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**Anup Engineering Ltd. Vs. the Controller of Patents Office, New Delhi and ors.**

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**SooperKanoon Citation : [sooperkanoon.com/736051](http://sooperkanoon.com/736051)**

**Court : Gujarat**

**Decided On : Feb-19-1982**

**Reported in : AIR1982Guj250; (1982)2GLR14**

**Judge : A.N. Surti and; D.H. Shukla, JJ.**

**Acts : [Patents Act, 1970](#) - Sections 25; [Constitution of India](#) - Article 226**

**Appeal No. : First Appeal No. 600 of 1980**

**Appellant : Anup Engineering Ltd.**

**Respondent : The Controller of Patents Office, New Delhi and ors.**

**Advocate for Def. : A.P. Ravani,; S.N. Shelat and; A.A. Dave, Adv.**

**Advocate for Pet/Ap. : P.M. Raval, Adv.**

**Judgement :**

**Surti, J.**

1. A short and a neat point adversely affecting a citizen's legal right for being heard only in opposition proceedings under the [Patents Act, 1970](#) arises in these two matters for our consideration,

2. Both the aforesaid matters are disposed of by this common judgment as desired by the learned advocates of the parties.

3. In order to appreciate the grievance of the petitioner - Anup Engineering Ltd. - before us, a few relevant facts may be stated.

4. The petitioner-Company in manufacturing machines of several types, and is having its registered office at Anil Starch's Premises, Anil Road, Post Box No. 1164, Ahmedabad. It may be also stated at this stage that respondent No. 3 - 'Bharat Heavy Electricals Ltd.' - is having its office at 18.20 Kasturba Gandhi Marg, New Delhi.

5. The case which was put up before us discloses that respondent No. 3 made an application to the Controller of Patents having its office at Municipal Market Building, III Floor, Karol Bagh, New Delhi, on Oct. 3, 1977, for getting a patent in regard to a machinery known as 'metal bellows'. It may be stated that respondent No. 3 had made such an application to respondent No. 1 - the Statutory Officer u/s. 66 of the [Patents Act, 1970](#).

6. After the filing of such an application by respondent No. 3 before respondent No. 1, an advertisement appeared in the Gazette of India of Oct. 20, 1979 (Asvina 28, 1901) Part III S. 2 and the advertisement which appeared in the said Gazette is in the following terms:-

'MANUFACTURE OF METALLIC

BELLOWS,

Applicant ; Bharat Heavy Electricals Ltd., 1820, Kasturba Gandhi Marg,

New Delhi-110001.

Investors : Mahendra Kumar Mehta, Rain Kumar Dassmal Budhani and George Mathew of Patents Office, New Delhi Guj. 251 Appln. No. 1141/Cal/76 filed July 5, 1976. Complete Specification left Oct. 3, 1977. Appropriate office for opposition proceedings (Rule 4, Patents Rules, 1972) Patent Office, Delhi Branch,

## 5 Claims.

An apparatus for producing metal bellows out of metallic tubes comprising a die preferably made in two halves, said die having grooves formed at its inside, said die being disposed within a cylinder means for introducing liquid such as oil under pressure into a metal tube placed within the die to form partial convolutions in the wall of the metal tube, on the expansion of the metal tube under the ore pressure said -tube being then subjected to roll forming machine comprising three rollers, one top roller and two bottom rollers, each having stages for stepwise formation of grooves to give the final shape to the bellow.

Prov. Specn, 6 pages.

Com. Specn. 9 pages, Drg, 3 Sheets.'

7. The said advertisement clearly provides inter alia, that even the appropriate office for opposition proceedings, (See the bracketed portion of the said advertisement a Rule 4 of the Patents Rule, 1972) is, as referred in the advertisement, It may be significantly noticed that the appropriate office address for the opposition proceedings is only mentioned as 'Patent Office, Delhi Branch'. In pursuance to the said advertisement, it is an admitted fact, as can be seen from the affidavit-in-reply filed by the Deputy Controller of Patents and Designs, Bombay, that the petitioner-Company wanted to appear and lodge its grievances by way of opposition proceedings before grant of any patent to respondent No. 3. After having read the advertisement, the petitioner who is having its registered office in Ahmedabad posted an application on Feb. 17, 1980. The petitioner-Company posted the application in Ahmedabad by registered post. On these facts, there was no dispute before us as can be significantly noticed even from the affidavit-in-reply filed by the Deputy Controller of Patents and Designs on behalf of respondent No. 1.

8. It appears, that the said application was not received by respondent No. X by Feb. 20, 1980, but the envelope containing the application of the petitioner was possibly returned by the post office to the petitioner-Company.

9. It may be also stated that on Mar. 3, 1980 the application of the petitioner Company was reposted with the aforesaid envelope bearing the date Feb. 17, 1980 at the Delhi address of respondent No. 1.

10. On March 5, 1980, the Statutory Officer viz. respondent No. 1 received the envelope posted from Ahmedabad on Mar. 3, 1980, and which also contained the application of the petitioner dt. Feb. 15, 1980.

11. On Mar. 7, 1980, respondent No. 1, the Controller of Patents intirriated to the petitioner-Company that the application of the petitioner-Company cannot be entertained.

12. It was under these circumstances that the petitioner-Company had a genuine grievance against respondent No. 1 who was holding a statutory office under the [Patents Act, 1970](#). In substance, his grievance was, that before the grant of any patent to any industry or any person or any Company or any merchant or any industry, a citizen must be heard, particularly when the aforesaid statutory right of the petitioner to lodge its objections and opposition before the statutory office was very much subsisting within a period of 4 months as provided in S. 25 of the [Patents Act, 1970](#), and to ventilate its grievance, the petitioner-Company took out two proceedings, viz. (1) The petitioner-Company filed the aforesaid first appeal in this Court; and (2) The petitioner also filed Special Civil Application 2767 of t980. Both these matters were admitted by this Court, and in Special Civil Application No. 2767 of 1980 Mr. A. P. Ravani, the learned advocate appeared for the Controller of Patents and Designs, New Delhi, and for the Controller of Patents, Calcutta. On behalf of respondent No. 3 viz. Bharat Heavy Electricals Ltd. Mr. S. N. Shelat appeared with Mr. D. A. Dave.

13. At the time of the hearing of these two matters, it clearly emerges even from the affidavit-in-reply filed by the Deputy Controller of Patents and Designs, that the petitioner-Company sent an application along with Form No. 14 duly filled in to respondent No. 1 at New Delhi At this stage, we want to clarify that in the said application dt. Feb. 15, 1980, it is stated that respondent No. 3's application for a patent was accepted and that the petitioner-Company desired to file an opposition application to the grant of a patent on the basis of an application filed by

respondent No. 3. It is also stated in the said application that the petitioner-Company had already applied for the copy of the specification of the said application, and that they were studying the specifications, and that, therefore, they required time to file the opposition. Under the aforesaid circumstances, the petitioner filed in Form No. 14 a request for extension of time, and that the petitioner-Company also paid the requisite fee of Rs. 25/on Form No. 14 by way of postal order. The petitioner-Company also sent the power-of-attorney authorising one Mr. J. T. Trivedi to make an application' along with the said application dt. Feb, 15, 1980.

14. As stated above, and under the circumstances mentioned, respondent No. I intimated the petitioner-Company that the petitioner-Company's aforesaid application even for extension of time could not be considered.

15. As stated above, out of safety and caution, the petitioner-Company has filed the aforesaid special civil application in this Court as well as the first appeal, as the petitioner-Company had the grievance against the impugned order of respondent No. I inasmuch as he was not inclined to entertain the aforesaid application of the petitioner-Company.

16. In the case before us, we are convinced beyond any doubt that on a plain reading of S. 25 of the [Patents Act, 1970](#), a citizen is having a statutory legal right of lodging his objections and/or opposition within a period of four months from the date of the advertisement appearing in the gazette. At this stage, we may usefully refer to S. 25(1) of the Act. which is in the following terms:-

'25 (1). At any time within 4 months from the date of advertisement of the acceptance of a complete specification under this Act (of within such further period not exceeding one month in the aggregate as the Controller may allow on application made to him in the prescribed manner before the expiry of the four months aforesaid) any person interested may give notice to the Controller of opposition to the grant of the patent on any of the following grounds, namely:- (a) to (i) .....

17. in substance, Mr. Raval's submission before us was, that this is a clear case where the [Patents Act, 1970](#) confers on any person interested, a right of being heard so that he can give notice to the Controller - the notice of opposition to the grant of a patent on any of the grounds set out in S. 25 of the Act. He urged, that by the impugned order or action of respondent No. 1, the petitioner-Company has lost an extremely valuable right, and that this court should necessarily protect the same. as the petitioner-company had posted an application wherein he had clearly expressed his intention to file opposition or notice of opposition within the time statutorily prescribed u/s. 25 of the Act, and that being so, in the instant case, there is no question of condoning the delay in sending the said application as urged by the respondents.

18. Mr. Raval also urged, that this is a case, where the petitioner-Company is having its registered office in Ahmedabad, the communication in question has taken place between respondent No. 1 and the petitioner-Company in Ahmedabad, respondent No. 1 intimated to the petitioner-Company that its application could not be entertained in Ahmedabad, and hence, this Court should protect the right of the petitioner-Company at least when his grievance is, that he should be heard on all the counts or any of the counts envisaged by the Act in a proper proceeding, particularly when he expressed in clear and categorical terms to respondent No. 1 that he desired to oppose the grant of any patent to respondent No. 3 in regard to the aforesaid machinery.

19. Mr. Shelat, the learned advocate could not satisfy us as to how the aforesaid application of the petitioner-Company was not in time. In any event. the petitioner-Company sent the aforesaid application at the very address mentioned in the advertisement. It is possible, as mentioned in the affidavit-in-reply on behalf of respondent No. 1, that the, correct address was not written down on the envelope which was posted by the petitioner-Company for the purpose of being delivered to the office of respondent No. 1. Suffice it to say, that the petitioner-Company did act with all possible vigilance, and in the address mentioned in the advertisement. Under the circumstances, we are not at all impressed by the argument advanced on behalf of the respondent, that the petitioner-Company should have mentioned the correct address or should have stated further particulars in regard to the

address of the office of respondent No, 1. We may state that we have also seen R. 4 of the Patents Rules, 1972 referred to in the said advertisement, but even the said rule does -not assist nor advance the case of the respondents in any manner whatsoever.

20. But Mr. Shelat, the learned advocate for respondent No. 3, urged before us, that this High Court has no jurisdiction even to entertain the petition of the petitioner-Company. He urged, that if the petitioner-Company had -any grievance. it should have filed a petition not in this Court ' but in the High Court at Delhi. He also urged that this is a case, where the first appeal is not maintainable, having regard to S. 116 of the Act which provides that no appeal shall lie from any decision, order or direction made or issued under this Act by the Central Government or from any act or order of the Controller for the purpose of giving effect to any such decision, order or direction.

21. Section 116(2) of the said Act further provides as follows:-

'(2) Save as otherwise expressly provided in sub-see. (1), an ' appeal shall lie to a High Court from any decision, order or direction of the Controller under any of the following provisions, that is to, say, S. 15, S. 16, S. 17, S. 18, S. 19, S. 20, S. 25, S. 27, S. 28, S. 51. S. 54. S. 57, & 60, S. 61, S. 63, sub-section (3) of S. 69, S. 78. S. 84, S. 86, S. 88(3), S. 89, S. 96 and S. 97.'

22. As the impugned order is in essence and substance an order under Section 25 of the Act, the petitioner-Company has filed first appeal, and at the same time, as a measure of safety it has filed special civil application.

23. Without entering into controversy whether a first appeal or a special civil application is maintainable in this Court, this is a fit case even having regard to our powers under Art. 226 of the Constitution. that the necessary relief must be given to the petitioner-Company whose only grievance is that the petitioner-Company must be heard before the grant of any patent to respondent No. 3.

24. We may also mention at this stage, that we are not at all impressed by any of the two submissions made by Mr. shelat, This Is a case, where this Court must

protect the statutory legal rights when it exercises its powers under Article 226 of the Constn. Section 25 of the [Patents Act, 1970](#) confers a right to lodge objections or opposition to grant of any patent as stated above. In the facts and circumstances of the case, we are convinced beyond any doubt that the petitioner-Company did act with all vigilance and carefulness within the period statutorily prescribed u/s. 25 of the Act.

25. Under the aforesaid circumstances, we did not hear Mr. Shelat on the question of condoning delay at all, and hence, the circumstances of the case did not require us to hear either Mr. Shelat or Mr. Ravani on the point of condoning delay.

26. No other submission was advanced either by Mr. Shelat or Mr. Ravani in course of the hearing of the present two matters.

27. The result of the aforesaid discussion is, that the impugned order passed by respondent No. 1 is set aside, and we here by direct respondent No. 1 to decide the application along with Form No. T4 duly filled in by the petitioner-Company in accordance with law.

28. In view of our aforesaid discussion, we hereby direct the petitioner Company to lodge its opposition, if so desired within a period of one month from to-day. Having received the said application from the petitioner-Company, respondent No. 1 is directed to decide the opposition of the petitioner-Company in accordance with law on its own merits,

29. Accordingly, the impugned order of respondent No. 1 is set aside. Rule is made absolute, but having regard to the strenuous opposition even of respondent No. 1 on a vital right of the citizen, we direct the respondents Nos. 1 and 3 to pay to the petitioner costs of this petition. In view of this order in special civil application, there will be no orders in the first appeal as well as civil application.

30. Order accordingly,