

AD. 190.  
June 17, 2022.  
MNS.

(Assigned)

WPA No. 1963 of 2022

Kanishk Sinha  
Vs.  
Union of India and another

Mr. Kanishk Sinha

... petitioner in person.

Mr. Avinash Kankani

...for the respondents.

Leave is granted to the petitioner to appear in person.

The petitioner contends that the petitioner applied for patent of his product in the year 2005, but it was granted only in 2012, that is, after seven years.

It is contended that the petitioner has incurred severe losses; financial and otherwise, for such inordinate delay on the part of the respondent authorities to grant patent in favour of the petitioner.

It is thus submitted that the petitioner, in such context, gave a representation on January 25, 2022 via e-mail to the respondent authorities, which is annexed at page 98 (Annexure- P5) of the writ petition, wherein, *inter alia*, he sought an extension of the patent for 15 years as a penalty of harassing the petitioner, who is a citizen of India and for unnecessarily not implementing the order of

injunction so that the term of the patent shall come to end.

Learned counsel appearing for the respondent authorities submits that the writ petition is not maintainable in law and in its present form, since the representation made by the petitioner in this context, is not tenable in the eye of law.

The petitioner further submits in reply that the court ought to, at least, direct the concerned authorities of the Government to consider an amendment of the legislation to bring in specific provisions in law in respect of extension of patents, which right is available in various other countries, for example, the United States, Japan, Israel, Russia, Ukraine, Australia, Singapore, Taiwan as well as in the European Union.

At the outset, learned counsel for the respondent authorities takes objection to the writ petition on the ground of inordinate delay in filing the same.

However, since, as the primary relief sought by way of representation, what has been prayed to be implemented, is an extension of the tenure of the patent, which has not expired as yet, the said objection cannot be sustained.

Upon considering the submission of the petitioner and learned counsel for the respondents, the relief sought by the petitioner in the

representation is patently *de hors* the law as it stands today. Although the petitioner has contended that legislation regarding Patent Term Extension (PTE) exists in several developed countries, it does not necessarily mandate the Legislature of our country, which is a sovereign nation in its own right, to essentially follow such trend. The policies of a Government, moreover, are decided not on the basis of mere instances set by other countries but in the context of the domestic requirements and international relations of the country itself.

It would be patently beyond the charter of the court to traverse the territory of legislation and/or advice the Legislature to introduce law relating to extension of patent term, which can only be done as per the wisdom of the Legislature and upon adequate assessment by experts in the field.

The prayer made in the representation, as indicated earlier, does not find mention in any existing law. No sanction has been provided in either the Patent Law or Rules for automatic grant of extension of the patent term as a penalty for delaying the grant of patent.

Even if the petitioner is entitled to any relief for having suffered for 7 years between the filing of the application for grant of patent and the actual grant, the remedy of the petitioner lies entirely in damages. If so advised, the petitioner is at liberty to take out

appropriate proceedings to that end, which will not be affected in any manner by any of the observations made herein.

However, the said remedy does not confer power on the court to direct the respondent authorities to consider the unreasonable representation made by the petitioner.

Accordingly, WPA 1963 of 2022 is dismissed.

It is reiterated that if the petitioner is otherwise entitled to damages in law, it will be open to the petitioner to claim damages against the authorities for the delay in granting patent. If so sought by the petitioner, the appropriate forum will consider the same and decide it in accordance with law and subject to the law of limitation, upon hearing the concerned parties.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)