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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 15 January 2026
Pronounced on: 18 March 2026

\+ LPA 577/2025 & CM APPL. 57234-39/2025

EMBASSY OF PERU .....Appellant
Through: Mr. Neeraj Kishan Kaul and Mr. J. Sai Deepak, Sr. Advs. with Mr. Prashant Gupta, Mr. Jithin M. George, Mr. R. Abhishek and Mr. B. Sidhi Pramodh Rayudu, Advs.

versus

UNION OF INDIA & ORS. .....Respondents
Through: Ms. Shwetasree Majumder, Mr. Aditya Verma, Mr. Prithvi Singh, Mr. Rohan Krishna Seth, Mr. Rigved Prasad and Ms. Vanshika Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT

% 18.03.2026

C. HARI SHANKAR, J.

1. If judgments could be given subtitles, we could subtitle this, with due apologies to Dickens, "A Tale of Two Countries".

A. The *lis*

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2. The South American nation of Peru, through its Embassy in New Delhi, filed an application under Section 11(1)[1] of the Geographical Indications of Goods (Registration and Protection) Act, 1999[2], for registration of the Geographical Indication[3] PISCO, in relation to an alcoholic beverage manufactured in Peru. The Asociacion De Productores De Pisco A.G.[4] opposed the application. By order dated 3 July 2009, the Assistant Registrar of Trade Marks allowed the registration of the GI "PERUVIAN PISCO" in favour of Peru.

3. The Embassy of Peru[5] appealed to the Intellectual Property Appellate Board[6], praying that the order dated 3 July 2009 of the Assistant Registrar be quashed, Peru's application for registration of the GI PISCO (without any "Peruvian" prefix) be allowed and the Opposition filed by ADP to the application be dismissed.

4. The IPAB, by order dated 29 November 2018, allowed Peru's appeal, dismissed ADP's Opposition before the Assistant Registrar, and held Peru entitled to registration of the GI PISCO in respect of the alcoholic beverage manufactured by it.

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[1] **11. Application for registration**.—
(1) Any association of persons or producers or any organisation or authority established by or under any law for the time being in force representing the interest of the producers of the concerned goods, who are desirous of registering a geographical indication in relation to such goods shall apply in writing to the Registrar in such form and in such manner and accompanied by such fees as may be prescribed for the registration of the geographical indication.

[2] "the GI Act" hereinafter

[3] "GI" hereinafter

[4] "ADP" hereinafter

[5] "Peru", hereinafter, for ease of reference

[6] "IPAB" hereinafter

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5. ADP challenged the decision of the IPAB before this Court, under Article 226 of the Constitution of India, by way of WP (C) 3549/2020, which was later renumbered WP (C)-IPD 17/2021. Peru was impleaded as Respondent 4 therein.

6. In the interregnum, ADP filed GI Application No. 689 on 3 June 2020, in which it was claimed that the GI "CHILEAN PISCO" ought to be assigned to ADP and "PERUVIAN PISCO" to Peru.

7. While issuing notice in the writ petition, this Court, *vide* order dated 16 June 2020, stayed further proceedings in GI Application No. 689 filed by Chile.

8. By judgment dated 7 July 2025, a learned Single Judge of this Court has allowed ADP's writ petition, set aside the order of the IPAB and directed modification of the GI PISCO, granted to Peru, to "PERUVIAN PISCO". The stay imposed by order dated 16 June 2020 has also been vacated and the GI application filed by ADP has been directed to be further processed.

9. Aggrieved thereby, Peru has filed the present Letters Patent Appeal.

10. We have heard Mr. Neeraj Kishan Kaul and Mr. J. Sai Deepak, learned Senior Counsel for the appellant, and Ms. Shwetasree Majumder, learned Counsel for ADP, at length. Learned Counsel have also filed written submissions.

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B. The Statute, and some preliminary comments

11. Judicial pronouncements in our country on the GI Act are few, and it would be appropriate, therefore, to commence with a tour through the relevant provisions.

12. "Geographical indication" is defined in Section 2(1)(e)[7]. A GI is an "indication" which, in turn, is defined, in Section 2(1)(g), as *including* "any name, geographical or figurative representation or any combination of them conveying or suggesting the geographical origin of the goods to which it applies". The definition of "indication" is, therefore, inclusive, not exhaustive. The GIs with which we are concerned are, however, names. What is significant, for our purpose, is that an "indication" – and, therefore, a GI too – under the GI Act has to *convey or suggest the geographical origin of the goods to which it applies*. The *geographical origin of the goods* is, therefore, the defining criterion. A name which does not suggest the geographical origin of the goods is not, therefore, an "indication" under the GI Act and cannot, therefore, be a GI either. "Tirupati *laddoo*"[8] therefore, qualifies as a GI, as it identifies the goods, i.e., the distinctive *laddoo* made in the Tirupati temple, whereas "*laddoo*", by itself, would not qualify as an indication, or, therefore, a GI, under the GI Act, as a

[7] (e) "geographical indication", in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.

Explanation.—For the purposes of this clause, any name which is not the name of a country, region or locality of that country shall also be considered as the geographical indication if it relates to a specific geographical area and is used upon or in relation to particular goods originating from that country, region or locality, as the case may be;

[8] Referring to the distinctive *laddoos* made in the Tirupati Temple

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laddoo may be made anywhere, including the kitchen of our own High Court.

13. Reverting to the definition of "GI", a GI identifies goods as *originating*, or *manufactured* in the concerned territory, region or locality of a country. This attribute is further clarified by requiring that

(i) a given quality, reputation or other characteristic of the goods is attributable to its geographical origin, and

(ii) *in the case of manufactured goods*, production, processing or manufacture of the goods takes place in the said territory.

The Explanation to Section 2(1)(e) provides a further clarification. The GI is not required, necessarily, to be the name of the country, or of any region or locality thereof. It may *relate to* a specific geographical area of the country, *provided it is used upon, or in relation to*, the goods originating therefrom.

14. Section 6[9] requires a Register of GIs to be maintained, containing the prescribed details of registered GIs. Section 8(1)[10] requires the registration of a GI to be in respect of a definite region, locality or territory of a country. However, in respect thereof, the GI

[9] **6. Register of Geographical Indications**.—
(1) For the purposes of this Act, a record called the Register of geographical indications shall be kept at the head office of the Geographical Indications Registry, wherein shall be entered all registered geographical indications with the names, addresses and descriptions of the proprietors, the names, addresses and descriptions of authorised users and such other matters relating to registered geographical indications as may be prescribed and such registers may be maintained wholly or partly on computer.

[10] **8. Registration to be in respect of particular goods and area**.—
(1) A geographical indication may be registered in respect of any or all of the goods, comprised in such class of goods as may be classified by the Registrar and in respect of a definite territory of a country, or a region or locality in that territory, as the case may be.

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registration may be for all, or for any, of the goods, in any class. Section 8(2)[11] requires the classification, as far as possible, to be in accordance with the international classification of goods for the purposes of GI registrations.

15. Section 9 enlists GIs which shall not be registered. Clauses (a) and (g)[12] thereof alone are relevant for our purpose. Clause (a) prohibits registration of any GI, the use of which would be likely to deceive or cause confusion, and clause (g) prohibits registration of any GI which falsely represents that the goods originate from another territory, region or locality.

16. Section 10[13] permits registration of homonymous GIs. Homonyms, as the learned Single Judge has correctly held, are words with the same spelling and pronunciation, but with different meanings. The English language is replete with homonyms, and "advocate", which the learned Single Judge has, perhaps in a reflective moment, cited by way of example, is one.

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[11] (2) The Registrar shall classify the goods under sub-section (1), as far as may be, in accordance with the International classification of goods for the purposes of registration of geographical indications.

[12] **9. Prohibition of registration of certain geographical indications**.—A geographical indication—
(*a*) the use of which would be likely to deceive or cause confusion; or
*****
(*g*) which, although literally true as to the territory, region or locality in which the goods originate, but falsely represent to the persons that the goods originate in another territory, region or locality, as the case may be,
shall not be registered as a geographical indication.

[13] **10. Registration of homonymous geographical indications**.—
Subject to the provisions of Section 7, a homonymous geographical indication may be registered under this Act, if the Registrar is satisfied, after considering the practical conditions under which the homonymous indication in question shall be differentiated from other homonymous indications and the need to ensure equitable treatment of the producers of the goods concerned, that the consumers of such goods shall not be confused or misled in consequence of such registration.

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17. Homonymous GIs would, therefore, be the same word, registered as a GI in respect of different products, with different regions/territories of origin. The primordial element, which requires to be satisfied for registration of homonymous GIs, is that the consumer should not be confused or misled. Section 10 sets out the circumstances in which "*a homonymous GI* may be registered", which refers, therefore, to the registration of a GI which is, in spelling and pronunciation, identical to an existing GI. The Registrar may allow such registration, of a GI which is homonymous to an existing GI, if he is satisfied that consumers would not be confused or misled between the two, keeping in mind

(i) the practical conditions under which the two GIs would be differentiated from each other and

(ii) the need to ensure equitable treatment of the producers of the goods to which the GIs relate.

18. In the absence of any statutory guidelines, in the GI Act or elsewhere in our jurisprudence, with respect to homonymous GIs, the learned Single Judge has correctly relied on the following clarification with respect to homonymous GIs, as issued by the World Intellectual Property Organisation[14]:

> "Homonymous geographical indications (GI) are those that are spelled or pronounced alike, but which identify products originating in different places, usually in different countries. In principle, these indications should coexist, but such coexistence may be subject to certain conditions. For example, it may be required that they be used only together with additional information as to the origin of the product in order to prevent consumers from being misled. A GI may be refused protection if,

[14] "WIPO" hereinafter

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> due to the existence of another homonymous indication, its use would be considered potentially misleading to consumers with regard to the product's true origin."

19. Any application, for registration of a GI, has to be made under Section 11(1). The particulars required to be provided in the application are specified in Section 11(2). Among others, the application is required to contain a statement "as to how the geographical indication serves to designate the goods as originating from the concerned territory of the country or region or locality in the country, as the case may be, in respect of specific quality, reputation or other characteristics of which are due exclusively or essentially to the geographical environment, with its inherent natural and human factors, and the production, processing or preparation of which takes place in such territory, region or locality, as the case may be". We, for the purposes of adjudicating the present *lis*, are thankfully not required to disentangle that clause. Additionally, the application is required to indicate the class of goods, for which the GI is sought. Section 11(6)[15] empowers the Registrar to refuse the application or accept it absolutely or subject to any modification, conditions or limitations as he thinks fit.

20. Section 16(1)[16] provides for grant of registration of a GI. Read in isolation, the provision empowers the Registrar only to register the

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[15] (6) Subject to the provisions of this Act, the Registrar may refuse the application or may accept it absolutely or subject to such amendments, modification, conditions or limitations, if any, as he thinks fit.

[16] **16. Registration**.—
(1) Subject to the provisions of Section 12, when an application for registration of a geographical indication has been accepted and either—
(*a*) the application has not been opposed and the time for notice of opposition has expired; or
(*b*) the application has been opposed and the opposition has been decided in favour of the applicant,

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GI of which registration is sought, as is apparent from the use of the words "register the said geographical indication". However, as we would observe hereinafter, Section 16(1) should, in our view, be read along with Section 11(6).

21. The remaining provisions of the GI Act do not concern the present dispute.

C. The Litigative Trajectory

I. Peru's application for registration of the PISCO GI

22. Peru pleaded, in its application, that Pisco was a grape liquor obtained by distilling fresh and recently fermented grapes in accordance with traditional methods, maintaining quality established in previously recognised areas comprising the departments of Lima, Ica, Arequipa, Moquegua and the Locumba, Sama and Caplina valleys in the department of Tacna. The application asserted that the word Pisco was "undoubtedly" of Peruvian origin. "Pisco", it was contended, had four meanings, all of which were linked to the Pisco valley, located in south Peru in the Ica department. The application also provided the origin of these meanings, which were claimed to be zoological, toponymic, ethnic and industrial. It was further asserted that grape breeding was introduced in Peru in the 15th century, and that the breeding considerably expanded in the department of Ica, of which

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the Registrar shall, unless the Central Government otherwise directs, register the said geographical indication and the authorised users, if any, mentioned in the application and the geographical indication and the authorised users when registered shall be registered as of the date of the making of the said application and that date shall, subject to the provisions of Section 84, be deemed to be the date of registration.

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Pisco was the main port. Pisco, thereby, became a very popular drink among travellers of the region.

23. As far back as the 17th century, the application asserted that there was historical evidence of the production of a grape brandy in Ica, in the form of a journal of the historian Lorenzo Orchards. The circumstances in which the journal was written were also stated.

24. The Dictionary of Spanish languages, asserted the application, defined PISCO as a brandy originally manufactured in Pisco, in Peru. The British Encyclopaedia also defined "Pisco" as a city in Ica, "known for its brandy made of muscatel grapes".

25. The application went on to detail the distilling process of Pisco as well as processing features distinguishing the liquor from grape liquors manufactured outside Peru. It was also stated that Pisco was recognized as a Peruvian appellation of origin in Costa Rica, Bolivia, Colombia, Ecuador, Venezuela, Panama, Cuba, Guatemala and Nicaragua.

26. Predicated on these assertions, Peru sought registration of PISCO as a GI in Class 33 in respect of the alcoholic beverage manufactured in Peru.

II. <u>ADP's Notice of Opposition</u>

27. ADP, in its notice of opposition, stated that the origin of the word "Pisco" was traceable to the region in which the Pisco wine was

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produced, which encompassed certain parts of the Peruvian coastline and the Atacama Region and the city of Coquimbo in Chile. This region, according to ADP, came to be recognized as the Pisco region. A spirit, made of unadulterated grape wine, distilled in the region, came to be stored in clay pitchers called "Piscos" or "Pisquillos" in Quechua language, as a result of which it came to be known as Pisco. The name "Pisco", it was therefore asserted, was derived from the containers in which the wine was stored.

28. The ADP claimed to have been producing Pisco through traditional methods since 1873, during which they used "Pisco", as a GI, open, extensively and continuously. They had also standardized the production of Pisco, and had taken promotional measures to promote Chilean Pisco worldwide. Owing to its quality, it was asserted that Chilean Pisco had become popular as an alcoholic beverage globally. Pisco, as a brand of alcoholic beverage, was universally identified with Chile. Documentary evidence of these assertions, it was submitted, existed in the form of the Decree Nº Confirmado Mediante Decreto dated 12 November 1873.

29. ADP alleged that Peru had misappropriated the GI PISCO as used by Chile. Peru was attempting to mislead the Registrar into believing that the beverage Pisco was produced exclusively in certain areas and regions of Peru. ADP also questioned the locus of the Embassy of Peru to maintain the application.

30. ADP alleged that the application of Peru failed to disclose any clear link between the alcoholic beverage Pisco and the geographical

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region indicated in the map submitted with the application. There was no integrated supply chain, nor was there any mention or elucidation of the traditional methods used in production of Pisco.

31. It was further submitted by ADP that Peru's application did not make out a case to grant the PISCO GI to Peru, in the light of the definition of "GI" as contained in the GI Act. It was submitted that Peru had failed to demonstrate that Pisco, as an alcoholic beverage, or the manufacturing process thereof, was inextricably linked to any geographical area in Peru, or that it had any "quality, reputation or other characteristics" which were "essentially attributable to its geographical origin". No direct or indirect link, between the manufacture or production of Pisco, and the geographical region indicated by Peru in its application, was shown to exist.

32. ADP further submitted that there was no area, or region, in Peru, named Pisco. The Pisco region encompassed parts of Peru and parts of Chile. A spirit, distilled in that region, was called "Pisco" as it was stored in clay pitchers bearing a similar name. The Pisco produced in the said region was of seven types. Definitive political boundaries, in the said region, came to be established only in the period between 1880 and 1940, when the area was divided into the nations of Peru and Chile. As such, ADP asserted that Peru could not claim any exclusive right to the GI PISCO and could, at best, have a shared claim along with Chile.

33. To demonstrate the fact that Chile had also been producing Pisco for long, ADP annexed a statement showing the quantities of

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Pisco exported by Chile between 1984 and 2001, as well as another statement manifesting the production of Pisco, by Chile, in litres. It was submitted that Chile had also enacted legislations specifically dealing with Pisco, which were specifically referenced, and went back for nearly a century. Free Trade Agreements[17], executed between Chile and other countries, also recognized Pisco as a GI/Appellation of Origin. A list of such FTAs was provided, executed with Mexico, Brunei, New Zealand, Singapore, South Korea, the European Union, USA, Canada, China and Central America.

34. ADP further submitted that registration of the GI Pisco in favour of Peru would result in Peru obtaining a monopoly over the GI which would, in turn, result in consumer confusion, especially as Chilean Pisco, which had been manufactured and sold since over a century, had a greater market reach. Moreover, all manufacturing and production of Pisco, by Chile, which had been continuing since a century, would come to a halt.

35. ADP prayed, therefore, that the application of Peru be rejected.

III. Order of the Assistant Registrar

36. The Assistant Registrar, after rejecting the preliminary objection regarding locus of Peru to maintain the application – which has not been seriously pressed before this Court – held that, while PISCO was an established GI in Peru, it was also well known in Chile, and the documents on record indicated that both countries were using PISCO.

[17] "FTAs" hereinafter

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In the circumstances, in order to avoid confusion, the Assistant Registrar granted Peru the GI "PERUVIAN PISCO".

IV. Order of the IPAB

37. The IPAB noted, in its order, Peru's contention that PISCO, as a Peruvian appellation of origin had been registered in WIPO on 19 May 2005 in the International Registry for protection of Appellations of Origin and that Algeria, Burkina Faso, Congo, Cuba, Georgia, Haiti, Israel, North Korea, the Republic of Moldovia, Serbia, Tongo and Tunisia had accepted PISCO as an exclusive Peruvian denomination of origin. The Czech Republic, France, Italy, Portugal, Hungary, Slovakia and Bulgaria had also recognised PISCO as a Peruvian appellation of origin, with a limitation of the recognised rights to Chile, because of the FTAs earlier executed between Chile and the European Union. Peru also pointed out that no other country had come for registration of the denomination of the origin PISCO.

38. Peru had also explained, in detail, the manufacturing and distilling process of Pisco and that grapes, soil and adequate climate were found in the PISCO-producing valleys which began 145 kms south of Lima and end in Tacna. It had also established the existence of family ties in the industry both in industrial production as well as with small-scale producers.

39. The IPAB also placed reliance on the definition of "Pisco" in the Encyclopaedia Britannica as the "city of Ica, south-east of Peru… Recognised by its brandy made of muscatel grapes". This fact, seen

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with the above material, including the recognition of PISCO as the appellation of origin specific to Peru, clearly established the geographical link on the basis of which Peru could claim entitlement to PISCO as a GI.

40. The IPAB noted that, in the Peruvian coast, there was a valley, a river, a port and a city named Pisco, since colonial times. According to the politico-legal division of Peru, the district of Pisco existed since Peru became an independent republic in 1821, and was made in by the Law of Congress on 13 October 1900, as was published in the Official Gazette on 30 October 1900. The relationship between Pisco and the Peruvian geography and toponomy was, thus, indisputable. The origin of the name Pisco was, therefore, undoubtedly Peruvian, and came from a pre-Hispanic Quechua word meaning "the bird".

41. The IPAB went on to hold that Chile had misappropriated the Peruvian word "Pisco" and had artificially renamed the region which for many centuries had been known by another name. The town La Union was renamed "Pisco Elqui" in 1936, with the sole objective of creating a geographical link between this region and the Chilean liquor produced therein. It was further observed, by the IPAB, that the demarcation of the borders of Peru and Chile in 1929 did not have a major effect on the Peruvian nature of Pisco. After the war with Chile, in 1883, the Department of Tacna, located in Peru, was kept by Chile as a captive province till 1929, and returned to Peru. It was during this period the production of Pisco in Tacna was stopped, to restart in 1929. A mere *de facto* possession of a Peruvian province by Chile

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between 1883 and 1929, it was held, did not extend the Pisco region geographically from Peru to Chile

42. Finally, the IPAB observed that Peruvian Pisco was distinct and different from the Chilean liquor and, especially seen in the light of the international association of the word "Pisco" with Peru, there was no likelihood of confusion or deception among customers.

43. In these circumstances, the IPAB held that the Assistant Registrar had no justification for directing registration of the GI "Peruvian Pisco" in favour of Peru. No justification for the said condition, it was held, was forthcoming from the decision of the Asst Registrar, which had allowed "impurity to creep in the Registrar of Geographical Indications".

44. The IPAB, therefore, dismissed the opposition to Peru's application, as submitted by ADP and directed registration of the GI PISCO in favour of Peru.

V. <u>The Impugned Judgment</u>

45. The impugned judgment notes ADP's contention that Peru and Chile have a shared history of manufacture of Pisco. The learned Single Judge has also taken note of the multiple FTAs between Chile and other countries, which recognised Chilean rights in Pisco. She also notes the fact that Peru's application for grant of GI for PISCO was refused by Czech Republic, France, Italy, Hungary, Slovakia, Portugal and Iran and was withdrawn from Mexico, Bulgaria and

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Costa Rica. As against this, the right of ADP in the GI Pisco was recognised in various countries. The learned Single Judge has also noted ADP's contention that ADP and Peru were coexisting, in the manufacture of the alcoholic beverage Pisco in various countries, which have been tabulated in the impugned judgment. The impugned judgment also notes Peru's contention that the FTAs were merely commercial trade agreements beneficial to Chile and could not amount to statutory recognition of intellectual property rights.

46. The impugned judgment further notes that Chilean Pisco has received multiple accolades and that, in Chile, legislations dealing with Pisco are in existence for over a century. In certain countries, the grant of the GI PISCO to Peru is subject to Chile's rights. The learned Single Judge has arrived at a subjective finding, based on the material before her, that the alcoholic beverage originating from Chile was also known as Pisco.

47. Following these observations, the learned Single Judge has held that there was no justification for the IPAB not to have recognised the existence of Chilean Pisco. The learned Single Judge has taken exception to the reference, in the order of the IPAB, to Chilean Pisco as "the Chilean liquor" and to the finding that Chile had dishonestly adopted "Pisco".

48. The impugned judgment further observes that aspects of priority, existence of an earlier GI, etc, are not grounds for refusing registration under Section 9. The test is whether the goods are actually recognised or identified to be produced/manufactured in that particular

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region, locality, territory or city. Considerations of priority of user and dishonesty of adoption, according to the learned Single Judge, do not arise for consideration while examining an application for grant of GI.

49. Inasmuch as the alcoholic beverage originating from Chile was also identified as "Pisco", the IPAB's finding that the use of Pisco by Chile was historically dishonest, or that Chile had misappropriated "Pisco" have been found, by the learned Single Judge, to be both erroneous and irrelevant.

50. The learned Single Judge has thereafter proceeded to allow registration of the homonymous GI PISCO in favour of Peru, with the geographical identifier "Peruvian" in the form of a prefix. By adding the geographical identifier, the learned Single Judge observes that likelihood of confusion among consumers would be obviated. She also holds that allowing Peru exclusive right over the GI PISCO would be detrimental to the legal and legitimate commercial interests of Pisco producers in Chile and would also help in deception and confusion.

51. The learned Single Judge has further faulted the order of the IPAB for failing to note the historical association of Pisco with Chile including, *inter alia*, legislations enacted in Chile to deal with Pisco as a Chilean produce.

52. The learned Single Judge also adverted to the concept of homonymous GIs, and to Section 10 of the GI Act in that context. In para 56 of the impugned judgment, the learned Single Judge observes

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that ADP claimed "Chilean PISCO as homonymous GI with Peruvian PISCO".

53. The learned Single Judge proceeds on the premise that, in the absence of any additional geographical identifier, the consumer public would be misled and confused if PISCO were to be permitted to be allowed both by Chile and Peru, and keeping in mind the fact that the alcoholic beverages manufactured in Peru and Chile are qualitatively different, though both were known, historically, as "Pisco", as was admitted both by Peru as well as by ADP.

54. As a sequitur to the above discussion, the learned Single Judge has restored the decision of the Assistant Registrar to register the GI "Peruvian Pisco" in favour of Peru. She has also vacated the stay granted by this Court on 16 June 2020 to further proceedings with respect to the application filed by Chile for grant of registration, in its favour, of the GI CHILEAN PISCO and has directed the Registrar to proceed with the application in accordance with law.

D. Rival Contentions before this Court

55. We deem it appropriate to itemise the submissions of learned Counsel, so as to facilitate dealing with them on our findings.

I. Submissions of Mr. Neeraj Kaul on behalf of Peru

56. Arguing for Peru, Mr. Neeraj Kishan Kaul, learned Senior Counsel, submitted as under:

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(i) A preliminary objection to the maintainability of the LPA, as advanced by Ms. Majumder, was first addressed, by submitting that the impugned judgment, inasmuch as it decides the writ petition on merits, is relatable to Article 226, with or without Article 227 and that, therefore, an LPA is maintainable.

(ii) There can be no question of application of Section 10, or registration of a homonymous GI, in the absence of any earlier identical GI. The very invocation of Section 10 is, therefore, misconceived. This was also apparent from Rule 32(1)(6)(h)[18] of the Geographical Indications of Goods (Registration and Protection) Rules, 2002[19] .

(iii) Besides, Chile pleaded for registration of homonymous GIs only in its rejoinder before the learned Single Judge and not at any earlier point of time.

(iv) The grant of homonymous GIs with prefixes would genericize the GI and result in irreparable prejudice.

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[18] **32. Content of application**.—
(1) Every application for the registration of a geographical indication shall be made in the prescribed forms and shall contain the following:
*****
(6) the statement contained in the application shall also include the following:
*****
(h) where the geographical indication is a homonymous indication to an already registered geographical indication, the material factors differentiating the application from the registered geographical indications and particulars of protective measures adopted by the applicant to ensure consumers of such goods are not confused or misled or confused in consequence of such registration.

[19] "the GI Rules" hereinafter

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(v) Besides, the possibility of homonymous GIs is not a ground on which an application for registration of a GI can be rejected under Section 9 of the GI Act.

(vi) PISCO was recognised and identified as a product from Peru. Even on this sole basis, Peru was entitled to registration of the GI PISCO.

(vii) Pisco originated and was manufactured in the grape growing regions of Lima, Ica, Arequipa, Moquegua in the valleys of Locumba, Sama and Caplina in the Department of Tacna, all within Peru. The word "Pisco" was derived from the Quechua word "Pisku", meaning "bird", and the region in Peru was named "Pisco" owing to the number of birds which frequented it. Maps recorded Pisco as a Peruvian town since 1574. The beverage distilled in this area was known as Pisco since the 15th and 16th centuries.

(viii) Geographically, too, Pisco was indelibly associated with Peru. It was produced exclusively from eight varieties of grapes which grew only in Peru. The reputation of Pisco as a beverage was also attributable to its traditional methods of preparation. Pisco was not rectified or treated with distilled water to lower the alcohol level.

(ix) Goodwill and misappropriation, as well as priority and honesty, are not alien to the concept of GI registration, as held by the learned Single Judge. Reliance has been placed, in this

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context, on Section 9(g) and Section 22(1)(b)[20] of the GI Act, as well as on its Statement of Objects and Reasons.

(x) The learned Single Judge is also in error in holding that vagaries of socio-political events could not influence her decision. Inasmuch as the very object of the GI Act is adding to the economic prosperity of producers, social, economic, historical and political events are relevant and critical to determine GI rights.

(xi) All ingredients of Section 2(1)(e), in order to entitle Peru to the GI PISCO, therefore, stand satisfied.

(xii) Chile could claim no rights in the GI PISCO, as the very adoption of the name "Pisco", by Chile, was dishonest. Continuous or consistent user of a dishonestly adopted moniker would not confer GI rights.

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[20] **22. Infringement or registered geographical indications**.—
(1) A registered geographical indication is infringed by a person who, not being an authorised user thereof,—

*****

(*b*) uses any geographical indication in such manner which constitutes an act of unfair competition including passing off in respect of registered geographical indication.

Explanation 1.—For the purposes of this clause, "act of unfair competition" means any act of competition contrary to honest practices in industrial or commercial matters.

Explanation 2.—For the removal of doubts, it is hereby clarified that the following acts shall be deemed to be acts of unfair competition, namely:—

(*i*) all acts of such a nature as to create confusion by any means whatsoever with the establishment, the goods or the industrial or commercial activities, of a competitor;

(*ii*) false allegations in the course of trade of such a nature as to discredit the establishment, the goods or the industrial or commercial activities, of a competitor;

(*iii*) geographical indications, the use of which in the course of trade is liable to mislead the persons as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods;

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(xiii) Chile's contention that the Pisco region had been divided into two countries after definitive political boundaries were established between 1880 and 1940 and that, therefore, "Pisco" was a drink produced both in Peru and Chile, was incorrect. To support its contention that Pisco was exclusively of Peruvian origin, Peru had relied upon a map from 1534 which showed Pisco as a region in Peru; travelogues, memoires and other documents of early travellers and villagers which showed that Pisco was a Peruvian drink as well as an extract from the Modern Encyclopedia of Spain from 1859, referring to Pisco as an "incomparable Pisco spirit". As against this, Chile was relying on vague references in an encyclopedia and recent articles, which could not be prioritised over historical documents. Historical documents revealed that Chile had adopted "Pisco" to ride on the goodwill and reputation of Peruvian Pisco. This was clear from war accounts of Chilean soldiers, documents from the Peruvian embassy to US, the Chilean action of renaming its province as "Pisco" and other memoirs and other documents.

(xiv) The impugned judgment does not deal with the evidence led by Peru. On the other hand, it treats the evidence, and documents, on which ADP relies, as gospel truth.

(xv) The reliance, by the learned Single Judge, on FTAs between Chile and various nations, was misconceived. FTAs are merely a consequence of the larger economic policies of

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States, based on political negotiations and compromise. They cannot be used to interpret statutory rights.

(xvi) Peru has been granted the GI PISCO in 82 jurisdictions, in none of which has the prefix "Peruvian" been added.

(xvii) The IPAB had considered all these factors and arrived at a reasoned conclusion that Peru was entitled to the GI PISCO, and the learned Single Judge ought not to have interfered therewith, while exercising jurisdiction under Article 226 of the Constitution of India. The learned Single judge has done so without returning any finding that the view expressed by the IPAB was not plausible.

II. Submissions of Ms. Shwetasree Majumder

57. Responding to Mr. Kaul, Ms. Majumder submits thus:

(i) The impugned judgment having been rendered under Article 227 of the Constitution, no LPA is maintainable thereagainst.

(ii) There was no dispute that PISCO referred to an alcoholic beverage manufactured and distilled in Peru. Equally, though it also refers to an alcoholic beverage produced in Chile. The finding of the Assistant Registrar, to this effect, was not disturbed by the IPAB. There is also no dispute that the two beverages are different and distinct from each other.

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(iii) Since both countries were using "Pisco", the Assistant Registrar, in exercise of the powers conferred by Section 11 of the GI Act, correctly directed that Peru be granted the GI "PERUVIAN PISCO".

(iv) The FTAs and the legislations, to which the learned Single Judge alludes, clearly establish use of "Pisco" by Chile since a century, along with worldwide recognition of the fact.

(v) Satisfaction of the criteria envisaged in Section 2(1)(e) does not guarantee a GI. A GI may still be refused if the application is hit by Section 9.

(vi) Grant of the GI PISCO to Peru would violate Section 9(a) and 9(g), as there would be clear likelihood of confusion.

(vii) Peru effectively seeks to submit that Chile's beverage must not have a name.

(viii) Acceptance of Peru's argument would render Section 10 otiose.

(ix) Priority of use has been rightly held by the learned Single Judge to be irrelevant while considering an application for grant of a GI.

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(x) Equally, the plea that the decision of the Assistant Registrar has genericized "PISCO" is also irrelevant. The object has, ultimately, to be to avoid confusion.

(xi) No prejudice had resulted to Peru as a result of the decision to allow Peru the use of the GI "PERUVIAN PISCO". A GI is not a brand under which a product is sold.

(xii) The name "PISCO" is not claimed, even by Peru, to be derived from its geographical origin. The learned Single Judge has also noted that Peru contends otherwise. Pisco, as a Peruvian beverage, is not grown in the Pisco region in Peru. In fact, the entire plea to relate Peruvian Pisco to Peru historically is a red herring.

(xiii) "Brandy: A Global History", by Becky Sue Epstein, recorded thus:

> "As much as Peru has been identified with pisco for centuries, today it is not only country that makes this spirit: Chile has launched an effort to complete on the world pisco market. Historically, a pisco-style brandy has been made in Chile, though even as recently as a decade ago in Chile it was common to look to Peru for better piscos. But not any more.
>
> Chilean piscos, however are quite different from Peru's in aromas and flavours- Chile's tend to be softer and more fragrant. Currently, several producers in Chile are making very good piscos in cognac-style double- distillation stills with aromatic Muscat grapes, notably companies like Kappa (from the winemaking Marnier-Lapostolle family) and ABA. They are using high quality wine grapes, and it shows in the final product.

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> Though the pisco industry is still dominated by Peru, Chile actually had its own pisco determination since 1936, when a town in grapes- growing region of Elqui changed its name to Pisco Elqui. And Chilean producers are also experimenting with another cognac element: barrel-ageing."

(xiv) Besides, Encyclopaedia Britannica also notes that Pisco originates both in Peru and Chile, as the learned Single Judge rightly notes.

(xv) The climatic coordinates, nature of the soil, and variety of grapes found in the various provinces of Peru, in which Pisco is produced, as per Peru's application for grant of GI, are all different. Peru's claim that there is one alcoholic beverage, produced by it, called Pisco, was, therefore, false.

(xvi) FTAs are international documents evidencing agreements between countries, and cannot be dismissed.

(xvii) The fact that Peru may have been granted the GI PISCO in 82 countries is irrelevant.

(xviii) The judgment of the learned Single Judge, being well considered and comprehensive, does not merit interference in LPA, applying the standards contained in ***T.K. Mohammed Abubucker v. P.S.M. Ahamed Abdul Khader***[21].

(xix) The plea that a pre-existent GI, on the Register of GI, was necessary for Section 10 to apply, is misconceived. The words

[21] **(2009) 14 SCC 224**

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"subject to Section 7", as contained in Rule 32(1)(6) of the GI Rules, is only to ascertain whether the applicant falls in Part A or in Part B of the Register. Rule 32 only requires another homonymic GI to be indicated.

(xx) The power to grant homonymic GI, with prefixes and suffixes, etc., is contained even in Section 11(6) of the GI Act. The Registrar is empowered to do so *suo motu* or on the suggestion of the opponent.

III. Submissions of Mr. Sai Deepak in rejoinder

58. Mr. Sai Deepak argued in rejoinder, responding to Ms. Majumder's submissions. He submits thus:

(i) The learned Single Judge has entirely misread Section 10. Further, a homonymic GI, he submits, can be granted only on application, as is specifically stated in the provision itself. Further, the same product, with different qualities, cannot be entitled to homonymous GIs.

(ii) An opposition to an application for registration of a GI can never be decided on the basis of homonymy, which is not a ground of opposition as per the GI Act. Besides, homonymy is a question of fact, which has to be specifically pleaded, proved and adjudicated. No factual foundation, for grant of homonymous GIs, was contained in the Notice of Opposition filed by ADP.

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(iii) In its Notice of Opposition to Peru's application for registration of the GI PISCO, ADP admitted that Peru had GI rights in PISCO, and only claimed a "shared right". The Assistant Registrar directed registration of the GI PERUVIAN PISCO on the sole finding that Pisco was "well known in Chile". Such a finding falls short of the requirement of geographical origin, necessary for registration of a GI.

(iv) Unlike "*rosogolla*", an analogy from which the learned Single Judge has sought to draw, Pisco is not a generic expression. Pisco by itself is a GI, and one cannot further add to a GI with a prefix.

(v) Further, ADP had, in its Notice of Opposition to Peru's application, stated that the beverage being manufactured in Peru and in Chile was the same.

(vi) Reliance was also placed on Explanation 1 to Section 9[22], and Rules 32(1)(1)[23] and 32(1)(6)(b)[24] of the GI Rules. These

[22] *Explanation 1*.—For the purposes of this section, "generic names or indications", in relation to goods, means the name of a goods which, although relates to the place or the region where the goods was originally produced or manufactured, has lost its original meaning and has become the common name of such goods and serves as a designation for or indication of the kind, nature, type or other property or characteristic of the goods.

[23] **32. Content of application**.—
(1) Every application for the registration of a geographical indication shall be made in the prescribed forms and shall contain the following:
(1) a statement as to how the geographical indication serves to designate the goods as originating from the concerned territory of the country or region or locality in the country, as the case may be, in respect of specific quality, reputation or other characteristics which are due exclusively or essentially to the geographical environment, with its inherent natural and human factors, and the production, processing or preparation of which takes place in such territory, region or locality as the case may be;

[24] **32. Content of application**.—

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provisions, he submits, make it clear that the history of the GI and its commercial use are relevant criteria.

(vii) Despite pleading Section 9(1)(a) as a ground to oppose Peru's application, ADP had not produced any material showing reputation, trade presence or consumer recognition of Chilean Pisco in India. There could, therefore, be no question of likelihood of confusion.

E. Analysis

I. Objection to maintainability of the LPA

59. We reject, at the outset, Ms. Majumder's objection to the maintainability of the present LPA. Mr. Kaul is correct in his contention that the learned Single Judge has given a decision on the merits of Peru's entitlement to the GI PISCO and the merits of ADP's objection thereto, which does not partake of the exercise of supervisory, but of judicial review jurisdiction. The impugned judgment is, therefore, rendered, not under Article 227, but under Article 226 of the Constitution. The writ petition, too, was filed both

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(1) Every application for the registration of a geographical indication shall be made in the prescribed forms and shall contain the following:

*****

(6) the statement contained in the application shall also include the following:

*****

(*b*) The standards benchmark for the use of the geographical indication or the industry standard as regards the production, exploitation, making or manufacture of the goods having specific quality, reputation, or other characteristic of such goods that is essentially attributable to its geographical origin with the detailed description of the human creativity involved, if any or other characteristic from the definite territory of the country, region or locality in the country, as the case may be;

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under Articles 226 and 227 of the Constitution. An LPA, admittedly, is maintainable against a judgment rendered under Article 226.

60. We, therefore, hold that the present LPA is maintainable.

II. The Issue before us

61. The issue before us is simple. Peru seeks the GI PISCO. The learned Single Judge has allowed registration of the GI PERUVIAN PISCO in favour of Peru. Peru objects to the prefixing of PISCO with "PERUVIAN".

62. We are *not* concerned with whether Chile is, or is not, entitled to the GI "CHILEAN PISCO". A separate GI application has been filed by Chile for the purpose, the further prosecution of which the impugned judgment directs.

63. We, therefore, are only entitled to decide whether

(i) Peru is entitled to the GI PISCO, *per se*, and

(ii) *if not*, whether the learned Single Judge could have upheld the decision of the Assistant Registrar to register the GI PERUVIAN PISCO in favour of Peru.

64. We proceed to address them, seriatim.

III. Is Peru entitled to the GI PISCO?

III.1 Section 9(a) of the GI Act

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65. The entire dispute can, to our mind, be decided solely by reference to Section 9 of the GI Act.

66. Ms. Majumder is correct in her submission that there is no absolute right to grant of a GI even if the criteria for a GI, as envisaged in Section 2(1)(e), are satisfied. If the grant of the GI, as sought, would infract any of the clauses of Section 9, the GI cannot be granted. Section 9 has not been made subject to any other provision in any statute, and the proscription is absolute, as is apparent from the use of the word "shall".[25]

67. Registration of GIs, "the use of which would be likely to deceive or cause confusion", and "which falsely represent to the persons that the goods originate in another territory, region or locality" is absolutely proscribed under clauses (a) and (g) of Section 9.

68. Further, the proscription under Section 9(a) is agnostic of *all other considerations*. Considerations of priority of use and equity, in particular, are irrelevant, where likelihood of confusion is found to exist.

69. There can be no doubt that, if "Pisco" was being used, since long, in Chile, for an alcoholic beverage, grant of the GI PISCO exclusively to Peru is likely to result in confusion amongst consumers.

[25] For the proposition that use of the word "shall" ordinarily connotes a mandate, refer **Khub Chand v. State of Rajasthan, AIR 1967 SC 1074** and **Vijay Dhanuka v. Najima Mamtaj, (2014) 14 SCC 638.**

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70. Peru, too, does not dispute that "Pisco" has been used, since long, to denote an alcoholic beverage manufactured in Chile, though it seeks to contend that the use is dishonest. The material cited by Peru, to buttress the allegation of dishonesty is, to our mind, woefully inadequate for the purpose.

71. For that matter, we are not convinced that the allegation of dishonest adoption, as levelled by Peru against Chile, is relevant for the purposes of Section 9(a). The dishonesty alleged is not recent. Peru does not seek to allege that Chile, in recent times, adopted the moniker "Pisco", for its beverage, to ride on the goodwill of Peru.

72. What is the basis on which dishonesty on Chile's part, in using the name Pisco, for the alcoholic beverage produced by it, is alleged, first in the order of the IPAB and, thereafter, in the present LPA?

73. The IPAB first quotes, in para 15 of its order, the case of Peru in its pleadings, which largely assert regarding the production zones of Pisco in Peru, the varieties of the Pisco beverage, a reference to the Directorial Resolution N 072087-DIPI of the Department of Industrial Property of ITINTEC dated 12 December 1990 which declared PISCO to be an appellation of Peruvian origin, the toponymic, ethnic, industrial and zoological origins of "Pisco", other historical data which purportedly manifest the antiquity of use of "Pisco" in Peru, and the method of manufacture of the Pisco beverage. Apropos the allegation of "misappropriation" by Chile of the name "Pisco", the sole averment is that Chile had artificially renamed the town La Union

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as "Pisco Elqui" in 1936. The *only* finding in the order of the IPAB, regarding misappropriation of the name "Pisco" by Chile, is as under:

> The so called Chilean Pisco region has been constructed by misappropriating the Peruvian name Pisco and artificially renaming a region that for many centuries has been known with another names. That is the case of the town called La Union, which was renamed as "Pisco Elqui" in 1936, with the sole objective of creating a geographical link between this region and the Chilean liquor produced in the same.

We find nothing, in the order of the IPAB, to sustain this finding. In fact, the order merely reproduces the submissions of Peru and proceeds to return findings, without any reasoning as to why the submissions were found substantial, and without any discussion of Chile's stand.

74. In the present LPA, as also in the written submissions and oral arguments advanced at the Bar, Peru, again, has, to substantiate its allegation of dishonesty on the part of Chile, only adverted to the fact that Chile changed the name of the town La Union to Pisco Elqui. The Memoirs of Gabriel Gonzales Videla, President of Chile from 1946 to 1952, on which Peru itself relies, assert that the name was changed so as to export Chilean Pisco to the US. The fact that Chilean Pisco was being traded even prior to 1946, therefore, stands admitted even by Peru.

75. We are of the view that the allegation of misappropriation, or dishonesty, on the part of Chile, in adopting the name "Pisco" for the alcoholic beverage which it admittedly manufactures and distils, is completely bereft of credible supportive evidence. Arriving at such a

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finding, as a ground to decide GI rights of Peru vis-à-vis Chile would, to our mind, be grossly arbitrary.

76. We, therefore, reject Peru's submission that Chile dishonestly misappropriated the name "Pisco". We have no hesitation to hold, either, that the IPAB returned the said finding purely on presumption, with little or no material cited to sustain it.

77. In any event, Section 9(a), as we have already noted, is agnostic of such factors. A GI which is likely to result in confusion or deception cannot be registered. The material on which the learned Single Judge establishes, more than amply, that Pisco, as an alcoholic beverage, was being manufactured in Chile for nearly a century. The legislations enacted in Chile, the FTAs executed between Chile and several other nations, the other material to which Ms. Majumder alludes, and even the material on which Peru itself relies, clearly bear this out.

78. We unhesitatingly reject Peru's contention that FTAs are of no consequence. FTAs are solemn commercial agreements between nations, and manifest international recognition of the fact that the alcoholic beverage manufactured by Chile is known, not only within, but also outside Chile, as Pisco. They, therefore, constitute valuable – perhaps more valuable that antiquated historical tomes, the correctness of which can hardly be verified at this distance of time – evidence of the identification of the alcoholic beverage manufactured in Chile with the name "Pisco".

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79. Peru has sought to contend that bilateral FTAs might not be relevant to the aspect of statutory recognition of a GI in India. The argument entirely begs the issue of the purpose for which FTAs would be relevant in this context. The relevance of the FTAs is not for the purpose of establishing goodwill or reputation of the GI in India, but to establish that the GI is an indicator of origin of the indication identifying the goods concerned in the country, region or territory for which registration of the GI is sought.

80. Chilean Pisco is, therefore, a known alcoholic beverage since long, worldwide. The use, by Peru, of "Pisco" as a GI, for an alcoholic beverage would, therefore, manifestly result in confusion among the consuming public. A "GI" is, per definition, an indication which identifies goods as originating, or manufactured, in the country, region, locality or territory concerned. In the case of manufactured goods, the GI would indicate that the goods are manufactured in that country or territory. If, therefore, Peru were to use the GI PISCO, the impression conveyed to the public is that the spiritous beverage Pisco is manufactured in Peru. That, however, is not the truth, as Pisco is manufactured, not just in Peru, but also in Chile, though the two Piscos may be different in quality and characteristics. The use of the GI PISCO by Peru, therefore, is bound to confuse consumers, as, if they were to encounter Chilean Pisco, they would presume that it is Peruvian, and *vice versa*. Neither Peru nor Chile can, therefore, be granted the GI PISCO, *per se*.

81. In the face of spiritous liquors, from the adjoining countries of Peru and Chile both being known as "Pisco", though they are different

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in quality and character, since long periods of time, the Registrar in India would certainly be breaching Section 9(a) of the GI Act if he were to allow either Peru, or Chile, the absolute right to use PISCO as a GI, as the use, by either Peru, or Chile, of PISCO as a standalone appellation is bound to result in confusion among the consuming public.

82. Peru's application for registration, in its favour, of the GI PISCO, could not have been granted.

III.2 Section 9(g) of the GI Act

83. Ms. Majumder also alleged the use, by Peru, of the GI PISCO to breach Section 9(g).

84. We confess our inability to agree.

85. Section 9(g) applies where the GI is literally true as to the territory, region or locality in which the goods originate, but *falsely represent, to the public, that the goods originate elsewhere*.

86. Would the use, by Peru, of the GI PISCO, attract this clause?

87. In our opinion, it would not.

88. The use, by Peru, of the GI PISCO is undoubtedly literally true as to the territory, region or locality in which the goods, on which the GI is used, originate, as Peruvian Pisco originates in Peru. However,

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by using the GI PISCO for the alcoholic beverage manufactured and distilled in its territory, *Peru would not be representing, to anyone, that Pisco originates elsewhere*.

89. *Positive representation, by the GI user, that the goods originate elsewhere*, is the *sine qua non* for Section 9(g) to be attracted. A likelihood of consumers being confused – unlike in the case of Section 9(a) – absent such positive misrepresentation on the part of the GI user, would not render Section 9(g) applicable. As Peru would not be using the GI PISCO representing the beverage, in connection with which it is used, to be originating in any other country or region, Peru cannot be denied GI registration of PISCO on the basis of Section 9(g).

90. Section 9(a), however, applies, nonetheless.

IV. Relevance of historical data

91. Extensive arguments were advanced before us, by learned Senior Counsel for the appellants, regarding the history of the conflict between Peru and Chile, the origins of the name "Pisco", the manner in which Pisco is prepared and distilled in Peru, and the like. We are not, however, convinced that these details seriously impact the controversy before us. Had Chile not been manufacturing and producing an alcoholic beverage also called "Pisco", we are convinced that Peru would have been entitled to register the GI PISCO in respect of the beverage produced by it. Given the fact, however, that Peru and Chile both can boast of considerable longevity of use of the moniker

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"Pisco" for alcoholic beverages manufactured in their respective territories, each would, in a sense, be entitled to seek registration of the GI PISCO, had Section 9(a) not stood in the way. We are in agreement with Ms. Majumder that the GI Act does not prioritise prior user of the mark of which registration, as a GI, is sought. Considerations of prior user, greater goodwill, and such other factors which inform the entitlement to registration under the Trade Marks Act, 1999, are alien to the GI Act.

92. The applicant for a GI registration is only required to satisfy the registering authority that the requirements of a GI, as envisaged in Section 2(1)(e) are satisfied. Section 11 of the GI Act allows persons to apply for registration of GIs in relation to goods. Section 11(1) requires the application to be made in such form and in such manner and accompanied by such fees as may be prescribed. "Prescribed" is defined in Section 2(1)(j) as "prescribed by rules made under" the GI Act. Section 11(2)[26] stipulates the contents of the application under Section 11(1). Of the various clauses of Section 11(2), clause (a) alone may be of relevance, to the contention advanced by Peru. Section

[26] **11. Application for registration.—**
(2) The application under sub-section (1) shall contain—
(a) a statement as to how the geographical indication serves to designate the goods as originating from the concerned territory of the country or region or locality in the country, as the case may be, in respect of specific quality, reputation or other characteristics of which are due exclusively or essentially to the geographical environment, with its inherent natural and human factors, and the production, processing or preparation of which takes place in such territory, region or locality, as the case may be;
(b) the class of goods to which the geographical indication shall apply;
(c) the geographical map of the territory of the country or region or locality in the country in which the goods originate or are being manufactured;
(d) the particulars regarding the appearance of the geographical indication as to whether it is comprised of the words or figurative elements or both;
(e) a statement containing such particulars of the producers of the concerned goods, if any, proposed to be initially registered with the registration of the geographical indication as may be prescribed; and
(f) such other particulars as may be prescribed.

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11(2)(a) requires the application to contain a statement *as to how the GI designates the goods as originating from the concerned territory*. The link between the GI and the origin of the goods, as by Section 11(2)(a), be in respect of

(i) quality,

(ii) reputation, or

(iii) other characteristics exclusively or essentially due to the geographical environment, with its inherent natural and human factors.

The clause also requires the goods to be produced, processed or prepared within the said territory, which is an ingredient of the very definition of "GI" in Section 2(1)(e).

93. The GI Rules, in Chapter II, contain the provisions relating to the procedure for registration of GIs. Of the various Rules contained in the said Chapter, the only Rule of significance, for our purpose, is Rule 25, which requires the application for registration of a GI to contain a statement of

(i) the period during which the GI was used in respect of the goods mentioned in the application, and

(ii) the person by whom the GI was used, and

is required to be accompanied by an affidavit testifying to such user, accompanied by exhibits showing

(i) the GI as used,

(ii) the volume of sales under the GI,

(iii) the territory, region or locality in the country to which the GI relates,

and such other particulars as the Registrar may require.

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94. Inasmuch as a GI, by its very definition, is required to be an indication linking the goods to the region, locality, territory or country for which the GI is sought to be registered, Section 11 and Rule 25 have specified the details which an applicant seeking registration of a GI is required to furnish. These details, quite clearly, only serve to satisfy the Registrar that the GI, of which registration is sought, satisfies the ingredients of a "GI" as defined in the GI Act.

95. Any GI, with satisfies these ingredients, would be entitled to registration under the GI Act, subject to the condition that none of the proscriptions against registration, envisaged in Section 9 of the GI Act, applies. If one were to ignore Section 9, both Peru and ADP might have been entitled to register the GI PISCO for the alcoholic beverages being manufactured and sold, in their respective countries, under that name. In the face of Section 9(a), however, neither Peru, nor ADP, would be so entitled.

96. In view thereof, it is not necessary for us to dwell further on the submissions of Peru, or of ADP for that matter, of the history of the name "Pisco", as it came to apply to the alcoholic beverage manufactured in that country.

V. <u>The aspect of homonymous GIs</u>

97. The impugned judgment holds that Peru and ADP would both be entitled to registration of the GI PISCO as a homonymous GI, but prefixes the GI with a geographical identifier. Inasmuch as the *lis*,

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before the learned Single Judge was only with respect to Peru's application, the impugned judgment allows the registration, in favour of Peru, of the GI PISCO, but with the prefix geographical identifier PERUVIAN, so that the GI would read "PERUVIAN PISCO".

98. We are in agreement with the submission of Mr. Sai Deepak that a homonymous GI can be registered only on an application seeking such registration. Section 10 of the GI Act reciprocally states that *a homonymous GI may be registered* under the GI Act, if the Registrar is satisfied regarding the practical conditions under which the said homonymous GI would be differentiated from other homonymous GIs. It is clear that Section 10 would come into play only where there is a request for registration of a homonymous GI, in other words, of a GI which spells and is phonetically identical to an existing GI, but relates to different goods. Any ambiguity in this regard is clarified by Rule 32(1)(6)(h) of the GI Rules, which requires an application seeking registration of a GI which is homonymous to an already registered GI to disclose the material factors differentiating the application from the earlier registered GIs and the protective measures adopted by the applicant to ensure that consumers are not misled or confused.

99. These provisions, read in conjunction, make it clear, beyond any shadow of doubt, that a homonymous GI can be registered only on an application seeking such registration, and that such registration can be sought only where there is an existing registered GI which is homonymous to the GI of which registration is sought.

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100. There having been no existing PISCO GI on the date when Peru applied for registration, the question of granting registration as a homonymous GI would not arise at all.

101. We, therefore, regret our inability to agree with the learned Single Judge, in so far as she has proceeded on the premise that Peru could be allowed registration of the GI PISCO as a homonymous GI.

VI. Re. Section 11(6) of the GI Act

102. The learned Single Judge, in deciding to grant, to Peru, the GI PERUVIAN PISCO, has invoked the principle of grant of homonymous GIs in conjunction with the clarification regarding the nature of homonymous GIs as contained on the webpage of the WIPO, reproduced in para 18 *supra*. As per these guidelines, homonymous GIs can be registered together with additional information as to the origin of the product in order to prevent consumers from being misled. Inasmuch as we have held that the GI Act envisages registration of a homonymous GI only on application, which is required to disclose the existence of the earlier homonymous GI, we are not entering into the aspect of whether registration of a homonymous GI, under the GI Act, is permissible with additional geographical identifiers.

103. To the extent the impugned judgment upholds the grant of the GI PERUVIAN PISCO to Peru *as a homonymous GI* with the added geographical identifier "PERUVIAN", therefore, we are unable to agree with the learned Single Judge.

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104. Ms. Majumder submits that the learned Single Judge was, even otherwise, within her rights to grant registration, to Peru, of the GI PERUVIAN PISCO in view of Section 11(6) of the GI Act.

105. We agree.

106. Section 11 deals with the application for registration, the requirements and content of the application, and the manner in which the Registrar would deal with the application. Registration of the GI is separately covered by Section 16 of the GI Act.

107. Section 11(1) allows an applicant to apply for registration of a GI. Section 11(2) enumerates the contents of such application. Section 11(3) permits a single application to be made in respect of a GI for different classes of goods. Section 11(4) requires the application to be filed in the office of the GI Registry within whose territorial limits the territory of the country or the region of locality in the country is situated, the proviso to Section 11(4) providing that, where such territory is outside India, the application would be filed in the office of the GI Registry within whose territorial limit the address for service in India, as disclosed in the application, is situated. Section 11(5) requires the Registrar to examine the application in such manner as may be prescribed. Section 11(6) stipulates that, subject to the provisions of the GI Act, the Registrar may refuse the application, accepted absolutely or accepted subject to amendments, modifications, conditions or limitations as he think fit. Section 11(7) requires the Registrar to record, in writing, the grounds for refusing the application or accepting it conditionally.

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108. The words "amendments, modification, conditions or limitations", as employed in Section 11(6), are as wide as all outdoors. They are unfettered by any caveats contained in the statute or outside it. The power vested in the Registrar by Section 11(6) would, unquestionably, extend to allowing the grant of the request for registration of the GI, subject, however, to the GI being prefixed with the geographical identifier PERUVIAN.

109. It is true that Section 16(1), in its plain terms and read in isolation, envisages registration of the GI of which registration is sought, as is apparent from the use of the words "registered the *said* geographical indication". However, we are of the opinion that, given the amplitude of the expression "amendments, modification, conditions or limitations", as employed in Section 11(6), Section 16(1) is to be read in tandem with Section 11(6). Thus read, in our view, the learned Single Judge was within her jurisdiction in upholding the decision of the Assistant Registrar to dispose of the application filed by Peru by granting registration of the GI PERUVIAN PISCO.

110. Thus, the Registrar and, therefore, the learned Single Judge, who was sitting in judicial review over the decision of the IPAB which, in turn, was hearing the appeal against the decision of the Assistant Registrar, were well within their jurisdiction in accepting the application of Peru for registration of the GI PISCO, subject to the condition/amendment of the addition of PERUVIAN, as a prefix to PISCO.

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VII. And finally …

111. Peru, apparently, is least interested in being proprietor of the GI PERUVIAN PISCO. If that is so, this judgment would not stand in the way of Peru taking steps in accordance with law to surrender the said registration.

112. We are clear, however, in our mind, that Peru cannot be allowed registration of the GI PISCO as a standalone GI.

F. Conclusion

113. The appeal is therefore dismissed. No costs.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

MARCH 18, 2026/AR

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