



COURT NOT TO ISSUE ADMINISTRATIVE DIRECTIONS WHEN A QUASI-JUDICIAL AUTHORITY IS SEIZED WITH A PROCEEDING

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A writ petition filed by Panacea Biotech Limited for reconstitution of the Opposition Board in a post-grant proceeding was rejected by the Hon'ble Bombay High Court. The Court held that since the post-grant was still pending before the Patent Office, it would refrain from issuing any directions, and would let the parties get their rights adjudicated before the forum provided under the Act. Panacea Biotech Limited was granted a patent, IN272351 for a vaccine and the grant was published in favour of the Patentee in the Patent Office Journal, on 01.04.2016. Post-grant Oppositions were filed by Shantha Biotechnics Private Limited and Biological E Limited. The Controller General of Patents constituted an Opposition Board as per the provisions of the Patents Act, 1970. The Controller of Patents circulated the copies of the recommendations received from Board to the Patentee. The Patentee wrote to the Controller General, complaining that the recommendations suffer from glaring lacunae and they be discarded and a new Board be constituted. The Patentee also filed a writ petition challenging said Opposition Board recommendations and requesting the constitution of a new Opposition Board. The Controller General replied to the letter /complaint of the Patentee and held that it will not be proper to issue any such administrative directions when the Controller is in the midst of quasi-judicial proceedings. The Controller General of Patents clarified that the Petitioner/Patentee could contest the recommendations in the pending proceedings based on law and fact. The Court reviewed the reply of the Controller General and completely agreed with the findings therein. The main question as per the Hon'ble Bombay High Court, in this case, was whether the Court should examine this case under the extraordinary jurisdiction under Article 226 of the Constitution of India in midst of the proceedings pending under Section 25(2) of the Patents Act before the Controller of Patents. The answer as per the Court was in the negative for the following reasons: – 1. The Court held that a self-contained scheme of expert adjudication is provided by the Patents Act and Rules and it would be incorrect for the Court to issue a direction merely because the petitioner says that the recommendation is flawed; 2. The Court also held that to check if the recommendation in question is faulty, the Court will have to enter into the merits of the recommendation and will have to sit in appeal to assess the merits; 3. The Court also distinguished the present case with the case relied upon by the Petitioner/Patentee, that is, the order of the Supreme Court in *CIPLA Limited vs. Union of India and others* – (Civil Appeal No(s). 8479 – 8480 of 2012 dated 27 November 2012). The Court held that, in the Cipla case, the patent was finally revoked without giving a copy of the recommendation to the patentee, and the Supreme Court held that not furnishing of the recommendations violated the principles of natural justice. As per the Hon'ble Bombay High Court, such a situation does not exist in the present case as the matter is yet to be concluded and a copy of the recommendation is given to the Patentee and the Opponents; 4. The



Court also held that there is nothing improper when the Controller General of Patents observes that he will not issue administrative directions when a quasi-judicial authority is seized with the proceedings. The Controller General made it clear that the Petitioner can challenge the Opposition Board recommendations before the Controller of Patents. In view of the above findings, the Court rejected the Writ Petition. **Team Anand and Anand:** Archana Shanker and Gitika Suri



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