

IN THE HIGH COURT OF SINDH AT KARACHI
M.A. No. 05 of 2012

Appellant : M/s. Brothers Industries,
through Ms. Sara Shaikh, advocate.

Respondents : The Controller of Patents and another,
Through Mr. Abad ul Hasnain, advocate.

Date of hearing : 13.02.2020.

Date of order : 13.02.2020.

J U D G M E N T

Salahuddin Panhwar-J, Appellant has challenged the order dated 26.09.2011 and order-in-original, the detailed order dated 2nd November 2011, (the impugned order) passed by learned Controller of Patent, Karachi wherein the Controller refused the opposition filed by the appellant against the respondent No.2 on the ground that the opposition was time barred since it was filed after the expiry of prescribed period of four months commencing from the date of publication of official gazette.

2. Precisely relevant facts are that that Respondent No.2 filed application for the grant of patent before the Respondent No.1, which application after passing through the due process of examination was accepted and as the Patents Ordinance, 2000 (the Ordinance) requires, in terms of section 23 and under Rule 17 of the Patents Rules 2003, the application was advertised for the purposes of filing of opposition by any person against the grant of the said patent.

3. It is pertinent to mention that notifications related to patents are advertised in Part-V of the Federal Government Gazette, which are published on weekly basis, in terms of which information with regards filing, acceptance and sealing of patents, etc. are advertised. Worth noting are the provisions of section 2(e) of the Ordinance which defines "date of advertisement" to mean the date on which the relevant Part-V of the Official Gazette is actually made available to the public.

4. In the instant case, application was advertised in the official Gazette on 16.03.2011, therefore in the normal course, the statutory period of filing opposition expired after four months' period. The case of the Appellant is that the date from which the period of four months

would commence is the date on which the Gazette was made available at the Patent Office rather than the date on which Gazette was published (or made available to public at large), he therefore, contended that the opposition filed on 30.08.2011 (after the statutory limit of four months) was still within time since the said Gazette was only received at the Patent Office in the month of July 2011, wherefrom he took notice of the said application and filed opposition. It is further argued that gazette of Pakistan Part-V was delayed at Printing Corporation of Pakistan, therefore, dismissal of the Notice of opposition filed under section 23 of the Patent Ordinance 2000, by the Respondent No.1 being barred by 45 days is against the settled principle of law.

5. The question, involved in the petition, can well be formed into the proposition as:

“Whether effective date for remedy, provided by section 23 of the Patents Ordinance, would be that when it (Gazette) was made available at the Patent Office or the one when it (Gazette) was published (with specific date of its publication)?

6. Since, the above *proposition* has already been attended by this Court in the case of **PAKISTAN PHARMACEUTICAL MANUFACTURERS ASSOCIATE (PPMA) through Authorized Signatory vs. The CONTROLLER OF PATENTS and another** [2017 CLD 427 (Sindh), therefore, I would prefer referring relevant portion of the *judgment*. The relevant portion thereof reads as:-

“The point of determination thus can now be summarized as to whether the notifications advertised in the official Gazette (Part-V) dated 29.09.2010 would take effect from the date of the said Gazette or from 07.03.2011 (or any other date) when the Appellant acquired knowledge of the Gazette after having visited the Patent Office?

In this regard the rule of thumb and consistency mandates that a Gazetted notification bearing a particular date be presumed to be published on the date indicated thereon unless proved otherwise. If by leading evidence it can be shown by any interested party that the Gazette was actually published (or made available to public) on a date subsequent to the date indicated on the Gazette, then **that subsequent date would be taken as the date of actual publication** (i.e. the act of making it public) which will be rendered as the relevant date from which the Gazette would come into force. This view finds support from the case reported as A.M. Sheikh v. National Refinery Limited (1990 CLC 479)

where the Court while contemplating on the issue regarding the specified date from which a notification was to operate held that if a notification was to operate commencing from a specified date, the period could not be computed from any date other than which had been specified in the notification itself, however, if the notification had been silent as to the date of the commencement of the period, the same would be reckoned from the date when the notification was made available to the public and not from the date of publication of notification in the Gazette. Similar dictum is also laid down by the Indian Supreme Court in the case of Union of India v. Ganesh Das Bhoraj (2000 (116) ELT 431) wherein, the court specifically ruled that a notification would come into operation as soon as it is published in the gazette i.e. the date of publication of the gazette and no further publication is contemplated. Similar are the findings given in the case of Metro Exporters (P) Ltd. v. Collector of Customs (1997 (94) ELT 427 Tri Del) where it was held that the normal presumption is that the date printed on the Gazette Notification is the date of its publication unless proved otherwise, and therefore it is from this date that it becomes effective and comes in force irrespective of whether (or if and when) a particular person came to know about it or could obtain it.

7. In above judgment, it stands quite clear that *normally* effective date would be that when a notification is published in the *gazette* and not the one when it is received in relevant office. Therefore, the plea of the counsel to the effect that effective date for filing opposition would be that of making it available at the Patent Officer is entirely misconceived. One can't take advantage of his own *ignorance* from a particular *gazette* because every *gazette* is meant to make effective from the date of its publication which (*date of publication*), otherwise, is meant for purpose of taking benefit thereof or to face consequence of any inaction, if required to be taken with reference to such *gazette*.

In result of above, I do not find any illegality in the *impugned* order. Accordingly, by short dated 13.02.2020 instant application was dismissed being not tenable, these are the reasons for that order.

J U D G E