

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

BEFORE:

The Hon'ble Justice Ravi Krishan Kapur

WPA-IPD 2 of 2024
(Old No.WPA 28484 of 2024)

UPL Limited
Vs.
Union of India & Ors.

For the petitioner	: Mr. Subhatosh Majumder, Adv. Mr. Paritosh Sinha, Adv. Mr. Sayan Roy Choudhury, Adv. Mr. Teeshan Das, Adv. Ms. Mitul Dasgupta, Adv. Mr. Monosij Mukherjee, Adv. Ms. Sonia Nandy, Adv.
For the respondent no.5	: Mr. Subhasish Sengupta, Adv. Mr. Bhavesh Garodia, Adv. Mr. S. Das, Adv. Mr. S. Chowdhury, Adv.
For the respondent nos. 1 to 4	: Ms. Reshmi Bothra, Adv. Mr. Subrata Santra, Adv.
Judgment on	: 25.02.2025

Ravi Krishan Kapur, J.:

1. This writ petition is directed against a communication dated August 1, 2024 issued by the respondent authorities adjourning the hearing of the subject patent application.
2. Briefly, the writ petitioner had filed an application for grant of patent which had been duly published under section 14 of the Patents Act, 1970. The

matter was heard on May 21, 2021 and Written Submissions were filed by the petitioner. Thereafter, a pre-grant opposition was filed by the respondent no.5 and hearing of the same was concluded on October 13, 2023. Written submissions were filed by the parties on November 28 2023. As such, the hearing insofar as the pre-grant opposition of the respondent no.5 was concerned stood concluded.

3. Thereafter on November 30, 2023 a second pre-grant opposition was filed by the respondent no.6 on the same grounds and relying upon a majority of common prior arts which had been cited by the respondent no.5 in their pre-grant opposition. At this stage, the respondent authorities issued an e-mail informing the parties that the hearing fixed on August 22, 2024 relating to the second pre-grant opposition had been adjourned. On August 1, 2024 the respondent authorities issued the impugned communication which is as follows:

“The grounds of opposition, as stated in the representation filed on 30/11/2023 under section 25(1) of the Act, are accessible on the official website of The Patent Office. The Office has observed that in this second opposition, a total of six documents are being cited, all of which fall within the citations of the previous opposition filed on 19/03/2020. Therefore, the applicant may choose to submit their statement and any supporting evidence for their application within two months from the date of this notice, along with a copy sent to the opponent, as per Rule 55(4) of the Patents Rules (as amended).”

Therefore, the scheduled hearing on 22/08/2024 has been cancelled.”

4. On behalf of the petitioner it is contended that in view of the extant Rules, the Controller was obliged to give *prima facie* reasons in view of the

amended Rule 55 which governs the opposition proceedings for grant of patent. Furthermore, the impugned communication reflects that though the respondent authorities had found that in the second opposition, a total of six documents which were cited fell within the citations of the previous opposition filed by the respondent no 5 which had been heard and concluded, the hearing of the proceedings were unjustifiably cancelled without following the procedural mandate of the Act and the Rules framed thereunder. The impugned communication also demonstrates that there has been no *prima facie* finding insofar as the pre-grant opposition filed by the respondent no.6 is concerned and the impugned notice has been issued in a mechanical manner. In any event, insofar as the second opposition is concerned, the Controller has failed to adhere to the mandate of Rule 55 (3) of the Rules.

5. On behalf of the respondent no.5, it is contended that, despite the pre-grant proceedings pertaining to the objection filed by the respondent no.5 having concluded as far back as on November 2023, the proceedings have unnecessarily procrastinated. Significantly, despite not admitting to any irregularity in the procedure being adopted by the respondent authorities, the respondent no.5 opposes the prayer for transfer of the proceeding to any other Officer. The respondent no.5 also highlights the dilatory tactics adopted by the writ petitioner in seeking repeated adjournments. In such circumstances, the respondent no.5 submits that there is no scope of the Writ Court passing any order and the matter be remanded to the same Controller for concluding the proceedings. The respondent no.6 remained unrepresented.

6. On behalf of the respondent Controller a written instruction has been filed by the concerned Officer who now undertakes to conclude the proceedings expeditiously.
7. It is fairly admitted by all the parties that the issues raised in the petition pertain solely to the infraction of procedure and there is no decision which has been impugned insofar as the merits of the application for grant of patent is concerned or the pre-grant opposition filed by either the respondent no.5 or the respondent no.6.
8. A perusal of the Act read with the Rules framed thereunder provides a fixed time frame for hearing and disposing of an application for grant of patent. The said timelines reflect the intention of the Legislature to ensure that no unnecessary delay is caused. Keeping in view the purpose and object of the Act, it is imperative that the prescribed time limits be strictly adhered to.
9. In the facts and circumstances of the instant case, the matter has been kept pending by the particular Hearing Officer for a substantially long period of time. The grant of unnecessary adjournments mechanically passed defeats the very intention of the Legislature as reflected on a combined reading of sections 14 and 21 of the Act read with Rule 24B of the Rules. Admittedly, the hearing insofar as the first pre-objection filed by the respondent no.5 had concluded on November, 2023. It is true that the second pre-objection was filed on November 30, 2023. However, the matter was repeatedly adjourned without assigning any reasons whatsoever. There has also been an infraction of Rule 55 (3).

10. An adjournment is not to be granted for the mere asking or as a matter of right. It is true that the Rules contemplate two adjournments being allowed to a party but this does not justify the grant of repeated adjournments. In the procedure which has been adopted by the Controller, there is a serious infraction of the principles of natural justice and fairness which goes to the root of the decision making process and defeats the very objective and purpose of the Act.
11. In view of the above, the following directions are passed:
- a) The respondent no.2 is directed to assign the matter to a Controller other than the officers who have already heard this matter either under section 14 or section 25(1)(a) of the Patents Act, 1970.
 - b) The Patent Application as well as the pre-grant opposition filed by the respondent no.5 would be considered afresh from the stage of hearing. It is clarified that the provision of Rule 55(iii) of the Patents Rules 2003 (as amended) shall not be applicable to the pre-grant opposition filed by the respondent no.5.
 - c) Insofar as the second pre-grant opposition filed by the respondent no.6 under section 25(1) of the Act, the Controller is to follow the extant provision of Rule 55(3) of the Patent Rules 2003 and record *prima facie* reasons for consideration of the pre-grant opposition filed by the respondent no.6 either accepting or rejecting the subject pre-grant opposition.

12. The above exercise is to be concluded within a period of eight weeks from the communication of this order without granting any unnecessary adjournments to either of the parties. It is made clear that there has been no expression or adjudication on the merits of the case and all issues are left open to be adjudicated in accordance with law.

13. With the above directions, WPA-IPD 2 of 2024 stands allowed.

(Ravi Krishan Kapur, J.)