



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

Interlocutory petition No. 1/2019

In

Rectification/Removal application No. 1/2018

Against

Geographical Indications application No. 533  
(Geographical indication "Banglar Rasogolla")

Dated: 31.10.2019

Present: Mr. Chinnaraja G Naidu, M.A., LL.M.,  
Deputy Registrar-Head of Office  
Geographical indications Registry

1. M/s. West Bengal state Food Processing and Horticulture  
Development Corporation Limited  
2<sup>nd</sup> Floor, Mayukh Bhavan, DF Block  
Sector 1, Salt lake City  
Kolkata 700 091

2. M/s. Patent Information Centre  
Department of Higher Education Science and Technology  
West Bengal State Council of Science and Technology  
3<sup>rd</sup> Floor, 26B DD Block  
Salt Lake sector I  
Kolkata 700 064

... Petitioners/Respondents / Registered Proprietors

And

Mr. Ramesh Chandra Sahoo  
S/o. Mr. Mayadhar Sahoo  
Simulipatna, Chandaka  
Bhubaneswar 754005  
District Khurda, Odisha

... Respondent/Rectification applicant/Third party

31/10/19

### Chronological index of Rectification/Removal No.1/2018

Date of GI Application	:	18.09.2015
Date of Advertisement in GI Journal	:	14.07.2017
Date of GI Registration	:	14.11.2017
Rectification GI-6 (A) filed on	:	13.02.2018
Counter statement GI 2 (B) filed on	:	13.06.2018
Receipt of Counter statement by respondent	:	16.06.2018
Form GI 2(C) seeking extension	:	13.08.2018
Form GI 9 (C) seeking extension	:	11.09.2018
Date of filing Evidence affidavit	:	29.10.2018

### Heard on 21.10.2019

The instant Interlocutory application was filed by the Petitioners/ Respondents/ Registered Proprietors on 03.08.2019 under Rule 44 (2) of the Geographical Indications of Goods (Registration and Protection) Rules 2002 (Herein mentioned as 'Rules'). The said Interlocutory application requesting the tribunal to pass an order treating the Rectification/removal application filed by the Respondent/Rectification applicant/Third party as abandoned under Rule 44(2) of the Geographical Indications of Goods (Registration and Protection) Rules 2002. The said Interlocutory application was heard in presence of Adv. Mr. S.Majumdar, Adv. Mr.Sayan Roy Chowdhory and Adv. Mr. Manosij

Mukherjee, Advocates-Partners of M/s. S. Majumdar & Co. represented

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*S. Majumdar*  
S/M

the Petitioners/Respondents/Registered Proprietors and for the Respondent/Rectification applicant/Third party Adv. Mr.T. Sundara Nathan and Adv. Mr. Suvendra Kumar Panda Advocates-Partners of M/s. IPR Delta Legal appeared before this tribunal and argued the matter. After hearing the arguments and perusal of written arguments, documents available with the registry, this tribunal passed the following

### Order

1. Petitioners/ Respondents/ Registered Proprietors are the Registered proprietors of the Geographical Indication 'Banglar Rasogolla', aggrieved by the registration the Respondent/Rectification applicant/Third party namely Mr. Ramesh Chandra Sahoo had filed a Rectification/removal application on 13.02.2018 in Form GI-6(A) under section 27 of The Geographical Indications of Goods (Registration and Protection) Act 1999 (herein referred as "Act") read with Rule 65 of the Rules. The copy of the Rectification application was forwarded to the Petitioners/ Respondents/ Registered Proprietors through the letter No.GIR/RGI-533-REC-1/2017-18/455 dt 14.03.2018 and the Petitioners/ Respondents/ Registered Proprietors have filed a request on 07.05.2018 seeking extension of time for filing the counter statement in Form 9-C



*Shyama Bhat*  
8/10/18



under Rule 66 of the Rules. On 13.06.2018, the Petitioners/ Respondents/ Registered Proprietors had filed their counter statement with statutory fees to full fill their responsibility and shifted the procedural burden with the Respondent/Rectification applicant/Third party for filing his evidence in support of the rectification/removal application under Rule 44 (1) of the Rules. It was acknowledged by the respondent that the counter statement filed by the Petitioners/ Respondents/ Registered Proprietors was received on 16.06.2018 and from the date of receipt onwards, the timepiece starts counting for the evidence in support of the Rectification application under Rule 44 (1) of the Rules.

2. On 13.08.2018 the Respondent/Rectification applicant/Third party have filed Form GI-2C with a title "Application for extension of time for giving notice of Opposition" , In the said form it was mentioned " In matter of an application No.533 in class 30, I do hereby apply for extension of time of 2 months for giving notice of opposition to the registration of the geographical indication or authorized user under the above number in the Geographical Indications Journal granted on Dt. 14 Nov 2017" further the reasons mentioned in the application is



*Shyama Bhandari*  
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some relevant materials are in search and the respondent is in collection of the vital documents.

3. On 11.09.2018, the Respondent/Rectification applicant/ Third party filed Form GI--9C seeking extension of one month time for filing his evidence affidavit in support of the rectification/ removal application. On 29.10.2018, the Respondent/Rectification applicant/ Third party has filed his evidence affidavit in support of his statements made in the rectification application. It was acknowledged by the Petitioners/ Respondents/ Registered Proprietors that the evidence affidavit was received by them on 30.10.2018 and through a letter dt.18.12.2018 (received by this tribunal on 26.12.2018) objection was raised to consider the evidence affidavit as Record due to non-compliance of Rule 44 (2) of the Rules. It was objected that the Form GI-2C cannot be taken on record and Form GI-9C was filed belated and there was a delay of 74 days in filing the evidence affidavit.

4. In the above said facet mentioned in Para.3, the present Interlocutory petition was filed by the Petitioners/ Respondents/ Registered Proprietors highlighting that there is inordinate delay in filing the evidence affidavit under Rule 44(1) of the Rules. The contents



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of the Interlocutory petition narrates that the Banglar Rasogolla is a registered Geographical indications and the Respondent/Rectification applicant/Third party filed a rectification application on frivolous and baseless grounds against the subject registration. On March 14, 2018 the Petitioners/ Respondents/ Registered Proprietors received a copy of the rectification application inviting the registered proprietor to file counter statement. On 07.05.2018 a request was filed on Form-9C by the Petitioners/ Respondents/ Registered Proprietors for extension of time up to 14.06.2018 to file their counter statement as permitted under Rule 66 of the Rules. On 12.06.2018, the counter statement was filed by the Petitioner/Respondent/Registered Proprietor within time specified. The GI Registry took on record the counter statement and served a copy of the same on the Respondent/Rectification applicant/Third party inviting the Applicant to file its evidence in support of the rectification under Rule 44 of the Rules, i.e. within 16.08.2018.

5. The Petitioners/ Respondents/ Registered Proprietors invites the attention of the tribunal under Rule 66 of Rules mentioning the provisions of rules 44 to 51 shall apply mutatis mutandis to the further proceedings on the application connected to opposition and



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rectification. The Petitioners/ Respondents/ Registered Proprietors highlighted that the Registrar shall not rectify the register or remove the geographical indication or any authorised user from the register merely because the registered proprietor or the authorised user has not filed a counterstatement and reproduced the Rule 44 in the pleadings.

6. It was alleged in the Interlocutory application, on 13.08.2018 the Respondent/Rectification applicant/Third party filed a request in Form GI-2C under the heading "Application for extension of time for giving notice of opposition" by the Applicant for Rectification in the subject matter and on 11.08.2018, a further request was filed on Form GI-9C under the heading "Application for extension of time (not being a time expressly provided in the Act or prescribed by rule) by the Applicant for Rectification in the subject matter". After seeking extension of time on 29.10.2018 the unsubstantiated affidavit under Rule 44 of the Rules was filed by the Respondent/Rectification applicant/Third party. A copy of such affidavit was also received by the Petitioners/ Respondents/ Registered Proprietors on 30.10.2018.

7. The Petitioners/ Respondents/ Registered Proprietors raised a shield that the Respondent/Rectification applicant/Third party has



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3/11/2018

failed to file the said affidavit and/ or comply with Rule 44 of the Rules within the mandatory deadline of two months from the date of receipt of the counter statement filed by the Registered Proprietor within two months from 16.06.2018. Further the request filed on Form GI- 2C dt 13.08.2018 cannot be taken on record, as such form do not pertain to rectification proceedings and has evidently is of no consequence in the present proceedings. Subsequent request on Form GI- 9C was filed on 11.08.2018, which is beyond the permissible timelines and cannot be entertained under any circumstances. From the facts and circumstances of the present case, it is apparent that there has been a delay of more than 2 months (74 days, i.e. from 16th August 2018 up to 29th October 2018) in filing the evidence affidavit and/ or comply with Rule 44 of the Rules.

8. For the non-compliance of the mandatory provisions of law, the Petitioners/ Respondents/ Registered Proprietors filed a detailed representation on 18.12.2018 seeking dismissal of the instant rectification application under Rule 44 (2) of the Rules. Further the Petitioners/ Respondents/ Registered Proprietors submitted that the tribunal has no jurisdiction and / or discretionary powers to enlarge the time prescribed



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by the provisions of Rule 44(2) of the Rules. The said Rules are mandatory in nature and the Respondent/Rectification applicant/Third party has miserably failed to comply with the mandatory requirements of filing the evidence in support of the Rectification within the time frame stipulated under Rule 44(1) of the Rules and that the law does not provide for any alternative but to treat the rectification application filed by the Respondent/Rectification applicant/Third party as deemed to have been abandoned. With the above mentioned averments the Petitioners/ Respondents/ Registered Proprietors have filed the present interlocutory application requesting this tribunal to abandon the rectification/removal application under Rule 44(2) read together with Rule 66 of the Rules.

9. The Respondent/Rectification applicant/Third party was allowed to file his reply version to the Interlocutory application and on 14.10.2019 reply was filed by the respondent contending that the Rules cited in the Interlocutory Petition are not applicable to present facts and circumstance and therefore the averments made herein by the Petitioners/ Respondents/ Registered Proprietors are denied, disputed and not maintainable. In view of the reasons mentioned the



*Johny B. S.*  
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Interlocutory Petition itself not maintainable and hence liable to be dismissed limine.

10. The Respondent/Rectification applicant/Third party submitted that consequent to filing of Rectification application, a Counter Statement was received on 16/06/2018 from this tribunal and sought for extension of time for 2 months by filing the Form GI- 2C and paid the fee of Rs. 300/- and the same was acknowledged by this tribunal on 13.08.2018. It is also submitted that as originally the time extension for 2 months was filed in the Form GI-2C instead of GI-9C, it was requested to treat the same as Form GI-9C seeking time extension for a period of one month i.e., up to 16.09.2018. Accordingly, the fee receipt was duly issued by the Registry. The Respondent/Rectification applicant/Third party admits that another Extension of Time for one month before the expiry date of 16.09.2018 was filed with the registry on 11.09.2018. the Respondent/Rectification applicant/Third party highlighted that on 13.10.2018, the evidence in support of rectification was sent to this tribunal by email and also original of the same was submitted by Treekon courier on 13.10.2018.



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11. It is further submit that a copy of the evidence in support of Rectification was served to the Petitioners/ Respondents/ Registered Proprietors on 13.10.2018 through courier which was received by them and there is no dispute on the above. The Respondent/Rectification applicant/Third party countered that the filing of evidences in support of the rectification was duly complied with and the same is legally valid and proper, the entire above are matter of record on the file of this tribunal and there was no objection or protest of any sort from the Petitioners/ Respondents/ Registered Proprietors. As extensions of time were duly obtained in advance in accordance with law, before the expiry of the prescribed time, there was no delay of any sort in filing the evidences in support of the rectification.

12. In the above circumstance this tribunal served notice for hearing in the Rectification Application, fixing the date of hearing on 06/09/2019, after receiving the hearing notice and just a few days before the above said hearing date, the Petitioners/ Respondents/ Registered Proprietors filed the Interlocutory Petition praying for the abandonment of the Rectification Application and the same is not legally valid and not

proper.



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13. In summarizing his counter to the interlocutory application, the Respondent/Rectification applicant/Third party informed that the present interlocutory application is not maintainable both in law and on facts and liable to be dismissed in limine and the Interlocutory application was filed for malafide purposes of scuttling the legal proceedings and prolonging the issue for the sole purpose of sustaining the ineligible registration obtained through falsity and by playing fraud on this tribunal. It was challenged by the Respondent/Rectification applicant/Third party, even assuming that there was delay in filing the said evidences in support of the rectification, tribunal has powers to condone/extend the same and thus, the extensions of time were duly granted and the present Interlocutory Petition is infructuous both in law and also on facts. There shall not be any prejudice of any sort to the Petitioners/ Respondents/ Registered Proprietors as the matter shall only be proceeded, heard and decided on merits in accordance with law. On the other hand, if the same is allowed, the Petitioner/Objector shall be put to severe hardship, losses and injustice since the process of law and justice is being denied and requested for dismissal of the Interlocutory application.



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14. In the present Interlocutory application this tribunal is in the position to ascertain

a. Whether the procedural formalities are timely accomplished by the Respondent/rectification applicant/Third party?

b. Is there any dereliction on the part of the Respondent/rectification applicant/ third party in complying with Rule 44?

15. Both the parties advanced their arguments and submitted written version of the arguments. It was argued by the learned advocate Adv. S. Majumdar appearing for Petitioners/ Respondents/ Registered Proprietors, the Registrar of Geographical Indications has no jurisdiction or discretionary powers to enlarge the time prescribed by the provisions of Rule 44(2) read with Rule 66 of the Geographical Indication of Goods (Regulations and Protection) Rules, 2002. The Petitioners/ Respondents/ Registered Proprietors has cited the judgment passed by the Hon'ble IPAB in *Basmati Growers Association (BGA- Pakisthan) Vs. Agricultural & Processed Food Products, Export Development Authority* (reported in 2016 SCC Online IPAB 2)



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16. The learned Petitioners/ Respondents/ Registered Proprietors counsel submitted that the deeming fiction would squarely apply in the same way as in Rule 44 and by operation of law the option of filing evidence by the Respondent/Rectification applicant/Third party would automatically be closed and the Application for Rectification would be deemed to have been abandoned after the expiry of three months including a period of one month being the extendible time in the aggregate. No exception can be carved out when the provisions applies to a rectification proceeding. Rule 66 would have been framed independently of Rule 44 of Rules.

17. It is further submitted by the learned counsel for Petitioners/ Respondents/ Registered Proprietors, in opposition proceedings, the Opponent is bound by specific timelines (i.e. 3 + 1 month] at the time of filing an opposition against a pending application. While in case of rectification proceedings, it is expected that the Applicant for Rectification would have all necessary information including documents/ evidences based on which he would be challenging a statutory right granted by the registrar. In the instant case, it is apparent from the extension requests that the Respondent/Rectification applicant/Third party filed the impugned application for rectification



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without any basis whatsoever and the Respondent/Rectification applicant/Third party has failed to show any cause and/ or provide explanations as to why the Respondent/Rectification applicant/Third party did not have the documents readily available with him. The Respondent/Rectification applicant/Third party has also failed to provide any cogent reasons as to why within February 13, 2018 and September 16, 2018, the Respondent/Rectification applicant/Third party could not collect necessary materials to file its evidence.

18. The learned counsel for Petitioners/ Respondents/ Registered Proprietors emphasized that the GI application will be accepted upon satisfying the Registrar, the registration status was granted to the Registered Proprietor. Thus, the ratio of Sunrider case and the order of the Hon'ble Intellectual Property Appellate Board would squarely be applicable to the present case and no reason has been made out both in facts and in law by the Respondent/Rectification applicant/Third party which would warrant any departure from the well settled position of law with regard to grant of extension within the provisions of Rule 44 of the Geographical Indication of Goods (Regulations and Protection) Rules, 2002.



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19. It was argued by the learned advocate appearing for the Petitioners/ Respondents/ Registered Proprietors the registrar of Geographical Indications has no powers to extend time under Section 64 of Act read together with Rule 83 of the Rules. It was highlighted by the counsel that the time to file evidence in support of the rectification expired (after extension of one month) on 16.09.2018. Admittedly, the Respondent/Rectification applicant/Third party could not file the evidence in support of the rectification within the stipulated period of 2+1 months. During the course of the hearing, it was revealed that the Applicant for Rectification filed its evidence in support of the rectification on 29.10.2018 by hand serving the same upon the Registrar of Geographical Indications.

20. The Respondent/Rectification applicant/Third party claim of couriering the document by Track On courier on 13.10.2018 could not be substantiated by producing necessary evidence during the course of the hearing and is evidently false solely with the intention to mislead the tribunal. Evidently there is delay in filing evidence in support of the rectification for 43 days. The Respondent/Rectification applicant/Third party claimed to have sent an email on 13.10.2018 which in any event is



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27 days after the application for rectification was deemed to have been abandoned by operation of law under Rule 44(2) of the Rules.

21. The purported service of the affidavit vide email is not mandated nor in accordance with the Act and Rules. Rule 14 of the Rules specifically mandates that all applications, notices, statements, papers and/ or documents are to be sent by post. In any event, compliance of Rule 44 of the Rules could be considered complete only upon service of the evidence in support of the rectification upon the Registered Proprietor. It is an admitted position that the evidence in support of the rectification was served upon the Registered Proprietor only on 30.10.2018 when the Rectification Application has already deemed to have been abandoned under Rule 44 (2) of the Rules.

22. The learned counsel for Petitioners/ Respondents/ Registered Proprietors underlined in the present case, the applicant has sought extension of time on two occasions. Under Rule 44 of the Geographical Indication of Goods (Regulations and Protection) Rules, 2002 does not restrict the filing request for extension for more than once and thus uses the words "in the aggregate". Such words make it abundantly clear that the application could have applied for extension on multiple occasions, but the total period of the extendable period



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could not have exceeded more than one month in the aggregate. Even if the Applicant for Rectification had applied for extension one week each on four occasions there was no bar in law that such extensions could not have been granted because the aggregate of the 4 extensions of one week each was not in excess of one month.

23. Countering the arguments advanced by the Petitioners/ Respondents/ Registered Proprietors, the learned counsel for Respondent/Rectification applicant/Third party Adv. Mr.T. Sundara Nathan has argued that the Registration of Geographical Indication Tag for 'Banglar Rasogolla' was filed on 18.09.2015 and the same was granted and registered on 14.11.2017, the respondent has filed a Rectification Application on 13.02.2018 for the removal of the above said GI and the same was served on the Petitioners/ Respondents/ Registered Proprietors by the GI Registry on 14.03.2018. As the Petitioners/ Respondents/ Registered Proprietors could not file its counter statement within two months from the above date as provided in the Rules, an application in Form GI- 9C under Rule 66 has been filed seeking time extension for filing the above and accordingly, the counter statement was filed on 12.06.2018, a copy of which was served on the Respondent/Rectification applicant/Third party on 16.06.2019



*Shyama Bandyopadhyay*  
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warranting by him to file the Evidence in Support of the Application for Rectification as provided under Rule 66 read with Rule 44 of the Rules.

24. The Respondent/Rectification applicant/Third party filed a request on 13-8-2018 for time extension for filing the evidence as above said and the same was also taken on record as Form GI-9C, though the said request was originally filed inadvertently as Form GI-2C and in any case, there is no dispute of any sort till this stage. The Respondent/Rectification applicant/Third party had filed another application for time extension under Sec 64 and Rule 83 in Form GI-9C for a further period of one month from 16.09.2018 for filing the evidence in support of rectification. The Respondent/Rectification applicant/Third party has sent the said evidence both by email and also by courier on 13.10.2019, before the expiry of the said one month i.e, before 16-10-2019. The hard copy which was sent by courier was received by the Registry only on 29-10-2019.

25. The second request for time extension and the subsequent filing of the said evidence as above said and the same is being objected to and has become the subject of the dispute in the above Interlocutory Petition filed by the Petitioners/ Respondents/ Registered Proprietors and they are argued on the sole ground that there is no jurisdiction for



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the Registrar to grant the second time extension and in any case, to take on record the said evidence, since it is beyond the time limit as provided under Rule 44. The counsel had argued that the Registrar has jurisdiction to consider the Form GI-9C dt. 11-9-2018 seeking extension of time to file the evidence in support of Rectification and to take on record the evidence filed by the Respondent/Rectification applicant/Third party in the stated circumstances. The respondent/rectification applicant/third party concentrated with the case laws submitted by the other side is distinguishable both in law and also on facts and not applicable to the facts and circumstances of the case.

26. The learned counsel for the respondent Respondent/Rectification applicant/Third party emphasized that the Precedents cited by the petitioners are distinguishable for the reasons, the orders pertaining to GI application for 'Basmati' were passed in the course of opposition proceedings, whereas the issue herein are in respect of rectification proceedings. The opposition proceedings are invited by the process of law from any aggrieved person during the proceedings in the course of Registration whereas the rectification is an original and fresh proceeding initiated by a person who is either aggrieved or having



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any interest in respect of the Registration granted thereof, invoking the applicable provisions as provided in the Act and the Rules, for the purposes of rectification of the register. The opposition proceedings are in the nature of an interlocutory proceedings provided as such in the course of Registration which is thus to be decided in order to complete the Registration process either way whereas it is not the case, in respect of rectification being a fresh and new proceeding.

27. The Respondent/Rectification applicant/Third party also challenged the order of the Hon'ble Delhi High court in Sunrider Case, it is related to opposition proceedings and in addition, it is also pertaining to Trade Marks and not in respect of any GI. A trademark is an intellectual property created or proposed to be created by a person whereas GI is an intellectual property created over a period of time in the past usually by a populace in a specific territory and based on various factors that are specific to such territory. Thus, the nature of intellectual property contained in a GI and a trademark are different and thus, the above case law is further distinguishable.

28. It is the case of the Petitioners/ Respondents/ Registered Proprietors that the above provision does not permit filing any request and seeking further time after the expiry of time extension as provided



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under Rule 44(1) was over and the rectification ought to be declared as abandoned. Similar issues were also made in respect of the Opposition proceedings in the cited case laws as well.

29. In this regard learned counsel refer to Rule 44(2), if an opponent takes no action under sub-rule (1) within the time mentioned it is deemed to have abandoned his opposition. It may be noted that the above provision only provides for deeming the opponent i.e, the applicant for Rectification in this case, as having abandoned his opposition or his application for Rectification. In other words, the above provision has not provided to treat either the Applicant thereof or the his application thereof as abandoned but only to deem and that too only the applicant and not his application, which is already on the record of the registry and also of the registered proprietor being the very root of subject of the rectification proceedings. Thus, by deeming the applicant thereof as having abandoned his own application the same would not end the rectification proceedings thereof automatically. It may be taken akin to setting a party as ex-parte because of certain defaults on his part in a suit. But the proceedings shall continue further to consider the matter on the basis of available materials on record.



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30. Considering as to what should be done in respect of his application which is already on record along with a counter statement thereof and the Registrar should consider the same on merits or should deal in any other particular manner. The Act provides for the above circumstances in Sec 65 Wherein the opinion of the Registrar, an applicant is in default in the prosecution of an application filed under this Act, the Registrar may, by notice require the applicant to remedy the default within a time specified and after giving him, if so, desired, an opportunity of being heard, treat the application as abandoned, unless the default is remedied within the time specified in the notice.

31. In the present case, before the Registrar forming such an opinion, the Respondent/Rectification applicant/Third party admittedly and undisputedly expressly demonstrated his intention that he has not abandoned his application as he filed Form GI-9C again on 11-9-2018 under Sec 64 providing for such circumstances since the said time limit is only provided under the Rules and not expressly provided in the Act. Thus, the second request for extension of time on account of collecting documents, arranging for translation and transliteration of documents, thereof etc., filed under Sec 64 in Form GI-9 as provided under Rule 83 is

maintainable.



*Shyama Bhat*  
3/1/2019



32. The counsel for Respondent/Rectification applicant/Third party has raised an issue regards to the date of filing the evidence by the Respondent/Applicant, since it is received by the Registry only on 29-10-2019 and not before 16-10-2019 though the same has been sent both by email and also courier on 13-10-2019 which date is before the expiry of the time as sought i.e, before 16-10-2019. All applications, notices, statements, papers having representations affixed thereto, or other documents authorised or required by the Act or the rules to be made, served, left or sent, at or to the Geographical Indications Registry or with or to the Registrar or any other person may be sent through the post by a prepaid letter. Any application or any document so sent shall be deemed to have been made, served, left or sent at the time when the letter containing the same would be delivered in the ordinary course of post. In proving such sending it shall be sufficient to prove that the letter was properly addressed and put into the post.

33. It was argued upon conjoint reading of sec 14 would show that there is no particular manner of leaving the evidence as provided by the Rule 44(1) and the postal mode is only an acceptable mode and not the only permitted mode. The email address is given in all the notices and communications sent by and also in the website of the registry. It is



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verified and confirmed at the oral hearing that the evidence in support of rectification application sent by email dt 13.10.2018 was received by the Registry. The Courier receipt herein attached No.3100998023 dt 13-8-2018 by Trackon Couriers Pvt Ltd addressed to Registry proves that the hard copy version also was duly sent as stated in his counter statement and as provided under Rule 14(2) read with 14(3), the same should be deemed to have been received in the ordinary course of the post, usually, taking a time of 2 days i.e, by 15-10-2018 or latest by 16-10-2018 and thus the same is within time.

34. The counsel for Respondent/Rectification applicant/Third party argued that notice under Sec 65 was not yet issued and the Registrar is having discretion to consider the circumstances and any conditions under Sec 61 read with Sec 64. Though not warranted and by way of diligence and abundant caution that the Respondent/Rectification Applicant undertakes to comply with any reasonable conditions as may be imposed by the tribunal. As the law being as above, the Interlocutory application filed by the Petitioners/ Respondents/ Registered Proprietors is malafide and vexatious since filed with an illegal intention of misleading and preventing this tribunal from considering the above provisions of law and thus liable to be



*Shyama Reddy*  
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dismissed with costs. The respondent pressed this tribunal that it is having jurisdiction and requested to dismiss the Interlocutory petition and the evidences in support of the rectification application filed by the Respondent/Rectification applicant/Third party may be taken on record for further proceedings in accordance with law.

35. It is observed by this tribunal from the records available and from the submission made by both the parties regarding the filing of documents and connected transaction there is no dispute on the dates. The date of counter statement of the Petitioners/ Respondents/ Registered Proprietors is mentioned as 12.06.2018 in the interlocutory petition, it is noticed that the Petitioners/ Respondents/ Registered Proprietors filed the counter statement on 12.06.2018 without statutory fee, hence the particular date was not considered as date of Form GI-2B, as a fee bearing document filed without statutory fee was not considered as document filed within time. The Counter statement along with fee was received on 13.06.2018 and the said date is acknowledged as date of filing counter statement.

36. It was argued by the Petitioners/ Respondents/ Registered Proprietors that on 13.08.2018 the Respondent/Rectification applicant/Third party have filed Form GI-2C with a title "Application



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for extension of time for giving notice of Opposition”, In the said form it was mentioned “In matter of an application No.533 in class 30, I do hereby apply for extension of time of 2 months for giving notice of opposition to the registration of the geographical indication or authorized user under the above number in the Geographical Indications Journal granted on Dt. 14 Nov 2017” The Petitioners/ Respondents/ Registered Proprietors are opposing to the time extension petition filed on 13.08.2018 and argued that the Respondent/Rectification applicant/Third party quoted a wrong provision and it does not have any legal sanctity.

37. Our Hon’ble Supreme court in *The Municipal Corporation Of Ahmedabad Vs Ben Hiraben Manilal* (1983 AIR 537) held that “It has been well settled that mere mentioning wrong provision does not invalidate the order, if otherwise the authority has jurisdiction under the law”. In an another case *Vijaya Bank vs Shyamal Kumar Lodh* (Civil Appeal Nos. 4211 & 4212 of 2007) Hon’ble Supreme Court held that “Incorrect label of the application and mentioning wrong provision neither confers jurisdiction nor denudes the court of its jurisdiction. Relief sought for, if



*Shyamal Kumar Lodh*  
31/1/2018

falls within the jurisdiction of the court, it cannot be thrown out on the ground of its erroneous label or wrong mentioning of provision”.

38. The judgment of the Hon'ble Supreme court of India is directly appropriate to accept the time extension petition filed by the Respondent/Rectification applicant/Third party in Form GI 2C dt.13.08.2018 and there is no obscurity in extending the time for one month from 16.08.2018 to 15.09.2018. In the said aspect the plea raised by the Petitioners/ Respondents/ Registered Proprietors are not tenable and the Respondent/Rectification applicant/Third party granted an automatic time extension as per Rule 44(3) of the Rules and the Respondent/Rectification applicant/Third party got a right to file their evidence affidavit on or before 15.09.2018. It is witnessed from the available records that the Respondent/Rectification applicant/Third party had not filed the evidence before the extended deadline provided by the Rules ie on or before 15.09.2018.

39. On 11.09.2018 the Respondent/Rectification applicant/Third party filed a Form GI-9C under the heading “Application for extension of time (not being a time expressly provided in the Act or prescribed by rule) by the Applicant for Rectification in the subject matter”. On



*Shyama Bandyopadhyay*  
31/10/18

29.10.2018 evidence affidavit under Rule 44(1) of the Rules was filed by the Respondent. The present Interlocutory application challenges the subsequent time extension application filed by Respondent/Rectification applicant/Third party on 11.09.2018, the whole arguments are focused only with regards to the time extension application filed on 11.09.2018. The Petitioners/ Respondents/ Registered Proprietors are challenging the subsequent time extension is not maintainable under Rule 44(3) of the Rules.

40. Under Rule 44(1) of the Rules the evidence in support of the rectification application should be filed within two months from services of the counterstatement or within such further period not exceeding one month in the aggregate thereafter as the Registrar may on request allow, the applicant for rectification shall either leave with the Registrar such evidence by way of affidavit as he may desire to adduce in support of his rectification application or shall intimate to the Registrar and to the registered proprietor in writing that he does not desire to adduce evidence in support of his rectification application but intends to rely on the facts stated in the rectification application. He shall deliver to the registered proprietor copies of any evidence that he leaves with the



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21/10/18



Registrar under this sub-rule and intimate the Registrar forthwith in writing of such delivery.

41. The Rules direct the executing authority under Rule 44 (2) in event an applicant for rectification takes no action under sub-rule (1) within the time mentioned, he shall be deemed to have abandoned his application for rectification. Further the Rule 44 (3) unshakably explained that 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 of two months.

42. The Rules under Rule 44(2) & (3) in unblemished manner explained in a layman language that the extension for one month should be filed before the expiry of two months from the date of receipt of counter statement and the consequence of failure in obey the Rules will leads to deemed abandoned of the rectification. The argument put forward by the learned advocate Mr. Sundaranathan regarding the applicability of the Rule 44 in rectification proceedings are not acceptable, as per Rule 66 the procedure adopted for opposition is mutually applicable to rectification proceedings for filing of counter statement, evidence and other legal formalities. The



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Respondent/Rectification applicant/Third party attempts to distinguish the opposition and rectification formalities are not a valid argument in the eye of this tribunal.

43. To decide the issue of extending of time beyond the period mentioned in the Rules, this tribunal fully depends on the judgment passed by the Hon'ble Intellectual property Appellate Board in *Basmati Growers Association (BGA- Pakistan) Vs. Agricultural & Processed Food Products, Export Development Authority* reported in 2016 SCC Online IPAB 2, It was held by the Appellate Tribunal

"Para 15. The crux of the question involved in this matter is whether Rule 44(2) of G. I. Rules is mandatory and whether the non compliance of the time stipulated under Rule 44(1) & (2) of G.I. Rules for filing the evidence by way of affidavit in support of opposition would amount the opposition deemed to have been abandoned in terms of the provision of Rule 44(1) & (2) of G.I. Rules?

Para 24. Therefore we have no hesitation to hold that Rule 44(2) of G.I. Rules 2002 is mandatory and as the appellant miserably failed to comply with the mandatory requirements of filling the evidence in support of opposition within the time frame stipulated under Rule 44(1)



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of G.I. Rules, 2002, the opposition shall be deemed to have been abandoned by the appellant. The Assistant Registrar has rightly held by following the decisions cited supra, in which the decisions of the Hon'ble Apex Court has also been relied that Rule 44(1) & (2) of G.I. Rules 2002 are mandatory and in the event of not filing the evidence of affidavit in support of opposition within the prescribed time the opposition would have been abandoned.

Para 25. In view of the aforesaid reasons, we have arrived at the irresistible and inevitable conclusion that there is no infirmity or illegality warranting our interference in the impugned order dated 31.12.2013 made in Interlocutory Petition. No. 1 in TOP No. 18 against G.I. Application No. 145 and accordingly the appeal is hereby dismissed."

44. The Geographical Indications of Goods (Registration and Protection) Act 1999 is a special Act, the rectification to registration is in fact a kind of a plaint, it has to be filed within the period of limitation provided under the special Act in the manner prescribed and on payment of the prescribed fee as provided thereunder, and if that was not so done there was no power with the Tribunal to extend time. If Rules requires a thing to be done in a particular manner, it had to be



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done in that particular manner only. No such power to extend the time could be done under Rule 44 (3) and the general provision for time extension in Section 64 of GIG Act will not apply because, that Section will apply only where it is not expressly provided under the Rules for doing a particular act.

45. The Rules are intended to prescribe a fixed time, it has specifically so done under Rule 44 of the Rules. Power is given to do certain thing in a certain way, the thing must be done in that way or not at all, and that other methods of performance are necessarily forbidden. The Hon'ble Supreme Court of India in the case Chief Forest Conservator (Wildlife) Vs. Nishar Khan (2003) 4 SCC 595 "It is now well settled that when 'Rules' are validly framed, they should be treated as part of the Act".

46. The Hon'ble Delhi High court in the case Hsil Ltd. vs Manish Vij And Ors CS(OS) 486/2014 dt.19.01.2018 held that in case of delay condone there must a proper excusable explanation to be submitted by the person who claiming the benefit. The Respondent/Rectification applicant/Third party has failed to provide sufficient and cogent reasons for allowing the delay condone application. There was no proper explanation preferred by the Respondent/Rectification



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applicant/Third party and cannot be regarded as a ground for exercise of discretion. There must be excusable reasons to be stated for granting time extension, but the application second extension petition has been filed without any justification and not acceptable.

47. Based on the authoritative precedent *Basmati Growers Association (BGA- Pakistan) Vs. Agricultural & Processed Food Products, Export Development Authority (supra)* the present dispute of extending the time beyond one month under Rule 44(3) is decided and reached a conclusion that this Tribunal has also no jurisdiction in extending the time beyond the maximum period prescribed under Rule 44(1) and the evidence in support of rectification in the instant proceedings are barred by limitation.

48. The principles of law laid down by the Appellate courts mentioned above are squarely applicable to the defense taken by the Petitioners/ Respondents/ Registered Proprietors in the present proceedings. This tribunal reaches a conclusion that the respondent/rectification applicant/Third party filed his evidence beyond the prescribed period under Rule 44 (1) of the GI Rules. If the evidence affidavit has not been filed within the time prescribed under Rule 44(1), the rectification would have to be abandoned. From the



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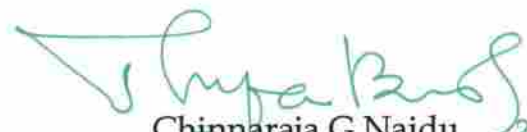
observations made by the apex courts, this tribunal has no jurisdiction in extending the time beyond the maximum period prescribed under Rule 44(1) and the evidence in support of rectification/removal petition is time-barred. It is decided that the respondent/rectification applicant/third party futile to observe the procedural formalities enlightened by the Rules.

In final, the Interlocutory application filed by the petitioners/respondents/Registered proprietors is allowed and in consequence the Rectification petition filed by the Respondent/Applicant/Third party in Rectification/removal application No.1/2018 dated 13th February 2018 is treated as abandoned under Rule 44(2) of the Rules and there is no costs regarding this interlocutory application.

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

Given under my hand and seal the day 31st of October 2019



  
Chinnaraja G Naidu  
Deputy Registrar and Head of Office  
Geographical indications registry