Salgaonkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2086 OF 2021

Huntington Alloys Corporation .. Petitioner

Versus

Union of India & Ors. .. Respondents

...

Mr.Rohan Kadam with Mr.Ishaan Paranjape, Ms.Jasmeet Kaur, Ms.Fatima Ali and Ms.Vinayika Shahi i/b Anand and Naik Co. for the Petitioner.

Mr.Anil C. Singh, ASG with Mr.Yashodeep Deshmukh, Mr.Aditya Thakker, Ms.Apurva Gupte, Mr.Adarsh Vyas and Mr.Rutwik Rao i/b Anusha P. Amin for the Respondent Nos.1 to 4.

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATE : 07th APRIL, 2026

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JUDGMENT (PER BHARATI DANGRE, J.)

1. Rule. Rule is made returnable forthwith, by consent.

2. The Petitioner, a Corporation incorporated under the laws of USA, is aggrieved by the order dated 18/11/2020 passed by the Deputy Controller of Patents and further order dated 06/04/2021 passed by the Department of Atomic Energy, thereby rejecting the Patent Application of the Petitioner dated 09/11/2010.

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3. Heard learned counsel Mr.Rohan Kadam for the Petitioner.

According to Mr.Kadam, the orders passed by the Respondents suffer from lack of jurisdiction, non-application of mind and being unreasoned orders, are liable to be quashed and set aside.

The challenge to the impugned orders is raised in the background facts that on 09/04/2008, the Petitioner filed an National Phase Patent application (PCT/US2009/040019) and it was allotted number IN'4211, which was published under Section 11-A of the Patents Act, 1970 (for short, **"Act of 1970"**). The Petitioner filed the request for examination of Application on 09/03/2012, but no steps were taken by the Authority under Sections 12 to 14 of the Act of 1970.

On 18/11/2020, the Deputy Controller of Patents & Designs, forwarded a communication to the Department of Atomic Energy with respect to the Patent Application and expressed its *prima facie* view that the Patent cannot be granted to the applicants for the invention under Section 7 of the Act of 1970.

The Application was, therefore, referred to the Department of Atomic Energy under sub-section (6) of Section 20 of the Atomic Energy Act, 1962 (for short, **"Act of 1962"**) for directions as to whether the invention is relating to Atomic Energy and whether the said Application should be refused or whether it can be processed.

The aforesaid reference resulted into an order passed on 06/04/2021 by the Department of Atomic Energy, stating thus :-

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> "I am directed to refer to your Letter No.PO/KOL/Sec-4/EF/19-20(45) dated 18.11.2020 on the above subject and to state that the matter has been carefully reviewed by the Government of India, in the Department of Atomic Energy (DAE) with regard to the provisions of sub-section (1) of Section 20 of Atomic Energy Act, 1962 read with Section 4 of the Patents Act, 1970. It is concluded that **the above invention does relate to Atomic Energy and hence the application be refused."**

4. The above two orders are impugned in the present Writ Petition.

Learned counsel Mr.Kadam, by inviting our attention to the Act of 1962 would submit that Act of 1962 is a statue providing for development, control and use of atomic energy for the welfare of the people in India and for other peaceful purposes and the Act has defined 'atomic energy' to mean energy released from atomic nuclei as a result of any process, including the fission and fusion processes. According to him, by virtue of sub-clause (6) of Section 20, it is the Controller of Patents and Designs, who is empowered to refer any application to the Central Government for direction, as to whether the invention is one relating to atomic energy and the direction given by the Central Government is assigned finality. He has also invited our attention to the Act of 1970 and, in specific, Section 4 thereof, which provide that no Patent shall be granted in respect of an invention relating to atomic energy falling within sub-section (1) of Section 20 of the Act of 1962.

5. In light of the aforesaid statutory scheme, it is the submission of Mr.Kadam that the Application of the Petitioner, preferred under the Act of 1970 and the Patent Rules, 2003, set out the specification of the invention titled as, "Ultra Supercritical Boiler Header Alloy and Method of Preparation".

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The specification set out the background of the invention by submitting that the invention relate to an alloy suitable for a header pipe in boiler applications and, more particularly, to a high temperature, high strength nickel (Ni)-cobalt (Co)-Chromium (Cr) alloy for long-life service at 538°C to 816°C that offers a combination of strength, ductility, stability, toughness and fissure-free weldability as to render the alloy range uniquely suitable for the header pipe in ultra-supercritical boiler applications where essentially fissure-free joining of boiler tubes to the header is critical. The specification also contained the detailed description of the invention.

The publication under Section 11-A described the invention in the name of the Petitioner- Huntington Alloys Corporation, Huntington, West Virginia, U.S.A., with the name of the inventor, being set out as Baker, Brian, A., Smith Gaylord,D. and Gollihue, Ronald, D.

According to Mr.Kadam, though the Petitioner made Application for examination as early as in 2012 to the Controller of Patent and requested for it being examined under Sections 12 and 13 of the Act, no steps were taken, but all of a sudden, by passing the impugned orders, the Patent Application has been rejected.

6. Learned Additional Solicitor General Mr.Singh, representing the Respondents, by relying upon the affidavit filed by the Assistant Controller of Patents, Patent Office, would submit that the Application of the Petitioner was taken up for examination and on the basis of the report of the Examiner i.e. the concerned Controller, it was noticed that the

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Application of the Petitioner fall within the ambit of Section 4 of the Patents Act as the invention of the Petitioner consists of Niobium and Tantalum compositions and, therefore, the Controller deemed it appropriate to obtain necessary directions from the Department of Atomic Energy.

7. Mr.Singh would submit that, Respondent No.4, on review of the Application, concluded that the invention of the Petitioner relate to atomic energy and, hence, it was refused. According to him, reading of Section 4 of the Act of 1970 with Section 20 of Act of 1962, would clearly reveal that the Central Government i.e. the Department of Atomic Energy is the final authority to decide whether a patent can be granted or not and its decision is final.

Mr.Singh would submit that there is no scope to the Patent Office to grant hearing to the Petitioner under Section 14 of the Act of 1970, as the final decision is to be taken by the Department of Atomic Energy.

As far as the pendency of the Application for considerable length of time is concerned, the affidavit has stated that during the period prior to 2016, there was severe shortage of Examiners in Patent Office and after induction of considerable number of Examiners by the Government of India, the pending Patent Applications were examined and disposed of.

8. Mr.Singh would vehemently submit that Respondent No.4 has followed due process of law, as provided in the Act of 1970 and when the Application is screened as to have

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relevance to atomic energy or defence of India, future course of action of such application is governed by the concerned authority like Department of Atomic Energy or DRDO, as the case may be, and since the decision is finally taken, upon the refusal of the Patent Application, there is no scope for any judicial intervention.

In light of the prohibition contained in Section 4 of the Act of 1970 read with Section 20 of the Act of 1962, it is not permissible to grant patent for the inventions, which in the opinion of the Central Government are useful for or relate to the production, control, use or disposal of atomic energy or in the process ensuring of safety in atomic energy operations.

The prohibition also apply to any invention of the nature in respect of which an application for the grant of a patent has been made to the Controller of Patents and Designs appointed under the Indian Patents and Designs Act, 1911, before the commencement of the Act of 1962 and which is pending at the relevant time.

9. We have perused the scheme of the two enactments; Atomic Energy Act, 1962 and Patents Act, 1970. The Central Government is vested with the power to inspect any pending patent application and specification and if it considers that the invention relates to atomic energy, it is competent to issue directions to the Controller of Patents and Designs to refuse the application on that ground. Not only this, if any person has made an invention, which he has reason to believe relates to atomic energy, he is also duty bound to communicate the same to the Central Government. Any person desiring to apply

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for a patent abroad for an invention relating to it or which he has reason to believe that it relates to atomic energy, shall obtain prior permission of the Central Government.

The whole purpose in imposition of the restriction is evident from the statement of objects and reasons of the Atomic Energy Act, 1962, which was enacted for the development, control and use of atomic energy for the welfare of the people of India and for other peaceful purposes. The Central Government is exclusively empowered to produce, develop, use and dispose of atomic energy and carry out research into any matters connected therewith.

Section 3 of the Act of 1962 clothed the Central Government with distinct powers relating to atomic energy and for taking measures conducive to the production and supply of electricity from atomic energy as well as use of atomic energy for the welfare purpose. It is in the wake of this power conferred on the Central Government, no invention, which relate to the production, control, use or disposal of the atomic energy is allowed to be patented and the Central Government is conferred with the power to issue directions to the Controller of Patents and Designs to refuse the Application on that ground.

10. The Patents Act, 1970 has provided the procedure for grant of Patents and Section 65 provided for Revocation of patent or amendment of complete specification on directions from Government in cases relating to atomic energy. The Provision read thus :-

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"65. Revocation of patent or amendment of complete specification on directions from Central Government in cases relating to atomic energy.—

(1) Where at any time after acceptance of a complete specification, the Central Government is satisfied that an application for a patent or a patent is for an invention relating to atomic energy for which no patent can be granted under sub-section (1) of section 20 of the Atomic Energy Act, 1962 (33 of 1962), it may direct the Controller to refuse to proceed further with the application or to revoke the patent, as the case may be, and thereupon the Controller, after giving notice to the applicant or, as the case may be, to the patentee and every other person whose name has been entered in the register as having an interest in the patent, and after giving them an opportunity of being heard, may refuse to proceed further with the application or may revoke the patent.

(2) In any proceedings under sub-section (1), the Controller may allow the applicant for the patent or the patentee to amend the complete specification in such manner as he considers necessary instead of refusing to proceed with the application or revoking the patent."

11. As per the above provision, where at any time, after acceptance of complete specification, the Central Government is satisfied that the patent is for an invention relating to atomic energy for which no patent can be granted, it may direct the Controller to refuse to proceed further with the application or to revoke the patent, and thereafter, the Controller after giving notice to the applicant, or as the case may be, to the patentee and every other person whose name has been entered in the Register and after giving an opportunity of being heard, may refuse to proceed with the application or may revoke the patent. By virtue of sub-section (2), it was permissible for the Controller to allow the applicant for the patent or the patentee to amend the complete specification in such manner as he considers necessary instead of refusing to proceed with the application or revoking the patent.

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The said provision was substituted by the Patents (Amendment) Act, 2005 w.e.f. 01/01/2005 and the provision reads thus :-

> **"65. Revocation of patent or amendment of complete specification on directions from Government in cases relating to atomic energy.**-(1) Where at any time after grant of a patent, the Central Government is satisfied that a patent is for an invention relating to atomic energy for which no patent can be granted under sub-section (1) of section 20 of the Atomic Energy Act, 1962 (33 of 1962), it may direct the Controller to revoke the patent, and thereupon the Controller, after giving notice, to the patentee and every other person whose name has been entered in the register as having an interest in the patent, and after giving them an opportunity of being heard, may revoke the patent.
>
> (2) In any proceedings under sub-section (1), the Controller may allow the patentee to amend the complete specification in such manner as he considers necessary instead of revoking the patent."

12. In the wake of the amendment in Section 65, according to Mr.Kadam, the power which is now available under the provision is restricted to revocation of the patent and the option of non-consideration of the application is not available. However, we do not find merit in the said contention, as it can be seen that when Section 65 was introduced in the Act of 1970, in the backdrop of Act of 1962, authorising the Central Government to refuse any application for patent for an invention relating to atomic energy, the applications for patent involving atomic energy were awaiting the decision, and since, in the wake of Section 20 of the Act of 1962, the patent could not be granted, the Controller was authorised to refuse to proceed with the application, if pending or revoke the patent, if already granted. However, by the year 2005, in the wake of the provision contained in Section 20 of the Act of 1962, with the burden being cast on a person making an invention in

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relation to atomic energy to communicate it to the State Government or seek its permission, there were no applications pending and the provision was, therefore, restricted to revocation of grant of patent. But, in no case, the provision can be construed to the effect that the patent application shall be granted first and then it shall be revoked, if it relate to atomic energy in the wake of the bar imposed under sub-section (1) of Section 20 of the Act of 1962.

13. In both the cases, what is noted is the permissibility of allowing the patentee to amend the complete specification in such a manner as he considers necessary instead of revocation of patent, if it is granted. Since the Application of the Petitioner has been kept pending since 2010, there is no question of its revocation, but on consideration of application, it is permissible for the Central Government to issue direction to the Controller to refuse to proceed the same, if it relates to atomic energy, but to save such an application from its non-consideration on the said ground, it is open for the patentee/applicant to amend the specification, so as to avoid its invention involving atomic energy, resulting into its complete rejection.

14. In the light of the statutory scheme involving atomic energy, no patent can be granted and Section 4 of the Act of 1970 clearly imposes an embargo in grant of patent in respect of an invention relating to atomic energy falling within sub-section (1) of Section 20 of the Act of 1962.

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One significant aspect to which our attention is invited is the enactment of "The Sustainable Harnessing And Advancement of Nuclear Energy For Transforming India Act, 2025", an Act of Parliament providing for promotion and development of nuclear energy, including its application in healthcare, food, water, agriculture, industry, research, environment for the welfare of the people of India and providing for robust regulatory framework for its safe and secure utilisation. The statute being enacted in the background of India having achieved self-reliant capability in production and use of nuclear energy and recognising the potential, it offers towards rapidly meeting the ever increasing energy needs of the country through further research and development. Under said enactment, the absolute embargo to consider grant of patent has been relaxed by making it permissible to encourage invention involving atomic energy for welfare purposes. However, we are informed that the said Act is not brought into force yet.

15. When we have perused the impugned order passed by Respondent No.4, confirming the view expressed by Respondent No.3, that invention of the Petitioner relate to atomic energy and, thereby refusing the Application for grant of patent, what immediately struck us is, the absence of reasons in the said order.

'Atomic energy', as per the Act of 1962, is the energy released from atomic nuclei as a result of any process, including the fission and fusion processes and when the Central Government is conferred with the power to refuse any

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patent for invention, which involve atomic energy, in our view, when the applicant has preferred his application with specification and it is the contention of Mr.Kadam that the invention revolves around an alloy which is suitable for a header pipe in boiler applications and invention titled as, “Ultra Supercritical Boiler Header Alloy and Method of Preparation” in no way amount to release of atomic energy, as the specification has set out the summary of the invention and the detailed description of the invention. According to Mr.Kadam, the invention is only related to any alloy which is suitable for Ultra Supercritical Boiler applications and it no way results into release of any atomic energy.

Though in the reply affidavit it is faintly suggested that the invention involves release of atomic energy, we do not find any reasoning contained in the impugned order, as according to us, the Petitioner whose Application/Invention is rejected, is entitled to know the basis of rejection, as in the specification furnished in regard to the invention, the stand of the Petitioner is, it is not even remotely relate to atomic energy and if the reasons were furnished to the Petitioner, it was open for it to adopt the procedure under Section 65(2) of the Act of 1970 and the option of amending the specification was available to it.

However, in the wake of the impugned order, this opportunity is denied to the Petitioner and the Petitioner is not even communicated the reasons, why its Application is rejected.

It is trite position in law that a reasoned order is a judicial decision providing explicit reasons and justification for

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its conclusion, which ensures transparency, accountability and contributes to upholding the rule of law. The reasons of a decision are considered to be its 'heartbeat' replacing subjectivity with objectivity and ensuring that the authority passing the order has applied its mind to the facts placed before it. A non-speaking or unreasoned order, hinders the Appellate Court's ability to test the correctness. The situation is not rare, when the unreasoned orders passed by Administrative/Judicial Authorities are frowned upon and the procedure of fairness definitely can be ensured, if the order passed is supported by reasons, disclosing the mind of the authority taking such a decision.

Though Mr.Singh has attempted to canvass before us that the power is specifically vested in the Central Government to refuse an patent application, if it involves atomic energy, in our view, we see no difficulty as to why the reasons cannot be disclosed.

A process, which relates in release of atomic energy, is known to the experts with the Central Government, but when a person seek patent for his invention, according to us, he must be made aware of the reasons why his patent cannot be granted. In addition, as indicated under sub-section (2) of Section 65, upon the reasons being communicated to the applicant, it is open for him to vary his invention, so as to avoid rejection of application.

16. We find support to our view by the order passed in ***Writ Petition No.2257 of 2018 (Ceres Intellectual Property Company Limited Vs. The Controller of Patents, Trade Marks***

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and Designs & Ors.) dated 06/10/2022, when the National Phase Application filed by the petitioner at the Indian Patent Office in respect of method for deposition of ceramic films for the use in manufacture of solid oxide fuel cells was rejected by an unreasoned order, by stating that it was in the wake of the directions issued by the Department of Atomic Energy and Section 4 of the Patents Act, 1970. The Division Bench in the background facts observed thus :-

> "6. From perusal of the impugned order, it is manifest that the application has been rejected only on the ground that the directions are issued by the Department of Atomic Energy and in view of the said directions, the application is rejected. There cannot be a manner of doubt that if the application of patent engulfs within its fold, the circumstances and/or inventions as detailed in Section 20(1) of the year 1962, the Authority has got powers to reject the patent application. However, the same is to be borne out from the reasons in the order.
>
> 7. In light of the above, as the impugned order is *dehors* the reasons, the impugned order is set aside. The Respondent No.1 shall reconsider the application of the Petitioner for issuance of patent on its own merits in accordance with law and shall decide it a fresh expeditiously.

17. In the wake of the aforesaid, since we find that in the case before us, the order refusing the Patent Application is *sans* any reason, the same cannot be sustained and liable to be set aside. However, at the same time, on setting aside the order, we permit consideration of the Patent Application of the Petitioner alongwith the specification to be considered by the Respondent No.4, but by passing a reasoned order. Though Mr.Kadam do not insist for a personal hearing, we deem it appropriate to permit the Applicant to produce such material in addition to the specifications, which are already submitted to Respondent No.3, for consideration of its Patent Application dated 09/11/2010, captioned as invention, "Ultra Supercritical Boiler Header Alloy and Method of Preparation".

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Since the Application of the Petitioner is pending since 2010, we expect Respondent Nos.3 and 4 to process the same in an expeditious manner.

18. With these directions, the Writ Petition is made absolute.

(MANJUSHA DESHPANDE, J.) **(BHARATI DANGRE, J.)**

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