Glochem Industries Ltd vs Cadila Healthcare Ltd on 6 November, 2009

Equivalent citations: AIR 2010 BOMBAY 76, 2011 AIR CC 1155 (BOM), 2011 (2) AIR BOM R 629, 2010 (2) AIR BOM R 121

Bench: Swatanter Kumar, A.M.Khanwilkar

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1605 of 2009

Glochem Industries Ltd.,
represented by its Power of Attorney
Holder, having its registered office at
G.V. Chambers, 7-2-C8& C8/2,

Opp. Dynamic Tools Pvt. Ltd.
I.D.A. Sanathnagar,
Hyderabad-500 018, Andhra Pradesh. ...Petitioners

v/s.

1. Cadila Healthcare Ltd.
Having its registered office at
Zydus Research Centre, Zydus Tower,

Satellite Cross Road, Ahmedabad
Gujarat.

2. Union of India
Through the Secretary,

Department of Industrial Policy and
Promotion, Ministry of Industry and
Commerce, Udyog Bhavan,
New Delhi 110 011.

3. Controller General of Patents & Designs
Having its office at Bhoudhik Sampada
Bhavan, S.M. Road,
Near Antop Hill Head Post Office,
Antop Hill, Mumbai 400 037.

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4. Assistant Controller of Patents & Designs,
The Patent Office at Mumbai

address as above. ...Respondents

Mr. Anand Grover i/b. Prakash Mahadik for the Petitioner.

Mr. Janak Dwarkadas, Senior Advocate i/b. M/s. Singhi & Co. for the respondents.

ig CORAM:- SWATANTER KUMAR, C.J. AND
A.M.KHANWILKAR, J.

JUDGMENT RESERVED ON: September 22, 2009.

JUDGMENT PRONOUNCED ON: November 06, 2009.

JUDGMENT (PER KHANWILKAR, J):

Rule. Advocate for the private contesting Respondents waive notice. Notice to other Respondents is dispensed with being formal parties.

Rule made returnable forthwith, by consent. Having regard to the nature of challenge involved, we decided to finally dispose of the matter at the admission stage itself, by consent.

2. This Writ Petition under Article 226 of the Constitution of India essentially takes exception to the order passed by the Assistant Controller of Patents & Designs-Respondent No.4 dated 7/1/2009 on the Petitioner's representation by way of opposition against Patent Application No. 413/MUM/2003A. In the Petition as filed, the Petitioners at the outset have given short background of the alleged invention claimed by the Respondent No.1. It is stated that on 26/7/1985 a Patent being US Patent No. 4529596 was granted in the United States to Sanofi S.A.. This document discloses the compound Clopidogrel. By another patent issued on 11/7/1989 to Sanofi bearing US Patent No. 4847265 titled "Dextro-

rotatory enantiomer of methyl alpha-5 (4,5,6,7,-tetrahydro (3,2-c) thieno pyridyl) (2-chlorophenyl)-accetate and the pharmaceutical compositions containing it", was granted to Sanofi. This document discloses Clopidogrel Besylate and admits customary preparation of the salts of Clopidorgrel in a standard manner. It is then stated in 1998, an article authored by Caira M.R. Titled "Crystalline Polymorphism of Organic Compounds", was published in Topics in Current Chemistry, which describes that a systematic investigation of a compound to determine whether it is prone to polymorphism or not is a matter of routine practice in pharmaceutical pre-formulation studies. It is stated that Clopidogrel is a known anti-platelet agent with known therapeutic effects. It is used to inhibit blood clots and is used in the treatment of heart ailments.

According to the Petitioners since 17/11/1997, Sanofi has been marketing Clopidogrel Bisulfate (plavix). It is stated that the subject of patent application in the present case relates to Clopidogrel

Besylate, a salt of Clopidogrel.

3. The Petitioners have then adverted to relevant facts giving rise to this petition. It is stated that Respondent No. 1 herein on 25/4/2003 filed a Patent Application along with the provisional specification at the Mumbai office of the Respondent No. 3, which was later on allotted Patent Application No. 413/MUM/2003A. Thereafter, on 22/4/2004, the Respondent No. 1 filed International Application No. PCT/IN2004/000112 under the Patent Cooperation Treaty, corresponding to Patent Application No. 413/MUM/2003A. It is stated that on 2/9/2004, Patent Publication No. WO/2004/074215 A titled "Process for preparation of Clopidogrel, its salts and pharmaceuticals compositions", claiming priority from Indian Patent Application No. 54/KOL/2003 dated 03/02/2003, filed by Nadkarni, et al, (Torrent) was published. Even though Torrent's Patent Publication No. WO/2004/074215 is published later, its priority date (54/KOL/2003 filed on 03/02/2003) is earlier than 25/04/2003, the date of filing of Respondent No. 1's Patent Application No. 413/MUM/2003A.

As per the information made available to the Petitioners, the said Indian Patent Application No. 54/KOL/2003 published on 11/2/2005 appears to have been rejected or abandoned. It is stated that on 9/12/2004 the corresponding PCT International Patents Application No. PCT/IN2004/000112, filed by Respondent No. 1 was published as WO/2004/106344. The International Search Report with regard to said PCT International Patents Application was issued on 18/1/2005.

Thereafter, on 11/2/2005, Respondent No. 1 Patent Application was published in issue No. 04 of 2005 of the Patent Official Journal at page 2704. Thereafter, on 5/9/2005 the International Preliminary Report on Patentability of the corresponding International Application of the Respondent No. 1 was issued. It is stated that the Petitioners through its agents, obtained a copy of the complete specification accompanying the said patent application which pertain to Clopidogrel Besylate, a known salt of a previously known compound Clopidogrel. According to the Petitioners, as on the date of the alleged invention, the therapeutic efficacy of Clopidogrel and Clopidogrel Bisulfate (Plavix) in treating heart ailments were well known. Accordingly, the Petitioners filed a representation by way of opposition on 10/7/2008 in terms of Section 25(1) of the Patent Act 1970 (hereinafter referred to as 'the Act')raising diverse issues.

4. Respondent No. 1 filed its reply statement to the said representation by way of opposition of the Petitioners herein. The said reply statement was supported by an affidavit of evidence and certain Enclosures which were received by the Petitioners on or about 18/11/2008. The Petitioners were later on informed by communication sent by Respondent No.4 herein that the representation by way of opposition would proceed on 02/01/2009. The Petitioners through their agent appeared for hearing in the office of Respondent No.4. It is alleged that during the hearing, the Petitioner's agent was not allowed to rely on certain documents to rebut the Respondent No.1's reply statement. Similarly, the Petitioner's agent was not allowed an opportunity to verbally rebut the arguments of Respondent No.1 whereupon the Petitioner's agent sought permission to file written arguments which was granted. As per the said permission, written arguments were filed by the Petitioner's agent in the office of the Respondent No.3 on 6/1/2009. The Respondent No. 4 dismissed the representation by way of opposition of the Petitioners by impugned order dated 7/1/2009 for the

reasons recorded in the said order. We would reproduce the relevant extract from the impugned order which has dealt with the controversy on hand. The same reads thus:

> "Section 3(d): The claims 1 to 3 of the alleged invention are directed to Crystalline Clopidogrel besylate. The besylate salt of Crystalline Clopidogrel is pure, free flowing, easy to handle and chemically stable (nor hygroscopic) which can be utilized on an Industrial scale (pages 2, 3 & 5 of Complete Specification). To support this and also to meet the requirements of Section 3(d) of Patents Act, 1970 the applicants with their reply statement, have submitted the Stability study data sheet of bisulphate (Enclosure 5 & 9) and besylate (Enclosure 6); along with Stability and Comparative Pharmaceutical characterization Report of solvated (toluene and diozane) and Crystalline Clopidogrel besylate (Enclosures 13 & 14).
>
> The stability study data for the Clopidogrel bisulphate salt reveals that there is increase int he concentration of the inactive metabolite and which is in the long terms reduces the efficacy of bisulphate salt by reduction of therapeutic dose (Enclosure 5). Further in tablets of bisulphate salt there is an increase in acid impurities (Enclosure 9). Whereas the Crystalline Clopidogrel besylate of present invention surprisingly not detected with inactive metabolite for over six months in any of the three batches (Enclosure 6). Hence, the Crystelline Clopidogrel Besylate of instant invention is advantageous in terms of increased shelf life of the Clopidogrel bisulphate salt.
>
> The stability report given in the Enclosure 13 shows that the Crystalline Clopidogrel besylate of instant invention is more free flowing and stable even after two months period in comparison to the solvated (toluene and dioxane) forms of Crystalline Clopidogrel besylate (cited by the opponent).
>
> The comparative Pharmaceutical Properties data provided in Enclosure 14 shows that the solvated (toluene and dioxane) forms of Crystalline Clopidogrel besylate are more cardiotoxic compared to t he Crystalline Clopidogrel besylate of present invention. The Crystalline cop besylate is non toxic till 50 uM concentration, whereas the toluene solvated form showed toxicity at 5uM and dioxane solvated form showed toxicity at 25uM. Hence it shows that the Crystalline Clopidogrel besylate is better and advantageous in matters of toxicity in comparison to solvated forms.
>
> In view of the advantageous effects of Crystalline Clopidogrel besylate of instant invention over the known clopidogrel bisulphate and also over the solvated forms of Clopidogrel besylate in different characterization aspects, it can be held that the Crystalline Clopidogrel besylate of present invention compound is patentable and cannot be rejected under Section 3(d) of the Patents Act, 1970.
>
> Hence, the opponents objection of not an invention and also not patentable under the Act is not tenable."

5. In this background, the present writ petition is filed raising several issues. However, during the hearing of the Petition, the Counsel appearing for the Petitioners confined his arguments mainly in the context of Section 25(1)(f) read with section 3(d) of the Act. He raised following points :-

> (i) that there was no legal or admissible evidence produced by the Respondent No. 1 in support of their claim.
>
> (ii) The Respondent No. 1 has not shown that the disclosure of a new form of known substance in respect of which Patent is applied results in the enhancement of the known therapeutic efficacy.
>
> (iii) The Respondent No. 4 Authority has failed to examine the above issues and infact has decided the objection upon misconstruction and misapplication of Section 3(d) of the Act.

6. The Respondent No.1 on the other hand, have supported the impugned decision on the argument that all relevant matters have been taken into account by the Respondent No. 4 while answering the controversy on hand. It is not a case of any manifest error committed by the Respondent No.4. Further, this Court cannot sit in appeal over the opinion of the Respondent No. 4 on technical issues. It is submitted that Petitioners had fair opportunity in pursuing their objections and the Respondent No. 4 has dealt with the objection as raised by the Petitioners and decided the same on merits. According to Respondent No.1, there is an alternative and efficacious remedy available to the Petitioners to which they can take recourse to. It is submitted that the remedy of post grant opposition under Section 25(2) of the Act is still available. Even remedy of seeking suo moto revocation of Patent under Section 64 of the Act can be resorted to. Moreover, it is also open to the Petitioners to file a counter claim for revocation or invalidation of Patent, in a suit which may be filed by the Patentee, under Section 104 of the Act. Even for that reason, the Court should be slow in entertaining the present writ petition.

7. Having considered the rival submissions, we would deal with the last objection first. Although the Petitioners may have remedy of post grant opposition or of seeking suo moto revocation as well as filing of a counter claim as is suggested by the Respondents that by itself can be no basis to non-suit the Petitioners, if the Petitioners were right in their grievance that the authority has committed manifest or jurisdictional error while considering the representation by way of opposition or for that matter decided the objections on palpable misreading and misapplication of the relevant provisions of law. This is so because the law provides for remedy of pre-grant opposition by virtue of Section 25(1) of the Act. If such a remedy is provided, the authority is obliged to consider the representation by way of pre-grant opposition under Section 25(1) keeping in mind the parameters of law by observing principles of natural justice.

It is not necessary for us to examine the argument of the Petitioners that the remedy of pre-grant opposition is qualitatively different than the remedy of post-grant opposition. According to the Petitioners, in the pre-

grant opposition, the onus is on the patent applicant to show that the alleged invention would result in enhancement of the known efficacy of the stated substance; whereas in the post-grant opposition, the onus will be on the objector to show that the alleged invention does not result in enhancement of the known efficacy of the stated substance. Suffice it to observe that the preliminary objection raised by the Respondent No. 1 does not mean that this Court has no jurisdiction to entertain writ petition under Article 226 of the Constitution of India against the decision of the authority on the opposition under Section 25(1) of the Act. It is a matter of prudence and discretion as to whether the Court should entertain the writ petition or not. In the facts of the present case, we think that it would not be proper to non-suit the Petitioners at the threshold on this count.

8. We shall now revert to the first argument canvassed on behalf of the Petitioners that there was no legal or admissible evidence brought on record on the basis of which Respondent No. 4 could have answered the controversy on hand. It is submitted that Section 77 of the Act postulates that the Patent Controller is conferred with certain powers of Civil Court, in respect of summoning and enforcing attendance of witnesses, discovery of documents, receiving evidence of affidavits, issuing commissions for examination of witnesses of documents. Moreover, Section 79 of the Act stipulates that subject to any rules made in relation to evidence how to be given and powers of controller in respect thereof, in any proceedings under the Act before the Controller, evidence shall be given by affidavit in absence of directions given by the Controller to the contrary. Indeed, discretion is vested in the controller to take oral evidence in lieu of or in addition to evidence by affidavit or may allow any party to be cross-

examined on the contents of his affidavit. In the present case, it is argued that the applicants have not given evidence by affidavit. In absence of such evidence, the Respondent No. 4 could not have looked into the material produced by the Respondent No. 1-applicant. It is submitted that even though the Respondent No. 1 along with its reply statement filed an affidavit dated 14/10/2008 of an expert witness and appended certain Enclosures to the affidavit, the documents have not been proved. In other words, neither the affidavit of the expert nor the Enclosures to the affidavit could be of any avail and could be relied upon to decide the controversy. According to Respondent No. 1, however, the procedure to be adopted in pre-grant objection enquiry under Section 25(1) is a summary procedure. The requirement as per Section 25(1) read with Rule-55 is that on filing of representation by way of opposition, the applicant has to file his reply statement. There is no provision for any rejoinder being filed by the person opposing the grant of Patent, Production of any further documents or evidence either by the applicant or by the person opposing the grant of Patent. The objective of Rule-55 is to decide the pre-grant opposition expeditiously, whereas the post-grant opposition stage contemplates more elaborate procedure as is evidenced from Rules 55A to 62.

9. There is no difficulty in accepting the argument of the Respondent No. 1 that the enquiry contemplated at the stage of pre-grant opposition is a summary enquiry. Nevertheless, the principles of natural justice will have to be adhered to even during that enquiry. Moreover, keeping in mind the plain language of Section 79 of the Act, its application is not limited to enquiry under Section 25(2) of the Act. On the other hand, Section 79 postulates that the requirement specified under that Section is applicable in respect of "any proceeding" under the Act before the controller. That expression would certainly take within its fold enquiry under Section 25(1) of the Act.

Moreover, it cannot be overlooked that Section-77 of the Act postulates that the Patent Controller is conferred with certain powers of the Civil Court. Thus understood, the Respondent No. 4 even while deciding representation by way of opposition under Section 25(1) of the Act was expected to first ascertain as to which evidence produced by the applicant can be looked into to answer the point in issue. Moreover, the evidence produced by the applicant must be such that it would positively show that the alleged invention enhances the known efficacy of the stated substance and belies the contra stand of the objector. Indeed, the Respondent No.4 has answered the issue keeping in mind Enclosures 5,6,9,13 & 14, but has not in the first place considered the plea of the Petitioners for discarding the said documents one way or the other.

In so far as Enclosure 5 & 6 are concerned, according to the Petitioners, the same were incomparable and have been created/prepared with mal intention to misguide the authority. In so far as Enclosure-9 is concerned, it refers to tablet stability study restricted to only Clopidogrel Bisulphate and was no evidence to compare with tablet containing Clopidogrel Besylate. In so far as enclsoure-13 is concerned, according to the Petitioners, it was also incomparable. For, it is relating to comparative stability data of Clopidogrel Besylate of alleged invention vis-a-vis toluene solvated and dioxane solvate. There is no comparison with known existing salts such as bisulphate salt. In so far as, Enclosure No. 14 is concerned, the Petitioners have challenged the statement relating to comparative study of pharmaceutical characteristics of Clopidogrel Besylate of the alleged invention vis-a-vis toluene solvate and dioxane solvate. For, the study is carried vis-a-vis solvated forms of Clopidogrel Besylate and not with the known Bisulphate salt. These objections to discard the consideration of the above Enclosures have been specifically taken in writing before the authority, but the authority has not dealt with those matters at all.

10. Moreover, according to the Petitioners, there was no legal and admissible evidence before the authority which would establish the claim of the Respondent No. 1 that the alleged invention results in the enhancement of the known therapeutic efficacy of the stated substance- as is the requirement of Section 3(d) of the Act. Even this aspect has not been dealt with by the Respondent No. 4 at all, though a jurisdictional fact.

There is force in this grievance of the Petitioner. Even on careful perusal of the impugned order, there is nothing to indicate that the above objections of the Petitioners have been considered by the Respondent No.

4. It would have been a different matter if the Respondent No. 4 were to reject the said arguments of the Petitioners with reference to the concerned Enclosures which have been pressed into service to answer the point in issue.

11. The Order impugned before us not only suffers from the above infirmity but we also find force in the submission of the Petitioners that the Respondent No.4 ought to have considered the dictum of the Madras High Court in the case of Novartis AG v/s. Union of India & ors.

Reported in (2007) 4 Madras Law Journal 1153. In the said case while examining the question regarding the validity of the Amendment Act which amended Section 3(d) of the Act, the Court

proceeded to examine the purport of the amended provision i.e., Section 3(d). It is held that from the language of Section 3(d) when considered along with the parliamentary debates, it was clear that Section 3(d) as it appears in the statute book is the result of parliamentary debates and not mere re-

production of the provision in the Ordinance. The Court then considered the validity of the provision on the touchstone of Article 14 of the Constitution. While doing so, it considered the purport of Section 3(d) along with explanation and in the first place held that the amended section not only covers the field of pharmacology but also other fields.

In other words, it is a comprehensive provision covering all fields of technology including the field of pharmacology. It then went on to observe that the explanation would come in aid only to understand what is meant by the expression "resulting in the enhancement of a known efficacy" in the amended section. The Court has unambiguously held that the explanation would operate only when discovery is made in the pharmacology field. After referring to the reported decisions, it then went on to observe that the explanation creates a deeming fiction that all derivatives of a known substance would be deemed to be the same substance unless they differ significantly in properties with regard to efficacy. It has noted that it is clear from the amended Section and the explanation that in the pharmacology field, if a discovery is made from a known substance, the duty is cast upon the patent applicant to show that the discovery has resulted in the enhancement of the known therapeutic efficacy of that substance. The Court further opined that the explanation places emphasis on the expression 'efficacy'. It held that it only means that the derivatives should contain such properties which are significantly different with regard to efficacy of the substance from which the derivative is made. It concluded that sum and substance of amended section read with explanation, it prescribes the test to decide whether the discovery is an invention or not, is that, the Patent applicant should show the discovery has resulted in enhancement of known therapeutic efficacy of that substance and if the discovery is nothing other than the derivative of a known substance, then, it must be shown that the properties in derivatives differ significantly with regard to efficacy. The Division Bench has observed thus:-

> "... As we understand the amended section, it only declares that the very discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance, will not be treated as an invention. The position therefore is, if the discovery of a new form of a known substance must be treated as an invention, then the Patent Applicant should show substance so discovered has a better therapeutic effect..." (emphasis supplied) The Respondents herein have not questioned the correctness of the above-stated legal position before us.

12. The grievance of the Petitioners is that the Respondent No.4 has negatived the opposition of the Petitioners on the finding that:-

(i) the stability study data for the Clopidogrel Bisulphate salt reveals that there is increase in the concentration of the negative metabolic and which in the long term reduces the efficacy of Bisulphate salt by reduction of therapeutic dose.

(ii) In the tablets of Bisulphate salt there is an increase in the acid impurities. Whereas, the Crystalline Clopidogrel Besylate of present invention was not detected with inactive metabolite for over six months. Therefore, it has increased shelf life over the Clopidogrel Bisulphate salt.

(iii) The Crystalline Clopidogrel Besylate of instant invention is more free flowing and stable even after 2 months period in comparison to the solvated (toluene and diozane) forms of Crystalline Clopidogrel besylate(cited by the opponent).

(iv) The solvated (toluene and dioxane) forms of Crystalline Clopidogrel Besylate are more cardiotoxic as compared to the Crystalline Clopidogrel Besylate of present invention. Hence, it is better and advantageous in matters of toxicity in comparison to solvated forms.

13. According to the Petitioners, none of these factors which have weighed with the Respondent No. 4 are germane to answer the core issue as to whether the substance so discovered has a "better therapeutic effect". The real question to be answered has not been dealt with by the Respondent No.4 in the impugned order at all. We are in agreement with this submission. Considering the exposition of the Madras High Court, the Respondent No. 4 ought to have examined whether the factors noted in the impugned order had the effect of enhancement of known efficacy of stated substance in the context of "better therapeutic effect" which is the legislative intent behind the amendment of Section 3(d) and not recognise the alleged invention merely because of its new form or some other advantages or is better in some respect. These matters though crucial have not been examined by the Respondent No. 4 at all.

14. The Counsel for the Respondent No.1 had placed reliance on the decision of the Apex Court in the case of J.Mitra & Co. Pvt.Ltd. Vs. Asst. Controller of Patent & Designs & Ors. Reported in (2008) 10 SCC 368. In that case, however, the problem considered was about the confusion arising on account of the postponement of in-part commencement of the Patents(Amendment) Act, 2005, in particular with regard to the remedy of appeal against an order rejecting the pre-grant opposition. Indeed, the Court considered the legislative change brought about by introducing pre-grant opposition vide section 25(1) of the Act, which was a radical shift. Nevertheless, the law as it operates after the amendment has come into force is that it provides only one remedy of statutory appeal against the post-grant order. The ratio of this decision does not take the matter any further.

15. The Petitioners relying on the decision of the Intellectual Property Appellate Board dated 26th June, 2009 in M.P. Nos. 1 to 5/2007 and TA/1to5/2007/PT/CH in the case of Novartis AG v/s. Union of India & ors. would contend that a patent is granted on the basis of its full disclosure of the invention in the specification furnished on the priority date of the application. The law debars an applicant a grant of patent for belated discovery of a new thing which is not disclosed which may or may not be pivotal in determining patentability. According to the Petitioners, the original specification furnished by the Respondent No.1(Applicant) did not disclose matters which have been considered by the Respondent No. 4.

16. To get over this argument, the Respondent No. 1 has submitted that such restriction will have no application to the facts of the present case. In that, the Respondent No. 1 had submitted application

in April 2004;

whereas Section 3(d) was amended and came into effect subsequently on 1/1/2005. Moreover, even before the Petitioner filed representation by way of opposition under Section 25(1) of the Act during the examination proceedings in respect of the application filed by the Respondent No. 1, the Respondent No. 1 had submitted extrinsic evidence before the Controller to establish that the compound claimed by them had unexpected and significantly higher properties in respect of efficacy as compared to the known compounds. In other words, that evidence was already part of the prosecution history of Respondent No. 1's application.

We do not propose to examine the correctness of the above submissions with reference to the ground under consideration for the nature of relief that we intend to grant in the present petition. The same is left open to be decided by the Authority at the appropriate stage.

17. In our opinion, the appropriate course is to set aside the impugned order and direct restoration of the representation by way of opposition filed by the Petitioners to the file of the Respondent No.4 to be reconsidered by the Respondent No. 4 on its own merits in accordance with law. All questions that have been raised in the present petition as argued before us by the rival parties are left open to be considered afresh on its own merits in accordance with law uninfluenced by the observations in the impugned order or for that matter the present Judgment. The parties shall appear before the Respondent No. 4 in his office on 23rd November, 2009 at 11.00 a.m. The Respondent No. 4 shall proceed to hear the parties on the basis of material already on record or pass such other orders as may be appropriate but may try to dispose of the representation by way of opposition filed by the Petitioner finally afresh on its own merits in accordance with law preferably within eight weeks from that date.

18. We may once again clarify that although the Petitioners have raised several objections before the authority as also referred to in the present petition, however, confined the argument only in the context of Section 25(1)(f) read with Section 3(d) of the Act to the effect that the alleged invention of the Respondent No. 1 was not an invention as it does not result in the enhancement of the known therapeutic efficacy of the stated substance. Accordingly, we have confined ourselves only to the grounds pressed into service by the Counsel across the bar with reference to the said grievance. Be that as it may, as we are relegating the parties before the authority, the Respondent No. 4 would examine the matter afresh confined to the grievance made before this Court and not on any other issues.

19. Accordingly, we allow this writ petition and make the rule absolute on the above terms with no order as to costs.

CHIEF JUSTICE A.M.KHANWILKAR, J