IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
(Intellectual Property Rights Division)

BEFORE:
The Hon'ble Justice Ravi Krishan Kapur

IPDPTA/88/2023

SHROFF GEETA (OA/10/2019/PT/KOL)
Vs.
ASST. CONTROLLER OF PATENTS AND DESIGN

For the appellant : Mr. Vindhya S. Mani, Advocate
Ms. Diya Mal, Advocate

For the controller of patent : Mr. Swatarup Banerjee, Advocate
Ms. Mary Datta, Advocate
Mr. Anirban Das, Advocate

Reserved on : 06.11.2025

Judgment on : 17.11.2025

Ravi Krishan Kapur, J.:

1. This is an appeal under section 117A of the Patents Act, 1970 against an order dated 24 September 2018, rejecting an application for patent being no. 3853/COL/MP-2008 dated 22 September 2018 titled '*Composition comprising human embryonic stem cells and their derivatives, methods of use and methods of preparation*' primarily on the ground of section 3 (b) of the Act.

2. Briefly the application was filed on 22 September 2008. Upon a request for examination, the First Examination Report (FER) was issued to which a response was filed by the appellant. Upon completion of the hearing,

the Written Submissions were filed by the appellant alongwith amended claims 1-56 and the impugned order was passed on 24 September 2018.

3. On behalf of the appellant, it is contended that, the impugned order has been passed in violation of the principles of natural justice and proceeds on an erroneous interpretation of section 3(b) of the Act. The subject invention does not necessarily destroy human embryos and is not precluded under the Act. As such, there has been a complete misappreciation of the subject invention and the impugned order is liable to be set aside.

4. On behalf of the respondent it is contended that, the impugned order is reasoned and warrants no interference at all. The subject invention has been discussed and it was found that the invention involved collection of 2 to 7 day old human embryos in minimal essential medium. There is a categorical finding that the cell invention contemplates destruction and use of human embryos. As a result, the use of the human embryonic cell obtained through extraction from the embryo leads to abortion or

destruction of embryos and is unethical. In such circumstances, the invention has been rejected under section 3(b) of the Act.

5. Section 3(b) of the Act provides as follows:

> *3. The following are not inventions within the meaning of this Act,—*
> *(b) an invention the primary or intended use or commercial exploitation of which could be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment;*

6. The section focuses on four major aspects. Firstly, the primary or intended use of the invention claimed which includes the purpose for which the invention was actually made. Secondly, the potential for the invention to be commercially exploited in a manner which could harm public health, safety, or the environment. Thirdly, whether the claimed invention is contrary to public order or morality. If the invention disrupts public order or morality, it is excluded from patentability and ultimately whether it causes serious prejudice to life or health. The term "serious" was added by virtue of the 2002 Amendment, indicating that the impact of the invention must be significant. This aims to prevent the patenting of inventions which despite being novel and inventive, pose significant risks to public health, safety, or the environment.

7. The interplay of patent law with ethical and moral considerations brings with it complex legal challenges, especially when evaluating inventions which may affect public health, order, or morality. Section 3(b) of the Act serves as a safeguard by disqualifying inventions which could potentially harm human, animal, or plant life, health, or the environment and is contrary to public order and morality. In this context, Article 53(a) of the Paris Convention refers expressly to "*ordre public* or *morality*". The purpose of the provision is "to deny protection to inventions likely to induce riot or public disorder, or to lead to criminal or other generally offensive behaviour. In *Harvard College v. Canada (Commissioner of Patents) [2002] 3 S.C.R. 519* when considering the scope of Article 53(a) the European Patents Office had held as follows:

> *"5. It is generally accepted that the concept of 'ordre public' covers the protection of public security and the physical integrity of individuals as part of society. This concept encompasses also the protection of the environment. Accordingly, under Article 53 (a) EPC, inventions the exploitation of which is likely to breach public peace or social order (for example, through acts of terrorism) or to seriously concept encompasses also the protection of the environment. Accordingly, under prejudice the environment are to be excluded from patentability as being contrary to 'ordre public'.*

8. It is a long-standing principle of patent law that patent laws should not be granted for immoral inventions. Such issues raise serious practical,

ethical and moral considerations. Some examples of biological inventions which have created difficulties are (a) processes for cloning of human beings (b) process for modifying the germ line genetic identity of human beings (c) use of human embryos for industrial or commercial use. In this context, the use of human embryos for industrial or commercial use is somewhat controversial. Any such examination would necessarily involve (a) what is a human embryo (b) the use of a human embryo (c) industrial or commercial purpose. [*Prathiba M. Singh on Patent Law, Edition -1, Vol-I at page 140*].

9. The impugned order proceeds on the basis that the invention involved destruction of the human embryo and was found to be unethical. Inventions with human embryo especially within 2-7 days of formation, being at a very delicate stage of formation of human life that may or may not cause permanent damage or even miscarriage of such foetus must be considered with care and caution. The impugned order has been passed after having considered all the contentions of the parties and is adequately reasoned.

10. Upon an examination of the invention it was found that the embryonic stem cells were derived from human embryo inner cell mass using either immunological or mechanical methods for isolation. Such human embryonic stem cells lines were necessarily produced by a destructive use of human embryos. The invention requires the use of human embryos for industrial or commercial purposes within the meaning of section 3(b) of Act. Such use of human embryonic stem cells obtained through extraction from the embryo leading to abortion or destruction of embryo has been held to be unethical. The commercialization of the claimed invention is also held to be contrary to public order or morality and thus falls within the purview of non-patentable claims under section 3(b) of the Act.

11. There is nothing in the impugned order which can be described as an incorrect interpretation of section 3(b) of the Act. There is no illegality nor irrationality nor contravention of any law which warrants any interference. In a complex matter of such nature it is not for this Court to re-examine the wisdom of the experts. The impugned order is also in

conformity with the National Guidelines for Stem Cell Research (2017). Despite the technical and scientific advancement in the field of research on stem cells and the revolutionizing through regenerative therapies, the reasons provided for in the impugned order justify no interference.

12. In view of the above, IPDPTA 88 of 2023 is dismissed.

(Ravi Krishan K apur, J.)