



**Before the Assistant Registrar of Geographical Indications
Geographical Indications Registry, Chennai.**

Rectification application No. 2
Against
Geographical Indications application No. 121

Dated: 30.07.2012

Present: Mr. Chinnaraja G Naidu, M.A., LL.M.,
Assistant Registrar
Geographical indications Registry

In Matter of:

Mr. R. S. Praveen Raj
S/o. Mr. P. Rajagopal
Raj Sadan
AP/VII/1620, Pullekkonam
Anad (Post)
Nedumangad
Thiruvananthapuram 695 544

... Rectification Applicant

And

Tirumala Tirupathi Devasthanams
represented through the Executive Officer
TTD Administrative Building, K.T.Road
Thirupathi 517 501

... Respondent/ Registered Proprietor

Heard on 16.07.2012

The instant Rectification-removal application was filed on 25.10.2010 under section 27 of Geographical Indications of Goods (Registration and Protection) Act 1999 (hereafter mentioned as 'Act') read with Rule 65 of Geographical Indications of Goods (Registration and Protection) Rules 2002 (herein mentioned as 'Rules') pleading to remove GI -121 Tirupathi Laddu from the Register of Geographical Indications. The Rectification Applicant has filed the GI-6 in time and the copies of GI-6 were supplied to the Respondent/ Registered proprietor.



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For the Rectification Applicant

: No representation

For the Respondent/ Registered Proprietor

: Mr. M.S. Bharath and Ms. Gowri
Tirumurti advocates appeared for
M/s. Anand and Anand

There was no representation for the Rectification Applicant and he was called absent and heard the arguments of the Respondent/Registered Proprietor. After hearing the arguments and perusal of documents available with this registry regarding GI -121 (Tirupathi Laddu), this tribunal passed the following

Order

1. Brief facts relevant for deciding this Rectification application, the rectification applicant Mr. R.S. Praveen Raj is serving with National institute for interdisciplinary science and technology (NIIST-CSIR) filed an rectification application alleging that granting of GI tag for 'Tirupathi Laddu' is contravene the section 11(1) of the Act and rules 32(5) and 32(6) (a) & (f) of Rules and that the said Geographical indication is prohibited for registration under 9(a) & (d) of the Act. Further the rectification applicant has alleged that there was no industrial purpose is served by the grant and granting monopoly to a single producer will defeat the fortitude of Geographical indications. Moreover the applicant claims that other religious entity will claim right over their products demonstrating this Indication as a precedent and it is very difficult to revoke the Intellectual property protection granted to religious institution. It was also alleged by the applicant that Geographical indication granted to Tirupathi Laddu is a grave injustice to Art. 25 & 26 of the Constitution of India and there will issues in event infringement by Non-Hindu. For the above mentioned grounds the rectification applicant looking for removal of GI-121 from the Register of Geographical indications.

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2. The respondent/registered proprietor Tirumala Tirupathi Devasthanam through the authorised signatory filed a counter affidavit executed by Mr. Y.R. Krishna Rao, raised preliminary objections stating that the rectification applicant has no locustandi to institute the instant proceedings and the rectification applicant is no way offended by the registration and never objected when the matter was publicised in the GI Journal. In addition to the preliminary objections the respondent/registered proprietor has expressed that granting of Geographical indication tag is not against the religious passion. The registered proprietor is a non-profit trust under Andhar pradesh Charitable and Hindu Religious Institution and Endowment Act 1987 and it employs about 14,000 persons to serve devotees visiting Tirumala and engaged in variety of religious and endowment activities. The TTD is also under the obligation to admister and maintain the Turst property and to cater the needs of the pilgrims. The Tirupathi laddu is offered in subsidised rates to pilgrims and gained great reputation and distinctiveness for a long period. The registered proprietor further articulated that in granting Geographical indication tag to Tirupathi laddu all the procedural formalities contemplate under the Act and Rules were strictly adhered and the genuineness of the product was verified by duly appointed experts and it the product was classified as food stuff.

3. The Respondent/registered proprietor tendered paragraph wise reply alleging that the respondent trust is a legal entity taking care of the needs of the persons involving in the production of the goods. There are some examples where single producer was granted with GI tag and under section 13(2) of The General Clauses Act 1897 the words in singular shall include the plural i.e producer. The respondent is having inherent statutory and equitable rights to fence its Intellectual property. The Geographical indication registration was acquired to make sure and aware the public from unauthorised sales. The product was rightly classified as food stuff and the explanations in the rectification application for the term food stuff are misleading. Grant of GI protection for Tirupathi Laddu is not contrary to Art. 25 & 26 of the



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Constitutional Law of India. Art.300A of Constitution of India relating to property right was misconstrued by the rectification applicant and the respondent requested to dismiss the rectification application.

4. The Registry has sent notice to both the parties. The Rectification applicant was not present on the date of hearing and there was no representation for him and he has not notified his intention to appear at the hearing. The rectification applicant sent an e-mail dt.21.06.2012 to the registry stating that he is having some practical difficulties in attending the hearing and the matter may be heard in his absence. The Rectification applicant led no evidence and has not produced any documents in his favour. The respondent/registered proprietor represented through their counsel Mr. M.S. Bharath argued the issues in detail and on 18.07.2012 submitted written arguments substantiate the contents in the counter affidavit. The Executive officer Mr. Y.R.Krishna Rao filed proof affidavit with annexure to justify his averments.

5. Based on the grounds mentioned in the rectification application and the counter affidavit filed by the respondent, the following points for determination are framed:

a. Whether the Rectification applicant has established his locustandi to institute the rectification proceedings against the Registered Geographical indication Tirupathi Laddu?

b. Whether the Rectification applicant is an aggrieved person?

c. Whether granting of GI tag to the product is prejudice to Art. 25, 26, 300A of Constitution of India?

d. Whether there are any violation of sec. 11(1), 2(1) (f), 9(a), 9(d) of Act and Rule 32(5), 32(6) (a) & (f) of Rules?

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e. Whether the rectification applicant proved the claim as alleged in the rectification application?

f. Whether the rectification applicant entitled to the relief sought for in rectification application?

6. The respondent/registered proprietor raised preliminary objections regarding the maintainability of the rectification application. Under sec. 27(1) of the Act and Rule. 65 of the Rules, the aggrieved person alone have the right to file rectification application to the Registrar. Under sec. 27 (1) of the Act, a person cannot bring a rectification application challenging the registration unless the rectification applicant can exhibit that he is harmed by the registration. The rectification applicant never elucidates how he was wounded by the Registration of the product. On the other hand it is the duty of the rectification applicant to setout fully the nature of the applicant's interest in the registered product. The rectification applicant was unsuccessful to satisfy this Tribunal on this issue of his interest towards the registered GI. From the averments of the instant application it is apparent that the rectification applicant is a third party, working with NIIST-Council of Scientific and Industrial Research (CSIR) and not even involved in the same trade or manufacturing the similar GI product. The applicant is also residing at Thiruvananthapuram (Kerala) and not connect the particular geographical area of the Tirupathi Tirumala- Chittoor district (Andhra Pradesh) The rectification applicant "lacks standing" in proving his locus standi in the registered GI. The issue No. 1 & 2 were not in favor of the rectification applicant on the ground he is not an aggrieved persons and not having interest towards the registered GI.

7. It was alleged in instant application that sec. 11(1), 2(1) (f) of Act and Rule 32(5), 32(6) (a) & (f) of Rules are violated, raising an issue that the respondent is a sole producer of the product. Under sec.11(1) of the Act, any association of persons or producers or any organization or authority established by or under any law for the time



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being in force representing the interest of the producers of the goods may make an application for GI registration. From perusal of the documents submitted at the time of registration the registration the respondent/registered proprietor is a Hindu Religious institution governed by Andhra Pradesh Charitable and Hindu Religious Institutions and Endowment Act 1987, it falls within the ambit of sec. 11(1) of the Act and the said entity is entitled to make an application for GI registration for any product subject to show that they are representing the interest of producers. The rectification applicant has mentioned that TTD is the sole proprietor and no other manufactures of Tirupathi Laddu. Each and every person involved in the manufacturing of the product is deemed to a producer of the product. It is an admitted version that the Tirupathi laddu is not manufactured by the effort of single person. It is a product emerging from of the effort of employees of TTD.

8. The respondent/ registered proprietor produced the copy of official journal of European Union relating to Council regulation (EC) No. 510/2006 'Karlovarsky Suchar' a registered Geographical indications with European Union, in which single producer manufacturing breads and bakery items in a traditional style was accepted and recognised world wide. The term 'producers' mentioned in the Act represents both singular and plural, the interpretation to the term should be done in the light of sec. 13(2) of The General Clauses Act 1897. Sec.9(a) of the Act prohibits the registration of GI which would be likely to deceive or cause confusion, in case of Tirupathi laddu there is no such confusion and mislead in the part of the registered proprietor, on the other hand the rectification applicant failed to explain how the registered product will cause confusion. The essence of GI is not only to protect the interest of manufacturer but also that of consumer who are willing to pay more for a genuine product. The legislative intent is to protect the interest of the producer and general public from imitation, as the Tirupathi laddu is having a well known reputation and the producer is having every right to fence the product by getting all types of eligible Intellectual property protection.

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9. The rectification applicant himself made a self contradictory statements with regards to the classification of goods under sec.2 (1) (f) of the Act and he himself admits that the Tirupathi laddu is food stuff and there is no need for further clarification regarding classification of goods. Form the above mentioned observations the issue No. 4 was decided in favour of the respondent/registered proprietor.

10. The rectification applicant has stated that grant of GI tag to Tirupathi laddu is a serious prejudice to Art. 25 & 26 of Constitution of India. The said Articles are related with Right to Freedom of Religion and the Constitution of India authorised the religious institution for acquiring right in property.

Right to Freedom of Religion (Art.25)

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law –

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Art.26 - Subject to public order, morality and health, every religious denomination or any section thereof shall have the right –

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law

Art.300A - No person shall be deprived of his property save by authority of law.

Persons not to be deprived of property save by authority of law.



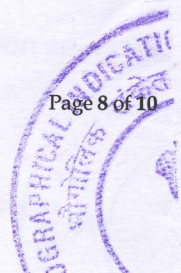
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As our Constitutional law allows the religious institution for acquire movable and immovable property and nothing prejudice was happened by granting GI tag for Tirupathi Laddu. The Constitutional law provisions and the Precedents mentioned by the rectification applicant is no way assist him and not relevant to the instant rectification proceedings. The issue No.3 also disservice the claim made by the rectification applicant.

11. The Rectification applicant has mentioned sec.9 (d) of the Act, GI comprises or contains any matter likely to hurt the religious susceptibilities are prohibited for registration. In a persuasive precedent reported in 2009 (41) PTC 719 (GIG) it was held that '*Religious sentiment is not away from granting Geographical Indications protection- in event of any harm to religion GI is prohibited*'. Granting of GI tag granted to religion related product never hurt the religious sentiments, at the same time GI protect the devotees against non-genuine products and on the other hand facilitates the growth and prosperity of the society.

12. It is a well established legal principle "*Ei incumbit probatio, qui dicit, non qui negat; cum per rerum naturam factum negantis probatio nulla sit*" that the proof lies upon him who affirms, not upon him who denies; since, by the nature of things, who denies a fact cannot produce any proof. The onus of proving details in the rectification application rests upon the applicant. Section 103 of Indian Evidence Act says that Burden of Proof lies on the person who wishes the court to believe in its existence unless it is provided by any law that proof of the fact shall lie on any particular person. In a celebrated case relating to Onus of proof the honourable Supreme Court reported in AIR 2002 SC 827 the court held that '*the proof lies upon the one who affirms, not the one who denies*'. It is the bounden duty of the rectification applicant to prove his pleadings with supportive evidence. The rectification applicant failed to turn up for hearing and never took any effort to prove his case. The issue No.5 yields a negative result to the rectification applicant.

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13. The rectification applicant has filed the instant application mentioning that he is serving as a scientist in NIIST-CSIR Trivandrum. In all the communications addressed to this Registry mentioned his official status and carrying the official emblem of CSIR and his communication address is also mentioned as Scientist, NIIST-CSIR Thiruvanthapuram. In fact the rectification applicant attempted to create an impression that the rectification application was sponsored by the CSIR, which is a Government institution. From perusal of records it is very understandable that the CSIR is not having any role in filing the instant application, the official seal and emblem are misused by the rectification applicant for his personal gain. The conduct of the applicant in conducting the rectification proceedings is iniquitous. The rectification applicant never approached the forum with a clean hand, only for publicity this instant rectification application was instituted by the rectification applicant.

12. The Rectification applicant was granted sufficient opportunity of hearing, but the applicant never turned up for hearing and wasted the precious time of the tribunal by filing frivolous, frolicsome and playful application and misused his official status and emblem of his employer (NIIST-CSIR) for shameful publicity. This shows the reckless, irresponsible, immature attitude of the rectification applicant. The rectification applicant distorted the very purpose of the legislation by filing frisky application. In an authoritative precedent reported in (2004) 3 SCC 349 their lordship of honourable Supreme Court held that *'busybodies, meddlesome interlopers, wayfarers or officious interveners who approach the adjudicating authority with extraneous motivation or for glare of publicity should be penalised for wasting the precious time'*. The instant rectification application was not contested by the applicant. In such circumstances this Tribunal is empowered with the authority to impose costs under Rule. 89 of the Rules. The rectification applicant Mr. R.S. Praveen Raj is directed to pay Rs. 10,000/- (Rs. Ten thousand only) towards cost and the time for deposit of cost is one month from the date of order.



The rectification applicant failed to prove his locustandi and his interest with the registered goods and he is not a capable person to challenge the constitutionality of the registration of GI-121. All the issues framed by this Tribunal regarding the rectification application were disfavor the rectification applicant.

In culmination, the rectification applicant is not entitle to acquire the relief claimed in the application and the rectification application filed by the applicant is not hold any merits and dismissed with abovementioned cost.

The parties to the rectification application also informed that appeal, if any, relating to the rectification proceedings may be preferred to Intellectual property appellate board, Chennai within three months from the date of order.



C. G. Naidu
Chinnaraja G Naidu
Assistant Registrar
Geographical indications registry

Witnesses:

1. For Rectification Applicant : No witness statements
2. For Respondent : Proof affidavit of Mr. Y.R. Krishna Rao, EO-TTD

Documents:

1. For Rectification Applicant : No documents produced
2. For Respondent : a. Official Journal of European Union Dt. 29.11.2006
b. GI Journal 01.07.2005-GI No.6 Payyanur Pavithra Ring
c. Copy of 2009(41) PTC 719(GIG)

Copy submitted:

The Controller General of Patents, Design, Trademark & Registrar of Geographical indications, Mumbai

Copy to

1. Mr. R.S.Praveen Raj, to his communication address namely Scientist, NIIST, Industrial Estate Post, Pappanamcode, Thiruvananthapuram-695 019
2. M/s. Anand and Anand Advocates, Flat No.31, Third Main road, Gandhi Nagar, Adyar, Chennai-600 020