

**2022 LiveLaw (Del) 232**

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

**CORAM: JUSTICE PRATHIBA M. SINGH**

W.P.(C)-IPD 4/2022 & CM 27/2022; 21<sup>st</sup> March, 2022

**Summary: The High Court has imposed a cost of Rs. 1 lakh each on two officials of office of the Controller General of Patents, Designs & Trade Marks (CGPDTM) over non-disclosure of facts, thereby wasting judicial time.**

**DR. REDDYS LABORATORIES LIMITED**

*versus*

**CONTROLLER GENERAL OF PATENTS DESIGNS AND TRADEMARKS**

*Petitioner Through: Mr. Ranjan Narula, Mr. Shashi P. Ojha and Ms. Deeksha Singh, Advocates.*

*Respondent Through: Mr. Harish V. Shankar, CGSC with Ms. S. Bushra Kazim & Mr. Srish Kumar Mishra, Advocates for UOI.*

WITH W.P.(C)-IPD 88/2021 & CM 31/2021

**TERRACE PHARMACEUTICALS PVT. LTD.**

*versus*

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

*Petitioner Through: Mr. Mohan Vidhani and Mr. Ashish Singh, Advocates.*

*Respondents Through: Mr. Harish V. Shankar, CGSC with Ms. S. Bushra Kazim & Mr. Srish Kumar Mishra, Advocates for UOI.*

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

**PARVESH KAMBOJ**

*versus*

**THE CONTROLLER GENERAL OF PATENTS AND TRADEMARKS & ORS**

*Petitioner Through: Mr. Amarjeet Kumar, Advocate.*

*Respondents Through: Mr. Davesh Vashishtha and Mr. Sharabh Srivastava, Advocates for R-3.*

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

**SOUMYA JOSHI**

*versus*

**REGISTRAR OF TRADEMARKS NEW DELHI & ANR.**

*Petitioner Through: Mr. Naman Jain, Advocate.*

**1. This hearing has been done through hybrid mode.**

**2. These are four writ petitions filed by different Petitioners who have been forced to approach this Court invoking its extraordinary jurisdiction under Article 226/227 of the Constitution of India, in view of the completely arbitrary and discriminatory manner in which the Controller General of Patents, Designs and Trade Marks/Respondent (*hereinafter "CGPDTM"*) has disallowed the Petitioners from filing oppositions to the trademark applications, which each of them wishes to oppose. The said oppositions have not been entertained on the ground that they were proposed to be filed beyond the time period of four months, as prescribed under Section 21 of the Trademarks Act,**

1999 (hereinafter “Trademarks Act”).

3. The details of the trademark applications in each of the cases are as under:

| W.P.(C.) NO.         | TRADEMARK APPLICATION NO.                         | DATE OF APPLICATION | TRADE MARK JOURNAL                                      | DATE FOR EXPIRY OF PERIOD TO FILE OPPOSITIONS | STATUS AND DATE OF ISSUANCE OF REGISTRATION CERTIFICATE          |
|----------------------|---|---------------------|---|---|--|
| W.P.(C)-IPD 88/2021  | 3872572 for 'SANJIVANI MANTRA'                    | 28th June, 2018     | Trade Marks Journal No. 1999-0 dated 10th May, 2021     | 10th September, 2021                          | Registration Certificate has been issued on 23rd September, 2021 |
| W.P.(C)-IPD 103/2021 | 3547316 for 'GREASE BUCKET PUMP (Shape of Goods)' | 12th May, 2017      | Trademark Journal No. 1972-0 dated 2nd November, 2020   | 2nd March, 2021                               | Registration Certificate has been issued on 8th April, 2021      |
|                      | 3502874 for 'DEVICE'                              | 3rd March, 2017     | Trade Mark Journal No. 1987-0 dated 15th February, 2021 | 15th June, 2021                               | Registration certificate has been issued on 4th March, 2022      |
| W.P.(C)-IPD 4/2022   | 4996426 for 'RAZOMAX'                             | 7th June, 2021      | Trade Mark Journal No. 2009-0 dated 19th July, 2021     | 18th November, 2021                           | Opposed  |
| W.P. (C)1907/2022    | 5093598 for 'SYZYG'                               | 18th August, 2021   | Trade Marks Journal No: 2016 dated 6th September, 2021  | 6th January, 2022                             | Registration Certificate has been issued on 25th February, 2022  |

4. Ld. counsels for the Petitioners submit that the arbitrary manner in which the Trademark Registry is functioning is evident from the fact that the benefit of the order of the Supreme Court in ***Suo Moto Writ (Civil) No. 3 of 2020*** titled ***In Re: Cognizance for Extension of Limitation*** has been selectively given to some opponents and not to all. In some of these matters, it is submitted by Id. Counsels that when the opponents tried to file oppositions after the expiry of the four-month period, in view of the extension of limitation granted by the Supreme Court, the portal did not permit the said filing. The Petitioners tried to file the hard copy of oppositions which were also stated to have not been accepted. Repeated emails written by the opponents to the concerned office in the Trademark Registry also evinced no

response whatsoever. It is the Petitioners' grievance that despite the Trademark Registry being aware of the oppositions of the Petitioners and of the present writ petitions having been filed, registration certificates have also been issued in three of the matters, without any reference to the Petitioners. Therefore, Id. Counsels submit that despite the Trademarks Registry being cognizant of the grievances of the Petitioners and the fact that they wish to file oppositions to the said applications, the registration certificates were issued in an indiscriminate manner.

5. Moreover, in all the three writ petitions where registration certificates have been issued, the certificates of registration are stated to have been issued after filing of the writ petition and after advanced copy had been served on the CGPDTM. This position is disputed by the registered proprietor of the trademark in question i.e., Respondent No. 3 in ***W.P.(C)-IPD 103/2021***.

6. Heard. At the outset, it is noted that Section 21 of the Trademarks Act read with Rule 42 of the Trademarks Rules, 2017 (*hereinafter "Trademarks Rules"*), provides for a period of four months for filing of oppositions to a trademark application. The said section reads as under:

*"21. Opposition to registration.—*

*(1) Any person may, within three months from the date of the advertisement or re-advertisement of an application for registration or within such further period, not exceeding one month in the aggregate, as the Registrar, on application made to him in the prescribed manner and on payment of the prescribed fee, allows, give notice in writing in the prescribed manner to the Registrar, of opposition to the registration.*

*..."*

7. Rule 42 of the Trademarks Rules reads as under:

*"42. Notice of Opposition. — (1) A notice of opposition to the registration of a trademark under sub-section (1) of section 21, with such particulars as specified in Rule 43, shall be filed in form TM-O within four months from the date of publication of the trademark journal in which the application for registration of the trademark was advertised or re-advertised.*

*..."*

8. Thus, in terms of Section 21 read with Rule 42 of the Trademarks Rules, the period of limitation for filing the oppositions is four months. It is not disputed that thousands of trademarks have been advertised during the period of the pandemic.

9. Insofar as the extension of limitation period is concerned, various orders passed by the Supreme Court in ***Cognizance for Extension of Limitation (supra)*** make it very clear that the period between 15<sup>th</sup> March, 2020 to 28<sup>th</sup> February, 2022 has to be fully excluded for the purpose of calculation of limitation under all enactments and statutes, both before judicial and *quasi* judicial bodies. The operative portion of the said order dated 10<sup>th</sup> January, 2022, reads as under:

*"Taking into consideration the arguments advanced by learned counsel and the impact*

of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

*I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasijudicial proceedings.*

*II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*

*III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.*

*IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.*

**10.** There can be no doubt about the fact that the above order would be applicable to filing of oppositions under Section 21 of the Trademarks Act as well. The fact that this order is applicable to the filing of oppositions is also clear from the public notice issued by the CGPDTM dated 18th January, 2022, which records that the period of limitation shall be computed in accordance with the earlier order of the Supreme Court dated 10th January, 2022. The said public notice dated 18th January, 2022, reads as under:

*“In the matter of Suo Motu Writ Petition (Civil) No. 3 of 2020 (In Re: Cognizance for Extension of Limitation), the Hon’ble Supreme Court of India vide order dated 23.03.2020 (enclosed), extended period of limitation prescribed under the general law or special laws with effect from 15.03.2020 till further orders. Vide order dated 08.03.2021, the order dated 23.03.2020 was brought to an end, permitting the relaxation of period of limitation between 15.03.2020 and 14.03.2021. While doing so, it was made clear that the period of limitation would start from 15.03.2021. Thereafter, due to a second surge in COVID-19 cases, vide order dated 23.09.2021, the said period of limitation is extended with effect from 15.03.2020 till 02.10.2021.*

Now, vide order dated 10.01.2022 (enclosed), the Hon’ble Supreme Court of India, inter alia, has ordered as follows:

*5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022*

with the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply....”

It is accordingly notified to all the concerned stakeholders/litigants that the period of limitation shall be computed in accordance with the afore-cited order dated 10.01.2022 (enclosed) passed by the Hon’ble Supreme Court of India.”

11. Accordingly, when the orders of the Supreme Court in **Cognizance for Extension of Limitation (supra)** have been rightly acknowledged by the CGPDTM, there was no reason whatsoever, to not accept the oppositions which were filed by the Petitioners herein. This position is also reaffirmed in the order dated 30<sup>th</sup> July, 2020 passed in **W.P.(C) 3059/2020** titled **Intellectual Property Attorneys Association (IPAA) & Anr. v. The Controller General of Patents, Designs and Trade Marks & Anr.**, wherein public notice dated 19<sup>th</sup> June, 2020, issued by the CGPDTM had been placed before the Court which confirmed that timelines for completion of various acts and proceedings shall be as decided by the Supreme Court in **Cognizance for Extension of Limitation (supra)**. The relevant portion of the order in **W.P.(C) 3059/2020** dated 30<sup>th</sup> July 2020 is as under:

“Learned senior counsel for the petitioners states that a public notice has been taken out on 19.06.2020 which states as follows:-

“Therefore, it is hereby notified to all the stakeholders that the Public Notice dated 18.05.2020 stand withdrawn and timelines/periods for the completion of various acts/proceedings, filing of any reply/document, payment of fees etc. falling due after 15.03.2020, shall be the date as decided/ordered by the Hon’ble Court.”

It is admitted that nothing further survives in this matter in view of the above notification.

At this stage, learned senior counsel for the petitioners states that the petitioners have filed an impleadment application in the proceedings which are pending in the Supreme Court i.e. In Re: Cognizance for Extension of Limitation; Suo Motu Writ Petition (Civil) No. 3/2020.

The application is disposed of.”

12. Therefore, in view of the latest order passed by the Supreme Court, the entire period of limitation between 15<sup>th</sup> March, 2020 and 28<sup>th</sup> February, 2022, is to be clearly excluded.

13. Moreover, there is another disturbing feature in these matters. When **W.P.(C) IPD 4/2022** was heard by this Court on 4<sup>th</sup> March, 2022, this Court had directed a senior official from the CGPDTM to be present on the next date to ascertain the position relating to the extension of limitation, as the Court was informed that more than 4 lakh registration certificates have been granted during this period and the rights flowing therefrom ought not to be jeopardised. On 10<sup>th</sup> March, 2022, Mr. Sachin Sharma, Deputy Registrar of Trademarks & GI and Mr. Juneja, Assistant Registrar of Trademarks appeared before the Court and submitted that various applications filed within the limitation period, were entertained by the Trademark Registry during the pandemic. Despite a detailed interaction during the hearing on the said date, at no point of time was the Court informed of oppositions having been permitted to be filed, beyond the four months period of limitation. Accordingly, the Court passed the following order dated 10<sup>th</sup> March, 2022, directing the officials to place a short affidavit on record:

*“5. Considering the nature of the matter, let a short affidavit be placed on record by the office of the Registrar of Trademarks, giving the following information:*

*i. The total number of oppositions filed between the period 24<sup>th</sup> March, 2020 to 28<sup>th</sup> February, 2022.*

*ii. Total number of registration certificates issued to proprietors between 24<sup>th</sup> March, 2020 to 28<sup>th</sup> February, 2022.*

*iii. Total number of journals which have been published for which the limitation period for filing oppositions would have expired after 15<sup>th</sup> March, 2020.”*

14. The said affidavit dated 15<sup>th</sup> March, 2022, was filed by the CGPDTM which revealed the following data.

*“5. In compliance of the order dated 10.3.2022, the reply is submitted Query-wise as follows:*

*i) The total number of oppositions filed between the period 24<sup>th</sup> March, 2020 to 28<sup>th</sup> February, 2022 are **113517**.*

*ii) The total number of registration certificates issued to proprietors between 24<sup>th</sup> March, 2020 to 28<sup>th</sup> February, 2022 is **4,87,347** and*

*iii) A total of 96 journals were published (i.e. [1928-2023] Journal No. 1928 dated 18.11.2019 for which limitation period expired on 18.03.2020 to Journal No. 2023 dated 25.10.2021 for which limitation period expired on 25.02.2022) after 15<sup>th</sup> March, 2020 till 28.02.2022.”*

15. The matter was heard thereafter on 16<sup>th</sup> March, 2022, and some counsels submitted that apart from the figures given by the CGPDTM, various oppositions were

also permitted to be filed beyond the period of limitation under Section 21 of the Trademarks Act. Accordingly, on 16<sup>th</sup> March, 2022, the following directions were issued:

*“3. Pursuant to the previous order dated 10<sup>th</sup> March, 2022, a short affidavit on behalf of the Registrar of Trademarks & GI, has been handed over in the Court. Copies of the same have already been served upon other counsels.*

*4. Let the said affidavit be brought on record before the next date.*

*5. The Court has noted the number of oppositions and the information stated therein. **In addition, the office of Registrar of Trademarks & GI, to also inform the Court as to whether any physical or online filing of oppositions were permitted to be made, during the pandemic period, post the expiry of the time period of four months and if so, how many oppositions were entertained.**”*

**16.** Today, pursuant to the said order, Mr. Harish V. Shankar, Id. CGSC, candidly submits that he has been given instructions that approximately 6,000-7,000 oppositions have been filed during the pandemic period beyond the four month period of limitation, and the same have also been entertained by the CGPDTM.

**17.** This Court is dismayed to record that this fact was not brought to the notice of the Court on the previous two occasions when the officials of CGPDTM were present before the Court. Mr. Sachin Sharma, Deputy Registrar, who is dealing with oppositions, did not inform this fact to the Court and neither did Mr. Juneja, Assistant Registrar, who has filed the affidavit dated 15<sup>th</sup> March, 2022. The fact that 6,000-7,000 oppositions have been entertained beyond the period of limitation ought to have been disclosed on the first day when the writ petitions were filed so that judicial time could have been saved. The non-disclosure of this fact by the officials of the CGPDTM is clearly unacceptable and appears to be deliberate.

**18.** In any event, in terms of the orders of the Supreme Court extending the period of limitation in all proceedings and the stand of the CGPDTM before the Delhi High Court in ***W.P.(C) 3059/2020***, the CGPDTM has a duty to extend the limitation for filing oppositions to trademark applications. On the contrary, the CGPDTM has not only failed to entertain the oppositions but has gone ahead and jeopardized the rights of the applicants and issued trademark registration certificates, despite being in receipt of communications of oppositions/writ petitions. This conduct of the officials of the CGPDTM cannot be ignored by this Court. In the above factual background, the following directions are issued:

(i) The delay in filing of oppositions by all four Petitioners in respect of the applications which they intend to oppose as set out above, is condoned. They shall now file their oppositions by 31<sup>st</sup> March, 2022, either online or offline. The same shall be registered by the Trademark Registry by 10<sup>th</sup> April, 2022, and notices shall be issued to the concerned trademark applicants. The oppositions shall thereafter proceed in accordance with the provisions of the Trademarks Act and the Rules there under.

(ii) The registration certificates that may have been issued to the trademark applicants

in **W.P.(C) IPD 88/2021, W.P. (C) IPD 103/2021 & W.P.(C) 1907/2022** shall stand suspended during this period, till the decision is taken on the oppositions, as specified herein.

(iii) In **W.P.(C) IPD 4/2022**, the registration certificate shall not be issued to the Applicant, till the decision is taken on the oppositions, as specified herein.

(iv) In so far as other trademarks advertised during the pandemic are concerned, the advertised application in respect of which the four month limitation period would have expired after 15<sup>th</sup> March, 2020, the limitation period in terms of the orders of the Supreme Court shall be extended for filing oppositions to the said applications, until the expiry of 90 days from 1<sup>st</sup> March, 2022, i.e. till 30<sup>th</sup> May, 2022. Compliance of this direction shall be ensured by the respective Controllers in-charge of Oppositions across the five offices of CGPDTM, in case any emails are received by prospective opponents/ their agents/ counsels who wish to file oppositions. During this period, if any email is received by the CGPDTM from the opponents/their agents/counsels, the office of the CGPDTM shall enable the said opposition to be filed either through online mechanism or through physical filing. Upon filing of oppositions, the status of the trademark application shall be reflected appropriately on the portal within 48 hours.

(v) Insofar as trademark registration certificates which may have been issued during the pandemic period, the registration certificates shall be dealt with in the following manner:

(a) In respect of the trademark applications in which no oppositions have been already filed or are received till 30<sup>th</sup> May, 2022, the said registration certificates shall remain valid and the said applicants shall enjoy their statutory rights in accordance with law.

(b) In respect of those trademark applications where oppositions have already been filed or are filed by 30<sup>th</sup> May, 2022, the registration certificates shall either not be issued or if already issued, the same shall stand suspended till the oppositions are decided by the office of the CGPDTM.

(vi) In future, whenever emails concerning oppositions are received by the Opposition Section, CGPDTM, the concerned Controller in-charge shall first, ensure that such emails are replied to within a reasonable time, not later than three working days and second, that proper instructions are given by them to the section issuing registration certificates at the CGPDTM/ concerned officials in the Mumbai office, depending upon the correspondence received, so that certificates are not issued while issues relating to opposing the trademark are being raised with the office of the CGPDTM.

**19.** Further, in view of the fact that the office of the CGPDTM was represented before this Court by two senior officials, namely, Mr. Sachin Sharma and Mr. Juneja, who did not disclose to this Court or to their own counsel, the fact that oppositions were entertained even beyond the period of limitation, this Court deems it proper to impose heavy costs on them. The officers are warned to ensure that such conduct is not repeated in future. Accordingly, the said two officials, Mr. Sachin Sharma and Mr. Juneja, shall deposit a sum of Rs.1 lakh each with the DHCBA Pandemic Relief Fund



[A/c No.15530110152195, IFSC Code- UCBA0001553, UCO Bank, Delhi High Court] by 10th April, 2022. The said amount shall be utilised only for the purposes of distribution to lawyers and their families who have deceased/suffered, during the pandemic. Hony. Secretary, Delhi High Court Bar Association to confirm receipt of the said amount, on the next date. The proof of costs deposited shall be filed before the Registry and shall be given to the Id. CGSC, appearing for the CGPDTM, before the next date of hearing.

**20.** Additionally, during the hearings in these writ petitions, this Court was informed that a large number of oppositions are pending and are yet to be decided. The pendency is due to the lack of officials to hear the oppositions. This Court notes with some consternation that more than 2 lakh oppositions are stated to be pending and a substantial number of them are ripe for hearing, in the office of the CGPDTM, as submitted by the officials of the CGPDTM. Accordingly, a proposal shall be placed on record by the office of the CGPDTM in respect of the following:

(i) Status of compliance of today's order.

(ii) The manner in which the CGPDTM intends to deal with the said pending oppositions. A complete year wise chart of oppositions which are pending, where pleadings are complete and the matters have matured for hearing, shall be filed along with the proposed mechanism.

(iii) Insofar as registered trademarks *qua* which oppositions are filed are concerned, where trademark registration certificates have been issued, the affidavit shall also inform the procedure in which the said certificates shall either be cancelled or recalled.

**21.** The mechanism so placed, shall be perused by the Court and proper orders shall be passed on the next date of hearing.

**22.** Copy of the present order shall also be uploaded in the form of a public notice on the website of the CGPDTM, [www.ipindia.gov.in](http://www.ipindia.gov.in) or any other website used by the office of CGPDTM.

**23.** The writ petitions *qua* the Petitioners are disposed of, in these terms. All pending applications are also disposed of.

**24.** List these matters for receiving the status report and for reporting compliance on 18<sup>th</sup> May, 2022.

**25.** These shall be treated as part-heard matters, for the purpose of compliance.

**26.** The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, [www.delhihighcourt.nic.in](http://www.delhihighcourt.nic.in), shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.