also, Home Department is a necessary party and since it has not been made a party to the proceedings, we suo motu implead the Secretary to Government, Home Department as the third respondent in these writ petitions. Learned State Government Pleader accepts notice on their behalf.

3. Challenging the order of the Controller of Patents, Chennai dated 13.10.2020, rejecting the patent application of the petitioner in W.P.No.4122 of 2023 in No.976/CHENP/2008 filed under the national phase, the petitioner has filed an appeal under Section 117A read



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with Sections 15 and 25(1) of the Patents Act, 1970 before the erstwhile IPAB in December, 2020. Since the IPAB was abolished on 04.04.2021 and aggrieved by the deadlock that has ensued, the petitioner made a representation to the first respondent on 28.07.2022 for a direction to establish an Intellectual Property Division in the High Court to hear all the matters pending before the erstwhile IPAB, Chennai. As the petitioner did not receive any response and is remediless as regards his appeal, has come up with these writ petitions. The grievances in the other writ petitions are also similar in nature.

4. On 14.02.2023, when the matters were listed for admission, taking note of the status report filed in identical matters to the effect that the first respondent has addressed the Government to notify the Madras High Court Intellectual Property Rights Division Rules, 2022 in the official Gazette and is awaiting notification from the State Government and is also prepared to inaugurate the Intellectual Property Division within a week from the date of such notification by the Government, this Court granted a week's time to the Government to issue notification.



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5. Mr.J.Ravindran, learned Additional Advocate General appearing for the second respondent submitted that the High Court is empowered under Section 129 of the Code of Civil Procedure, 1908 to make any Rules and therefore, no prior approval of the Government is necessary and it is for the first respondent to publish the said Rules in the official Gazette as per Section 131 of Code of Civil Procedure, 1908.

6. Learned Additional Advocate General further submitted that as regards Rule 10 and Schedule I in the proposed Rules relating to Court fee, steps have already been taken to amend the Tamil Nadu Court-Fees and Suits Valuation Act, 1955, in consultation with Law (Legislation) Department, by following the procedure which requires minimum of two months either to promulgate an Ordinance by the Governor or to pass an amendment Act to that effect.

7. It is brought to our notice that 1094 IPAB cases, out of 2090 cases received from the erstwhile IPAB, are pending for notification of the Rules and in many cases, patents would expire. Hence, we make

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it is clear that the litigants will not be made to suffer for the delay on the part of the respondents.

8. Admittedly, the first respondent has forwarded the draft Rules to the Government, on 27.10.2022, for issuing notification, including Court fee, in the official Gazette. When the Government has no objection for the Rules to be notified, it has to take immediate steps to notify the Rules in the official Gazette, except Rule 10 which relates to Court fee. Hence, we direct the second respondent to notify the Madras High Court Intellectual Property Rights Division Rules, 2022, except Rule 10, within one week from the date of receipt of a copy of this order.

9. As regards the Court fee, since IPAB was abolished on 04.04.2021, the petitioner and similarly placed persons are left remediless and considering the dire need, the first respondent is directed to collect the Court fee as per the draft Rule 10 and Schedule I of the proposed Rules, pending amendment, with an undertaking from the litigants filing the appeal to make good the difference of amount in the event of any enhancement or change in



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the collection of Court fee. However, insofar as the cases transferred from IPAB are concerned, the Registry shall not collect Court fee as the Court fees had been paid and the petition was registered. While effecting amendment to the Tamil Nadu Court-Fees and Suits Valuation Act, 1955, care may be taken so that it shall have retrospective effect from the date of inauguration of the Intellectual Property Division of the High Court.

10. The first respondent is directed to make necessary arrangements to inaugurate the IPAB Division of this Court, once the Rules is notified in the official Gazette.

11. The writ petitions are allowed, with the above direction and observation. There will be no order as to costs.

(T.R., ACJ.) (D.B.C., J.)
07.03.2023

Index : Yes/No
Neutral Citation : Yes/No

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- To
1. The Registrar General
High Court of Judicature at Madras
Chennai 600 104.
 2. The Secretary
Law Department and Legal Affairs
Fort St. George
Chennai 600 009.
 3. The Secretary to Government
Home Department
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T.RAJA, ACJ,
and
D.BHARATHA CHAKRAVARTHY,J

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