

19th March,
2024
(AK)
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W.P.A 2461 of 2024

Kylin Sanitary Technology (Xiamen) Company Limited
Vs.
Union of India and others

Mr. Sayan roy Chowdhury
Mr. T. Roy

...for the petitioner.

Mr. Tirthapati Acharyya
Mr. Sailendra Tewari

...for the Union of India.

1. Affidavit-of-service filed in Court today be kept on record.
2. Learned counsel for the petitioner submits that the petitioner applied for a patent. Subsequently, the entire interaction with the patent authorities was entrusted to an Indian agent.
3. The petitioner, being a Chinese company, during the Covid pandemic period, was unable to personally look after the issue.
4. The petitioner, was, according to the pleadings in the writ petition, assured by its Indian agent, lastly in the month of April, 2020 that the time taken for issuance of First Examination Report (FER) could be around 18 months.
5. Accordingly, the petitioner rested assured that its agent would take care of the matter. However, subsequently the petitioner grew concerned since the

then agent of the petitioner did not take any initiative in the matter and appointed a different patent law firm to enquire into the issue.

6. It was then discovered that the FER was issued to the erstwhile agent of the petitioner as long back as on August 16, 2021.
7. Learned counsel for the petitioner argues that since a reply to the FER could, under the law, be filed within six months and/or, if extended, up to a further three months, the delay on the part of the petitioner in inquiring into the issue should be taken leniently.
8. The petitioner, it may be noted, started re-enquiring into the issue in the month of December, 2022.
9. Learned counsel submits that accordingly the petitioner wrote a representation to the respondent authorities to consider the petitioner's case, since the petitioner had never deliberately abandoned the right to have the patent.
10. However, no response having been received from the respondent authorities, the petitioner has preferred the instant writ petition.
11. Learned counsel for the petitioner places reliance on an unreported judgment of a learned Single Judge of the Delhi High court in *The European Union represented by the European Commission Vs. Union of India & Ors..*

12. In the said judgment, the Delhi High Court took a lenient view due to the diligence exhibited by the patent applicant.
13. That apart, it is argued that the Delhi High Court laid down the proposition that although the patent authorities do not have the power to condone the delay in filing reply to FER, the writ court, in appropriate circumstances, has the jurisdiction to do so.
14. It was observed by the Delhi High Court that in condoning the delay, extraordinary circumstances could also be considered by the court, such as negligence by the patent agent, docketing error and whether the applicant had been diligent. Lack of follow-up by the applicant, however, was held to be a circumstance which may lead to an inference that the applicant intended to abandon the patent.
15. Learned counsel for the petitioner submits that the petitioner seeks a consideration of its representation in the light of the above judgment of the Delhi High Court.
16. Learned counsel appearing for the respondent authorities, in his usual fairness, submits that there would not be any difficulty in the respondents considering the representation of the petitioner although the respondents do not admit any of the

allegations made in the writ petition and/or the legal arguments advanced by the petitioner.

17. Since no affidavits are invited in view of the innocuous nature of the prayer, it is deemed that none of the allegations made in the application are admitted by the respondents.

18. WPA No. 2461 of 2024 is thus disposed by directing the respondent nos. 2 to 4 to ensure that the petitioner's representation dated May 23, 2023, which is annexed to the writ petition, be considered in accordance with law in the light of the judgment of the Delhi High Court referred to above.

19. It is expected that such consideration shall be done by giving opportunity of hearing to the petitioner, preferably within a fortnight from date.

20. It is made clear that this court has not gone into the merits of the arguments and allegations made by the parties against each other in the writ petition and it will be open to the respondent authorities to consider the representation of the petitioner duly and independently in accordance with law, without being influenced by any of the observations made herein.

21. 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.)