

(2019) 10 DEL CK 0186

In the Delhi High Court

Case No : Civil Writ Petition No. 11346 Of 2019

Novartis Ag

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 23-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 227
Trade Marks Act, 1999 — Section 83, 84
Patents Act, 1970 — Section 116

Citation : (2019) 178 DRJ 223 : (2019) 80 PTC 483

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Hemant Singh, Mamta Jha, Dr. Shilpa Arora, Ankit Arvind, Rohan Krishnan, Waize Ali Noor, Sanjeev Sindhvani, Rajeshwari H., Sai Prasharan, Ansari, Swapnil Gauri, Tahir

Judgement

Prathiba M. Singh, J

CM APPL. 46770/2019 (for exemption)

1. Allowed, subject to all just exceptions. Application is disposed of.

W.P.(C) 11346/2019 & CM APPL. 46769/2019

2. The present petition has been filed by the Petitioner as its Appeal against the order of the Patent office dated 16th August 2019, by which the patent granted to it in respect of the drug 'Ceritinib' was challenged before the Intellectual Property Appellate Board (hereinafter, "IPAB") is not being heard as the said Tribunal is not functional.

3. The petition under Article 227 has thus been filed under extraordinary circumstances as the functioning of the IPAB has come to a complete standstill, owing to the fact that the Chairman has demitted office and only one technical member is available.

4. The IPAB established under Section 83 of the Trade Marks Act 1999 is the Appellate Board under Section 116 of the Patents Act, 1970 (hereinafter, "Patents Act") for hearing appeals against orders passed by the Patent office as also revocation petitions etc., The Bench of the Appellate Board, for any particular matter, has to consist of one judicial member and one technical member. Sections 84 of the Trade Marks Act and 116 of the Patents Act are set out below:

"Section 84. Composition of Appellate Board. - ...

(2) Subject to the other provisions of this Act, a Bench shall consist of one Judicial Member and one Technical Member and shall sit at such place as the Central Government may, by notification in the Official Gazette, specify. ...

116. Appellate Board. - (1) Subject to the provisions of this Act, the Appellate Board established under section 83 of the Trade Marks Act, 1999 shall be the Appellate Board for the purposes of this Act and the said Appellate Board shall exercise the jurisdiction, power and authority conferred on it by or under this Act:

Provided that the Technical Member of the Appellate Board for the purposes of this Act shall have the qualifications specified in sub-section (2).

(2) A person shall not be qualified for appointment as a Technical Member for the purposes of this Act unless he-

(a) has, at least five years held the post of Controller under this Act or has exercised the functions of the Controller under this Act for at least five years; or

(b) has, for at least ten years functioned as a Registered Patent Agent and possesses a degree in engineering or technology or a masters degree in science from any University established under law for the time being in force or equivalent;"

5. As of today, there are no judicial members functioning in the IPAB. There is also only one technical member, as per Id. counsel for the parties.

6. The IPAB is a specialized forum which was constituted under the Trade Marks Act and the Patents Act in order to ensure expeditious disposals of intellectual property matters. The manner in which the IPAB has been functioning during the last over 15 years shows that at every stage, there has been delay in the appointments being made to the IPAB, both of judicial members and technical members. Further, adequate infrastructure and autonomy is also not granted to the IPAB in order to make its functioning efficient and smooth. The statement of objects and reasons when the Trade Marks Act was amended, clearly records that the purpose of the IPAB is for speedy disposal of appeals and rectification applications, which at that time was jurisdiction which was vested in the High Courts. However, this purpose has been completely set at naught owing to the manner in which the IPAB has been functioning since the time it has been constituted.

7. The Trade Marks Act was notified on 15th September, 2003. The provisions

relating to the Appellate Board were also notified with effect from the said date. Thus, more than 16 years have passed since the IPAB has been constituted. However, the process of functioning of the IPAB has not been streamlined. Under these circumstances, some emergent steps need to be taken by the Government to ensure that the IPAB functions in an efficient and smooth manner for the purpose for which it has been constituted.

8. Accordingly, issue notice to Ms. Maninder Acharya, Id. ASG, to seek instructions as to the following:

- i) Total number of cases pending before the IPAB;
- ii) Conditions of appointment and Status of appointment of Chairperson of IPAB;
- iii) Status of appointment of technical members of IPAB;
- iii) Financial autonomy given to IPAB;
- iv) Recruitment of staff of IPAB and processes thereof;

9. Mr. Waize Ali Noor, Id. counsel for the Union of India, is directed to communicate this order to the Id. ASG, as also the Secretary, Department for Promotion of Industry and Internal Trade (DPIIT).

10. List on 24th October, 2019.

11. A copy of this order be given dasti under signature of the Court Master.