



W.P.(IPD)No.34 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2025

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.(IPD)No.34 of 2025
and W.M.P.(IPD)No.23 of 2025

Rajkumar Sabu
53/2, Kalai Mohalla, Bansi Bhawan,
Chhawani, Indore-452002 (MP)

... Petitioner

-VS-

1. Sabu Trade Private Ltd.,
Rep. by its Authorised Signatory,
No.114, Narasimman Road, Shevapet,
Salem-636002 (Tamilnadu).

2. The Registrar of Trademarks,
Trademark Registry, Boudhik Sampada Bhawan,
G.S.T.Road, Guindy, Chennai-600 032.

.. Respondents

Prayer: Writ Petition (IPD) filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the record of the respondent No.2 and quash the acceptance report dated 25.2.2025 and the



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Advertisement in the Journal Number 2199 dated 10.3.2025 in relation to

respondent No.1's mark being Application number 4416374 in Classes 30, 35 and 39.

For Petitioner : Mr. M.S.Bharath

For R1 : Mr.R.Sathish Kumar
for Mr.M.R.Gokulkrishnan

For R2 : Mr.Rajesh Vivekananthan, DSG

ORDER

The 1st respondent herein applied for registration of the word mark 'SACHAMOTI' on 22.01.2020 by asserting use by the applicant or its predecessor-in-title since 01.04.1984. The examination report in relation thereto was issued on 18.02.2020. The 1st respondent replied to such examination report on 19.02.2020. The petitioner herein filed an interlocutory petition on 20.07.2021 in respect of the above mentioned trade mark application and requested that such application not be proceeded with further and not published in the Trade Marks Journal. The petitioner herein further requested that he be heard in proceedings relating to such application. On 25.02.2025, the trade mark application was accepted and

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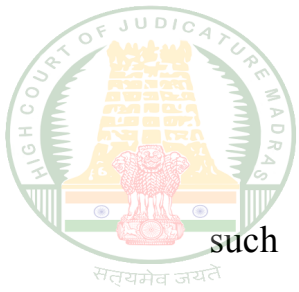


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directed to be advertised in the Trade Marks Journal. Meanwhile, the said interlocutory petition did not elicit a response. Therefore, the petitioner made a request under the Right to Information Act, 2005 (the RTI Act) on 21.04.2025. The RTI application was responded to on 04.06.2025 stating that all available documents had been uploaded and are reflected in the IP India portal. The present writ petition was filed in the above mentioned facts and circumstances.

2. Learned counsel for the petitioner submits that the trade mark application was filed by asserting use since 01.04.1984. By the interlocutory petition, which was filed in July 2021, the petitioner informed the Registrar of Trade Marks that the user claim was made on the basis of fabrication of documents and that the trade mark application should not be proceeded with in such circumstances and that the petitioner should be heard before a decision is taken thereon. He further submits that such interlocutory petition was filed by paying the requisite fees of Rs.2,700/-, but no response was received to such interlocutory petition. Therefore, the petitioner was constrained to file an application under the RTI Act. Even in response to



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such application, a vague reply was received stating that all available documents were uploaded in the IP India portal. He points out that the request under the RTI Act was to specify the exact document with user date of 01.04.1984 and the said request did not elicit a reasonable answer.

3. By referring to the Trade Marks Act, 1999 (the TM Act), learned counsel submits that Section 19 thereof enables the Registrar of Trade Marks to withdraw an application after acceptance but before its registration. With specific reference to the facts of this case, learned counsel submits that the Registrar should have considered the information provided by the petitioner and taken a decision by exercising powers under Section 19. He also submits that there is no prohibition under the TM Act that precludes the Registrar of Trade Marks from hearing the petitioner at the pre-advertisement stage. As regards the filing of the interlocutory petition, learned counsel submits that Entry 15 of Schedule I of the Trade Mark Rules, 2017 (the TM Rules) enables the filing of an application in respect of any other matters not covered in other trade mark forms.



WEB COPY 4. In response to these contentions, learned counsel for the 1st respondent submits that the TM Act prescribes the procedure for the lodging of an application for registration and the consideration thereof. According to him, the said procedure was followed in this case. As regards the petitioner, learned counsel submits that he is statutorily entitled to lodge an opposition in accordance with Section 21 of the TM Act and the corresponding rules and, in fact, such opposition has been lodged by the petitioner. Learned counsel further contends that the petitioner cannot be permitted to lodge an opposition at the pre-advertisement stage and that the consideration of any such opposition would be in contravention of the statute. As regards the interlocutory petition, learned counsel submits that the said petition has not been filed by citing any specific provision of the statute or rules. Therefore, learned counsel submits that the petition was rightly disregarded by the Registrar of Trade Marks. As regards the powers of the Registrar of Trade Marks under Section 19 of the TM Act, learned counsel admits that such power is conferred on the Registrar, but maintains that the statute and rules do not envisage hearing a person such as the petitioner at the



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pre-advertisement stage. Therefore, learned counsel submits that the writ petition is liable to be dismissed.

5. Chapter III of the TM Act deals with the procedure for and duration of registration. Section 18(1) enables the proprietor of the trade mark used or proposed-to-be-used by such proprietor to apply for registration of the trade mark. Upon receipt of such application, the powers of the Registrar are dealt with *inter alia* in sub-sections (4) & (5), which are set out below:

“18. Application for registration

.. ..

(4) Subject to the provisions of this Act, the Registrar may refuse the application or may accept it absolutely or subject to such amendments, modifications, conditions or limitations, if any, as he may think fit.

(5) In the case of a refusal or conditional acceptance of an application, the Registrar shall record in writing the grounds for such refusal or conditional acceptance and the materials used by him in arriving at his decision.”



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On examining sub-sections (4) & (5), it is evident that the statute mandates the recording of reasons in writing by the Registrar either in case of refusal or conditional acceptance of the application. Implied in the language of sub-section (5) is the absence of the requirement of recording reasons in case of unconditional acceptance. The order of acceptance reads as under:

“Adv N K Manchanda appeared Applicant claimed user from 01/04/1984 with relevant documents prior to cited mark and obtained registration in various application for same mark Hence objection is waived off and applied mark is accepted. And the same shall be advertised in the Trade Marks Journal as accepted under the provisions of section 20(1) of the Trade Marks Act, 1999.”

As is noticeable from the above extract, the Registrar of Trade Marks has recorded that counsel for the applicant had submitted relevant documents and that the objection is waived upon consideration thereof.

6. The question to be considered is whether the petitioner was entitled to be heard before the above order was issued in light of the interlocutory



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petition. The interlocutory petition was lodged on 20.07.2021, which is about 3 ½ years prior to the acceptance of the application. The interlocutory application does not make reference to any provision of the statute or the rules in terms of which such petition was lodged. Learned counsel for the petitioner referred to Entry 15 of Schedule I. Schedule I should be understood in the context of Rules 10 & 11 of the TM Rules. Rule 10 prescribes that the fees payable on an application, opposition etc., are those in Schedule I. Entry 15 thereof prescribes the fee and form for filing an application for three purposes, namely, review of the Registrar's decision; petition for obtaining Registrar's order for any interlocutory matter in a contesting proceeding; or any other matters not covered in other trade mark forms.

7. An application is required to be made by invoking a particular provision of the statute or rules that enables the applicant to apply. Typically, the substantive right would be traceable to the statute and the procedure would be prescribed in the rules. Therefore, unless the petitioner is able to establish that the right to apply is founded in the statute or rules,

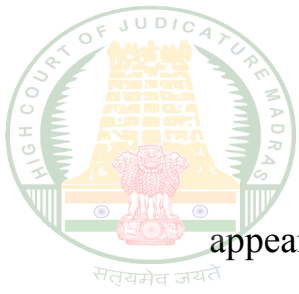


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the application would not be maintainable or liable to be considered merely because a fee was remitted.

8. On examining the TM Act and, in particular, Chapter III thereof, it is clear that an opposition is provided for only at the post advertisement stage. This becomes abundantly clear on examining the rules relating to the examination of an application for registration. While Rule 33(1) enables the Registrar to not only examine an application, but also re-examine the same, no provision has been made for considering an opposition at that stage. Instead, Section 21 of the statute enables an opposition to be lodged within four months from the date of advertisement or re-advertisement of an application for registration and Rules 42 to 51 deal with the procedure relating to the consideration of such opposition.

9. As contended by learned counsel for the petitioner, Section 19 of the TM Act undoubtedly confers on the Registrar of Trade Marks the power to withdraw the acceptance of an application at any time prior to the registration of the relevant trade mark. From the text of Section 19, it



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appears that this power may be exercised even before the advertisement is carried in the Trade Marks Journal. It does not follow from Section 19, however, that a person other than the applicant has the right to be heard in relation to the withdrawal of acceptance by the Registrar of Trade Marks.

10. The inference that follows from the above discussion is that the interlocutory petition of the petitioner was without statutory basis. Learned counsel submitted that requisite fees was paid by the petitioner and that the petition ought to have been responded to. This contention is not entirely devoid of merit. The solution would be for the Trade Mark Office to make it mandatory that the relevant substantive and procedural provision be indicated whenever an interlocutory application is filed and to further enable the rejection of an application as not being maintainable whenever such application is not founded in the statute.

11. It is common ground between the contesting parties that the petitioner has lodged an opposition, which is yet to be considered by the Registrar of Trade Marks. Therefore, it cannot be said that the petitioner is



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without remedy. In fact the provision relating to opposition read with the applicable rules enables the opponent to adduce evidence and establish the opposition. Therefore, at this juncture, no prejudice is caused to the petitioner by non-interference with the order impugned herein. On the contrary, in view of the fact that the petitioner has requested that the order of acceptance and the advertisement be quashed, irreparable injury would be caused to the 1st respondent, if the relief requested is granted.

12. Subject to the observations set out in this order, W.P.(IPD)No.34 of 2025 is dismissed without any order as to costs. Consequently, connected WMP is closed.

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Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No
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SENTHILKUMAR RAMAMOORTHY,J

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To

The Registrar of Trademarks,
Trademark Registry, Boudhik Sampada Bhawan,
G.S.T.Road, Guindy, Chennai-600 032.

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