

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

M.P.No. ¹⁸² of 2014

In

W.P.No.1256 of 2011

Shamnad Basheer
"Nishad" Kulathupuzha,
Quilon District, Kerala 691 310

...Petitioner/Petitioner

-Versus -

1. Union of India
Rep. by its Secretary,
Department of Industrial Policy & Promotion
Ministry of Industry & Commerce,
Government of India,
Udyog Bhavan,
New Delhi 110 011.
2. Intellectual Property Appellate Board
Rep. by its Registrar
Annex - I, Guna Complex,
II Floor, 443 Anna Salai,
Teynampet, Chennai 600 018.
3. Intellectual Property Rights Bar Association
Rep. by its President Mr.K.Rajasekaran
III Floor, YMCA Building,
No.223 NSC Bose Road,
Chennai 600 001.

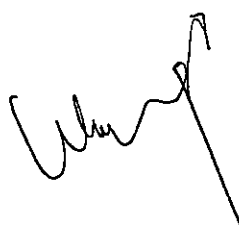
... Respondents/Respondents

COUNTER AFFIDAVIT OF THE 3RD RESPONDENT

I, K.Rajasekaran, Son of M.S.Kandasami , Hindu aged about 58 years and having office at III Floor, YMCA Building No.223 NSC Bose Road, Chennai -600 001, President of Intellectual Property Rights Bar Association, Chennai, do hereby solemnly affirm and sincerely state as follows:-

1] I am the President of I P R Bar Association and I am authorized to file this Counter Affidavit.

2]. I state that the present petition is filed by writ Petitioner seeking an interim stay of the search cum selection committee proceedings to select and appoint Vice Chairman to IPAB.



3] I state that the selection committee would be comprised of 4 members and the Chairman of Selection Committee would be secretary, Department of Industrial Policy and Promotion, members would be secretary Department of Legal Affairs and Director General CSIR, and along with them Chairman of IPAB, who is a Retired Judge of a Hon'ble High Court would also be a member. It is intimidating that for selecting a person to hold the post of Vice Chairman who will be independently sitting in a Bench along with a Technical Member to adjudicate issues judicially relating to Patents, Trade Mark and Copy Right, The Chairman of IPAB who is a Retired High Court Judge be only a member and do not have any say in the process as he is a lone member. Chairman of IPAB ought to be the Chairman of the selection committee and there has to be sitting High Court Judge in the committee. The scope of work of IPAB is very important as it touches the life of a common man. Therefore Judicial mind and Legal training is required to be the main criteria and qualification for the Selection Committee members to select a member or Vice Chairman . In the Instant case, the Judicial mind is marginalised and dominated by the Executives , this is against the sprit of Hon'ble Supreme Court of India, enumerated the procedure for Selection of members/Chairman of various Tribunals in Union of India Vs R.Gandhi (2010(3)CTC 517)

4] . I state that the former Chairman of IPAB in her Report dated 25.04.2013 had lamented as follows:

"The Search-Cum-Selection Committee for the selection to the post of Vice-Chairman and Technical Members is headed by the Secretary, DIPP, while the Chairman (who is a retired Judge of the High Court) of IPAB is only a Member. This anomaly is referred to at page No.10 of the 1st Report filed as per the orders of the Hon'ble court dated 06.06.2011. In spite of that, the Ministry has constituted the same Committee for selection of the Technical member. The judgment of the Hon'ble Supreme Court in Union of India v. R.Gandhi (2010(3) CTC 517) specifically hold that the Tribunals have no link with Parent Department".

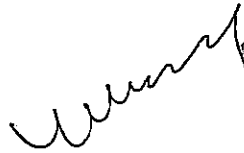
In view of what is stated above, the selection process of Technical Members and Vice Chairman is very crucial as their decisions will have

huge ramifications. There cannot be any let up in the process of Selection.

The executive cannot be allowed to dominate the Judiciary in the Selection process, especially while selecting a person to act as Vice Chairman of IPAB to act judicially, heading a Bench and who will also have occasion to become the Chairman in due course. Therefore our Bar Association is in agreement with contentions of the Petitioner, and the selection process scheduled for selecting the Vice Chairman of IPAB has to be stayed.

For the reasons stated above, this Hon'ble Court may be graciously pleased to take on record this Affidavit and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Solemnly affirmed at Chennai, on]
 this the day of August, 2014]
 and signed his name in my]
 presence.]



Before me

Advocate :: Chennai

HIGH COURT :: MADRAS
[Spl. Original Jurdn.]

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in
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Shamnad Basheer

--Petitioner/Petitioner

-Vs-

Union of India
Rep. by its Secretary
Dept. of Industrial Policy &
Promotion Ministry of
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Govt. of India
New Delhi 110 011
And 2 others.

--Respondents/Respondents

**COUNTER AFFIDAVIT OF THE
3RD RESPONDENT**

K.RAJASEKARAN

PARTY IN PERSON