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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 5590/2015

SHAMNAD BASHEER

..... Petitioner

Through: Mr. Abhimanyu Bhandari
with Mr. N. Sai Vinod and
Ms. Roohina Dua, Adv.

versus

UNION OF INDIA & ORS

..... Respondent

Through: Mr. Amit Mahajan, CGSC
for UOI.
Mr. Sanjoy Ghose, ASC
with Ms. Urvi Mohan, Adv.
for GNCTD.
Ms. Pritha Srikumar with
Ms. Neha Mathen, Adv. for
intervener.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

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10.01.2018

1. This writ petition highlights glaring non-compliance with the provisions of the Patents Act, 1970 on the part the Controller General of Patents. *Inter alia*, our attention is drawn to the scheme of the enactment and the object of issuance of patents as is manifested from Section 83 (b), (d) and (g) of the Patents Act, 1970 which deserves to be considered *in extenso* and read thus:

“83. General principles applicable to working of patented inventions.-

(a) xxx xxx xxx

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(b) that they are not granted merely to enable patentees to enjoy a monopoly for the importation of the patented article;

(c) xxx xxx xxx

(d) that patents granted do not impede protection of public health and nutrition and should act as instrument to promote public interest specially in sectors of vital importance for socio-economic and technological development of India;

(e) xxx xxx xxx

(f) xxx xxx xxx

(g) that patents are granted to make the benefit of the patented invention available at reasonably affordable prices to the public.’’

2. Mr. Abhimanyu Bhandari, Id. counsel for the petitioner submits that the grant of patents results in the patentees getting exclusive rights over the inventions and therefore, it is imperative that the Controller General of Patents maintains a scrutiny as to whether the patent is being worked or not. To ensure that the patentees have not merely acquired rights over the invention and are actually working the same, the statutory scheme requires a patentee to submit periodic information. In this regard, Section 146 of the Patents Act, 1970 empowers the Controller General of Patents, Designs, Trademarks and Geographical Indications to call for information in a format prescribed in accordance with Rule 131 of the Patents Rules, 2003. The manner in which the information has to be submitted has been set out in Form-27 annexed to the Patents



Rules, 2003. Failure to comply with the statutory requirements invites penalties and criminal action prescribed under Section 122 of the statute which includes imposition of fine as well as initiation of criminal proceedings.

3. Our attention is drawn to several admissions to the effect that the respondents are not ensuring compliance with the requirements of Section 146 of the Patents Act, 1970 and, despite failure of the patentees to conform to the requirements of Rule 131 of the Patents Rules, 2003 and Form-27, no action at all has been taken under Section 122 of the Patents Act, 1970.

4. In this regard, our attention is drawn to the Annual Report 2012-13 submitted by the Office of the Controller General of Patents, Designs, Trademarks and Geographical Indications. We extract relevant portions of this Report wherein the following disclosure is contained:

“(i) Working of Patents (Under Section 146): The Patent Office received 27946 Form-27 during the reporting year, of which 6201 were shown to be working.

	2009-10	2010-11	2011-12	2012-13
<i>Patents in force</i>	37334	39594	39989	43920
<i>Form-27 received</i>	24009	34112	27825	27946
<i>Reported as working</i>	4189	6777	7431	6201”

5. A bare glance of the above would show that despite the



Controller General of Patents, Designs, Trademarks and Geographical Indications having issued 43920 patents during the year 2012-13, returns as prescribed under Form-27 has been received only in 27946 cases; and, shockingly, the disclosure is only of 6201 patents as being worked by the patentees.

6. The petitioner appears to have addressed a query under the Right to Information Act, 2005 seeking information as to the action taken against the patentees/licensees in case of non-submission of Form-27. The respondents have responded to the query on 09.01.2014 stating that no action has been initiated for non-submission of Form-27.

7. The second glaring instance of non-compliance with the statutory scheme of the Patents Act, 1970 is highlighted by the petitioner in respect of grant of a compulsory licence to M/s NATCO Pharma in relation to patent no.215758 by order dated 9th March, 2012 in C.L.A. No.1 of 2011 under Section 84 of the Patents Act.

It is pointed out that the order dated 9th March, 2012 imposed an obligation on NATCO Pharma in Para 15(b) thereof, to report accounts of sales to the Controller on a quarterly basis, on or before the 15th of each succeeding month.

8. By the RTI query dated 19th January, 2015, the petitioner sought *inter alia* information as to whether M/s NATCO Pharma had complied with the above condition imposed in para 15(b) of the order dated 9th March, 2012. The petitioner also queried the Controller General of Patents, Designs, Trademarks and



Geographical Indications regarding the action in case M/s NATCO Pharma had failed to comply with the said requirements.

9. In its response dated 6th February, 2015, the Patent Office informed the petitioner that as per its records “*no details are available*”.

10. Our attention is also drawn to yet another statutory non-compliance. Ld. counsel for the petitioner also points out that Section 146(2) read with Rule 131 of the Patents Act, 1970 makes it mandatory even upon licensees to submit Form-27 containing information on commercial working of the patented invention. Section 146 of the Patents Act, 1970 draws no distinction between the original patentees and license holders. Thus, it has been pointed out by the petitioner that license holders are also required to file the same information in Form-27 as a patentee.

11. Vide the response dated 12th March, 2014, the Controller of Patents & Designs, CPIO has informed the petitioner to the effect that “*Form-27 are filed by Patentee only*”. There is certainly substance in the objection of the petitioner that this position is contrary to the statutory requirement.

12. Ld. counsel for the petitioner has also submitted that the respondents are not taking any action for notional or incomplete compliance with the provisions of Section 146 of the Act. In this regard, an instance has been pointed out wherein Form-27 was submitted by M/s Telefonaktiebolaget LM Ericsson (Pub.) in respect of patent no.203034 of 24th August, 1999. Against the column wherein the patentee was required to disclose information



regarding “*the licenses and sub-licenses granted during the year*”, this patentee stated as follows:

“As all the licenses are confidential in nature, the details pertaining to the same shall be provided under specific directions from the Patent Office.”

13. It is pointed out that so far as the grant of patents are concerned, information in regard thereto is available on the website of the Patents Office. All that the patentees submitting Form-27 are required to submit, is the details of the licenses and sub-licenses. This information certainly cannot be termed “confidential” and therefore, the Patents Office has to treat such suppression as failure to comply with the requirements of Section 146 of the Patents Act, 1970 and to take action against the patentees who do not furnish the required information.

14. Ms. Pritha Srikumar, Advocate for the intervener has submitted that the petitioner has also pointed out that Form-27 itself was extremely vague and the same deserves a relook by the respondents. Mr. Srikumar would, therefore, contend that non-compliance of such form cannot be faulted with.

15. In our view, this submission is erroneous inasmuch as there can be no exemption from statutory compliance and that in case any query in Form-27 could not be complied with, the person submitting the return would be required to state so. So far as the submission that Form-27 deserves a relook is concerned, we find that in the counter affidavit, the official respondents have stated



that they had issued a Notification dated 26th October, 2015 for a proposed draft amendment of the Rules by “*The Patents (Amendment) Rules, 2015*”. The respondents have also submitted that the same included amendments to Form-27 and the same has been posted on the official website of the Department of Industrial Policy and Promotion (DIPP). The counter affidavit says that public comments have been invited.

16. This counter affidavit was filed on 7th December, 2015. We are not informed as to what is the fate of the public notice issued by the respondents or amendments to the said Rules. Mr. Amit Mahajan, Id. CGSC is unable to inform this Court as to whether the necessary amendments have been effected to Form-27.

17. This writ petition has remained pending in this Court since 2015. We also do not have any information as to whether there is any change in the status with regard to the filing of returns under Section 146 of the Patents Act, 1970 and whether any action taken by the Controller General of Patents and Designs under Section 122 of the Act.

18. Mr. Amit Mahajan, Id. CGSC prays for an adjournment to inform this Court with regard to the status of the amendment of the rules and the action taken under Section 122 of the Patents Act, 1970.

On his request, list on 18th January, 2018.



A copy of this order be given *dasti* under the signatures of the Court Master.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

JANUARY 10, 2018/pmc