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W.P. No.7449 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P. No.7449 of 2022

Gilead Sciences Inc.

Rep. by the authorised Power of Attorney

Mr.Rahul Bargaje

....

Petitioner

VS

1. Union of India,
Through the Secretary,
Ministry of Commerce and Industry,
Udyog Bhawan,
New Delhi – 110 001.

2. The Controller of Patents & Designs,
The Patent Office,
IPO Building,
G.S.T. Road,
Guindy,
Chennai – 32.

3. The Deputy Controller of Patents & Designs,
The Patent Office,
IPO Building,
G.S.T. Road,
Guindy,
Chennai – 32.

4. Low Cost Standard Therapeutics,



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Rep. by its Managing Trustee,
I Floor, Premananda Sahitya Bhavan,
Opposite Lakadipul,
Dandia Bazar,
Vadodara,
390 001,
Gujarat,
India.

.... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned hearing notice No.poc/post grant-oppn./319927/1328/CHENP/2013/C4278, dated 11.02.2022 issued by the respondent No.3, which is in violation of the provisions of the Patents Act, 1970 and Rules thereunder and quash the same and consequently direct the respondent Nos.2 and 3 to require the Opposition Board constituted in the post grant opposition in Indian Patent No.319927 to provide its recommendation upon considering all the evidence on record including the declaration of petitioner's expert Dr.Piet Herdewijn.

For Petitioner : Mr.K. Muthuselvam
and
Mr.Sanjeev Kumar Tiwari
for M/s.K & S Partners

For Respondents : Mr.K. Ramanamoorthy
CGSC for R1 to R3
Ms.Rajeswari
for Ms.Subhashiny for R4

ORDER



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2. According to the petitioner, the impugned hearing notice has been issued by the 3rd respondent in violation of the statutory provisions of The Patents Act, 1970 and its Rules.

3. The learned counsel for the 4th respondent on instructions as seen from her written submissions would submit that the 4th respondent does not wish to object to the prayer sought for in this writ petition and therefore has suggested that the matter may be sent back to the learned Controller of Patents to adjudicate upon the application filed by the petitioner seeking for filing of the additional documents along with an expert affidavit. She also submits that the 4th respondent has no objection for quashing of the opposition Board recommendations provided, this Court fixes a time frame for deciding the matter afresh by the learned Controller of Patents.

4. The learned Standing Counsel appearing for the respondents 1 to 3 reiterated the contents of the counter affidavit filed by the respondents 1 to 3 before this Court. However in view of the fact that the contesting respondent viz., respondent No.4 has stated no objection for allowing this



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writ petition as prayed for by the petitioner and in view of the fact that no prejudice would be caused to any of the parties, if the matter is decided afresh on merits and in accordance with law by the learned Controller of Patents, after giving a fair hearing to both the contesting parties, within a time frame to be fixed by this Court.

5. The main grievance of the petitioner in this writ petition is that recommendations have been made by the opposition Board constituted by the Patent office in the post grant opposition application filed by the 4th respondent by not affording an opportunity for the petitioner to produce evidence. Since the 4th respondent, who is the contesting respondent has stated no objection for allowing this writ petition as per the terms referred to supra, this Court is quashing the impugned hearing notice, dated 11.02.2022 as well as the opposition Board's recommendation, dated 05.03.2021 by issuing the following directions :-

a) Both the petitioner as well as the 4th respondent are permitted to let in evidence in support of their respective contentions before the 3rd respondent, within a period of three weeks from the date of receipt of a copy of this order.

b) The 2nd or 3rd respondent shall pass final orders in the post grant opposition application filed by the 4th respondent on



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merits in accordance with law after giving a fair hearing to both the contesting parties, within a period of three months thereafter.

c) The respondents shall obtain fresh recommendations from the respondents opposition Board constituted by the Patent office uninfluenced by the earlier recommendations made by the Board, dated 05.03.2021 which has been quashed by this Court, after the respective parties have submitted their respective evidences, within the time frame stipulated by this Court as stated supra.

6. This writ petition is disposed of in the aforementioned terms.

No costs.

19.12.2024

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No
vsi2

ABDUL QUDDHOSE, J.



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