

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

M.P. No. 2 of 2014

in

Writ Petition No. 1256 OF 2011

ShamnadBasheer

... Petitioner

Versus

UNION OF INDIA rep. by its Secretary

Department of Industrial Policy & Promotion

Ministry of Commerce & Industry.

Udyog Bhawan, New Delhi & Another

... Respondents

COUNTER AFFIDAVIT ON BEHALF OF FIRST RESPONDENT

I,G.R. Raghavender, Son of Shri G.R. Rama Rao aged 51 years, working as Director, Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Udyog Bhawan, New Delhi do hereby solemnly affirm and sincerely state as follows:

1. I am a Director working in the Department of Industrial Policy & Promotion, Ministry of Industries & Commerce, Udyog Bhawan, New Delhi. I am well acquainted with the facts of the case through records and on information. I am authorized to file this Counter affidavit on behalf of respondents.

2. I respectfully submit that averments made in paragraphs 1 and 2 of the affidavit under reply are matters of record. It is respectfully submitted that the first respondent had earlier filed a Counter Affidavit in the main W.P.No. 1256 OF 2011 and the same may be read as part

Page : 1

R. Raghavender

G. R. Raghavender

G. R. RAGHAVENDER
Director

Dept. of Industrial Policy & Promotion

excluded from the committee. The concurrence of DoP&T was communicated to this department after DoP&T had been duly informed of the observations of the Hon'ble Delhi High Court in the LPA No.86 of 2013 vide order dated 8th April, 2013. Thereafter O.M. dated 2nd May 2014 was issued re-constituting the Search-cum-Selection Committee with the following composition.

- (1) Secretary - Department of Industrial Policy and Promotion-
Chairman
- (2) Chairman, Intellectual Property Appellate Board- Member
- (3) Secretary - Department of Legal Affairs- Member
- (4) Director General, Council for Scientific and Industrial Research -
Member

5. The composition of the Search-Cum Selection Committee is based on the guidelines of the Government as contained in the Department of Personnel and Training O.M.No. AB.14017/11/2004-Estt(RR) dated 30th July, 2007. I respectfully submit that the Ministries/Departments have the discretion to choose the Chairman of the Committee as per these guidelines. The said guidelines also state that the Chief Executive of the organization for which the selection is being made should also be included. The DoP&T had been duly informed of the observations of the Hon'ble Delhi Court in the LPA No.86 of 2013 vide order dated 8th April, 2013. It is submitted that the observations of the Hon'ble Delhi High

Page : 3

Corrections : NIL

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G. R. Raghavender
G. R. RAGHAVENDER
Director
Dept. of Industrial Policy & Promotion
Udyog Bhawan, New Delhi-110011

Court in the LPA No.86 of 2013 vide order dated 8th April, 2013 was duly considered by the government and a decision was taken keeping in mind the observations of the Hon'ble Delhi High Court.

6. Regarding averments made in Para 9 I submit that the Search-cum Selection Committee was constituted following and based on the guidelines of the Government as contained in the above said O.M.No. AB.14017/11/2004-Estt(RR) dated 30th July, 2007 issued by the Department of Personnel and Training. The first respondent never ignored the order of Hon'ble High Court of Delhi dated 8th April, 2014 in LPA No.86/2013.

7. While I submit that averments made in Para.10 are matters of record, the averments made in Para 11 are not admitted as correct. The

Selection procedure of vice chairman is as follows:

Qualifications prescribed in the Act: (ii) **Vice Chairman:** As per Section 85 (2) of the Trade Marks Act, 1999 a person shall not be qualified for appointment as a Vice Chairman, unless he-

(a) Has, for at least two years, held the office of Judicial Members or a Technical Member; or

(b) Has been a member of the Indian Legal Service and has held a post in Grade 1 of that service or any higher post for at least five years.

Page : 4

Corrections : NIL

[Signature]
Under Secretary to the Govt. of India
Ministry of Commerce & Industry
Dept. of Industrial Policy & Promotion
Bhyan Chawar, New Delhi

[Signature]
G. R. RICHAVENDER
Director
Dept. of Industrial Policy & Promotion
New Delhi

As per Department of Personnel and Training guidelines, the vacancy should normally be given wide publicity through open advertisements/circulation among various Ministry /Departments /State Governments/Autonomous bodies/Research Institute etc as per instructions of the Department of personnel and Training. However, considering the eligibility criteria for the post in prescribed terms of Section 85 (2) of the Trade Marks Act, 1999, only Judicial Members or Technical Members of IPAB and Grade 1 officers of Indian Legal Service are eligible for the post, the Chairman, IPAB and the Secretary, Department of legal Affairs are requested to forward the names of eligible members/officers for considering for the post of Vice-Chairman.

8. Regarding averments made in Para 12 to 14 it is submitted that the relevance and application of the decision and principle laid in Union of India Vs R Gandhi to the instant case is denied. The Chairman, IPAB in the first meeting of the Search-Cum-Selection Committee observed that in case of appointment of Vice-Chairman, IPAB the principles laid down by the Constitution Bench under the Union of India Vs R.Gandhi JT 2010 (5) 553 Vol.1 should be followed, since the Hon'ble Supreme Court observed that the officers of Indian Legal Service should not be considered for Judicial Member post in Tribunals and observed that the post of Vice Chairman, IPAB is judicial in nature. Hence the matter was referred to the Department of Legal Affairs seeking their considered opinion/advice. The Department of Legal Affairs opined that the observation of the Hon'ble

Page : 5

Corrections : NIL

B. S. Srinivas

B. S. SRINIVAS
Member Secretary to the Govt. of India

G. R. Raghavender
G. R. RAGHAVENDER
Director

Dept. of Industrial Policy & Promotion

Supreme Court in the case of Union of India Vs R Gandhi was in connection with corrections required to set right defects in Chapters IB and 1C of the Companies Act, and they opined that the above judgment of the Supreme Court cannot be applied to the appointment to the post of Vice Chairman, IPAB as per prevalent statutory provisions of Section 85 of Trade Marks Act, 1999, which has neither been amended nor declared ultra vires.

9. Regarding the contentions raised in Para 15 I submit that the Supreme Court in the Union of India Vs R.Gandhi (NCLT) case observed that the functions of National Company Law Tribunal and the Appellate Tribunal were mainly legal in nature and not technical. Therefore the decision of the constitution bench applies institutions such as NCLT. However, matters to IPAB are "largely technical in nature" and as such the decision is not applicable to IPAB. Further, as per Section 85 (2) of the Trade Marks Act, 1999 a person shall not be qualified for appointment as a Vice Chairman, unless he-

- (a) Has, for at least two years, held the office of Judicial Members or a Technical Member; or
- (b) Has been a member of the Indian Legal Service and has held a post in Grade 1 of that service or any higher post for at least five years.

S. K. Raghavender
S. K. RAGHAVENDER
Director
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Udyog Bhawan, New Delhi-110001

Page : 6
Corrections : NIL

Ramesh
RAMESH
Under Secretary to the Govt. of India
Ministry of Commerce & Industry
Dept. of Industrial Policy & Promotion
New Delhi-110001

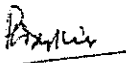
10. Contentions in Paragraphs 15 to 19 are not admitted and they are denied as incorrect, untenable and unsustainable in law. As per Section 85 (2) of the Trade Marks Act, 1999 the officers are eligible to be considered for the post of Vice Chairman. I submit that in so far as the contentions raised in Para 18 are concerned the Search-cum Selection Committee was constituted following and based on the guidelines of the Government as contained in the O.M. No. AB.14017/11/2004-Estt(RR) dated 30th July, 2007 of the Department of Personnel and Training with the approval of Department of Personnel and Training. Based on the recommendations of the Search-cum-Selection Committee as per qualification stipulated in Section 85(2) of Trade Marks Act, 1999 and subject to approval of Appointment Committee of Cabinet, appointments are made to the posts of Vice Chairman and Technical Members.

11. It is respectfully submitted that the contentions in Paras 20 to 22 are not admitted as they are incorrect and misleading. IPAB is chaired by a retired judge of the High Court who is in turn assisted by one Vice Chairman and Three Technical Members.

12. Regarding averments made in Para 24 it is respectfully submitted that the post of Vice-Chairman is presently vacant and needs to be filled up urgently for the smooth functioning of the Intellectual Property Appellate Board. There is no illegality or impropriety in forming the Search Cum Selection Committee as per the guidelines contained in the circular issued by the Department of Personnel and Training,

Page : 7

Corrections : NIL




G. R. RAGHAVENDER
Director

Dept. of Industrial Policy & Promotion
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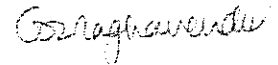
Government of India in O.M. No. AB.14017/11/2004-Estt(RR) dated 30th July, 2007. It is submitted that mere non-issuing of any advertisement calling for applications will not ipso facto render the decision of the Search Cum Selection Committee illegal or void unless the statutory provisions themselves are declared unconstitutional.

For the reasons stated above, it is humbly prayed that this Hon'ble Court may please to dismiss the application filed by the Petitioner seeking interim injunction to continue the selection process to fill up the post of Vice-Chairman, IPAB and thus render justice.

Solemnly affirmed at New Delhi on
this the 22nd day of August, 2014 and
the Deponent signed his name in my
Presence.

Page : 8 & last page

Corrections : NIL



Before Me
C. R. RAGHAVENDER
Director

Dept. of Industrial Policy & Promotion
Lodges Extension, New Delhi-110011



Under Secretary to the Govt. of India
Ministry of Commerce & Industry
Dept. of Industrial Policy & Promotion
Udyog Bhawan, New Delhi

HIGH COURT ::: MADRAS

(Special Original Jurisdiction)

M.P.No. 2 of 2014

in

W.P. No. 1256 of 2011

COUNTER AFFIDAVIT OF
RESPONDENT No.1

*True Copy
Counsel for Respondent
Counsel for Respondent*

A.S.VIJAYARAGAVAN

SCGSC

Enrolment No. 239/1983

COUNSEL FOR RESPONDENT