

\$~18, 21, 22 & 2 (SB)

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

Date of decision: 18th May, 2022.

+ **W.P.(C)-IPD 4/2022 & REVIEW PET. 102/2022**

DR. REDDYS LABORATORIES LIMITED Petitioner

Through: Mr. Ranjan Narula and Mr. Shashi P. Ojha, Advocates. (M:9891584230)

versus

CONTROLLER GENERAL OF PATENTS DESIGNS AND TRADEMARKS Respondent

Through: Mr. Harish Vaidyanathan Shankar, CGSC with Ms. S. Bushra Kazim, Srish Kumar Mishra and Mr. Sagar Mehlawat, Advocates. (M:9810788606)

Mr. Shakti Dhar Ojha, Deputy Registrar, CGPDTM, Mumbai and Mr. Juneja in person.

Mr. Sachin Sharma, Deputy Registrar of Trademark & GI in person.

21

WITH

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W.P.(C)-IPD 88/2021

TERRACE PHARMACEUTICALS PVT. LTD. Petitioner

Through: None.

versus

THE CONTROLLER GENERAL OF PATENTS, DESIGNS AND TRADE MARKS & ANR. Respondents

Through: Mr. Harish Vaidyanathan Shankar, CGSC with Ms. S. Bushra Kazim, Srish Kumar Mishra and Mr. Sagar Mehlawat, Advocates.

22

WITH

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W.P.(C)-IPD 103/2021

PARVESH KAMBOJ Petitioner

Through: None.

versus

THE CONTROLLER GENERAL OF PATENTS AND TRADEMARKS & ORS. Respondents

Through: Mr. Davesh Vashishtha and Mr.
Sharab Srivastava, Advocates for R-3.
(M:9958445115)

2(SB) AND
+ **W.P.(C) 1907/2022 & CM APPLs. 5485/2022, 11118/2022,
12729/2022**

SOUMYA JOSHI Petitioner

Through: None.
versus

REGISTRAR OF TRADEMARKS NEW DELHI
& ANR. Respondents

Through: None.

**CORAM:
JUSTICE PRATHIBA M. SINGH**

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. There are two aspects being considered in these matters.
 - i) The first relates to the review application filed on behalf of the officers of the CGPDTM seeking review of the order dated 21st March, 2022, by which Rs.1 lakh was imposed as costs on each of the officers for lapses in communicating incorrect facts to the Court.
 - ii) The second concerns the issue of a large number of pending oppositions, ripe for hearing, in the CGPDTM office.
3. Post the passing of the order dated 21st March, 2022, and filing of the review petition, this Court has heard the matters on 8th April, 2022, 11th April, 2022 and today. Mr. Shakti Dhar Ojha, Deputy Registrar, CGPDTM, Mumbai and two officers Mr. Sachin Sharma and Mr. Juneja - have joined the various hearings. Affidavits have also been filed by some of these

officials, explaining the reasons why the Court was not informed that more than 7000 oppositions were filed and taken on record, beyond the period of limitation. While reading the affidavits, the impression that the Court gets is that there has been a clear lack of communication between the various officers in the CGPD TM and conflicting notices were issued in respect of acceptance of oppositions. It is also submitted by the officers that they were not in the CGPD TM in the capacity of hearing officers and were therefore unaware of any oppositions being accepted beyond the limitation period. Further, the orders passed by the Supreme Court in *Suo Moto Writ (Civil) No. 3 of 2020* titled *In Re: Cognizance for Extension of Limitation* concerning extension of limitation period in various matters during the pandemic, also do not seem to have been properly interpreted and understood by the office of CGPD TM.

4. Considering the affidavits dated 10th May, 2022 filed before this Court, and the explanation given by the officers, this Court deems it appropriate to clarify as under:

(1) That the lapse, which was attributed to the officials personally, shall be treated as an overall lapse of the office of CGPD TM and not of the said officials individually. The officials are cautioned that in the future it shall be ensured that the directions issued by the CGPD TM shall be issued in a clear and transparent manner, without ambiguities. Further, proper information shall be furnished to the Court whenever called upon.

(2) Insofar as the cost of Rs. 1 lakh imposed on each of the officers is concerned, the same shall stand. However, the Id. Controller General shall take a decision as to whether the said costs are to be deposited by

the office as a whole or by any of the officers individually. The Court shall be informed of the said decision on the next date of hearing.

(3) Insofar as the cases where registration certificates had been issued and oppositions have now been filed pursuant to the order dated 21st March, 2022, the affidavit of Mr. Prithpal Kaur Sidhu dated 10th May, 2022 has set out the procedure, which would be followed by the office of the CGPDTM, as under:

“13. It is submitted that as far as procedure related to cancellation/recall of the registration certificates of the application where registration certificates have been issued but oppositions have been received or may be filed by 30/05/2022 is concerned, the office has adopted the following procedure:

a. As directed, wherever opposition is received, registration certificate is suspended and opposition petition is taken on record and the status of the application is reflected as opposed on e-Register.

b. The processing the opposition petition will be proceeded as per provision of the law as stated u/s 21 of Trade Marks Act, 1999 read with rule 44-50 of Trade Marks Rules, 2017.

c. In case an opposition is allowed in future, the registration certificate will be cancelled and digital record will be updated accordingly.

d. However, in case opposition is dismissed, the suspension of the registration certificate will be revoked and registration will be restored in the e-Register.”

(4) The above procedure shall be adhered to in respect of oppositions, which may be filed till 30th May, 2022, pursuant to the order dated 21st March, 2022. Accordingly, the above stand of the CGPDTM's office in respect of the procedure to be followed, is taken on record.

(5) Insofar as the pending oppositions are concerned, the affidavit dated 10th May, 2022 has been filed on behalf of Dr. Prithpal Kaur Sidhu, Deputy Registrar IP Office at Dwarka New Delhi, stating the following facts:

“5. It is submitted that as per office record the following are the pending application where third party opposition has been filed and are presently pending with the Trade Marks Registry.

<i>Sr. No.</i>	<i>Period (of application filing and pending in opposition proceedings)</i>	<i>Delhi</i>	<i>Mumbai</i>	<i>Kolkata</i>	<i>Chennai</i>	<i>Ahmedabad</i>	<i>Total</i>
1.	<i>Up to 31/12/2005</i>	5434	7991	1394	1914	1997	18730
2.	<i>Jan 2006 - Dec 2010</i>	9127	10235	2168	4593	3859	29982
3.	<i>Jan 2011 - Dec 2015</i>	13953	10114	2861	5137	5832	37897
4.	<i>Jan 2016 - Dec 2020</i>	45258	25221	7848	17997	16728	113052
5.	<i>Jan 2021 - Mar 2022</i>	10973	5556	1870	4752	4391	27542
		84745	59117	16141	34393	32807	227203

6. It is also submitted that at present there are 12 Registrar level officer who are working in Trade Marks Registry.

7. It is submitted that the Government has

sanctioned 30 post of Hearing officers (on Contract basis) to dilute the pendency of the above pending cases. Recruitment process of these Hearing officers are completed and one month the training of these officers is scheduled at RGNIIPM Nagpur.

8. It is further submitted that the recruitment of 11 Assistant Registrars of Trade Marks & GI is pending with the UPSC and it is expected to be completed before the end of this year which will further arraignment the manpower required for leading with pendency in opposition cases.

9. It is further submitted that a promotion proposal of 8 Assistant Registrars of Trade Marks & GI is also under consideration and is expected to be completed soon.

10. It is expected that by the end of this year the Trade Marks Registry would have around 59 Hearing officers to dispose pending opposition in the System. Details are summarised as under:

<i>Sr. No.</i>	<i>Number of Registrar Level Officers</i>	<i>Working -Status of the Officers</i>	<i>Remarks (if any)</i>
<i>1</i>	<i>12</i>	<i>Present working strength of registrar level officers in the office</i>	<i>N/A</i>
<i>2</i>	<i>30</i>	<i>Hearing officers engaged in contract basis to dispose pending matter related to opposition proceedings</i>	<i>Officer letter issued, training of these officers are scheduled from 02/05/2022 to 27/05/2022.</i>
<i>3</i>	<i>08</i>	<i>Officers are eligible to promote from Sr. Examiners to</i>	<i>Promotion proposal is already submitted to DPIIT</i>

		<i>Assistant Registrar.</i>	<i>for further processing.</i>
<i>4</i>	<i>11</i>	<i>Proposal has been forwarded to UPSC for direct recruitment of Assistant Registrar level officers.</i>	<i>As per UPSC website, scrutiny of received application is completed. Interview of these candidates may be conducted shortly.</i>

“11. It is further submitted that opposition around 86 thousand related to application filed up to 2015 and around 1 lakh 10 Thousands opposition related to applications filed between the year 2015 to 2020 are pending.

12. It is submitted that the office is targeting the disposal of these approx. one lakh ninety six thousand applications on priority basis by allotting these application among the atherosed officers by the end of the year 2025. As far as opposition filed after 2020. Are concerned the same will be taken up for disposal in accordance to its maturity for hearing by allotting them for disposal among Dy. Registrar and above officers.”

(6) As per the above, Mr. Sachin Sharma, Deputy Registrar of TM & GI, CGPDTM, clarifies that 30 new officers are likely to join the various trademark registries in Delhi, Mumbai, Kolkata, Chennai, Ahmedabad from June, 2022. This fact, coupled with the further recruitment that is to be made with the intervention of the UPSC ought to take the strength of Hearing Officers to 59. Accordingly, let the recruitment process begin and be carried out expeditiously, considering the large quantum of oppositions which are pending.

- (7) In addition, Mr. Sharma submits that the CGPDTM also intends to start a mediation and settlement drive in the Trademark Registry for quicker disposal of the trademark oppositions.
- (8) Let a decision in this regard be taken in respect of implementing mediation/settlement drive, as also the Hearing Officers being placed in various offices within the next eight weeks, and a further status report be filed in this regard by the CGPDTM, as to the progress of hearings and status of recruitment of officers, for the pending oppositions. The said status report shall be placed before the Court, at least one week before the next date of hearing.
- (9) During this period, the new officials shall join the various offices of the CGPDTM and the list of cases for hearing of opposition matters shall be finalized. The matters shall be taken up for hearing after issuing public notices on the website of the CGPDTM.
5. In *W.P.(C)-IPD 103/2021*, Mr. Davesh Vashishtha, Id. Counsel appearing for Respondent No.3, submits that the limitation to file the opposition ought not to be extended in his case, as the Appellant ought to have been vigilant and there is also an active litigation pending between the parties. The said proceedings are as under:
- (1) *CS (COMM) 540/2020* titled *Groz Enterprises Tools Pvt Ltd. v. Kamboj Enterprises & Ors.*, before the Tis Hazari Courts, Delhi
- (2) *FAO-IPD 38/2021* titled *Groz Enterprises Tools Pvt Ltd. v. Kamboj Enterprises & Ors.*
6. Heard. The order passed by this Court on 21st March, 2022 was in a batch of matters, wherein the oppositions to trademark applications had been

rejected on the ground that they were filed beyond the four months' limitation period, which was contrary to the extension of limitation orders passed by the Supreme Court from time to time during the pandemic. The reasons for the said order have been clearly elaborated in the order itself.

7. Accordingly, it is clear that in case the Appellant in ***W.P.(C)-IPD 103/2021***, files an opposition pursuant to the order dated 21st March, 2022, the said opposition proceeding shall be decided in accordance with law on its own merits. Mr. Vashishth, Id. Counsel submits that the Appellant has already filed the opposition. It is clarified that the filing of the opposition and the suspension of the registration certificate of the Respondent, shall not affect the merits of the dispute between the parties, both in the suit and the appeal mentioned above, as the opposition has been permitted to be filed on a technical ground (limitation) and not on merits. Thus, the said opposition proceedings shall proceed in accordance with law and such proceedings shall not affect the suit or any other disputes pending between the parties. Clarified accordingly.

8. List all these matters on 3rd August, 2022 for receiving of the status reports to be filed by the office of the CGPTDM.

9. The present order shall be communicated to the Secretary, UPSC by the Registry, as also through Mr. Harish V. Shankar, Id. CGSC, to enable the UPSC to take steps immediately for recruitment of further Hearing Officers.

**PRATHIBA M. SINGH
JUDGE**

MAY 18, 2022/dk/ms