



REPORT ON CHASWAL'S APPOINTMENT TO THE IPAB

JULY 2013

Recently, Justice Sridevan refused to sit in on a selection committee body, since it was headed by a government secretary. This case pertained to the [selection of one Mr Chaswal](#) as a “trademark” technical member. Our previous posts on this issue can be seen over [here](#) and [here](#). The Search-cum-Selection Committee received 8 applications to fill up two vacant positions of Technical Members for trademarks in 2010. The Committee invited all applicants for an interview on November 29, 2010.

The Committee recommended Mr. V. Ravi and Mr. Sanjeev Kr. Chaswal. However, Chaswal’s recommendation was conditional on verification of his credentials in relation to trademark expertise. This appears a tad bit strange, as one would have expected a selection committee to first do a credentials check before recommending someone’s name for a post.

Ms. Usha, the Vice Chairman of IPAB and member of the Selection Committee, was asked to examine Mr. Chaswal’s credentials. Usha opined that the documents submitted by Chaswal did not demonstrate any significant dispute resolution experience pertaining to trademarks. She noted that while he’d filed trademark applications, he does not appear to have been party to any contentious proceedings involving trademarks. Naturally, one would assume that such a person was not fit enough to be appointed India’s top IP dispute resolution body.

The Chairman of the Selection Committee who is also the Secretary to DIPP rejected

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Chaswal's candidature based on Usha's report. Unhappy with the turn of events, Chaswal challenged the report before the Delhi high Court. A Single Judge of the High Court set aside Usha's findings as erroneous and directed the Government to forward Chaswal's name to ACC (Appointment Committee of Cabinets) to decide his appointment. The Single Judge followed the procedure laid down in an office memorandum of DoPT (under the Ministry of Personnel, Public Grievances and Pensions) dated July, 17, 2012, according to which the Ministry/Department is bound to accept all recommendations of the Selection Committee; if they wish to differ with any of the names recommend, they have to necessarily consult with the ACC.

The relevant portion is reproduced below:

"..the panel recommended by the Committee will have to be accepted in toto by the Ministry/Department. Any deviation in such matters will require the prior approval of ACC."

From a bare reading of the above guideline, it would appear that the judge wrongly relied on it. For the guidelines only come into play when the government ministry/department differs with any recommendations by the selection committee. If the selection committee itself finalizes its selection only after a "credentials check", it is unclear as to why the ACC needs to be involved at all. Unless of course, the selection committee was stupid enough to send the selected two names to the Ministry (with the credential verification of one of them still pending).

Interestingly, the Division Bench appears to have caught on to this procedural error in calling the ACC into play and directed the Selection Committee to re-examine the matter after taking into account Chaswal's complaint that Usha had not properly assessed his credentials. However, it wrongly assumes that the selection committee had called for verification of credentials from "another committee". From the facts, it is clear that the selection committee had only called for verification from one of its own members, namely Ms Usha.

Needless to say, a large part of Chaswal's challenge and the courts' time could have been saved if the selection committee had avoided this "curious" route of verification of credentials after selection!

Interestingly, the Division Bench permitted Chaswal to take a second bite at the cherry by making out a better case and furnishing more documents to prove his credentials. And with these additional documents, the selection committee reversed their earlier decision and found him suitable for appointment. We've not had access to these documents filed by Chaswal and are not clear whether they prove definitively that he was indeed involved significantly in contentious trademark matters, as would enable him to be a fit candidate for the post of TM technical member.

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If however, these documents do not validate Chaswals' experience with contentious TM matters and the selection committees decision to reverse their earlier decision on Chaswal stemmed only out of a desire to avoid further legal skirmishes, we've effectively ended up facilitating yet another lousy appointment to the IPAB. Readers will remember the faulty appointment of Syed Obaidur Rahman, a figure who features in our [writ](#), and who claims to have been involved TM matters in the late 1800's before he himself was born.

It is also interesting to note that during this court reordered reexamination of Chaswals' record/credentials, the government invited Justice Sridevan to be one of its members on the selection committee. However, despite her position as an ex judge of the Madras High Court and the chairman of the IPAB, the government did not see it fit to appoint her as Chairman. Rather, they opted for it to be headed by one of their own, namely, the secretary of the DIPP, Ministry of Commerce. Not too surprisingly, Justice Sridevan flatly [refused](#) stating that as per [NCLT norms](#), only the Chief Justice or his/her nominee has to necessarily chair the selection committee meeting.

She also sent a written submission to this effect to the Delhi high court before whom Chaswals' petition was pending. Unfortunately, the government decided to go ahead with the selection committee meeting without her and proceeded to appoint Chaswal. Given this unfolding of events, the [Delhi High Court](#) appears to have treated it as fait accompli and simply took Justice Sridevans' complaint on record and disposed off the matter. Chaswal's appointment letter is expected to issue any moment now.

Needless to state, the entire appointment process could have been done more sensibly and efficiently, had the selection committee not made this monstrous mistake of selecting, subject to credential verification. However, one is still not clear as to what documents Chaswal submitted and whether he does indeed have contentious TM experience. A quick check on Manupatra reveals only one matter where Chaswal's name features as one of the counsels in a trademark infringement proceeding before the Delhi High Court [MANU/DE/0649/1994]. But then again, Manupatra does not hold the entirety of TM cases that have been contested. And it certainly does not hold any contentious TM disputes before the registry. And given the fact that our patent and trademark databases at the IPO website leave much to be desired, searching decisions by counsel name is tougher than finding a needle in the haystack.