

SUPREME COURT OF INDIA

Natco Pharma Limited

Vs.

Union of India

C.A.Nos.6004-6018 of 2008

(S.H. Kapadia and B. Sudershan Reddy JJ.)

01.10.2008

ORDER

1. Leave granted.

2. A piquant situation has arisen in this case on account of absence of Technical Member in the Intellectual Property Appellant Board (IPAB) constituted under the provisions of Section 116 of the *Patents Act, 1970*.

3. On 2nd April, 2007, Central Government appointed S.Chandrasekaran as Technical Member (Patent) of IPAB vide notification of even date. On 3rd April, 2007, notification was issued notifying 2nd April, 2007 as the date for transfer of appeals pending before any High Court to IPAB. The appeals were transferred to the IPAB by the High Court vide its order dated 4th April, 2007.

4. On 16th June, 2007, Misc. Petition Nos.1 and 2 of 2007 were filed by respondent No.4 herein before IPAB praying for the appointment of another Technical Member in place of S.Chandrasekaran on the ground that the said Member had earlier filed an affidavit in the matter taking a particular position in the dispute which has a direct bearing on the case in hand.

5. It is under these peculiar facts and circumstances of the case and, 1 particularly, in view of the fact that the controversy involved before IPAB is concerning crystal modification of a N-Phenyl-2-Pyrimidineamine derivative and since the dispute is regarding patentability of the process as well as the product that we are of the view that such complicated disputes need to be resolved by IPAB which must have a Technical Member in it.

6. In the above facts and circumstances of this case only and without making our order a precedent for future cases, we called for a panel/list of Controllers duly qualified under Section 116 of the Patents Act, as amended by the *Patents (Amendment) Act, 2006*.

7. From that list submitted to us, we have opted for the name of Dr.P.C.Chakraborti, Deputy Controller of Patents & Designs, who holds post- graduate degree of M.Sc.(Chemistry) as well as Ph.D.

8. We, accordingly, direct that all preliminaries will be completed by the parties in the month of October, 2008 and the IPAB duly reconstituted under our orders, which would include Dr. P.C.Chakraborti, would hear and decide the pending Appeal Nos.TA/001/2007/PT/CH to TA/005/2007/PT/CH preferably in the month of November, 2008. We direct the IPAB to list the above Appeals before it for directions on 3rd November, 2008. The matter will be heard and disposed of on day- to-day basis.

9. As a special case, Dr.P.C.Chakraborti will continue to be the Member of the said Board till the hearing and final disposal of the said appeals. He will be the Member of the IPAB only for the said Appeals. He will be paid remuneration payable to the Technical Member of IPAB, namely, salary of Rs.86,286/- per month with other perquisites as mentioned in the annexure to this order. This annexure has been given to us by the Union of India. It is also made clear that Dr.P.C.Chakraborti, who is presently Deputy Controller of Patents and Designs, will not be entitled to draw his salary for the aforesated period as Deputy Controller of Patents and Designs but, he would be entitled to protection of his seniority and other incidental benefits.

10. We hope that the Board would preferably dispose of the Appeals within one month, if possible, from the date of the commencement of hearing.

11. Both sides have accepted the name of Dr.P.C.Chakraborti to act as Technical Member in the above Appeals. Civil Appeals are disposed of accordingly, with no order as to costs.