IN THE HIGH COURT AT CALCUTTA
Intellectual Property Rights Division
Appellate Side

BEFORE:
The Hon'ble Justice Ravi Krishan Kapur

WPA-IPD No.2 of 2025
(Old No. WPA No.20214 of 2024)

Dr. Dulal Kumar De
-vs
Union of India & Ors.

For the petitioner	:Mr. Sudeep Sanyal, Advocate Mr. Sukanta Das, Advocate Mr. Chandrachur Lahiri, Advocate
For the respondent nos. 1 to 5	: Mr. Siddhartha Lahiri, Advocate Ms. Mary Dutta, Advocate
For the respondent no. 6	: Mr. Dibashis Basu, Advocate Ms. Tutun Das, Advocate
Heard on	: 15.12.2025
Judgment on	: 19.01.2026

Ravi Krishan Kapur, J.:

1. The grievance of the petitioner is against rejection of an application for patent titled "Herbal Anti-Venom against Catfish Sting" on the ground of abandonment under section 21(1) of the Patents Act, 1970.
2. Briefly, the petitioner alongwith two other individuals as co-inventors filed an application on the online portal being Patent Application No. 202031002063 for the above patent on 17 January, 2020. On 14.02.2020, the above invention was published on the website. The First Examination Report was published and sent to the registered email address of Midnapore College on 4 July, 2022. On 4 January 2023 the last date for

filing of a response to the FER expired. On 4 April 2023, the extended prescribed period for filing of a response to the FER also expired.

3. It is alleged that the Midnapore College was celebrating its 150th anniversary and the email sent by the respondents was overlooked. This fact came to light on 9 June, 2023 when the principal of the college had written to the respondent authorities seeking a response as to the status of the above application. The petitioner alleges non-compliance under section 21(1) of the Act read with Rule 24B of the Rules framed thereunder. It is alleged that there has been no lawful communication of the First Examination Report by registered post as contemplated under section 149 of the Act. As such, the respondent authorities erred in its finding that the application was deemed to have been abandoned without complying with the mandate of effecting postal service.

4. The only question which arises for consideration is whether there has been any compliance with section 149 of the Act. Admittedly, there has been no service by postal communication. It is contended by the appellant that the time prescribed for computing the time period is only triggered upon service by registered post and not by e-mail. On a conjoint reading of the relevant provisions of the Act read with section 27 of the General Clauses Act, the requirement of service by post is indispensable. As such, there has been no lawful service. It is also contended that where a statute provides a thing to be done in a particular manner then it can only be done in that manner and no other manner at all. In any event, the Rules cannot supersede the Act and only supplement the same. In support of

such contentions, the petitioner relies on *K. Narasimahiah vs. H.C. Singri Gowda 1964 SCC OnLine SC 278, Chief Inspector of Mines vs. Karam Chand Thapar 1961 SCC OnLine SC 19, J.K. Cotton Spinning & Weaving Mills Co. Ltd. vs. State of U.P. 1960 SCC OnLine SC 16, Jagdish Singh vs. Lt. Governor (1997) 4SCC 435* and *J. Jayalalithaa vs. State of Karnataka (2014) 2 SCC 401.*

5. On behalf of the respondent authorities, it is submitted that there has been substantial compliance in service of the FER in terms of the Act. There is no reason as to why service by email should not be considered to be proper and effective service. In fact, the application form filled in by the petitioner duly provided for the petitioner's email address. The communication by the respondent authorities was admittedly sent to the registered email address furnished by the petitioner. In such circumstances, the grounds now urged by the petitioner are an afterthought, belated and concocted.

6. For convenience, the relevant provisions in respect of service are provided below:

> ***The Patents Act, 1970***
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> ***Section 149. Service of notices, etc. by post.—****Any notice required or authorised to be given by or under this Act, and any application or other document so authorised or required to be made or filed, may be given, made or filed by post.*
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> ***The Patents Rules,2003***
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> ***Rule 24(B) (5)*** *The time for putting an application in order for grant under section 21 shall be six months from the date on which the first statement of objections is issued to the applicant to comply with the requirements.*

> ***(6)*** *The time for putting an application in order for grant under section 21 as prescribed under sub-rule (5) may be further extended for a period of three months on a request in Form 4 for extension of time along with prescribed fee, made to the Controller before expiry of the period specified herein.*
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> ***General Clauses Act, 1897***
> *27. Meaning of service by post.—Where any [Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.*

7. Section 149 of the Act provides that notices, applications, or documents *may* be served by post. The use of the word '*may'* in the section denotes a permissive and non-mandatory approach. Ordinarily, the word '*may'* is not compulsory. It is an enabling word which implies discretion. "May" does not mean "must". On a conjoint reading of the above provisions, the intention of the legislature, the purpose for which the provision has been made and general inconvenience or injustice in reading the above provisions one way or the other, there is nothing to suggest that the same should be interpreted to be mandatory. The Act bestows a discretionary power to the Patents Office regarding mode of service and hence the use of the word '*may'* does not impose any mandatory requirement for service of documents by post.

8. In this context, section 159(2)(vi) of the Act empowers the authorities to formulate Rules regarding the manner in which documents may be served. This Rule making power makes it clear that there is no exclusivity

attached to any single mode of service and the authorities are free to prescribe additional or alternative means. The statutory provisions operate in complete harmony with Rule 6 of the Patents Rules, 2003. Rule 6 recognises service of documents by registered post or to the e-mail address of a party is deemed to be lawful and proper. These Rules which have been framed under section 159 of the Act serve to clarify and particularize the permissive provisions of the Act without creating any inconsistency. As valid subordinate legislation, they offer specific procedural guidance while remaining within the scope of the parent Act. As such, the Patents Office is vested with unequivocal authority to effect service, including the option to serve documents exclusively by email.

9. Since 2016, the Patents Office implementation of e-filing and e-service protocols demonstrates the practical application of this legislative framework. The recognition of email service as proper service enables the Patent Office to utilize email exclusively for efficiency obviating the need for postal service unless otherwise necessary. This approach also finds support from the Information Technology Act, 2000 which accords electronic records the same status as physical documents. With the ongoing efforts to broaden digitalization, the Patent Office vide order No.23/2016 has also introduced the practice of serving the First Statement of the Objection exclusively through e-mail. In this context, a copy of the office order is set out below:

OFFICE ORDER NO. 23 OF 2016

In order to rationalise the allotment of patent application to examiners for examination, an auto allotment system is being implemented from 01/04/2016. The First Statement of objection (FERs) shall henceforth be issued by respective

Controllers electronically and shall be sent to the agents/applicant through e-mails ONLY. The first examination report shall also be available on official website in In PASS. The response to First Statement of objections (FERs) shall invariably be sent to the original jurisdiction to which the application belongs through front office counter or shall be filed through comprehensive e-filing system.

The applicants are further requested to ensure their e-mail addresses are updated in the records of Patent Office.

Subsequently, the Rules were amended and notified on 16 May 2016 bringing about a change in Rule 5 and 6 of the Rules. A comparison of the amended rules would demonstrate that service by e-mail was introduced and specifically provided for. In such circumstances, service by way of e-mail has become now an acceptable, valid and legally recognized mode of service.

10. Significantly, the petitioner himself had given his official e-mail id to the respondent authorities and the FER was served by e-mail to the petitioner. As such, it is difficult to accept the submission that there has been no valid service of the FER under the Act.

11. A reading of the above Act and Rules would demonstrate that there is a structured and time bound mechanism for prosecution of an application for patent. A combined reading of section 21(1) read with Rule 24(B), 5 and 6 makes it clear that upon failure to comply within the stipulated time period, an application for patent is deemed to be abandoned. Admittedly, no objection had been filed to the FER whether within the original period or even the extended period under Rule 6. It was only on 29 June 2024 that the petitioner attempted to file Form 4 alongwith the prescribed fee. Such a prohibition is mandatory and not merely procedural nor technical. Repeated pronouncements of different Courts have held that the fixed

timelines under the Act and the Rules have to be strictly complied with and the Courts should not relax such time limits. [*Kylin Sanitary Technology (XIAMEN) Company Limited vs. Union of India & Ors. U*nreported *decision dated 11.08.2025 passed in WPA-IPD No.1 of 2024 by the High Court at Calcutta* and *Carlos Alberto Perez Lafuente vs. Union of India (2019) SCC OnLine Del 7404*].

12. In *Nippon Steel Corporation vs. Union of India (2011) SCC OnLine Del 669*, it has been held as follows:

> *"25. There is a logic to the time limits set out under the Act. The scheme of the Act and the Rules require time-bound steps to be taken by applicants for grant of patent at various stages. The provisions of the Act and the Rules have to expressly reflect the legislative intent to permit relaxation of time limits, absent which such relaxation cannot be 'read into' the provisions by a High Court exercising powers under Article 226 of the Constitution. In other words, it is not possible for this Court to accept the submission of the learned Senior counsel for the Petitioner that the time-limits under section 11-B(1) of the Act read with Rule 24-B of the Rules, notwithstanding section 11-B(4) of the Act, are merely 'directory' and not mandatory. In fact, the wording of section 11-B(4) of the Act underscores the mandatory nature of the time limit for filing an RFE in terms of section 11-B(1) of the Act read with Rule 24-B of the Rules.*
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> *28. This Court is of the view that the decisions in Ferid Allani v. Union of India and Telefonaktiebolaget LM Ericsson (Publ) v. Union of India were rendered in a different factual context and do not aid the Petitioner's submissions. The Petitioners there were in correspondence with the Office of the CoP in relation to the defects pointed out in their respective patent applications and had in fact made requests for oral hearing. In those circumstances, this Court held that those Petitioners could not be held to have abandoned their claims for the purposes of section 21 of the Act. As far as the present case is concerned, the Petitioner missed the deadline of 9th February 2010 for filing an RFE. It realised the error much later and on 28th October 2010, filed an application for amending the priority date by which time the patent application itself ceased to exist. The decisions of the Commissioner of Patents and Trademarks, USA in Re Katrapat, AG 6 U.S.P.Q. 2 D (BNA) 1863 and Re Application of Ong, et al (Application No. 11/754, 832) are also of no assistance since the patent law regime in our country is governed by the Act and Rules which in themselves constitute a complete code."*

13. In view of the above, there is no merit in the submissions made on behalf of the petitioner that postal communication as stipulated under section 149 of the Act is mandatory and absolute. To this extent, all the decisions cited on behalf of the petitioner that where a statute provides a particular

thing to be done in a particular manner, it must be done in that manner are distinguishable.

14. For the above reasons, there is no merit in the writ petition, WPA-IPD No.2 of 2025 stands dismissed.

(RAVI KRISHAN KAPUR, J.)