

**FROM *LADDU* TO GI AND AFTER:  
A POST-GRANT ANALYSIS OF THE *TIRUPATI LADDU*  
REGISTRATION**

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**I. INTRODUCTION**

That religion is a money-spinner is a truism repeated frequently enough. But the commercializing potential of intellectual property rights in religion appears to have been discovered only recently in India. This throws up some fascinating conundrums for anyone observing the Indian IP system, which in any case is grappling with preserving the old and broaching the new. This tussle has had no better advertisement in the recent past than in the grant of a geographical indication (henceforth, “GI”) to the *Tirupati Laddu*. This note tries to enquire into some of the controversial issues raised in the aftermath of the grant, in light of the policy objectives of the law governing geographical indications in India, as well as recent decisions of the administrative authorities. The note concludes with a speculative discussion on the rationale for applying for a GI on the *Laddu*, and whether those objectives have been met.

**II. THE BACK-STORY: FROM *LADDU* TO GI**

A GI is a name or sign attached to goods that signifies the geographical location of origin or manufacture of the goods. The GI may also by extension indicate an inherent quality, reputation or other characteristic associated with the goods. India has embraced GI’s as part of its system of protecting intellectual property rights with enthusiasm by designing a statute, i.e., the Geographical Indications of Goods (Registration and Protection) Act, 1999 [henceforth, “the Act”], to favour agricultural, natural and manufactured goods, including handicraft products and foodstuffs. Nearly 200 applications for GI’s have been made to date since the Registry commenced functioning, just over 6 years ago, with over a third having been successfully registered.<sup>1</sup>

The application for the *Tirupati laddu* is one such application, filed on March 31, 2008 by the *Tirumala Tirupati Devasthanam*, (henceforth, TTD), a body that manages, among others, the Venkateswara temple at Tirupati in the southern Indian state of Andhra Pradesh, reportedly one of the richest Hindu temples in the world. From the description of goods offered by the applicants, one notes that the *Tirupati Laddu* is “*offered as naivedyam to the Lord and*

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1. See GI Journals 1 to 31.

*distributed and sold as prasadam to the devotees after they worship Lord Venkateswara, the presiding deity at the Sri Vari Temple at Tirumala Hills at Tirupathi*” (GI Application No. 121, 2008). For anyone familiar with an Indian kitchen, a *laddu* requires no further explanation. The *Tirupati* variety claims to be unique not only because of the combination of ingredients used in its manufacture which “*impart a distinctive aroma, appearance and taste*”, but also because of the reputation, quality and human skill associated with the product. What makes it more special, according to the application for its GI, is that the *laddus* are prepared in the religious centre of Tirupati, and that the *laddus* are the same ones that are first offered to the temple deity before being sold or distributed to waiting pilgrims as *prasadam*.

The GI registration for the *Tirupati Laddu* was granted in 2009, and instantly became the cynosure of all attention. Critics pointed to at least two possible grounds for rejection that appeared to have been ignored: first, that the TTD could not be considered an applicant fit to apply for a GI, since it was not an association of persons or producers, or organization or authority representing the interests of producers (Section 11(1) of the Act)<sup>2</sup>; and second, that the GI, indicating a religious offering, fell under the statutory exception of comprising or containing “any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India” (Section 9(d) of the Act)<sup>3</sup>.

### **III. THE TTD AND ‘AN ASSOCIATION OF PRODUCERS’**

To understand the first of these two concerns better, it may be relevant to keep in mind the mandate with which the bill governing GIs was introduced in Parliament in 1999 (*See* ‘Statement of Objects and Reasons’, GI Bill 1999)<sup>4</sup>, which was as follows:

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2. Section 11(1) states, “Any association of persons or producers or any organization 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.”
  3. Section 9(d) states, “A geographical indication: ... which comprise or contains any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India... shall not be registered as a geographical indication.”
  4. The exact words of the ‘Statement of Objects and Reasons’ in the GI Bill 1999 read as follows: “At present there is no specific law governing geographical indications of goods in the country which could adequately protect the interests of producers of such goods. Exclusion of unauthorised persons from misusing the geographical indications would serve to protect consumers from deception, add to the economic prosperity of the producers of such goods and also promote goods bearing Indian geographical indications in the export market... In view of the above circumstances, it is considered necessary to have a comprehensive legislation for registration and for providing adequate protection for geographical indications. Hence the Bill.”

- To protect the interests of producers of goods;
- To exclude unauthorized persons from misusing geographical indications;
- To protect consumers from deception;
- To add to the economic prosperity of the producers of such goods; and
- To promote goods bearing Indian geographical indications in the export market.

A key term, relevant to our understanding of the present case, and one that recurs in the mandate both explicitly and implicitly, is that of “producers”. The legislation sought to protect the interests, and add to the economic prosperity, of producers. To reinforce this mandate, the statute requires that a GI application shall be made by “any association of persons or producers or any organization or authority representing the interest of the producers of the concerned goods” (Section 11(1) of the Act). The legislature further offers a definition of “producer” in relation to goods to mean any person who (a) produces, processes or packages the goods, if such goods are agricultural goods; (b) exploits, trades or deals in, the goods, if they are natural goods; or (c) makes, manufactures, trades or deals in, goods, if they are handicraft or industrial goods (Section 2(1)(k) of the Act)<sup>5</sup>.

As an aside, the Act does not provide for the definition of “producers” in the context of food products. It is interesting that the *Tirupati Laddu* remains classified as “Food Stuff”, although there is no provision for such terminology in the legislation. If one wishes to be pedantic about referring to goods as per the categories provided in, say, Section 2(1)(k), the *Tirupati Laddu* would appear to fall into the agricultural goods category; and to such extent, the application could have been challenged on grounds of being wrongly categorized. As it turns out, it was not challenged thus. The *Laddu* remains in the GI Register, along with Dharwad *Pedha*, as the only “Food Stuffs” registered in India.

The Geographical Indications of Goods (Registration and Protection) Rules, 2002 [henceforth, “the Rules”], which accompany the Act, require that the names, addresses and other identifying particulars of the association of persons, producers, authorized users and other persons shall be submitted in

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5. Section 2(1)(k) states: “producer”, in relation to goods, means any person who:- (i) if such goods are agricultural goods, produces the goods and includes the person who processes or packages such goods; (ii) if such goods are natural goods, exploits the goods; (iii) if such goods are handicraft or industrial goods, makes or manufactures the goods, and includes any person who trades or deals in such production, exploitation, making or manufacturing, as the case may be, of the goods

full in an application [Rule 15(1)]<sup>6</sup>. Section 11(2)(e) of the Act read with Rule 32(1)(5)<sup>7</sup> requires that the application include a statement containing particulars of the producers, if any, proposed to be initially registered with the GI. This may include a “collective reference to all the producers of the goods in respect of which the application is made”. Rule 32(1)(6)(a)<sup>8</sup> further adds that the statement shall also include an affidavit as to how the applicants claim to represent the interests of the association of persons or producers.

All of these provisions, read with the legislative intent in introducing the statute, point in the direction of protecting the collective rights of producers *as a community*. This is further validated by the absence of any provision for assignment, transmission, licensing or any such transfer of rights under the Act (except in the case of an authorized user, where the user’s right may devolve to the successor in title) [Section 24 of the Act<sup>9</sup>]. As a corollary, it is also evident that the law does not intend to extend GI protection to individual entities that may not have the mandate of the producers of the concerned goods. This is clearly shown in the repeated requirement of stating the particulars of producers in the application.

Having said this, it bears to note that these provisions also give applicants a little license when it comes to identifying the producers that are to be registered under the GI; the statement shall include particulars of producers that will be *initially* registered with the application, say Section 11(2)(e) and Rule 32(1)(5). This provision is taken full advantage of in the actual application process – a cursory reading of the applications that are published in the GI Journals shows that applicants frequently prefer to state that these particulars will be “provided

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6. Rule 15(1) states: “Names and addresses of the association of persons, producers, authorised users and other persons shall be given in full, together with their nationality, calling and such other particulars as are necessary for identification.”
  7. Section 11(2)(e) states: “The application ... shall contain ... 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 Rule 32(1)(5) states: “Every application for the registration of a geographical indication shall be made in the prescribed forms and shall contain the following ... A statement containing such particulars of the producers of the concerned goods proposed to be initially registered. The statement may contain such other particulars of the producers mentioned in Section 11(2)(f) including a collective reference to all the producers of the goods in respect of which the application is made.”
  8. Rule 32(1)(6)(a) states: “the statement contained in the application shall also include the following: an affidavit as to how the applicant claim to represent the interest of the association of persons or producers or any organization or authority established by or under any law.”
  9. Section 24 states: “Notwithstanding anything contained in any law for the time being in force, any right to a registered geographical indication shall not be the subject matter of assignment, transmission, licensing, pledge, mortgage or any such other agreement; Provided that on the death of an authorised user his right in a registered geographical indication shall devolve on his successor in title under the law for the time being in force.”

on request”, and then proceed to prosecute the application without furnishing these particulars.

The *Tirupati laddu* application stands out because it identifies the TTD as not merely the applicant, but also as the entity under the “list of association of persons or producers or organization or authority” to be registered under the GI. This is clearly intended to indicate that the TTD is the sole producer, and by extension the sole beneficiary, of the *Tirupati laddu*. This is further enforced by the accompanying statement, which suggests little other than the idea that the TTD is the sole beneficiary. At best, it makes a passing reference to the approximately 200 workers (of which at least 60 are hired on a contractual basis) who make about 1.25 lakh *laddus* everyday (See GI Application No. 121), but no further suggestion that these workers may be involved in any way in the revenues generated from the sale of the goods.

It is relevant here to reiterate that GIs, unlike other forms of intellectual property, are essentially community rights. Rather than creating incentives for individual monopolies, GI’s offer entire communities the opportunity to exploit their collective rights over products peculiarly representative of their region.

That the TTD has obtained a GI registration in its independent capacity, rather than in a representative role, appears to defeat the purpose of GIs as rights that seek to protect the collective community interests of producers. To treat the TTD as being equivalent to a “community” suggests instead that any entity in the future may successfully obtain a registration without needing to show either representation, or collective interests, in the right to a GI in India.

A similar issue came up in the case of the GI applications for the name ‘Jamnagar’ in connection with petrol, fuel, LPG and diesel, filed by Reliance Industries Limited (which was merged upon an order by the Registrar into GI Application No. 38). These applications stayed alive for over four years, from the time they were applied for in 2005. Opposition proceedings in the matters were scheduled for July 2009, but according to reports, the Indian conglomerate withdrew the applications before they were heard.<sup>10</sup> Nevertheless, there was no lack of debate on the functioning of a GI system, which permitted a private entity to pursue this application for a significant length of time. The ‘Jamnagar’ applications are similar to the *Tirupati Laddu* one to the extent that they were prosecuted by private entities, rather than by identifiable “communities”, thereby

10. P. Manoj, *Reliance Drops GI Tag for KG Gas, Jamnagar Refinery Fuel*, September 7, 2009, Available at: <http://www.livemint.com/2009/09/07214706/Reliance-drops-GI-tag-bid-for.html>.

appearing to defeat the very purpose of a GI. That applications of this sort were entertained at all by the GI Registry is indicative perhaps of the lack of understanding of the legal nature of geographical indications, on the part of the applicants, their legal counsel, and the administrative authority. This is surely evidence, if evidence were needed at all, that legal education when it comes to matters of GI's is urgently needed.

#### **IV. LADDUS AND OBJECTS OF RELIGIOUS SENTIMENT**

The second line of criticism leveled at the *Tirupati Laddu* GI is less substantial and perhaps more emotional. That a product with a spiritual connotation should be granted a GI has attracted reference to Section 9(d) of the Act, which, excludes from registration anything that comprises or contains any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India.

This line of argument against the *Tirupati Laddu* GI registration gains significance when read in light of comments relating to a sister legislation: the Trade Marks Act, 1999. This Act contains a similar provision under Section 9(2)(b) which cites matter hurting religious susceptibilities as an absolute ground for refusal of registration<sup>11</sup>. In reference to this clause, and in its report on the Trade Marks Bill that eventually became the Act, the Department-related Parliamentary Standing Committee for the Ministry of Industry (1999) observed, "The Committee is of the opinion that any symbol relating to religion, gods, goddesses, places of worship should not ordinarily be registered as a trademark." This observation came up again in a 2005 order of the Intellectual Property Appellate Board (henceforth, "IPAB") in an appeal from the grant of a trademark on the word "Ramayan" in connection with incense sticks (*agarbattis*) and related goods<sup>12</sup>. The IPAB, setting aside the order of the Assistant Registrar of Trade Marks, said, "our courts, particularly the apex court, had been sensitive about the religions, social and cultural susceptibilities of various segments of our social fabric. Observations of the Hon'ble Parliamentary Committees in 1993 too are a pointer in the same direction." While it remains reasonable to argue that the motives behind a trade mark application and a GI application are slightly different, it does not deter from the generic nature of the observations made by the Standing Committee, which preferred to disfavour granting registration to marks having any religious

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11. Section 9(2)(b) of the Trade Marks Act 1999 states: "A mark shall not be registered as a trade mark if ... it contains or comprises of any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India"

12. *Amritpal Singh v. Lal Babu Priyadarshi and another*, 2005 (30) PTC 94 IPAB, also available also at: <http://www.ipab.tn.nic.in/Orders/005-2005.htm>

association. In the specific context of the present note, it is evident that the word “Ramayan” has extremely wide usage, and cannot be said to be the unique property of any person or community or group. To such extent, this example may not be exactly parallel to the idea of the *Tirupati Laddu*. However, it is arguable that by granting a GI to the *Tirupati Laddu*, one profanes the idea of *prasad*, which, in religious terms, has absolutely no commercial value.

Interestingly enough, despite these observations with reference to trademarks being within sighting distance, the GI Registry has attempted to take a contrary view of the matter. In a July 2009 order discussing the opposition to an application for the *Payyanur Pavithra Ring*<sup>13</sup>, the Assistant Registrar for GIs discussed the opposition to the ring for reasons of being “a sentimental issue of the public and could not be considered a GI product”. The Registry studied the history of manufacture of the ring, a ‘sacred ornament’ with religious and ritualistic associations, and the associated rituals from which the product is said to derive sanctity, and concluded, “the ring is the product available in the particular region and famous in the name of Payyanur Pavithra Ring having specific quality... In view of that the product Ring is the goods of GI and use of sentimental of religion does not bar for registration.”

In essence, the order suggests that so long as the product is available in a particular region, and has a specific quality, reputation or other characteristic associated with it, it may proceed for registration, notwithstanding any religious sentiment.

## V. A GI FOR THE LADDU: WHAT NEXT?

The preceding discussion begs a singular question that remains unsatisfactorily answered, at least in this author’s interpretation of the present case. That is, what exactly was the motivation for obtaining a GI status for the *Tirupati Laddu*? Surely, it could not have been to “officially” sanctify what has already been sanctified!

If one revisits the mandate of the GI legislation, as laid down in the Statement of Objects and Reasons accompanying the GI Bill, and examines *this* grant in light of the same, it is evident that this registration will protect the interest of but one producer of the *laddus*, and will add to the economic prosperity of but one producer of the goods. Had the applicants provided information on how the actual producers would gain from such a grant, the response to the registration could have been slightly more sympathetic. Instead, one is compelled to speculate, and contrarily at that, upon how the finances of the TTD would have changed had the GI not been granted at all.

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13. *Payyannur Pavithra Ring, Artisans & Devp v. K Balakrishnan* , 2009 (41) PTC 719 (GIG)

Separately, if the intent of the application, and the rights gained upon the subsequent grant, is to protect customers from deception, and to exclude unauthorized persons from misusing the tag of Tirupati *laddu*, surely the TTD may have had avenues for protection in other existing legislation, for instance the Trade Marks Act 1999 or even the Consumer Protection Act 1986. Additionally, going by the precedent set by this application, one should not be surprised if other temples proceed to similarly obtain GI protection for their own products.

As a passing thought, one wonders if the TTD may have nipped its own growth in the bud by obtaining this registration: the TTD maintains a dozen temples, and has funded several others, including ones outside the country. Would a *laddu* made and obtained as *prasadam* from one such TTD temple 'branch' not be deemed as a '*Tirupati*' *laddu*, or be denied its sanctity merely because it was not made in Tirupati? Even the Board of Trustees managing the TTD would balk at this thought.

## VI. CONCLUSION

The discussion offered in the present note suggests not only that the TTD is not an applicant fit to apply for a GI, but also that the grant of a GI for the *Tirupati Laddu* fails to establish how the registration will protect the interests and add to the economic prosperity of an entire community of producers. The application is thus contrary to the original mandate of the legislation. Whether or not the GI amounts to hurting religious susceptibilities is a matter of debate still, but it sets a precedent for other temples and religious or communal institutions to obtain GIs for their own products of manufacture, which in the view of this commentator may not be a healthy prospect. It is true that GI's as a form of legal protection in India remain immature, particularly since no court has been brought to deliberate on any of the issues discussed above. Nevertheless, all of these factors prompt immediate and urgent introspection on the part of various stakeholders in the system, including prospective applicants, their legal counsel, and the GI Registry itself, on their vision of the GI system's future.