

\$~24

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 23rd March, 2022

+ **W.P.(C)-IPD 7/2022 & CM 30/2022**

PAWANDEEP SINGH Petitioner
Through: Mr. Chander Mohan Lall, Sr. Adv.
with Mr. Jatin Sharma, Advocate
(M: 9811881981)

versus

THE REGISTRAR OF TRADEMARKS & ANR. Respondents
Through: Mr. Harish Vaidyanathan Shankar,
CGSC, Ms. S. Bushra Kazim, Mr.
Srish Kumar Mishra, Advocates for
UOI (M: 9810788606)
Ms. Shikha Dewan, Sr. Examiner of
trademarks

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. In the present writ petition, the grievance of the Petitioner is that the trademark application of the Petitioner bearing no. 3981639 dated 24th October, 2018 in Class - 17 for the registration of the mark 'SWISS' has been refused without even affording a hearing to the Petitioner. The case of the Petitioner is that two notices for hearing were given to him. Even though the agent for the Petitioner logged in for the hearing, the official concerned did not log in, on both the occasions. Emails were sent by the Id. counsel for the Petitioner in respect of the same but no response was received. Finally, without the hearing being held, the refusal order was issued on 25th January, 2022.
3. The matter was taken up for hearing yesterday, i.e., 22nd March, 2022,

and the concerned Senior Examiner of Trademarks was directed to join the Court proceedings in order to clarify as to whether any hearing was in fact given to the Petitioner, and if it was not given, the reason for the same.

4. Ms. Shikha Dewan, Senior Examiner of Trademarks has appeared today in compliance of directions contained in order dated 22nd March, 2022. Submissions made by Id. counsels for the parties and Ms. Shikha Dewan show that:

- I. The cause list for hearing of the Trade Mark Registry is published on a monthly basis.
- II. The platform over which hearings are conducted by the Registry, permits only three persons at a time to be present in the hearing and all the remaining participants/attendees are kept in the waiting room.
- III. The order which is passed by the Trade Mark Examiner has two parts, the templated portion and the non-templated portion where the Trade Mark Examiner types out the order. The templated portion is not editable and shows that the matter was set down for hearing and eventually hearing took place on a particular date. The templated portion in the impugned order in the present case reads as under:

“Above application has been filed for registration of the trademark SWISS on 24/10/2018 which was examined on 27/11/2018 and examination report was communicated to the applicant at his address for service. A reply to the office objection(s) had been filed on behalf of the applicant but the same was not found

satisfactory and the application was set down for hearing and eventually hearing took place before me on 30/11/2021.

I have gone through the records”

IV. Ms. Dewan admits that the Ld. counsel for the Applicant/Petitioner (*hereinafter “Applicant”*) in the present case was not heard and the templated portion of the impugned order is contrary to the actual fact. Perusal of the screenshot placed on record also shows that the Id. counsel for the Applicant was in the meeting room during the show cause hearing on 30th November, 2021. However, without giving any hearing to the Id. counsel, it has been recorded in the impugned order that hearing was held, submissions were heard, and the application for registration of the mark was refused.

5. Heard. Orders which are passed by the Registrar of Trademarks deal with precious rights relating to the trademarks of individuals and businesses. The refusal of a trade mark without even affording a hearing would be contrary to the fundamental tenets of natural justice. The illegality is further compounded when the order captures that hearing took place, whereas in fact the counsel was kept waiting in the WAITING ROOM but was not admitted. Thus, submissions were not heard but the order records that submissions were heard.

6. The Trade Mark Registry deals with lakhs of applications every year and therefore, the utilisation of a platform for virtual conference hearing wherein only three individuals are permitted to join at a time, would be

grossly insufficient and an outdated mode of holding hearings. In fact, the office of the Registrar of Trademarks should encourage and move towards having a much more transparent system of hearings in the presence of Agents/ Lawyers/ Applicants who may be permitted to join through an open link. The hearings can also be held by publishing daily cause lists with a serial number for the applications being taken up and allotting at least two-hour slots where the open link is made available on the website of the Trade Mark Registry.

7. In the opinion of this Court, Lawyers/Applicants/Agents ought to be permitted to appear through the open link and make submissions before the Examiner so long as they do it in an orderly manner without disturbing the hearings being held. It is clear that there is a need to alter the current mode and manner of holding hearings from publishing monthly cause lists to publishing daily cause lists with proper serial numbers, giving open links to Counsels/Applicants individually or publishing the same on the Trade Mark Registry website and by moving to a platform which would permit more individuals to join the hearings simultaneously at a time.

8. Clearly in the present case there is no doubt that the hearing was not held and the application has been refused by wrongly recording that a hearing has been granted. Ms. Dewan apologises for what has transpired. In order to avoid inconvenience and expense for the applicants to knock the doors of High Courts by way of writ petitions for such procedural lapses, it is necessary for the Controller General of Patents, Designs & Trade Marks (*hereinafter "CGPDTM"*) to devise a proper mechanism for holding show cause hearings by including the following features:

- i. Publication of cause list notice on a daily basis, with serial

numbers for the applications to be taken up, preferably with morning and afternoon slots, if required.

- ii. Utilising a platform with an open link which permits more individuals to join a hearing at a time.
- iii. Matters be called serial number-wise for the purpose of certainty and convenience of the applicants, so that the concerned Applicant/Agent/Counsel can make submissions in respect of the application being examined when the appropriate number is called out, instead of waiting endlessly in the waiting room.
- iv. Removal of templates from the order statements such as 'hearing took place before me' which may vary on case-to-case basis.
- v. Some extra space being made available in the order for Senior Examiners to put their brief reasons for allowing or refusing the application.

9. Let the proposal on behalf of the CGPDTM in respect of holding show cause hearings *qua* the points outlined above be placed on record within two weeks.

10. In the process of placing the said proposal, the CGPDTM may also consult the IP fraternity including Associations like the Intellectual Property Attorneys' Association (IPAA), and the Asian Patent Attorney Association (APAA), International Association for the Protection of Intellectual Property (AIPPI), International Trade Mark Association (INTA), or any other stakeholders, if required.

11. In view of the facts discussed above, the impugned order dated 25th

January, 2022 passed by the Senior Examiner of Trade Marks is set aside and the matter is remanded to the Trade Marks Registry.

12. The office of the Registrar of Trade Marks, shall afford a proper hearing to the Applicant and pass orders in accordance with law. The date of hearing shall be communicated to the Applicant through email by the Examiner.

13. The order passed be placed on record in the present case.

14. Accordingly, the petition along with all the pending applications is disposed of in the above terms.

15. List for receiving compliance on 27th April, 2022.

**PRATHIBA M. SINGH
JUDGE**

MARCH 23, 2022/aman/sk
(corrected & released on 28th March, 2022)

भारतमेव जयते