



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 14<sup>TH</sup> DAY OF JUNE, 2024**

**BEFORE**

**THE HON'BLE MR JUSTICE C M JOSHI**

**WRIT PETITION NO. 12356 OF 2023 (GM-RES)**

**BETWEEN:**

SRINIVAS S. DEVATHI,  
S/O LATE D. SATYANARAYANA,  
AGED ABOUT 46 YEARS,  
R/AT NO.63, 11<sup>TH</sup> 'B' CROSS, 3<sup>RD</sup> MAIN,  
PRASHANTHAGAR, BANGALORE-560 079,  
INDIA.  
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...PETITIONER

(BY SRI SRINIVAS S DEVATHI, PARTY -IN -PERSON)

**AND:**

UNION OF INDIA,  
MINISTRY OF EXTERNAL AFFAIRS,  
LEGAL AND TREATIES DIVISION,  
ROOM #901, AKBAR BHAVAN,  
CHANAKYAPURI, NEW DELHI-110 021.  
PH: 91-11-24674143.  
REP. BY MRS. UMA SEKHAR, ADDL. SECRETARY,  
ALSO REPRESENTING EXTERNAL AFFAIRS MINISTER,  
MR. S. JAISHANKAR.

...RESPONDENT

(BY SRI M.N KUMAR, CGSPC)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226  
AND 227 OF CONSTITUTION OF INDIA, BY PETITIONER PARTY-  
IN- PERSON PRAYING TO ISSUE ORDERS TO RESPONDENT TO  
ISSUE THE CONSENT LETTER OF INDIAN CENTRAL





GOVERNMENT DULY CERTIFIED BY SECRETARY TO INDIAN CENTRAL GOVERNMENT, TO SUE UNITED STATES PATENT AND TRADEMARK OFFICE, USPTO, AND SUMMON WIPO, WORLD INTELLECTUAL PROPERTY ORGANIZATION, INTERNATIONAL BUREAU TO ASSIST THE COURT WITH DISCOVERY AND FACT FINDING TO ADDRESS CPC SECTION 86(1) APPLICABLE TO THEM, SUCH THAT I COULD INITIATE THE COURT PROCEEDING IN THE TRIAL COURT, AT THE EARLIEST. THIS IS AN ACCORDANCE WITH DOCUMENTED PROOF SUBMITTED AND EXPLAINED IN ANNEXURE A, OF BREACH OF PATENT COOPERATION TREATY ARTICLES 18(2) AND 19(1), COMMITTED BY USPTO ON 05/08/2015 IN THEIR CAPACITY OF ISA, INTERNATIONAL SEARCH AUTHORITY FOR MY PCT INTERNATIONAL APPLICATION PCT/US2014/046619 WHICH CORRESPONDS TO MY INVENTION PRIORITY PATENT GRANT US 8,910,998 BI.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 07-06-2024 COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

In this petition, petitioner-party in -person has prayed for the following relief:

"To issue orders to respondent to issue the 'consent letter of Indian Central Government duly certified by Secretary to Indian Central Government, to sue United States Patent and Trademark Office, USPTO, and summon WIPO, World Intellectual Property Organization, International Bureau to assist the court with discovery and fact finding', to address CPC Section 86(1) applicable to them, such that I could initiate



the court proceeding in the trial court, at the earliest. This is in accordance with documented proof submitted and explained in Annexure- A, of 'Breach of Patent Co-operation Treaty Articles 18(2) and 19(1), committed by USPTO on 05/08/2015 in their capacity of ISA, International Search Authority for my PCT International Application PCT/US2014/046619 which corresponds to my invention priority patent grant US 8,910,998 BI."

2. The arguments by the writ petitioner-party-in-person and Sri M.N. Kumar, the learned CGSPC for respondent-Union of India were heard.

3. The petitioner party-in-person states that he applied for Priority Patent with US Patent Office with Patent No. 8910998 B1 for 'Systems and methods for altering the colour, appearance or feel of a vehicle surface' claiming that he had invented the same. He also filed an application under the Patent Co-operation Treaty, International Application No.PCT/US/2014/046619 dated 15-07-2014 to the USPTO in the capacity of "International



Search Authority- ISA". USPTO issued a fabricated "International Search Report- ISR" and it was transmitted to the petitioner on 05-08-2015 thereby breaching Articles 18(2) and 19(1) of Patent Co-operation Treaty. Using the said PCT International Application, he filed 15 National and 02 Regional Stage applications for Patent Protection of his invention covering total of 61 Non USA Countries. It is alleged by the petitioner that the fabricated ISR with fabricated Prior art has resulted in all National and Regional Stage applications to go into 'pending-reject' office actions causing him to lose his 'patent rights' across 60 World Countries. Therefore, it was alleged that the fraud committed by USPTO is very deliberate and intentional with malicious intent and motive to block his invention patent rights from across the World Countries.

4. Therefore, he filed a suit in OS No.2613/2020 but the said suit came to be rejected on the ground that the defendant is an instrumentality of the Foreign State and the consent of the Central Government under Section



86 of CPC is mandatory. Therefore, he sought for consent of the Central Government and when there was no response, he approached this Court in W.P.No.21782/2022 and the said petition came to be disposed of on 06-02-2023 with a direction to the respondent-Central Government to consider and pass appropriate orders with regard to the grievance of the petitioner. It is submitted that there was Webex meeting with the petitioner on 13-2-2023 and thereafter, the respondent by an email communication dated 05-04-2023, informed that it is not possible to accede to the request.

5. The petitioner submits that he has submitted voluminous materials to the respondent with all documents which show that the ISR issued by USPTO was fabricated and malicious and none of the materials submitted by him were considered by the respondent. It is submitted that a two line communication is issued as per Annexure-C which reads as below:



"The request has been considered in the Ministry of External Affairs. However, it has not been found possible to accede to the request."

6. The petitioner submits that the Article 18 of the Patent Co-operation Treaty stipulates that the ISR shall as soon as it is established have to be transmitted to the applicant. But such communication was delayed by the USPTO, which is the ISA.

7. In order to substantiate his contentions, he has produced voluminous material to demonstrate that he has merits in suing the US PTO and the WIPO. It is submitted that Annexure-C issued by respondent is a non speaking order and the reasons for rejection of his application is not forthcoming and therefore, Annexure-C has to be quashed and the respondent be directed to issue the consent as required under Section 86 of Code of Civil Procedure.

8. Learned standing counsel appearing for the respondent-Union of India submits that the request of the



petitioner was considered by the Central Government in length and it was found that there was no merit in the claim. It is submitted that the functioning of ISA is governed by the agreement of the respective authority with the international bureau of WIPO. The application filed by the petitioner with the USPTO is in the capacity of ISA and therefore, the USPTO is not sued in the capacity of an instrumentality of the State. It is submitted that the respondent is not having competency to make assessment or give comment as to whether or not USPTO can be sued by the plaintiff or not. Therefore, he defended the communication issued by the respondent as per Annexure - C.

9. It is relevant to note that this Court in W.P.No.21782/2022 had directed the respondent to consider the grievance of the petitioner and pass necessary orders. Para 7 of the order passed by this Court dated 06-02-2023 reads as below:

"The submission is placed on record. Since the consideration is underway, I deem it appropriate to



issue a direction to the respondent to pass appropriate orders, with regard to the grievance of the petitioner, after affording an opportunity of hearing, within six weeks from the date of receipt of a copy of this order, if not earlier."

10. Pursuant to the said orders passed by this Court, a Webex Meeting was held by the respondent with the petitioner on 13-02-2023 and a communication was issued as per Annexure C on 05-04-2023 as stated supra.

11. The provisions of Section 86 of Code of Civil Procedure deal with consent to be given by the Central Government to sue any Foreign State, its Envoys, Rulers etc. When a request is made to the Central Government by a person who is aggrieved by the act of any Foreign Entity which is under the control of the Foreign State, the consent of the Central Government is mandatory. Such consent, if rejected would affect the rights of an Indian citizen. A rejection cannot be by cryptic and whimsical orders. In this regard, it is relevant to rely on the





judgment of the Apex Court in the case of ***Veb Deutfracht Seereederei Rostock v. New Central Jute Mills Co. Ltd.***<sup>1</sup>

- "11. Sub-section (2) of Section 86 of the Code says that such consent shall not be given unless it appears to the Central Government that the suit in question has been filed under the conditions mentioned in clauses (a) to (d) of sub-section (2) of Section 86. Clause (b) of sub-section (2) provides that consent shall be given, in respect of a suit, which has been filed against a foreign State, if such foreign State 'by itself or another, trades within the local limits of the jurisdiction of the Court'. When sub-section (2) provides that such consent shall be given by the Central Government in respect of cases covered by clause (b) of sub-section (2), then a person who is to sue in any court of competent jurisdiction, against any such foreign State or any company or corporation, which can be held to be a foreign State in respect of any breach of contract, is entitled to apply for consent of the Central Government and the Central Government is expected to consider the said request taking into consideration the facts and

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<sup>1</sup> (1994) 1 SCC 282



circumstances of that particular case. While considering the question of grant or refusal of such consent, the Central Government is expected to examine that question objectively. Once the Central Government is satisfied that a cause of action has accrued to the applicant against any foreign company or corporation, which shall be deemed to be a foreign State, such consent should be given. The immunity and protection extended to the foreign State on the basis of International Law should not be stretched to a limit, so that a foreign company and corporation, trading within the local limits of the jurisdiction of the court concerned, may take a plea of Section 86, although prima facie it appears that such company or corporation is liable to be sued for any act or omission on their part or for any breach of the terms of the contract entered on their behalf. It is neither the purpose nor the scope of Section 86 to protect such foreign traders, who have committed breach of the terms of the contract, causing loss and injury to the plaintiff. But, if it appears to the Central Government that, any attempt on the part of the plaintiff, to sue a foreign State, including any company or corporation, is just to harass



or to drag them in a frivolous litigation, then certainly the Central Government shall be justified in rejecting any such application for consent, because such motivated action on the part of the plaintiff, may strain the relations of this country with the foreign State.

Further in another judgment in the case of ***Harbhajan Singh Dhalla v. Union of India***,<sup>2</sup> the Apex Court has held as below:

"23. It is well to bear in mind the two principles on which sovereign immunity rest. The principle expressed in maxim *par in parem non habet jurisdictionem* is concerned with the status of equality. The other principle on which immunity is based is that of non-intervention in the internal affairs of other states. See in this connection *Brownlie "Principles of Public International Law*, 3rd Edn., pp. 322-25. Much has happened in different States since Marshall, C.J. of the United States in *Schooner Exchange v. McFaddon* [(1812) 7 Cranch 116 : Green, p. 237; Briggs, p. 413 Bishop, p. 659] explained the principle and said that a state within its own territory as being "necessarily exclusive and absolute". In the days of international trade and

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<sup>2</sup> (1986) 4 SCC 678



commerce, international interdependence and international opening of embassies, in granting sanction the growth of a national law in this aspect has to be borne in mind. The interpretation of the provisions of Code of Civil Procedure must be in consonance with the basic principles of the Indian Constitution.

24. The expression "political ground" used in the communication of the Government noted before covers a wide range as explained in *Aiyar's Law Lexicon*, p. 986. It connotes without further particulars vague and fanciful attitude.

25. *Corpus Juris Secundum*, Vol. 48, p. 28 at p. 30 to 35 deals with the various kinds of remedies by a citizen against foreign State. In granting of sanction or refusing sanction under Section 86, the Central Government must bear these factors in mind.

26. In this case there is no provision of any appeal from the order of the Central Government in either granting or refusing to grant sanction under Section 86 of the Code. This sanction or lack of sanction may, however, be questioned in the appropriate proceedings in court but inasmuch as there is no provision of appeal, it is necessary that there should be an objective evaluation and examination by the appropriate authority of relevant and material factors in exercising its



jurisdiction under Section 86 by the Central Government. There is an implicit requirement of observance of the principles of natural justice and also the implicit requirement that the decision must be expressed in such a manner that reasons can be spelt out from such decision. Though this is an administrative order in a case of this nature, there should be reasons. If the administrative authorities are enjoined to decide the rights of the parties, it is essential that such administrative authority should accord fair and proper hearing to the person to be affected by the order and give sufficiently clear and explicit reasons. Such reasons must be on relevant material factors objectively considered. There is no claim of any privilege that disclosure of reasons would undermine the political or national interest of the country."

So also, in the case of ***Shanti Prasad Agarwalla v. Union of India***<sup>3</sup>, the Apex Court has noted the necessity of a reasoned order in following words:

"6. In the present case also, it is difficult to comprehend what is meant by the expression "political grounds" used in the impugned order. It is not clear what political considerations necessitated

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<sup>3</sup> 1991 Supp (2) SCC 296



the rejection of the application. The Central Government while considering the application under Section 86 of the Code must decide the application in accordance with the provisions of the section itself and state clearly and intelligibly its reasons for rejecting the application. In the instant case, we are unable to appreciate what political considerations weighed with the Central Government for rejecting the application. We, therefore, have no alternative but to quash the impugned Order No. 10245-EE/82 dated February 1, 1984 and remit the matter to the Central Government for taking a fresh decision in accordance with law after giving an opportunity to the petitioners of being heard.”

12. Thus, it is evident that the rejection has to be with reasons. A cryptic and two line order would not show that there was any application of mind by the concerned authority. The applicant, who is an Indian citizen is entitled to know the reasons, unless they affect the National interest. Annexure-C issued by the respondent does not disclose any such reason for rejection.



13. Pursuant to a query posed by this Court dated 03-01-2024, the learned counsel appearing for the respondent-Union of India, has filed a Memo stating that the place of cause of action being USA, the petitioner should have filed the suit in USA. Such a view was taken by the Additional City Civil Judge Bangalore in OS No.2613/2020 filed by the plaintiff which came to be rejected. It was stated in the memo that the subject matter is not about the infringement of the patent rights of the patent holder, but it was the allegation pertaining to ISA report issued by USPTO in the capacity of ISA. Therefore, he has defended the Annexure-C issued by respondent. Evidently, the above contentions of the respondent-Union of India are not sustainable. The petitioner is not claiming that his patent rights have been infringed. It is his contention that his patent applications for the invention made by him are being rejected on the basis of a fabricated and fraudulent search report by the ISA. It is his contention that the voluminous materials



produced by him show that with a malicious intention that the petitioner, who is an Indian should not be allowed to obtain the patent, a fabricated ISA report came to be communicated to him. The delay in communicating the ISR itself is an indication of the violation of the Articles of the Treaty. Evidently, the respondent-Union of India, should have bestowed its attention on these contentions of the petitioner.

14. Now the next question would be, Whether a direction can be issued to the respondent-Union of India, to give consent as required under Section 86 of CPC? In this regard, it is relevant to refer to the judgment of the Apex Court in the case of ***Union of India v. Bilash Chand Jain***<sup>4</sup>, wherein it was held below:

"5. It may be mentioned that there is a distinction between "judicial review" and "appellate jurisdiction". The High Court in a writ petition when examining an administrative order is not exercising the appellate power but exercising the power of

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<sup>4</sup> (2009) 16 SCC 601





judicial review which is much narrower than the appellate power. Such judicial review can only be exercised on Wednesbury principles.

6. It is well settled by a series of decisions of this Court that the High Court cannot itself perform the functions of a statutory authority. Thus in *G. Veerappa Pillai v. Raman and Raman Ltd.* [(1952) 1 SCC 334 : AIR 1952 SC 192] it was held that the High Court under Article 226 of the Constitution of India cannot direct the Regional Transport Authority to grant bus permits as the grant of the permit is entirely within the discretion of the Regional Transport Authority. Of course, if the Regional Transport Authority rejects the application for grant of permits arbitrarily or illegally, the High Court can set aside the order of the Regional Transport Authority and direct the Regional Transport Authority to pass a fresh order in accordance with law, but the High Court cannot itself order grant of permits, in that case it will be taking over the function of the Regional Transport Authority.

11. In the circumstances, we allow these appeals; set aside the judgments of the Division Bench and the learned Single Judge of the High Court and remand the matter to the Central Government to reconsider the prayer of Respondent 1 under Section 86(3) CPC for giving consent to execute the



decree in accordance with law expeditiously. There shall be no order as to costs."

15. Therefore, this Court cannot take the role of the respondent and issue directions to give consent. It is the duty of the respondent-Union of India to consider the grievance of the petitioner and pass a reasoned order as reiterated by the Apex Court in several decisions as referred above. A cryptic order, without any reasons is not expected by the Union of India, when a citizen of this Country claims an invention, which would have fetched him a patent of great importance.

16. For aforesaid reasons, the writ petition deserves to be allowed. Hence, the following:

**ORDER**

- (i) Writ Petition is allowed.
- (ii) The communication dated 05-04-2023 at Annexure-C is hereby set aside.
- (iii) The respondent-Union of India, is directed to reconsider the application of the petitioner afresh



and pass a reasoned order, by following the principles of natural justice, as observed by the Apex Court in the above referred judgments within a period of six months.

**Sd/-  
JUDGE**

tsn\*  
List No.: 1 Sl No.: 3