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

+ W.P.(C) 5571/2019 & CM No.24540/2019 & 26833/2019

MYLAN LABORATORIES LIMITED

..... Petitioner

Through: Ms. Rajeshwari H. and Ms. Swapnil  
Gaur, Advocates.  
Mr. Rajiv Nayyar, Senior Advocate as  
amicus curiae.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms. Maninder Archarya, ASG with  
Mr. Gaurang Kanth, CGSC with Mr.  
Pooja Swaroop, Dy. Secretary,  
DPIIT, Mr. Hoshiyar Singh, ITS,  
Registrar Copyright and Dr. S.S.  
Singh, Dy. Controller of Patents and  
Designs.  
Mr. Varun Sharma and Mr. Gautam  
Kumar, Advocates for R3.

**CORAM:**

**HON'BLE MR. JUSTICE J.R. MIDHA**

**ORDER**

% **19.09.2019**

1. Intellectual Property Appellant Board (IPAB) is dealing with the cases relating to patents, trademarks, copyright and plant variety protection. Justice Manmohan Singh, former Judge of this Court is the Chairman of IPAB and Dr. Onkar Nath Singh is the Technical Member (Plant Varieties Protection Appellate Tribunal).
2. IPAB is dealing with the cases relating to patents, trademarks, copyright and plant varieties protection. IPAB Bench for cases relating to copyright the Bench has to comprise of a Judicial Member and a Technical Member (Copyright); for cases relating to trademarks, the Bench has to comprise of a Judicial Member and a Technical Member (Trademarks); and

for cases relating to patents the Bench has to comprise of a Judicial Member and a Technical Member (Patents).

3. During the course of hearing of this petition, this Court noted that IPAB had been shut down for want of Technical Members of Copyright, Patents and Trademarks which shocked the conscience of this Court.

4. Vide order dated 08<sup>th</sup> July, 2019, this Court invoked the doctrine of necessity and directed the Chairman, IPAB and Technical Member (Plants Varieties Protection) to take up the urgent matters relating to trademarks, copyright and patents till the vacancies of the Technical Members are filled up.

5. In compliance with the order dated 08<sup>th</sup> July, 2019, IPAB started functioning on 19<sup>th</sup> July, 2019 and 1430 cases were taken up out of which 92 cases were disposed of till 20<sup>th</sup> August, 2019.

6. The term of the Chairman, IPAB is expiring on 21<sup>st</sup> September, 2019 and no fresh appointment of the Chairman is forthcoming.

7. Vide order dated 13<sup>th</sup> September, 2019, the response of the Central Government was sought on the continuation of the Chairman of IPAB till the fresh appointment of the Chairman.

8. The Central Government is not at all agreeable to the continuation of the Chairman, IPAB till the appointment of the fresh Chairman.

9. In *Kudrat Sandhu v. Union Of India*, W.P.(C) No(s).279/2017 the Supreme Court vide order dated 11<sup>th</sup> May, 2018 extended the term of the President and the other members of National Consumer Disputes Redressal Commission (NCDRC) till fresh appointments are made by the Central Government.

10. In *Rojer Mathew v. South Indian Bank Ltd*, S.L.P.(C)15804/2017, the Supreme Court vide order dated 29<sup>th</sup> May, 2019 extended the term of a Judicial Member of National Consumer Disputes Redressal Commission by

one year or till the process of fresh appointment is completed, whichever is earlier.

11. With respect to the aforesaid two judgments by which the Supreme Court extended the term of the President and Judicial Member of a National Consumer Disputes Redressal Commission (NCDRC), it is submitted that this Court is not exercising the PIL jurisdiction.

12. If the term of the Chairman of IPAB is not extended till the fresh appointment is made, the IPAB would be shut down on 22<sup>nd</sup> September, 2019 which would violate the valuable right to access to justice. Reference be made to *Anita Kushwaha v. Pushap Sudan*, (2016) 8 SCC 509 relevant portion whereof is reproduced in para-22 of the judgment dated 08<sup>th</sup> July, 2019.

13. This Court is concerned about the violation of the valuable right of access to justice. This Court is of the view that guidelines are necessary for proper functioning of the Tribunals. However, considering that the framing of guidelines and continuation of the Chairman to IPAB till the fresh appointment, are in the nature of PIL, it would be appropriate to send this matter to PIL Bench.

14. Subject to the order of the Hon'ble the Chief Justice, list before the PIL Bench on 20<sup>th</sup> September, 2019.

15. Copy of this order be given *dasti* to counsels for the parties under signature of Court Master.

**J.R. MIDHA, J.**

**SEPTEMBER 19, 2019**  
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