2025:MHC:1293

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2025

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

(T)CMA(GI)No.2 of 2023

Ramesh Chandra Sahoo ...Appellant

-Vs-

1.West Bengal State Food Processing and
Horticulture Development Corporation Limited,
2nd Floor, Mayukh Bhavan,
DF Block Sector-I, Salt Lake City,
Kolkata – 700 091, West Bengal.

2.Patent Information Centre,
Department of Higher Education Science and Technology,
West Bengal State Council of Science and Technology,
3rd Floor, 26B, DD Block,
Salt Lake, Sector I,
Kolkatta – 700 064.

3.The Registrar,
Geographical Indications Registry,
Intellectual property Office Building,
Industrial Estate, GST Road,
Chennai – 32. ...Respondents

Prayer: Appeal filed under Section 31 of the Geographical Indications of Goods (Registration and Protection) Act, 1999, to set aside the above stated Impugned order dated 31.10.2019 of Deputy Registrar of

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Geographical Indications. b. to direct the Ld.Deputy Registrar of Geographical Indications to take on record the Appellant's Evidence in Support of Rectification and decide the same in accordance with law.

For Appellant	:	Mr.T.Sundaranathan for Mr. Suvendra Kumar Panda
For R1 & R2	:	Mr.S.Majumdar for M/s.Arul Gnana Prakash
For R3	:	Mr. K.Subbu Ranga Bharathi, CGSC

O R D E R

Background

This appeal is directed against the order dated 31.10.2019 allowing interlocutory petition No.1 of 2019, which was filed by the first and second respondents herein (the contesting respondents).

2. By such interlocutory petition, the contesting respondents requested the Registrar of Geographical Indications to treat the rectification application of the applicant as abandoned under Rule 44(2) of the Geographical Indications of Goods (Registration and Protection) Rules 2002 ('GI Rules').

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3. The contesting respondents submitted an application for registration of GI on 18.09.2015. Such application was advertised in the GI Journal on 14.07.2019 and registration was granted on 14.11.2017. The appellant herein applied for rectification of the entry relating to such registration on 13.02.2018 under Section 27 of the Geographical Indication of Goods (Registration and Protection) Act 1999 ('GI Act'). In response to such rectification application, the respondents herein filed a counter statement on 13.06.2018, and such counter statement was received by the appellant on 16.06.2018. By virtue of Rule 66 of the GI Rules, Rules 44 to 51 which deal with opposition proceedings, are made applicable *mutatis mutandis* to rectification proceedings. Consequently, the applicant was required to adduce evidence within two months from the receipt of a copy of the counter statement or inform the Registrar and the counter party in writing that he does not desire to adduce evidence in support of the rectification application but intends to rely on the facts stated in the rectification application.

4. In the case at hand, the appellant applied for extension, in the first instance, on 13.08.2018, and, thereafter, requested for a second

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extension by application dated 11.09.2018. Evidence in support of the rectification was lodged with the Registrar subsequently on 29.10.2018. The interlocutory application requesting that the rectification application be deemed abandoned was filed in the above facts and circumstances and such application was allowed by the impugned order. Hence, the present appeal.

Counsel and their contentions:

5. Learned counsel for the appellant referred to the key dates and events, as narrated above, and contended that the appellant had taken action within the time limit specified under Rule 44(1) of the GI Act and that the request for extension was acceded to. In support of this contention, learned counsel referred to hearing notice dated 26.07.2019 fixing the hearing of the rectification application on 06.09.2019. He further submits that the interlocutory application was filed thereafter on 03.08.2019. Therefore, learned counsel submits that it cannot be said that the appellant abandoned the rectification application in terms of Rule 44(2) of the GI Rules.

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6. His next contention is that the GI Act makes a distinction between abandonment of proceedings at the instance of the Registrar and deemed abandonment by the applicant or opponent concerned. By drawing reference to Section 14(2) and Rule 44(2), learned counsel submits that the said provisions provide for deemed abandonment of the application or opposition, as the case may be, by the party, but not an abandonment of the proceedings. By contrast, by reference to Section 16(3) and Section 57(3), he points out that these provisions enable the Registrar to treat the application as abandoned after providing notice to the party concerned.

7. He further contends that Section 64(1) of the GI Act enables the Registrar to grant extension of time for doing any act unless the time for such act is expressly provided in the Act. As regards the time limit for adducing evidence in support of the rectification application, learned counsel submits that the GI Act does not expressly specify a time limit. Since the Registrar granted the extension requested for by the appellant by fixing a date for hearing the rectification application, he submits that even an appeal by the respondents against such order is not maintainable.

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8. By relying on Section 65 of the GI Act, learned counsel also contends that the Registrar is empowered to call upon an applicant, who defaulted in the prosecution of an application, to remedy the default within the time specified, and to treat the application as abandoned if the default is not remedied within such time. In spite of the existence of such enabling provision, learned counsel submits that the Registrar failed to exercise his power and instead erroneously allowed the application to treat the rectification application as abandoned. For all these reasons, learned counsel submits that the impugned order calls for interference.

9. In response to these contentions, learned counsel for the contesting raises the preliminary objection that the appeal is not maintainable. According to learned counsel, the impugned order was issued under Section 64(1) of the GI Act. Consequently, he submits that an appeal is expressly barred under Section 64(2) thereof.

10. Without prejudice to this preliminary objection, learned counsel proceeded to deal with the appeal on merits. His first

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contention on merits is that Section 64(1) is not applicable in cases where specific provision is made in the rules fixing the time limit. After referring to Rule 66 which makes Rules 44 to 61 of the GI Rules applicable to a rectification application, learned counsel invited my attention to Rule 44 and pointed out that Rule 44(1) expressly stipulates that the maximum permissible extension beyond two months cannot exceed one month in the aggregate.

11. With regard to extension under Section 64, he pointed out that the application for extension is required to be made under Rule 83 in FORM GI-9. By referring to Rule 83, learned counsel pointed out that it enables the filing of an application for extension of time provided time is not expressly provided for such purpose either under the GI Act or the GI Rules. In this case, learned counsel submitted that the application for extension was made in FORM GI-9 by invoking Rule 83. By virtue of the time limit being prescribed expressly in Rule 44(1), including in respect of maximum permissible extension, learned counsel submitted that Section 64(1) cannot be invoked.

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12. In support of these contentions, learned counsel referred to and relied upon the judgment of the Delhi High Court in *Sunrider Corporation v Hindustan Lever Limited and another, 2007 SCC Online Delhi 1018*, particularly paragraphs 9 to 15 thereof. With specific reference to the said paragraphs, learned counsel pointed out that the Court dealt with Section 131 of the Trade Marks Act 1999 (the TM Act) and Rule 50 of the Trade Marks Rules 2002 (the TM Rules 2002), which are in *pari materia* with Section 64 of the GI Act, and held categorically that the said provision would not apply to cases wherein the time limit, including the maximum permissible extension, is prescribed in the applicable rules. By relying on the judgment of the Intellectual Property Appellate Board (the IPAB) in *Basmati Growers' Association v Agricultural and Processed Food Products Export Development Authority (APEDA) and another 2016 SCC Online IPAB 2,* particularly paragraphs 19 to 24 thereof, learned counsel submitted that the IPAB considered the judgment of the Delhi High Court and several judgments of the Supreme Court before concluding that Rule 44 of the GI Rules is the same as and identical to Rule 50 of the TM Rules 2002 and that the opposition shall be deemed to have been

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abandoned in the event of non-compliance with the time limit prescribed under Rule 44(1) of the GI Rules.

13. Without prejudice to the contention that Section 64(1) of the GI Act is inapplicable, learned counsel submitted that the appellant failed to explain the delay and that this was noticed in the impugned order by recording that delay had not been satisfactorily explained. In this regard, he submitted that no interference is warranted with the exercise of discretion by the Registrar in concluding that delay had not been properly explained.

14. As regards the contention that the issuance of a hearing notice should be construed as grant of extension, learned counsel pointed out that, even prior to the hearing notice, the contesting respondents had addressed communications dated 18.12.2018 and 03.01.2019 to the Registrar stating that the appellant herein failed to comply with the mandatory requirements of Rule 44(1) of the GI Rules and, therefore, the application ought to be deemed to be abandoned. The last contention of learned counsel was that Section 65 of the GI Act is only applicable to applications for registration of GI and not to

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applications for rectification. He also submitted that the said provision cannot be invoked in respect of matters expressly provided for in the GI Act or the GI Rules. Since the filing of evidence in support of a rectification application is expressly dealt with in the GI Rules, learned counsel submitted that Section 65 cannot be pressed into service.

Discussion, Analysis and Conclusion:

15. The preliminary objection with regard to the maintainability of the appeal is dealt with first. By relying on Section 64(2) of the GI Act, it was contended by learned counsel for the contesting respondents that the present appeal is not maintainable. Section 64 reads as under:

> ***"64. Extension of time.**—(1) If the Registrar is satisfied, on application made to him in the prescribed manner and accompanied by the prescribed fee, that there is sufficient cause for extending the time for doing any act (not being a time expressly provided in the Act), whether the time so specified has expired or not, he may, subject to such conditions as he may think fit to impose, extend the time and inform the parties accordingly.*

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(2) Nothing in sub-section (1) shall be deemed to require the Registrar to hear the parties before disposing of an application for extension of time, and no appeal shall lie from any order of the Registrar under this section.

"

As is noticeable, sub section (1) enables the Registrar to extend time for doing any act for which time is not expressly provided in the Act. In this case, two applications for extension of time were filed by the appellant. The first application dated 07.08.2018 was not disposed of earlier but appears to have been considered and granted up to 15.09.2018 in the impugned order. As regards the second application, the appellant has addressed a communication dated 23.09.2024 to the Registrar requesting for a copy of the order passed on the application under Section 64(1). Till date, no separate order under Section 64(1) has been placed on record by the adversaries. If an order allowing or rejecting an application for extension of time had been issued, the import of Section 64(2) is that no appeal would lie therefrom.

16. As stated earlier, by the impugned order, an application by the contesting respondents seeking an order treating the rectification application as abandoned was allowed. Consequently, the rectification

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application of the applicant was effectively rejected. Section 31 of the GI Act enables any person aggrieved by an order or decision of the Registrar to appeal to this Court. Undoubtedly, the impugned order qualifies as an order or decision of the Registrar and, in the absence of any provision excluding an appeal against such order, an appeal is maintainable under Section 31. In view of this conclusion, the merits of the appeal are required to be dealt with.

17. On merits, I first propose to examine whether further extension of time was permissible under the GI Act and Rules. The appellant relied on Section 64(1) as the basis for seeking further extension. As is noticeable from the text of Section 64(1), it enables the Registrar to extend the time for doing any act for sufficient cause, if time for such act is not expressly provided in the statute. Rule 83 was framed pursuant to the rule making powers conferred by Section 87 of the GI Act. The said rule is as under:

> *"83. Extension of time.- (1) An application for extension of time under section 64 (not being a time expressly provided in the Act or a time for the extension of which provision is made in the rules) shall be made on Form GI- 9.*

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(2) Upon an application made under sub-rule (1) the Registrar, if satisfied that the circumstances are such as to justify the extension of the time applied for, may subject to the provisions of the rules where a maximum time limit is prescribed and subject to such conditions as he may think fit to impose, extend the time and notify the parties accordingly and the extension may be granted though the time for doing the act or taking the proceeding for which it is applied for has already expired."

On perusal of Rule 83, it excludes applications for extension of time under Section 64 if time is expressly provided either in the statute or in the rules. It further provides that such application is required to be made in Form GI-9. Although it appears *prima facie* that Rule 83 goes beyond the scope of Section 64(1), the validity of Rule 83 is not under challenge in these proceedings. It should also be noticed that the appellant applied for the second extension by invoking Rule 83 and lodged the application in Form GI-9. When these aspects are considered holistically, the conclusion that follows is that Section 64(1) cannot be invoked in this case because Rule 44(1) is applicable.

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18. Rule 44 is as under:

"44. Evidence in support of opposition by the opponents-(1) Within two months from service on him of a copy of the counter-statement or within such further period not exceeding one month in the aggregate thereafter as the Registrar may on request allow, the opponent shall either leave with the Registrar such evidence by way of affidavit as he may desire to adduce in support of his opposition or shall intimate to the Registrar and to the applicant in writing that he does not desire to adduce evidence in support of his opposition but intends to rely on the facts stated in the notice of opposition. He shall deliver to the applicant copies of any evidence that he leaves with the Registrar forthwith in writing of such delivery.

(2) If an opponent takes no action under sub-rule (1) within the time mentioned therein, he shall be deemed to have abandoned his opposition.

(3) An application for the extension of the period of one month mentioned in sub-rule (1) shall be made in Form GI-9 accompanied by prescribed fees before the expiry of the period

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of two months mentioned therein."

Thus the time limit of two months in Rule 44(1) for adducing evidence in support of the rectification application was applicable to the appellant with the option of seeking an extension for a further period not exceeding one month in the aggregate. If reckoned from the date of receipt of the counter statement by the appellant, the two month period expired on 16.08.2018 and the maximum permissible extension would be up to 15.09.2018. In these circumstances, the Registrar would have been justified in rejecting the second application for extension as not being in conformity with Rule 44(1). As noticed earlier, however, no order appears to have been passed on the applications for extension. This leads to the next issue as to whether the legal fiction in Rule 44(2) is attracted.

19. In order to trigger the legal fiction under Rule 44(2), the rectification applicant should not have taken action under sub-rule (1) thereof within the time mentioned therein. In such event, the statute prescribes that the applicant is deemed to have abandoned the application. The admitted position is that the appellant applied for extension on two occasions. The first letter was issued on 07.08.2018,

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seeking an extension of two months. This letter was clearly issued before the lapse of two months from the date of receipt of the counter statement, The second letter seeking an extension of one month was issued on 07.09.2018. These letters unequivocally indicate the appellant's intention to prosecute and not abandon the rectification application. As concluded earlier, the appellant could not have requested for extension beyond 15.09.2018 and, therefore, the application dated 07.09.2018 for extension of one month was liable to be rejected or disposed of by granting extension only up to 15.09.2018. Nonetheless, it cannot be said that the appellant/rectification applicant did not take any action under sub-rule 1 of Rule 44. Since such non-action is a condition precedent for triggering the legal fiction under Rule 44(2), I conclude that the legal fiction is not applicable in the case at hand. Even otherwise, it flies in the face of reason to conclude, whether by resort to legal fiction or otherwise, that a person seeking extension of time to adduce evidence in support of his application has abandoned the same. The consequences of the application not being abandoned by virtue of the legal fiction falls for consideration next.

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20. Learned counsel for the appellant relied on Section 65, which is titled 'abandonment'. He contended that the Registrar is empowered under this provision to issue notice and call upon an applicant to remedy the default in prosecution of the application under the GI Act, and to treat the application as abandoned if the default is not remedied within the time specified. In response to this contention, learned counsel for the contesting respondents submitted that Section 65 only applies to an application for registration and not to a rectification application. Section 27 of the GI Act enables the filing of an application for rectification. As noticed above, Section 65 deals with defaults in prosecution of an application and there is nothing in the text or context of Section 65 that limits its applicability to applications for registration by excluding applications for rectification. Therefore, I conclude that Section 65 also applies to applications for rectification.

21. The second contention of learned counsel for the contesting respondents, in this regard, is that this provision is not applicable to situations wherein the statute contains an express provision to deal with default. According to learned counsel, Rule 44 expressly deals

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with default in filing evidence in support of a rectification application within the prescribed time limit. If the legal fiction in Rule 44(2) had been duly triggered, I would have accepted the contention of learned counsel for the contesting respondents on this issue. As concluded earlier, the legal fiction was not triggered in this case in view of the appellant having taken action under Rule 44(1). Neither Rule 44 nor the other applicable rules deals with a situation wherein the time limit to adduce evidence has elapsed, but the legal fiction is not applicable. As a corollary, Section 65 becomes applicable and the Registrar was empowered to inform the appellant about the default in lodging evidence in support of the rectification application and that, therefore, the Registrar would treat the rectification application as abandoned in terms thereof. The record shows that such a course of action was not adopted. If such notice had been received, the course of action open to the appellant would have been to request that he be permitted to proceed with the rectification application without any evidence in support thereof.

22. On examining the impugned order, it is noticeable from the

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discussion in paragraphs 39 to 48 thereof that the interlocutory application of the contesting respondents was allowed on the ground that Rule 44 is mandatory and that non-compliance leads to the rectification application being deemed to be abandoned. While drawing such conclusion, the Registrar did not examine whether the applications for extension qualify as actions under Rule 44(1). In addition, the contention of the appellant that Section 65 is applicable was noticed in paragraph 34 of the impugned order, but the operative portion of the order contains no discussion with regard to the applicability or otherwise of Section 65. For all these reasons, the impugned order cannot be sustained.

23. Hence, the impugned order is set aside and the matter is remanded to the Registrar for reconsideration on the following terms:

(i) The appellant shall prosecute the rectification application without adducing any evidence in support thereof on the basis of the rectification application and any documents filed along with the same.

(ii) The contesting respondents are permitted to adduce

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evidence within two months from the date of receipt of a copy of this order.

(iii) After providing a reasonable opportunity to the appellant and the contesting respondents, a speaking order shall be issued within six months from the date of receipt of a copy of this order.

(iii) For the avoidance of doubt, it is made clear that no opinion has been expressed on the merits of the rectification application.

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To

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Department of Higher Education Science and Technology,
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SENTHILKUMAR RAMAMOORTHY, J.

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