

# Intellectual Property Attorneys ... vs The Controller General Of Patents, ... on 11 May, 2020

**Author: Rajiv Shakdher**

**Bench: Rajiv Shakdher**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ W.P.(C) No.3059/2020  
INTELLECTUAL PROPERTY ATTORNEYS ASSOCIATION  
(IPAA) AND ANR. ....

Through Mr. Chander M. Lall, Sr. A  
Ms. Nancy Roy, Ms. Archana  
Sahadeva, Mr. Gurvnder Sin  
Rahul Vidhani and Mr. Gaur  
Miglani, Advs.

versus

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

Through Mr. Harish Vaidyanathan Sha  
with Ms. Akanksha Kaul, Adv

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER  
ORDER

% 11.05.2020 [Court hearing convened via video-conferencing on account of COVID-19] CM  
No.10645-47/2020

1. Allowed, subject to just exceptions.

W.P.(C) No.3059/2020 & CM No.10644/2020

2. This writ petition had come up before my predecessor on 06.05.2020. The matter was adjourned to today to enable the respondents to take instructions in the matter.

3. To be noted, Mr. Harish Vaidyanathan represents the respondents today.

4. It is not in dispute that vide public notice dated 04.05.2020, the respondents have given time to litigants and/or their respective advocates to complete various acts/proceedings, filing of any reply/document, payment of fees, etcetera in the matter of any intellectual property (in short "IP") applications/actions by 18.05.2020.

5. In sum, the intent of this notice appears to be that the limitation which expires within the lockdown period shall stand extended till 18.05.2020. Since there is no dispute with regard to the

contents of the notice and because it is not on record, I intend to extract the relevant parts of the same in the order, which are as follows:

"Whereas this office has issued Public Notices regarding the timelines/periods as prescribed under the IP Acts AND Rules administered by the O/o CGPDTM towards completion of various acts/proceedings, filing of reply/document, payment of fees, etc. in the matters of any IP applications, falling due between the lockdown period, i.e. 25th March, 2020 to 3rd May, 2020, in accordance with section 10 of the General Clauses Act, 1897.

Whereas, the lockdown period has been extended to further period of two weeks, i.e. till 17th May, 2020 by GoI, MHA ORDER No.40-3/2020-DM-I(A) dated 1st May, 2020. Even though as per guidelines annexed with the order of MHA, the IP Offices are functional (with reduced strength), substantive limitations/restrictions on the movement of public and functioning of private offices in the Red Zones (Hotspots), are still in place.

Therefore, considering the fact that all the IP offices in India are located in Red Zones (Hotspots), the due dates, with respect to timelines/periods prescribed under the IP Acts and Rules administered by the O/o CGPDTM towards completion of various acts/proceedings, filing of any reply/document, payment of fees, etc. in the matters of any IP applications filed with the offices under the administrative control of O/o CGPDTM, falling due between the above said lockdown period shall be 18th May, 2020."

6. Mr. Chander M. Lall, learned senior counsel, who appears for the petitioners, submits that the said public notice is contrary to the order dated 23.03.2020, passed by the Supreme Court, in the matter of SUO MOTU WRIT PETITION (CIVIL) No(s).3/2020, titled IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION.

6.1 It is contended by Mr. Lall that firstly, the protection against triggering of the period of limitation both under general and special laws, whether condonable or not, is to kick in from 15.03.2020 and not from 25.03.2020 as is the stand taken by the respondents in its aforementioned public notice dated 04.05.2020.

6.2 Secondly, Mr. Lall says that for the respondents to fix a cut-off date i.e. 18.05.2020 for completion of various acts/proceedings, filings, payment of fees, etc. in the matters of any IP applications, not only flies in face of the Supreme Court order dated 23.03.2020, but also imposes onerous burden both on the litigants as well as their advocates. 6.3 Mr. Lall submits that it would be difficult for the litigants and the advocates to access their files and ensure that the filings as per prescribed procedure are made on 18.05.2020, when the lockdown itself, as it stands today, will get lifted only on 17.05.2020.

7. Mr. Vaidyanathan, on the other hand, says that the clarification, if any required, qua the order of the Supreme Court can be obtained by the writ petitioners by moving that court in the matter.

8. Having heard learned counsel for the parties and perused the record, two things are clear.

8.1 First, no Court, Tribunal or any authority can act contrary to the order of the Supreme Court dated 23.03.2020 to which I have made a reference hereinabove. This order has been passed by the Supreme Court in exercise of its powers under Article 141 and Article 142 of the Constitution. 8.2 Second, under Article 144 of the Constitution, all authorities whether civil or judicial, located in the territory of India are required to act in aid of the orders passed by the Supreme Court.

9. Therefore, Mr. Lall is right that the protection against limitation being triggered should commence from 15.03.2020 and not 25.03.2020, as is indicated in the public notice dated 04.05.2020 issued by the respondents.

10. As regards the submission that a very narrow window, in terms of timeframe, has been given for filings, I find that there is merit in the same as well. I tend to agree that the respondents should not have set forth such a short deadline.

11. Therefore, for the moment, the best course forward would be to suspend the operation of the public notice dated 04.05.2020. It is ordered accordingly.

11.1 Having regard to the fact that the said notice was issued after the institution of the captioned writ petition and is, therefore, not on record, the aforementioned direction is issued by taking recourse to the residuary prayer made in the writ petition.

12. Needless to add, the respondents shall act in accordance with the order of the Supreme Court dated 23.03.2020 referred to hereinabove.

13. For the purpose of good order and record, the public notice dated 04.05.2020 shall be filed with the Registry of this Court by Ms. Archana Sahadeva, counsel for the petitioner.

14. In view of the directions that I have passed, both Mr. Lall and Mr. Vaidyanathan submit that the writ petition can be disposed of at this stage itself.

14.1 It is ordered accordingly.

14.2 Resultantly, CM No.10644/2020 shall stand closed.

15. In case of any difficulty, parties are given liberty to approach the Court.

RAJIV SHAKDHER, J MAY 11, 2020/pmc/kk Click here to check corrigendum, if any