
(2016) 02 IPAB CK 0001

In the Intellectual Property Appellate Board

Case No : OA/1/2014/GI/CH, M.P. Nos. 1, 2/2014 In OA/1/2014/GI/CH,
OA/2/2014/GI/CH, M.P. Nos. 3, 4/2014 In OA/2/2014/GI/CH,
OA/3/2014/GI/CH, M.P. Nos. 5, 6/2014 In OA/3/2014/GI/CH,
OA/4/2014/GI/CH, M.P. Nos. 7, 8/2014 In OA/4/2014/GI/CH,
OA/5/2014/GI/CH, M.P. Nos.

Agricultural and Processed Food Products Export
Development Authority and Ors.

APPELLANT

Vs

Daawat Foods Limited and Ors.

RESPONDENT

Date of Decision : 05-02-2016

Acts Referred:

Agricultural And Processed Food Products Export Development Authority Act, 1985 —
Section 10(2)(b), 10(A), 11(6), 17, 21, 27, 29
Geographical Indication of Goods (Registration and Protection) Act, 1999 — Section
2(i)?, 11, 11(1), 12, 60
Geographical Indications of Goods (Registration & Protection) Rules, 2002 — Rule
23(2), 23(6)(a), 31, 33, 44(2)

Citation : (2016) 02 IPAB CK 0001

Hon'ble Judges : K.N. Basha, J; Sanjeev Kumar Chaswal, Technical Member

Bench : Division Bench

Advocate : P.S. Raman, Rajendrakumar, C. Daniel, Gladys Danial, Latha Nair,
Aashish Kanta Singh, Rajalakshmi, Sai Deepak, Julien George, Rachel Mamtha

Final Decision : Dismissed

Judgement

K.N. Basha, J

1. All these appeals arising out of a common order dated 31/12/2013 on the basis of a common issue and as such we have taken up the appeals

together for hearing the arguments and passing this common order.

2. The challenge in these appeals is to the common order dated 31/12/2013 passed by the Assistant Registrar of Geographical Indications,

Geographical Indication Registry, Chennai in Geographical Indications Application

No. 145 filed on 26/11/2008. The Assistant Registrar (hereinafter referred as AR), Geographical Indication Registry allowed the opposition TOP 13 - 17 and TOP - 19 filed by the opponents from the state of Madhya

Pradesh against GI Application 145 filed by the appellant in all these appeals namely Agricultural and Processed Food Products Export Development

Authority hereinafter referred to as APEDA and directed the appellant APEDA to file an amended GI Application No. 145 including the uncovered

area with map of the region clearly demarcating the area as production within 60 days from the date of the impugned order dated 31/12/2013.

3. This Bench considering the importance of the issue and of law and public policy regarding the protection of BASMATI as a GI in India have been

raised granted the relief of interim stay of the impugned order dated 31/12/2013 pending disposal of all these appeals.

4. Thereafter during the pendency of the appeal two more respondents have been impleaded in OA/5/2014/GI/CH namely New Darpan Social

Welfare Society an NGO based in Madhya Pradesh as Respondent No. 3 and Basmati Growers Association, Patiala as Respondent No. 4. The

appellant in OA/1-6/2014 is APEDA, OA/8/2014 is filed by Basmati Growers Association, Lahore, Pakistan, challenging the common order dated

31/12/2013 and further expressed their grievance that area below foothills of the Himalayas in the Indo Gangetic Plains forming part of the erstwhile

Punjab province now lying in the territory of Pakistan is entitled to the GI Tag for Basmati rice and OA/9/2014 is filed by Daawat Foods Limited, New

Delhi who is the opponent in TOP-15 challenging the locus standi of APEDA to file the GI application No. 145.

I. THE CASE OF THE APPELLANT/APPLICANT APEDA IN GI APPLICATION NO. 145

5. The applicant APEDA in GI application 145 filed under Form GI-1 and sought for registration of rice in the name of GI ""BASMATI"". It is stated

that APEDA is a statutory authority established under the Agricultural & Processed Food Products Export Development Authority Act, 1985 which

provides for the development and promotion of export of certain agricultural and processed food products from India including ""BASMATI"" rice. The

said registration comes under Part ""A"" of the register under class 30 in respect of rice. APEDA claims to represent the interest of the producers of

the said goods to which the geographical indication relates and which is in

continuous use for more than 200 years in respect of rice. The subject matter of the application in respect of GI is the 'BASMATI' to describe a special long grain aromatic rice grown and produced in a particular geographical region of the Indian sub-continent. Historically, BASMATI rice was a product of the undivided India with a recorded history of over 200 years. BASMATI rice has been grown and produced in the states of Punjab, Haryana, Himachal Pradesh and Uttarakhand and parts of Uttar Pradesh and Jammu & Kashmir. The name BASMATI is derived from the Hindi word 'BAS' meaning aroma with BASMATI being loosely translated as "the one containing aroma". BASMATI is Nature's gift and farmers have been growing this scented rice variety for many centuries. In India, various types of aromatic rice including short and long grain are grown. There are over hundreds of varieties of aromatic rice grown in the world as well. However, BASMATI is the best known among these owing to its many unique cooking and eating properties attributable to the agro-climatic conditions prevailing in the aforesaid geographical area.

6. The schedule to the APEDA Act 1985 was amended as per notification dated 28/03/2008 issued by the Ministry of Commerce & Industry to add 'Cereals' (which includes BASMATI rice) to the Schedule and omit the entry 'on-Basmati rice' therefrom. "APEDA has been involved in the protection and promotion of BASMATI" on behalf of farmers, millers, traders, exporters and importers. It is also stated about their efforts and achievements in protecting BASMATI viz. a worldwide watch agency was appointed to monitor the trade mark registers worldwide for any third party attempted registration in the name of "BASMATI" or any deceptive variations thereof. APEDA has taken legal actions by way of oppositions, rectifications, civil suits, cease & desist letters and amicable settlements against the rival third parties. So far actions taken in 40 countries. APEDA successfully challenged and forced a partial voluntary surrender/revocation of several claims of a patent taken out in the United States of America by Ricetec, Inc., which sought to confer a monopoly upon Ricetec in the production and marketing of rice grains, which claims would have interfered with the export of BASMATI rice to the United States.

7. The Basmati Seed Multiplication Committee was set up with the objective, inter alia, of seed development and distribution to farmers through

accredited and certified sources. Being a schedule product all exports of basmati rice out of India are required to be registered with the APEDA as

per Section 10(2)(b) of the APEDA Act. By an Ordinance, namely, the Agricultural and Processed Food Products Export Development Authority

(Amendment) Ordinance, 2008 [APEDA (Amendment) Ordinance], dated October 13, 2008, the APEDA Act has been amended and a new Section

10A has been inserted to confer on APEDA the specific authority to undertake such measures, as may be prescribed by the Central Government, for

registration and protection of the Intellectual Property rights in respect of Special Products listed in a new Second Schedule to the APEDA Act in

India or outside India. The (Amendment) Ordinance lists BASMATI rice as an entry in the new Second Schedule. Accordingly, APEDA is

competent to prefer the GI application under Section 11 of the Geographical Indication of Goods (Registration and Protection) Act, 1999.

8. The APEDA also stated about the historical origin and development of the GI ""BASMATI"" by furnishing the following particulars and documents.

a) BASMATI rice has been grown in the region where there is prolonged sunshine, high humidity, cool weather, sufficient water supply and normal soil. Such requirements fulfilled in the region specified by APEDA.

b) Indian farmers are known to have been growing scented rice varieties for several centuries. Scented rice varieties in ancient literature were known

by various names. In fact, the name BASMATI is so old that the origin of assigning the same to this famed rice is lost in antiquity. The first recorded

reference to BASMATI rice can be found in the epic poem Heer Ranjha by the great Punjabi Poet Varis Shah dated 1766. The said poet had sung in

praise of BASMATI rice at the wedding preparations of the beautiful heroine. (Annexure 4).

c) BASMATI rice has also been the subject of scientific research and there is extensive written scientific literature regarding BASMATI rice dating back to the 1800s. (Annexure 5).

d) Further, references to BASMATI rice can also be found in gazetteers published during the British rule in India. (Annexure 6).

e) Besides, Basmati rice traders nationally and internationally have been consistently describing BASMATI rice marketed by them to mean a unique rice variety originating from a region in the foothills of the Himalayas and

possessing the said qualities. (Annexure 7 and Annexure 8).

f) Even among the food and restaurant industry, BASMATI rice occupies a special place as a variety of premium rice both in India and

Internationally. The copies of some literature including references from well-known dictionaries and food encyclopedias which clearly describe the

geographical origin and significance of the name BASMATI in relation to this famous rice. (Annexure 9).

g) APEDA has initiated and continues to initiate appropriate action worldwide, against all third parties who have sought to register the name

BASMATI or any deceptive variations of the same, by itself or in combination with other elements, as a trademark/service mark. Attached and

marked as Annexure 10 is a table depicting a brief summary of such actions initiated by APEDA till the date of this application. With APEDA taking

such active steps against the unauthorized and illegal attempts at usurpation of the goodwill in the name by third parties, it has been able to enhance

the already existing public awareness and recognition of BASMATI rice as a geographical indication.

II. GEOGRAPHICAL AREA OF PRODUCTION OF BASMATI RICE AND A MAP OF THE REGION

Standards Prescribe for the Qualification of BASMATI Rice

9. Under the Seeds Act, 1966 as per provision under 3 pre-determined standards have been fixed for BASMATI rice. The Ministry of Agriculture

issued Office Memorandum dated 29/05/2008 (Annexure 12) prescribing the standards. The variety of BASMATI rice has to be tested and evaluated

through the National Basmati Trials. The said varieties should be suitable to be grown in the specified areas of India in the Indo-Gangetic Plains.

The Basmati Export Development Foundation (hereinafter referred to as BEDF) was established with the objective amongst others to undertake the

promotion and development of the supply chain of BASMATI rice and in particular to promote, develop and co-ordinate integration of activities of

diverse stake holders such as consumers, farmers, millers, traders and exporters by bringing focus and objectivity thereto. The BEDF has been

promoted by APEDA with a vision for an all-round development of BASMATI rice. BEDF is a society registered under the Societies Registration

Act, 1860 and in pursuance of its objectives, a Basmati Research Farm and a Lab-

cum-Office complex has been set up in Modipuram, Uttar Pradesh

to undertake testing and research of BASMATI rice. BEDF has established modern world class DNA testing and quality testing laboratory for testing

authenticity and purity of BASMATI rice. It is a unique integrated facility for complete testing of BASMATI rice under one roof, for exports as well

as for the domestic market. This facility is located within the BASMATI rice growing region. Accordingly, BEDF is inherently competent to act as

body for inspection to ensure that the standards, quality, integrity and consistency/other unique characteristics of BASMATI rice and maintained by

divers stake holders in the domestic and export markets.

Export of BASMATI rice

10. Owing to its unique flavor, aroma and cooking properties which are best suited for Asian dishes such as biryani and pulao, BASMATI rice has

become very popular in numerous foreign countries. In fact, the demand for BASMATI rice has been increasing over the last few decades.

BASMATI rice has been and continues to be exported to major countries all over the world, including Saudi Arabia, Kuwait, United Arab Emirates,

the United Kingdom, the United States of America, Canada and Europe. The total quantity of exports of BASMATI rice between the period 2004-

2007 is in excess of 3,375,200 million tones. The estimated cost of exports between the said period is in excess of USD 1900 million. Annexure 14 is a

table depicting the country-wise breakup of export of BASMATI rice along with the total cost.

11. Annexure 15 is a table representing the total exports of Basmati rice between the periods 1996-2007. APEDA also carrying out promotional

campaigns for BASMATI rice in jurisdictions such as the United States of America and Europe (Annexure 16).

12. The applicant/appellant also produced judicial orders for the recognition of BASMATI as a Geographical Indication (Annexure 17).

13. With the above said claims and production of supported documents which are marked as Annexures, the APEDA sought for the GI Indication

Registration for Basmati for the specified origin of the area has already stated supra more particularly as per the map Annexure 11.

III. Examination of the GI Application No. 145

14. After the submission of application and taken on file by the Registry a

Formality Check Report was issued by the GI Registry on 23/12/2009. The appellant/applicant have filed their response. On 28/01/2010, the consultative group meeting was held at New Delhi. The GI Registry has issued an Examination Report on 4/3/2010 seeking more information and documents and APEDA was permitted to file a revised application. Accordingly, APEDA filed its reply to the Examination Report with a revised application. The APEDA also led evidence to substantiate their claim filed the affidavit of Mr. AK Tripadi, Chairman of APEDA, the affidavit of Dr. K.V. Prabhu, Plant Breeding and Genetic Expert, Food Critics Ms. Rashmi Uday Singh and Mr. Vir Singhvi. APEDA also filed the affidavit of Dr. K.R. Gupta, BASMATI Rice Breeder who has retired from Haryana Agricultural University, Rice Research Station and Dr. D.V.S. Panwar, Senior Rice Breeder and Head from Chaudhari Charan Singh, Haryana Agricultural University. Based on such reply and revised application, the GI application was accepted by the Registrar and the same was published in the GI Journal No. 34 on 31/05/2010.

IV. FILING OF OPPOSITIONS TOP NO. 13 TO 17 AND TOP NO. 19

15. The respondent/opponents filed TOP Nos. 13 to 17 & 19. Among them TOP No. 19 is filed by the State of Madhya Pradesh and opponents are engaged in the business of manufacturing, processing and distributing rice and rice products and BASMATI Growers Association functioning in the State of Madhya Pradesh. TOP No. 13 is filed by the Madhya Kshetra Basmati Growers Association Samiti. Opponent in TOP No. 14 to 16 are Private Limited Companies. Opponent in TOP No. 17 is Madhya Kshetra Basmati Rice Exporters Association. The said oppositions have been filed by them against the acceptance of the GI Application No. 145. All the TOP's have been raised the same, similar and identical opposition by making a common demand of inclusion of the State of Madhya Pradesh viz. Morena, Bhind, Gwalior, Sheopur, Datia, Shivpuri, Guna, Vidisha, Raisen, Sehore, Hoshangabad, Jabalpur and Narsingpur in the GI application No. 145 filed by the appellant/applicant.

16. The opponents claimed that the farmers of Madhya Pradesh have been growing BASMATI for several decades. The climatic conditions in the said areas are also favourable for the cultivation of BASMATI. It is stated that Non inclusion of the Madhya Pradesh State in the BASMATI growing

areas will have an adverse effect on their lives of farmers who are solely depend upon BASMATI cultivation. The export potential would also be

affected resulting in the reduction of countries export in BASMATI. The state of Madhya Pradesh also stated that they have conducted special

programs for promotion of BASMATI cultivation. The introduction of various technologies like SRA (Medagasker Technique) has helped in

increasing the cultivation of Basmati in Madhya Pradesh. In 2009, a total of 45, 12, 444 quintals of Basmati were cultivated and approximately 40

lakhs quintal of Basmati is being exported from the State of Madhya Pradesh.

17. The state of Madhya Pradesh also has given special package of incentives to the rice millers and also exempted payment of mandi fees on the

purchase of paddy produced in the state to be used as raw material for processing BASMATI rice. Steps have been taken for extension of

BASMATI cultivation by the Director of Agriculture of the State of Madhya Pradesh. By educating the farmers about new techniques of BASMATI

cultivation on a regular basis. It is also claimed by the opponents that the BASMAT rice grown in the areas of Madhya Pradesh has all the

characteristics claimed by the applicant in GI No. 145. In support of their claim the opponents placed reliance on certain documents and affidavits filed

by them. They have filed the affidavits of Ms. Anu Sharma, Dr. S.C. Ahuja claim to be the rice breeder and Mr. Vineet Maheswari. They have

placed reliance on the following documents;

i. Publication of 1913 by the Department of Agriculture, India under Botanical Series, Volume 6, (Volume 3C, Page 2444-2500)

ii Publication titled ""Rice Breeding in Central Provinces"", published in the Indian Journal of Agricultural Science n 1931, (Volume 3C, Pages 2524-2537).

iii. The Annual Report of the Department of Agriculture from the State of Gwalior during 1938-39, (Volume 3C, Page 2542-2545).

iv. The supporting affidavit of Mr. Bharat Singh Gurjar, Officer-in-Charge of RVSKVV, Bagwal (Volume 3C, Page 2740-2743)

v. Document issued by the Central Experimental Farm Bagbal showing cultivation of basmati in the State of Madhya Pradesh since 1940 (Volume 3, page 1178-1185)

vi. Report of Rice Research Scheme Ventral Provinces, Raipur titled ""Varieties of

Rice Grown in the Central Provinces"" by B.B Dave published in 1949. (Volume 3C, Page 2940-2955)

vii. A book titled ""A Treatise on scented Rices of India"", authored by R.K. Singh and U.S. Singh referring to the book titled ""A Textbook of Punjab

Agriculture"" (Volume 3C, Page 2501).

viii. Affidavit of Dr. Manish Bhan, Scientist at the Department of Physics and Agrometeorology at the Jawaharlal Nehru Krishi Vishwavidyala

(JNKV), Jabalpur (Volume 3C, Pages 2551-2563)

ix. Affidavit of Dr. A.K. Rawat, Professor and Head of the Department of Soil Science & Agricultural Chemistry at JNKV, Jabalpur (Volume 3C,

pages 2546-2550)

x. Test Reports from the Laboratory of Molecular Genetics, Center for DNA Fingerprinting and Diagnostics, Hyderabad, DBT, Ministry of Science

and Technology, Government of India, (Volume 3A, Page 858-870)

xi. Affidavit of Dr. S.S. Shukla, Principal Scientist, Food Science and Technology, Crop Quality Breeding Lab, Department of Plant Breeding and

Genetics, JNKV. (Volume 3C, 2569-2572)

xii. ""Rice in India during the Tenth Plan"" published by the Directorate of Rice Development, Government of India (Volume 3C, Pages 3018-3023).

18. The opponents have also produced a map highlighting specific areas within the State of Madhya Pradesh having similar Agro-Climatic, Soil and

Temperature Parameters as that of regions comprising of the Indo-Gangetic Plains. The respondents/opponents on the basis of the grounds of the

opposition filed applications in TOP No. 13 to 17 and TOP No. 19 under Section 12 of the Act and sought for the withdrawal of the acceptance by the

Registry of the GI application.

19. The appellants/applicants categorically denied and disputed the claims of the opponents and also filed rebuttal evidence of affidavit of the experts.

V. PASSING OF THE IMPUGNED ORDER

20. The Assistant Registrar of GI Registry after hearing the arguments of both sides and perusing the documents and affidavits of evidence allowed

the oppositions with direction to the appellant/applicant to file an amended GI application No. 145 including the uncovered area with map of the region

clearly demarcating the area of production within 60 days from the date of the

order 31/12/2013. The said order is under challenge in these appeals.

VI. ARGUMENTS OF THE APPELLANT/APPLICANT

21. Mr. P.S. Raman, the Learned Senior Counsel appearing for the appellants in OA/1-6/2014/GI/CH would vehemently contend that the impugned

order passed by the Assistant Registrar, GI Registry is not only erroneous in law but also contrary to the facts and put forward the following

contentions;

(1) The Assistant Registrar has erred in negating and not recognizing the critical aspect of ""Reputation"" that is public recognition of association of a

GI with a region which is contrary to the definition of GI under Section 2(1)(e) of the Act, 1999.

(2) The Assistant Registrar has come to a wrong conclusion that all places where there is production of the so-called Basmati shall be included in the

growing area for GI purposes.

(3) The Assistant Registrar has failed to consider the well settled position of law in India and overseas relied upon by APEDA which acknowledge

reputation as the most important factor in the protection of a GI.

(4) The impugned order was passed without even referring to the detailed evidence produced by APEDA to prove public recognition and association

of Basmati rice with the area set out in APEDA's application.

(5) The Assistant Registrar ignored the evidence adduced by APEDA comprising trade descriptions, scientific literature, dictionary and encyclopedic

references and affidavits of food critics and prominent scientists.

(6) The Assistant Registrar totally ignoring the evidence produced by APEDA has erroneously come to the conclusion that MP has a history of

growing Basmati by relying upon historical records of germplasm collection, research and seed breeding activities.

(7) The Assistant Registrar has failed to distinguish between commercial cultivation and research and breeding activities - a distinction which was

highlighted in the extensive evidence filed by APEDA which was neither considered nor referred to by the Assistant Registrar in the order.

(8) The Assistant Registrar in his anxiety to demonstrate MP as a growing area of Basmati on his own introduced a document post the hearing at the

back of the parties, such document being a table allegedly showing growing

areas for Basmati. Even this document that the Assistant Registrar had relied on, on the face of it, shows that State of MP is not a growing area for Basmati and that non-Basmati/long grain variety called ""Laloo"" is grown in the State of MP.

(9) The Assistant Registrar ignored and overlooked the serious infirmities in the form, substance and stamping of the affidavits, improper verification, illegible and unreadable documents, inference of tampering etc.

(10) APEDA has established that there is exclusive public perception and recognition that Basmati rice has certain unique qualities and characteristics and the reputation of being grown in the defined areas of the Indo-Gangetic Plains and in support of such claim APEDA has filed the following documentary evidence.

- a) Epic poem, 'Heer-Ranjha' by Waris Shah (dated 1766).
- b) Gazetteers of Kashmir, Punjab (Amritsar district) etc. published during the British rule (the earliest dating back to 1869).
- c) Trade recognition of Basmati growing areas - packaging and trade literature of Basmati rice sold in India and abroad. Food dictionaries, recipe books, encyclopedia & other publications.
- d) Affidavits of two renowned food critics, Ms. Rashmi Uday Singh and Mr. Vir Sanghvi.

But all these materials have not been considered by the Assistant Registrar.

(11) The Assistant Registrar failed to consider the evidence produced by APEDA to establish scientific foundation and endorsement for the growing areas of Basmati claimed by APEDA in its application namely

- a) 'Basmati Varieties' Notification under the Seeds Act, 1966 stating that the recommended areas for cultivation of the notified varieties fall in the defined states of the Indo-Gangetic Plains.
- b) Extract from the proceedings of the Annual Rice Workshop, 2000, where it was decided to conduct the National Basmati Trials at 'traditional locations' only.
- c) Annual Progress Reports of the DRR for the period 2001-2008 (National Basmati Trials) recognizing the states in APEDA's application as the traditional Basmati growing areas.

d) MoA Memorandum dated May 29, 2008 referring to the Indo-Gangetic Plains as the areas for cultivation of Basmati varieties.

e) DRD notification for notified rice varieties in India during 1996-2010 recommending that Basmati trials be conducted preferably in the traditional locations.

f) Affidavits of plant breeder/scientists setting out agro-climatic conditions which define the growing area.

(12) The Assistant Registrar failed to note that Basmati rice is recognized internationally as a customary name for certain varieties of rice grown

exclusively in specific areas of the IGP such as Punjab (on both sides of the border), Jammu, Haryana, Uttaranchal and Western Uttar Pradesh. In

support thereof, APEDA filed a copy of the Code of Practice on Basmati Rice effective January 1, 2006, to which the British Rice Millers'

Association, British Retail Consortium, All India Rice Exporters' Association, Federation of European Rice Millers' Association, Local Authorities

Coordinators of Regulatory Service (LACORS), Association of Public Analysis, Rice Exporters Association of Pakistan (REAP) were parties. This

agreement recognizes the States forming part of APEDA's application as the traditional Basmati growing areas. This factor has been ignored by the

Assistant Registrar.

(13) The Assistant Registrar failed to note that the claim of the respondents/opponents that Madhya Pradesh lies in the IGP is not supported by any

evidence and further by its very name ""Madhya"" means ""Central"". Evidence of APEDA through affidavit of Dr. B. Khan, Former Head, Department

of Geography, DU deposing that the State of MP does not lie in the IGP but in Madhya Bharat Pathar, Bundelkhand Upland, Malwa Plateau, Vidhyan

Scraplands and parts of the Maharashtra Plateau and the said evidence remains unchallenged.

(14) The claim of opponents that the MP has the same agro-climatic conditions as those described in APEDA's application is countered by APEDA

by filing an affidavit of Dr. K.V. Prabhu, Head, Department of Genetics, IARI wherein he stated that temperature is not the sole determining factor in

the crop physiology of Basmati rice, which is in fact, influenced by the interplay of climatic factors such as humidity, day-length, solar radiation etc.

and this evidence also not rebutted by the opponents which factor was also

ignored by the Assistant Registrar as he has not at all referred the affidavit of Dr. K.V. Prabhu.

(15) The claim of opponents that the rice grown in MP has the same specification as Basmati rice is also not established by producing any substantial evidence and the affidavit of Dr. S.S. Shukla relied by the opponents is counted by the appellant by the affidavits of Dr. K.V. Prabhu and Dr. Nagaraju and the said evidence were also not rebutted by the opponents.

(16) The evidence produced by the opponents claiming that Basmati rice has been grown historically in the State of MP is unreliable and further all the historical documents filed by MP relate to germplasm collection and research breeding activities and not to any historical COMMERCIAL CULTIVATION and the farmers affidavits claiming cultivation for decades are tutored, parrot-like version and improperly verified without any documentary support.

(17) The Assistant Registrar has failed to note that a publication by Daawat itself describe Basmati as a product of IGP in North India. The evidence of Dr. K.V. Prabhu's second affidavit stating that germplasm and rice breeding cannot be construed as commercial cultivation of Basmati rice is also ignored by the Assistant Registrar. The affidavits of two renowned food critics, Ms. Rashmi Uday Singh and Mr. Vir Sanghvi stating that never associate Basmati with the State of MP is also ignored by the Assistant Registrar.

(18) The Assistant Registrar failed to note that the TRIPs agreement, the definition of a GI under the GI Act identifies reputation as an alternate independent basis for protection and registration of a GI. Accordingly, Form GI-1 mandates the filing of ""Proof of origin [Historical records]"" along with an application to register a GI. Hence, antiquity/proof of origin is mandatory under the GI law and there is no public perception that Basmati rice is produced in MP.

(19) The Assistant Registrar ought to have accepted that the public perception is central to the protection of Basmati rice as a GI. The GI are or its contiguity is not determined only by scientific mapping but on multiple considerations such as history, reputation and public perception. GIs the world over are protected on these principles.

(20) The Assistant Registrar has wrongly held ""Popular Perception"" has no

statutory sanction as a basis for GI protection ignoring recognition of reputation as a stand-alone basis for protection of GI as per the provision of the Act and not even one precedent of public perception or reputation cited by APEDA has been referred to let alone dealt with in the impugned order. The finding in the impugned order that APEDA has not assigned any reasons for exclusion of other states which have been produced Basmati since 1900 is incorrect as the APEDA produced evidence of history, scientific basis, public recognition, trade description to show the rationale for 'growing area' and such evidence has not been referred to let alone rejected

(21) Applicant has to show reasonably as to what is ""included"" and cannot be expected to give reasons for exclusion. The finding of Basmati

production in ""other States"" is completely flawed and baseless as there is no evidence therein for MP let alone other states where no evidence was let

at all. The finding that mere none participation of MP in the National basmati Trials (NBT) alone does not affect the case of the opponents is not

correct as the NBT process is a reliable and important evidence to establish the growing area of Basmati rice and historical recognition and Basmati is

neither native to nor under consistent commercial cultivation in MP.

(22) The opponents wrongly placed reliance under annexure F1-A publication by Department of Agriculture where there is no reference to Basmatia

and Basmati in the said Annexure.

(23) The evidence produced by the opponents under Annexure F6 - Annual Report of the Department of Agriculture, Gwalior does not establish

commercial cultivation and distribution to cultivators.

(24) Annexure F23 - Affidavit of Bharat Singh Gujjar relied by the opponents does not prove commercial cultivation of Basmati rice in the State of

MP as it all talks about experimental farm records.

(25) The opponents wrongly placed reliance of Exhibit O4 - DNA Test Report neither corroborates Basmati cultivation in MP nor establishes identical characteristics.

(26) The Assistant Registrar has wrongly placed reliance on the website extract of Directorate of Rice Development, Government of India as the said

document does not refer to any Basmati variety being grown in MP and the said

document was relied behind the back of the parties in breach of the principles of natural justice.

(27) Dr. K.V. Prabhu's two affidavits have not been dealt with in the impugned order and such non consideration itself vitiated the impugned order

(28) The impugned order is non-speaking and perverse and has been passed in violation of the principles of natural justice as evidence has been introduced behind the back of the parties.

(29) The impugned order is made in conscious violation of the pleadings and law as Non-consideration of evidence filed by APEDA and non-consideration of reputation as a stand-alone factor of protection of a GI.

22. In support of his contentions the learned counsel would also place reliance on the following decisions:

a) *Argyllshire Weavers Ltd. & Others v. A. MacCaulay (Tweeds) Ltd. & Others* (1964) RPC 477 ("the Harris Tweed Case")

b) *Chocosuisse Union Des Fabricate Suisses de Chocolat & Anor v. Cadbury Ltd.* 1998 RPC 117 ("the Chocosuisse case")

c) *Federal Republic of Germany, Kingdom of Denmark, French Republic and United Kingdom of England and Northern Ireland v. Commission of European Communities and Hellenic Republic* (Joined Cases C-465/02 and C-466/02) ("the feta Cheese case")

d) *Dyer Meakin Breweries Ltd. v. The Scotch Whisky Association* AIR 1980 Del 125 ("the Highland Chief case")

e) *Fage v. Chobani* (2014) EWCA Civ 5 ("the Gree Yogurt case")

23. Mr. P.B. Yogeswaran, the learned counsel for the 4th respondent Basmati Growers Association, Patiala in OA/5/2014GI/CH would support the

case of APEDA. It is contended that the GIs are called as "Direct" and "Indirect" when they do not provide the indication or designation and Basmati

is indirect GI.. The learned counsel would contend that GI is not creation but it is an evolution from the time immemorial. The quality is the product

and the reputation is for place of origin and the GI is the combination of quality and reputation. The learned counsel would point out that there are

notifications under the Essential Commodities Act, 1955. The State of Jammu & Kashmir and Himachal Pradesh issued notifications in respect of

Basmati and there is no notification for Madhya Pradesh. It is submitted that Madhya Pradesh is not suitable for the cultivation of Basmati due to

highest soil erosion occurred in that state. The learned counsel would contend that the objective of the Act is to enforce the GI extra territorially. It is further contended that reputation is sine qua non of GI and reputation is the essential indicator for registration of the GI. Reputation is not self declaration but it's a recognized perception of the consumer over a period of time. It is contended that the state of Madhya Pradesh was not included in the National Basmati Trials (NBT) but so far no complaints made for non inclusion of MP in the NBT. Lastly, it is contended that the APEDA has also replied the queries of consultative committee and explanation have been given before the Registrar and as far as the opposition is concerned they have not raised any specific opposition to GI application No. 145 expect praying for inclusion of MP.

VII. ARGUMENTS IN OA/8/2014/GI/CH SEEKING FOR EXCLUSION OF MADHYA PRADESH AND INCLUSION OF PUNJAB

PROVINCE OF PAKISTAN

24. Mr. Sanjay K. Sharma, the learned counsel for the appellant in OA/8/2014 would contend that the impugned order dated 31/12/2013 directing the APEDA to include the left out ""Basmati Producing Areas"" namely Madhya Pradesh within a stipulated period of 60 days is liable to be set-aside. It is contended that rice produced in the region of Madhya Pradesh is not entitled to the GI Basmati merely on the grounds that cultivation of Basmati seeds spread in to the regions of Madhya Pradesh. It is further submitted that no evidence has been filed to show that the Basmati was originated from the areas of MP and therefore the same does not falls within the definition of the word ""GI"" as defined under the Act. The learned counsel for the appellant would submit that reputation is one of the key requirements for securing a GI of a product. It is submitted that APEDA filed GI application No. 145 without mentioning about the area falling within the Punjab province of Pakistan inspite of APEDA had taken a stand before various forums all over the world that ""Basmati"" is grown in both Pakistan and India along the Foot Hills of Himalaya's in Indo-Gangetic Plains. The learned counsel would also point out that the appellant filed TOP18 against GI Application No. 145 but the same was dismissed on 31/12/2013 on the technical grounds of non filing of evidence within the stipulated time as per Rule 44 (2) of the GI (Registration and Protection) Rules, 2002 and the

said order is challenged by the appellant in OA/7/2014 and the matter is also pending on the file of IPAB for adjudication.

25. Per contra, Mr. P.S. Raman, the learned senior counsel for APEDA (Respondent No. 7) would submit that the appellant in OA/8/2014 was not a

party to the MP oppositions in which the impugned common order was passed and as such they have no locus standi to file the said appeal. It is

submitted that the appellant in OA/8/2014 who have suffered rejection of their opposition TOP 18 against the GI application No. 145 due to its own

callousness and negligence is now seeking a back door entry into these proceedings by filing the instant Appeal against the common order in the MP

Oppositions where it was not even a party in the original opposition proceedings. It is further submitted that the appellant in this appeal has taken a

contrary stand as it is claimed in OA/8/2014 that Basmati rice is grown only in the Punjab region of Pakistan and whereas it is stated in TOP 18 by the

appellant that Basmati rice is a common heritage of India and Pakistan and had sought to include the areas where Basmati rice is grown in Pakistan

as well to be included in the GI application. It is also submitted that the application preferred by this appellant for the registration of Basmati as a

collective mark was rejected by the order of the Registrar of Trade Marks, Pakistan dated 10/05/2008 and against the said order an appeal was

preferred before the Hon'ble High Court Sindh, Karachi and the same is pending.

VIII. ARGUMENTS IN OA/9/2014/GI/CH QUESTIONING THE LOCUS STANDI OF APEDA

26. Mr. Sai Deepak, the learned counsel for the appellant in this matter not seriously agitated by questioning the locus standi of APEDA for filing GI

Application No. 145.

Mr. PS Raman, the learned senior counsel for APEDA/2nd respondent would contend that OA/9/2014/GI/CH filed by Daawat Foods Limited

challenging the locus standi of APEDA to file GI Application No. 145 is liable to be dismissed as the Assistant Registrar has rightly held that APEDA

is a statutory authority established under the Agricultural and Processed Foods Products Export Development Authority Act, 1985 enacted by the

Parliament and as such APEDA is a non trading body and as such having locus standi to represent the interest of all the stake holders. It is contended

that the said question of locus standi raised during the time of arguments and

the opponents conceded that they would not press this ground at all, however, Daawat Foods has challenged the finding recorded by the Assistant Registrar in the impugned order by filing OA/9/2014.

IX. ARGUMENTS OF FIRST RESPONDENTS/OPPONENTS OA/1-6/2014/GI/CH AND APPELLANT IN OA/9/2014/GI/CH

27. Mr. Sai Deepak, the learned counsel appearing for the first respondent in OA/1-6/2014/GI/CH and the appellant in OA/9/2014/GI/CH would

strenuously contend that there is no illegality in the impugned order warranting interference by this Bench as the order was passed on the basis of the

extensive evidence and it is just and fair in the interest of all stake holders and put forward the following contentions;

1) The Assistant Registrar had rightly arrived at the conclusion that the specific areas demarcated within the State of Madhya Pradesh ought to be

included within the GI Application on the basis of the evidence produced by the first respondent.

2) The Learned Assistant Registrar relied the following evidence of the first respondent which the appellant has failed to rebut namely

i. Publication of 1913 by the Department of Agriculture, India under Botanical Series, Volume 6, (Volume 3C, Page 2444-2500)

ii. Publication titled ""Rice Breeding in Central Provinces"", published in the Indian Journal of Agricultural Science in 1931, (Volume 3C, Pages 2524-2537)

iii. The Annual Report of the Department of Agriculture from the State of Gwalior during 1938-39, (Volume 3C, Page 2542-2545)

iv. The supporting affidavit of Mr. Bharat Singh Gurjar, Officer-in-Charge of RVSKVV, Bagwai, (Volume 3C, Page 2740-2743)

v. Document issued by the Central Experimental Farm, Bagbai showing cultivation of basmati in the State of Madhya Pradesh since 1940, (Volume 3, Page 1178-1185)

vi. Report of Rice Research Scheme Ventral Provinces, Raipur titled ""Varieties of Rice Grown in the Central Provinces"" by B.B. Dave published in 1949. (Volume 3C, Page 2940-2955)

vii. A book titled ""A Treatise on Scented Rices of India"", authored by R.K. Singh and U.S Singh referring to the book titled ""A Textbook of Punjab Agriculture, (Volume 3C, Page 2501)

viii. Affidavit of Dr. Manish Bhan, scientist at the Department of Physics and Agro-meteorology at the Jawaharlal Nehru Krishi Vishwavidyala

(JNKV), Jabalpur, (Volume 3C, Pages 2551-2563)

ix. Affidavit of Dr. A.K. Rawat, Professor and Head of the Department of Soil Science & Agricultural Chemistry at JNKV, Jabalpur (Volume 3C,

Pages 2546-2550)

x. Test Reports from the Laboratory of Molecular Genetics, Center for DNS Fingerprinting and Diagnostics, Hyderabad, DBT, Ministry of Science

and Technology, Government of India, (Volume 3A, Pages 858-870)

xi. Affidavit of Dr. S.S. Shukla, Principal Scientist, Food Science and Technology, Crop Quality Breeding Lab, Department of Plant Breeding and

Genetics, JNKV. (Volume 3C, 2569-2572)

xii. "Rice in India during the Tenth Plan" published by the Directorate of Rice Development, Government of India (Volume 3C, Pages 3018-3023)

3. The learned Registrar rightly observed that the Registry had the bounden duty to protect the interest of producers by covering the entire area of

production and as such rightly given direction to include all the uncovered areas of Basmati production.

4. It is rightly observed in the impugned order that the documents and evidence filed by the Appellant shows the importance and special characteristics

of Basmati, but it does not disclose the actual area of cultivation.

5. The learned Registrar has rightly come to the conclusion that so long as even a single area that cultivates Basmati is not included in the GI

Application, the same cannot be allowed.

6. The appellant has not complied with the provision under Rule 23(6)(a) of the Geographical Indication of Goods (Registration and Protection) Rules,

2002 (hereinafter referred to as Rules) which requires the applicant must satisfy the condition namely

the geographical indication must be defined with sufficient precision so that the right to obtain relief in respect of infringement of geographical

indication can be determined

7. The Assistant Registrar is vested with the power under Section 11(6) of the Geographical Indication of Goods (Registration and Protection) Act,

1999 to refuse the application or may accept it absolutely or subject to such

amendments and as such the Assistant Registrar rightly directed the appellant to file an amended GI Application No. 145 including the uncovered area.

8. The contention of the appellant that the Registrar has placed reliance on the Report published by the Directorate of Rice Development titled ""Rice in India during Tenth Plan"" was introduced behind the back of the parties and there by violated the principles of natural justice is unacceptable as the said document is not the only evidence relied by the learned Registrar but plethora of evidence produced by the first respondent have been relied by the Registrar.

9. It is wrongly contended by the appellant that certain documents filed by the first respondent were introduced after September 2013 much after the completion of the hearing in respect of the oppositions namely TOP 13 -17 have been relied by the Registrar. The said documents have been supplied to the appellant on 13 June 2013 during the arguments in TOP 13-17 which were neither objected to nor rebutted by the appellant.

10. The appellant has wrongly contended that the learned Registrar failed to consider the voluminous evidence filed by the appellant as the learned Registrar has observed that the documents and evidence filed by the appellant show the important and special characteristics of basmati, however, it does not evidence the actual area of cultivation.

11. It was not necessary for the learned Registrar to mention and deal with each and every document placed on record by the parties.

12. When the primary issue was whether or not the areas specified within the State of Madhya Pradesh are deserving of GI recognition, the learned registrar was only required to mention documents evidencing the same, which has been done in the Impugned order and which the appellant has also failed to assail/rebut in the instant appeal.

13. As the appellant challenge the impugned order on the ground of procedural lapses namely affidavits filed by the first respondent were insufficiently stamped and improperly verified the appellant ought to have exercised their right to cross examination of the author of the affidavits as per provision under Section 60 of the GI Act having failed to invoke the provision under Section 60 of the GI Act the appellant now cannot challenge at the appellate stage.

14. The standard of evidentiary proof required for grant of GI has been satisfied by the answering respondents, however, the same is lacking in the GI application filed by the appellants.

15. The first respondent discharged their onus of proof by producing evidence namely by filing a map highlighting specific areas within the State of

MP having similar agro-climatic, soil and temperature parameters as that of regions comprising of the Indo Gangetic Plains. But, the said map has

been denied in its entirety by the appellants without any concrete reasons, documents dating back to the 1900s have been filed by the respondent No.

1 filed DNA test report certifying that rice grown in MP is Basmati and the respondent No. 2 has been rightly relied upon the said documents in the impugned order.

16. The appellant has heavily relied upon a publication titled as ""Basmati Rice - The Scented Pearl"" authored by Dr. S.C. Ahuja and Ors. as Exhibit

12. But, taking a contrary stand on the basis of Dr. K.V. Prabhu's affidavit stating that Dr. S.C. Ahuja is a Plant Pathologist and not a Plant Breeder

inspite of Dr. S.C. Ahuja has been described as a renowned rice breeder in the affidavit of Mr. Asit Kumar Tripathy.

17. Dr. K.V. Prabhu has not offered a single scientific explanation or a concrete reason for denying the GI extension to the State of Madhya Pradesh.

18. It is ironic that on the one hand the IARI, a Central body, has been allotting Basmati seeds to the State of Madhya Pradesh and on the other hand,

Dr. Prabhu who is a high level employee of the Central Government has submitted an affidavit against basmati cultivation in Madhya Pradesh.

19. The exclusion of Madhya Pradesh in NBT is unjustified.

In support of his contention, the learned counsel would also place reliance on the decision of IPAB Bench in OA/2/2010/GI/CH and M.P. Nos. 1/2010

& 269/2012 in OA/2/2010/GI/CH dated 14/11/2012 (Order No. 255 of 2012) - Subhash Jewellery v. Payyanur Pavithra Ring Artisans & Development

Society & Ors.

28. Mr. P. Sanjay Gandhi, the learned counsel for the third respondent in OA/5/2014/GI/CH namely New Darpan Social Welfare Society an NGO

would support the claim of first respondent for the inclusion of State of Madhya Pradesh as Basmati rice grown area.

It is contended that the appellant has not complied with the requirements for GI

application as contemplated under Section 11(i) and Rule 23(2) of the GI Act. The learned counsel would also place reliance on Section 17 of the Act in respect of application for registration as authorized user and in the event of non inclusion of MP they cannot subsequently seek relief of authorized user and they cannot derive the benefits of rights conferred by registration as per provision under Section 21 of the Act. The learned counsel in other aspects would adopt the arguments of Mr. Sai Deepak, the learned counsel for the first respondent.

29. We have given our careful, thoughtful and anxious consideration to the rival contentions put forward by either side and also scanned through the entire materials available on record and perused the impugned order.

X GEOGRAPHICAL INDICATIONS ITS MEANING AND SIGNIFICANCE.

30. A geographical indication is a geographical name signifying that a product originates in a country or a specific locality where it has been traditionally produced. The GI possess qualities, reputation and characteristics that are essentially attributable to that place of origin. Agricultural products typically have qualities that derive from their place of production and are influenced by specific local factors, such as climate and soil.

Whether a sign is recognized as a geographical indication is a matter of national law. Geographical indications may be used for a wide variety of

products, whether natural, agricultural or manufactured. While a trade mark is a matter of private law, a geographical indication would be under public

law and cannot be owned by a single group of individuals; anyone who produces the said goods in that region can use the geographical indicator for

the product. An appellation of origin is a special kind of geographical indication. It generally consists of a geographical name or a traditional

designation used on products which have a specific quality or characteristics that are essential due to the geographical environment in which they are

produced. The concept of geographical indication encompasses appellations of origin.

31. The use of geographical indications is not limited to agricultural products. They may also highlight qualities of a product which are due to human

factors associated with the place of origin of the products, such as specific manufacturing skills and traditions. The following are some of the

examples;

Mysore Silk, Mysore Agarbathi, Kancheepuram Silk, Bhavani Jamakkalam, Orissa Ikat, Channapatna Toys & Dolls, Coimbatore Wet Grinder,

Mysore Traditional Paintings, Alleppey Coir, Thanjavur Art Plate, Sikki Grass Work of Bihar, Orissa Pattachitra, Machilipatnam Kalamkari, Thanjavur

Doll, Kashmir Pashmina, Tirupathi Laddu, Bikaneri Bhujia, Hyderabad Haleem, Surat Zari Craft, Nachiarkoil Kuthuvilakku (Nachiarkoil Lamp),

Thanjavur Veenai, Banaras Brocades and Sarees (Logo) etc.

32. A geographical indication points to a specific place, or region of production that determines the characteristic qualities of the product which

originates from that place. It is important that the product derives its qualities and reputation from that place. Since those qualities depend on the place

of production, a specific "link" exists between the products and their original place of production.

33. It is relevant to refer the definition of geographical indication as per the Geographical Indications of Goods (Registration and Protection) Act, 1999,

Section 2(1) (e) reads hereunder;

Section 2(1)(e) - "Geographical indication", in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or

manufactured goods as originating, or manufactured in the territory of country, or a region or locality in that territory, where a given quality, reputation

or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of

the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality as the case

may be.

Explanation - For the purposes of this clause, any name which is not the name of country, region or locality of that country shall also be considered as

the geographical indication if it relates to a specific geographical area and is used upon or in relation to particular goods originating from that country,

region or locality, as the case may be.

34. It is imperative to protect the geographical indications which are understood by consumers to denote the origin and the quality of products. Many

of them have acquired valuable reputations which, if not adequately protected, may be misrepresented by dishonest commercial operators. False use

of geographical indications by unauthorized parties is detrimental to consumers

and legitimate producers. Consumers are deceived into believing that they are buying a genuine product with specific qualities and characteristics, when they are in fact getting an imitation. Legitimate producers are deprived of valuable business and the established reputation of their products is damaged.

35. Geographical indications are protected in accordance with international treaties and national laws under a wide range of concepts, including -

Special laws for the protection of geographical indications or appellations of origin.

Trademark laws in the form of collective marks or certification marks

Laws against unfair competition

Consumer protection laws, or

Specific laws or decrees that recognize individual geographical indications.

In essence, unauthorized parties may not use a geographical indication in respect of products that do not originate in the place designated by that indication.

36. A number of treaties administered by WIPO provide for the protection of geographical indications, most notably the Paris Convention for the

Protection of Industrial Property of 1883, and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.

In addition, Articles 22 to 24 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) deal with the international

protection of geographical indications within the framework of the World Trade Organization (WTO).

37. As far as India is concerned with a view to adequately protect the geographical indications of goods and the interest of producers the Geographical

Indications of Goods (Registration and Protection) Act, 1999 was passed and received the assent of the President on 30/12/1999. The statement of

objects and reasons are stated hereunder;

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 unauthorized persons from misusing 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.

Unless a geographical indication is protected in the country of its origin, there is no obligation under the Agreement on Trade Related Aspects of

Intellectual Property Rights (TRIPS) for other countries to extend reciprocal protection. India would on the other hand, be required to extend

protection to goods imported from other countries which provide for such protection.

The salient features of the Act are

(a) definitions of several important terms like "geographical indication", "goods", "producers", "package", "registered proprietor", "authorized user", etc.

(b) provision for the establishment of a Geographical Indications Registry.

(c) provisions for the maintenance of a Registrar of Geographical Indications in two Parts - Part A and Part B and use of computers, etc., for

maintenance of such registers. While Part A will contain all registered geographical indications, Part B will contain particulars of registered authorized users;

(d) registration of geographical indications of goods in specified classes;

(e) prohibition of registration of certain geographical indications;

(f) provisions for framing of rules by Central Government for filing of application, its contents and matters relating to substantive examination of

geographical indication applications;

(g) compulsory advertisement of all accepted geographical indication applications and for inviting objections;

(h) registration of authorized users of registered geographical indications and providing infringement action either by a registered proprietor or an authorized user;

(i) provisions for the renewal, rectification and restoration of geographical indications and authorized user;

(j) provisions for higher level of protection for notified goods;

(k) prohibition of assignment, etc., of a geographical indication as it is a public property;

(l) prohibition of registration of geographical indication as a trade mark;

(m) appeal against Registrar's decisions would lie to the Intellectual Property

Appellate Board established under the Trade Marks legislation;

(n) provision relating to offences and penalties;

(o) provision detailing the effects of registration and the rights conferred by registration;

(p) provisions for reciprocity, powers of the Registrar, maintenance of index, protection of homonymous geographical indications, etc.

XI. BASMATI RICE

38. The name Basmati is derived from two Sanskrit roots 'Vas' meaning 'aroma' and 'mati' meaning 'ingrained from the origin'. In Hindi, the equivalent

of 'Vas' is 'Bas' and therefore Basmati. Essentially, Basmati means, 'the one containing aroma'. Basmati is Nature's gift and farmers have been

growing this scented rice variety for many centuries.

39. Basmati rice has unique and delicately balanced combination of a number of characteristics such as long slender kernels with high length breadth

ratio, an exquisite aroma, sweet taste, soft texture, delicate curvature, intermediate amylase content, high integrity of grain on cooking, and linear

kernel elongation with least breadth wise swelling on cooking. These characteristics get enhanced when Basmati rice is aged and pre-soaked before

cooking. Further, these characteristics are attributable to a combination of various factors including natural and human factors, unique agro-climatic

conditions in the growing area, practices/methods of production in the sowing, harvesting and processing of Basmati rice. Basmati rice has traditionally

been grown and produced in a specific region of the Indo-Gangetic Plain (hereinafter referred to as IGP) below the foothills of the Himalayas.

40. Basmati rice is an iconic heritage of India. It has been called as Maharani or Queen of all rice. Basmati rice has also been referred as ""A Scented

Pearl"". As a matter of fact, Basmati rice has been one of the fastest growing export items from India in recent years. As of 2014-15, the value of

exports of Basmati rice was recorded at 27,598 crores. Therefore, in view of the paramount national interest, it is imperative to protect the Basmati

rice as a geographical indication.

XII. WHETHER APEDA IS HAVING LOCUS STANDI TO SEEK GI TAG FOR BASMATI RICE ?

41. The Assistant Registrar Geographical Indications has rendered a finding in the impugned order itself to the effect that APEDA has the experience,

capacity, infrastructure, resources and credibility without any conflict of interest for protecting the Basmati. Further, the Assistant Registrar observed

that under section 11(1) of the Act, any association of persons or producers or any organization or authority established by or under any law for the

time being in force representing the interest of the producers of the goods may make an application for GI registration. From the perusal of the

documents filed during the registration process, it is clear that the respondent/applicant APEDA is a statutory authority established under the

Agricultural and Processed Food Products Export Development Authority Act, 1985 enacted by the Parliament. It clearly falls under the "authority

established by the law".

42. The APEDA Act provides for the development and promotion of export of certain agricultural and processed food products from India including

Basmati rice. APEDA is a non-trading body, qualified to represent the interests of all the producers/stakeholders, including the farmers, millers,

traders, exporters, and importers of Basmati in the property and goodwill in the Basmati name and product. It is held by the Assistant Registrar that

the role of APEDA in protecting Basmati is extremely significant and APEDA falls within the scope of section 11(1) of the Act and is entitled to

make an application for GI registration. This finding is challenged by Daawat Foods Limited by filing OA/9/2014/GI/CH.

43. We are unable to find any infirmity or illegality in the above said findings of the Assistant Registrar, Geographical Indications holding that APEDA

is competent authority and having locus standi to make an application for GI registration of Basmati rice. At this juncture, we are constrained to refer

RiceTec case in respect of "American Basmati". A Texas-based company, in 1997, patented some types of rice they developed as "American

Basmati". RiceTec Inc, had been trying to enter the international Basmati market with brands like "Kasmati" and "Texmati". Ultimately, the company

claimed to have developed a new strain of aromatic rice by interbreeding basmati with another variety. They sought to call the allegedly new variety

as Texmati or American Basmati. RiceTec Inc, was issued the Patent number 5663484 on Basmati rice lines and grains on September 2, 1997.

44. The APEDA challenged the said patent in June 2000 and ultimately succeeded as RiceTec agreed to withdraw several of the claims. In January

29, 2002, the United States Patent and Trademark Office issued a Re-examination Certificate cancelling claims 1-7, 10, and 14-20 (the broad claims covering the rice plant) out of 24 claims and entered amendments to claims 12-13 on the definition of chalkiness of the rice grains. We are constrained to state that the RiceTec case in respect of Basmati rice is an eye opener for India which could have probably prompted APEDA to initiate actions against third party attempts to misappropriate the name Basmati by filing oppositions, cancellations, and court actions across the world including in India which would also ultimately prompted APEDA to seek GI tag for Basmati rice. Therefore, there is no two opinion that the APEDA is competent and having locus standi to file GI application for Basmati rice. Accordingly, OA/9/2014/GI/CH filed by Daawat Foods Limited is liable to be dismissed.

XIII. WHETHER APEDA IS ENTITLED TO GI TAG FOR BASMATI AS PER THE AREAS SPECIFIED IN THE MAP FILED ALONG

WITH THE GI APPLICATION NO. 145 ?

45. As already pointed out the APEDA has filed GI application 145 strictly in compliance of the provision under Section 11 of the Act and the same was examined thoroughly by the Registrar. The Registrar sent a notice dated 23/12/2009 stating that certain deficiencies are to be complied within the stipulated time of one month from the date of receipt of the notice and stating that in the event of failure, the GI application may be treated as abandoned under Rule 31 of the GI Rules (hereinafter referred to as Rules). APEDA on receipt of the said notice on 29/12/2009 submitted its reply and the compliance of the deficiencies pointed out in the notice as per their response dated 20/01/2010 well within the stipulated time. The Registrar constituted a consultative group as per provision under rule 33 of the Rules. The consultative group meeting was fixed on 29/01/2010 as per the communication dated 29/12/2009. But later the meeting was preponed to 28/01/2010 as per the communication dated 31/12/2009. The examination report dated 04/03/2010 was communicated to the applicant requiring the compliance of certain more furnishing of documents, APEDA received the same on 09/03/2010 and a detailed response dated 22/04/2010 was sent to the Registrar of GI furnishing the required details elaborately. In the said communication, APEDA highlighted the definition of Geographical Indications,

public perception of Basmati rice in India, National Basmati Trials

(NBT) and the National Agricultural Research System. NBT was conducted within the growing areas of Basmati as per the growing areas specified

by APEDA in their three certified maps of the Basmati growing area. At this juncture, it is to be stated even in their response 20/01/2010 to the notice

issued under Rule 31 dated 23/12/2009 APEDA furnished all the required details alongwith three certified maps of Basmati growing area, document

related to representative list of millers/traders of Basmati rice coupled with the affidavit of Shri. Asit Kumar Tripathy, who is the Chairman of

APEDA. In the response to the examination report dated 22/04/2010 APEDA also furnished the details of Members of the governing body of the

APEDA consisting 3 members of parliament, 8 members appointed by the Central Government to represent the ministries of agriculture and rural

development, commerce, finance, industry, food, civil supplies, civil aviation, shipping and transport, 5 members appointed by the Central Government

to represent the States and the Union Territories, 7 members appointed by the Central Government to represent among others the Indian Council of

Agricultural Research, the National Horticulture Board, the National Agricultural Co-operative Marketing Federation, the Central Food Technological

Research Institute etc, 12 members appointed by the Central Government on represent fruit and vegetable products industries, other scheduled

products industries etc, 2 members appointed by the Central Government from amongst specialists and scientists in the field of agriculture, economics

and marketing of scheduled products. It is also pointed out in the said response by the APEDA as per the PowerPoint presentation Basmati Export

Development Foundation (BEDF) is not a registered society of the farmer and referred about the objective of ""BEDF"" as hereunder:

BEDF was established with the objective, inter-alia, to undertake the promotion and development of the supply chain of Basmati rice and in particular

to promote, develop and coordinate integration of activities of the legitimate stakeholders by bringing focus and objectivity therein

Along with the response dated 22/04/2010 APEDA also sent revised statement of case and the documents Annexure 1 to 23 coupled with affidavit of

the applicant in support of the statement of case. In our considered view APEDA as per strict compliance of Section 11 of the Act furnished the

required particulars, documents and 3 certified geographical map of Basmati growing area showing the latitude and longitude of the growing areas as

hereunder:

It is also to be stated that APEDA has specifically pointed out the traditionally cultivated areas of Basmati Rice in their response dated 22/04/2010 for

the examination report as hereunder;

In India, Basmati rice has been traditionally cultivated in the entire states of Punjab, Haryana, Himachal Pradesh, Delhi, Uttarakhand and parts of

Western Uttar Pradesh and Jammu & Kashmir. It may be relevant to state that the States of Punjab, Haryana and Himachal Pradesh were originally

part of the erstwhile Punjab and as a result of the reorganization of the states in India for administrative reasons, these separate states have been

formed. Consequently, the Basmati growing area which fell in the undivided Punjab is now shared among the various states as aforesaid.

It is to be reiterated that Basmati rice has traditionally been grown and produced in a specific region of the Indo-Gangetic Plain (IGP) below the

foothills of the Himalayas. APEDA also produced documents namely atlases and maps published by the Survey of India under the Department of

Science and Technology, Government of India with a view to substantiate the physiography, topography and other characteristics of the IGP. Mr. P.S.

Raman, the learned senior counsel appearing for APEDA strongly placed reliance on the two affidavits of Dr. K.V. Prabhu, Head, Division of

Genetics, Indian Agricultural Research Institute who has categorically stated about the characteristics of Basmati rice and essentialities attributable to

the agro-climatic conditions prevailing in the Basmati growing region as per the certified copies of the maps furnished by APEDA. The learned senior

counsel for the APEDA also pointed out that even respondent No. 1 in OA/1/2014/GI/CH highlighted Basmati rice grown areas in the foothills of the

Himalayas and nurtured with snow-fed water. The said documents containing in the packaging materials of respondent No. 1 are to be referred

hereunder;

a) "'Daawat Rozana - The best budget buy! Original Basmati nourished by snow-fed rivers of the great Himalayas'

b) "'Daawat Traditional Basmati Rice - Traditional Roots Best Origin - The journey begins at the very birthplace of Basmati. Nourished by the pristine

snow-fed rivers that trickle down the majestic Himalayas, the grain is harvested once a year during winter.

c) ""Daawat Devaaya Basmati Rice - Devaaya Basmati Rice, grown in the foothills of the Himalayas and nurtured with snow-fed water, has matured

long grains, pearly whiteness, lingering aroma and maximum nutrition attained through advanced polishing system.

d) ""Kohinoor. India's finest, authentic Basmati rice. From the ethereal snow-fed valleys of the Himalayas, comes to you India's finest authentic

Basmati rice Kohinoor. Grown and nurtured in the most fertile fields of Punjab, it is a rare gift of nature.

e) ""Daawat Basmati Rice - Finest Rice Recipes by the Times of India states, Indian basmati, which predominantly grows on the foothills of the

Himalayas is also referred to as 'White Gold'. It is believed that the melting snows of the Himalayas, the rich soil, and the right climate in the northern

parts of the country are ideally suited to produce this distinctive quality of rice.

The above publication was sponsored by the Respondent No. 1 in OA/1/2014/GI/CH herein.

46. It is also rightly relied by the learned senior counsel for APEDA the publication of British Retail Consortium on the Code of Practice on Basmati

rice prepared in consultation with the local authorities co-ordination of regulatory service and association of public analyst and the same has been

agreed by The Rice Association, British Rice Millers Association, British Retail Consortium wherein Basmati rice has been defined as hereunder;

Basmati is a customary name of certain varieties of rice that are grown exclusively in specific areas of the Indo Gangetic Plains, which currently

includes the Punjab (on both sides of the Indian and Pakistani border), Jammu, Haryana, Uttaranchal and Western Uttar Pradesh in India.

47. It is also pertinent to state that the opponents have filed an application under Section 12 of the Act with a main prayer to withdraw the acceptance

of the GI Application No. 145 and sought for re-constitution of the consultative group. The perusal of the said applications filed by the opponents in

TOP 13 to 17 and TOP 19 reflects that they have come forward with a parrot like version similar to that of their version in their oppositions in TOP 13

to 17 and TOP 19 and it is stated by them categorically and uniformly that the primary contention between the parties pertains to the boundaries and

extent of the Basmati growing regions. Therefore, it is very clear that their only grievance is the non inclusion of the state of Madhya Pradesh in the

GI Application No. 145. As we have already pointed out it is to be stated that GI Application No. 145 fulfills the requirements contemplated as per

provision under section 11 of the Act and we would deal with the said grievance in the later portion of the judgment.

48. In view of the clear and cogent documents produced by APEDA, we are of the considered view that the world wide recognition of traditional

Basmati rice grown areas specified by APEDA cannot be disputed or denied. It is also pertinent to note that coupled with the fact of traditional

Basmati rice grown area the public perception and the reputation cannot be overlooked. The definition under Section 2(1)(e) of the GI Act which we

have incorporated in the earlier portion itself makes it crystal clear that ""reputation"" as a standalone factor for recognition of a GI under the GI Act. It

is rightly contended by APEDA that the basic foundation of GI protection is rooted in geography and reputation of the product associated with the

cultivation area as an important and stand-alone factor. As Mr. P.B. Yogeswaran, the learned counsel for R-4 in OA/5/14 has rightly contended the

quality is the product and the reputation is for place of origin and the GI is the combination of quality and reputation. The publication of APEDA's GI

application in the GI Journal itself makes it crystal clear that APEDA has fulfilled all the requirements under the GI Act for GI Tag for Basmati rice

relating to the specified geographic region and area as per three certified maps for Basmati rice grown areas filed by APEDA.

49. The undisputed fact remains that six oppositions namely TOP-15 (OA/1/2014/GI/CH), TOP-17 (OA/2/2014/GI/CH), TOP-16

(OA/3/2014/GI/CH), TOP-14 (OA/4/2014/GI/CH), TOP-19 (OA/5/2014/GI/CH) and TOP-13 (OA/6/2014/GI/CH) filed by the opponents reveals that

they have not raised their little finger about the identification and inclusion of traditional Basmati rice grown areas specified in GI application No. 145

by APEDA. It is not disputed or denied by them in respect of the Basmati rice grown area or region specified by APEDA. The oppositions have been

filed mainly for the inclusion of Madhya Pradesh state as Basmati rice grown area. In respect of the grievance of the opponents/respondents in

respect of the exclusion of Madhya Pradesh state in the GI Application No. 145, we would discuss and deal with the said aspect in the later portion of

the judgment. There is absolutely no justification for prolonging and protracting the proceedings of granting GI Tag for Basmati rice as per GI

Application No. 145 inspite of the fact is that the only grievance of the opponent/respondents as pointed out earlier is the exclusion of Madhya

Pradesh state.

50. It is pertinent to note that GI Application No. 145 has been filed by APEDA as early as on 26/11/2008 and even after the lapse of seven years

APEDA has been kept waiting for the GI recognition of Basmati rice relating to the areas and region specified in GI Application No. 145. We are also

constrained to state that the APEDA is a statutory body created by an Act of Parliament and one of the responsibility shouldered by APEDA is to

protect Basmati rice which is an iconic heritage of India and we cannot overlook and brush-aside the serious threat of infringement and

misappropriation of the name ""Basmati"" rice produced from our country and there is a paramount need to preserve and protect globally in the national

interest. History reveals that APEDA is fighting for such public cause and initiated several actions in our country and as well as in other countries and

Rice-Tech case is an eye opener for becoming more vigilant in protecting Basmati rice which has obtained world reputation and recognition. We are

also hastened to state that APEDA being a public statutory body, it may not have any personal interest or bias against anybody, group or state for

denying their genuine right for their inclusion in respect of the Basmati rice grown area in GI application.

51. Considering the above said undisputed facts, we are constrained to arrive at the irresistible and inevitable conclusion that the Registrar of GI

Registry shall grant GI TAG for Basmati rice in respect of the geographic region and areas specified by APEDA in GI Application No. 145. In view

the above said reasons, we have no hesitation to hold that APEDA is entitled to get GI TAG for the region and areas specified in the certified maps of

Basmati rice grown areas produced in GI Application No. 145. Accordingly, the Registrar of GI Registry shall proceed with the registration of GI for

Basmati rice in respect of the geographic region and area specified in APEDA in GI Application No. 145 and the certificate of registration is to be

issued within a period of four weeks from the date of receipt of the order copy of this Bench.

XIV. DISCUSSION AND FINDINGS IN RESPECT OF OA/8/2014/GI/CH

52. OA/8/2014/GI/CH is filed against the common order dated 31/12/2013 by the appellant, Basmati Growers Association, Pakistan. It is pertinent to

note that the appellant in this appeal supported APEDA relating to the exclusion of the state of Madhya Pradesh in GI Application No. 145 and stated

that the impugned order suffers from an error of law to the extent that it states, ""In finale, the oppositions are allowed; the respondent/applicant should

file an amended GI application No. 145 including the uncovered area, with map of the region clearly demarcating the area of production within 60 days

from the date of this order."" The appellant in this appeal expressed their grievance to the effect that the area below the foothills of the Himalayas in

the Indo-Gangetic Plains forming part of the erstwhile Punjab province, now is in the territory of Pakistan, received recognition world over for its

Basmati rice production. It is only this area falling within the territory of Pakistan that qualifies for and is entitled to the GI 'Basmati' by virtue of

having produced this exceptional rice over a long period of time and further alleged that the claim for inclusion of other areas is misconceived, and

misguided. It is also contended that APEDA had taken a stand in other proceedings before various forums that ""Basmati"" is grown in both Pakistan

and India along the foothills of Himalayas in IGP.

53. As rightly contended by Mr. P.S. Raman, the learned senior counsel for Respondent No. 7 in this appeal APEDA that this appellant was not a

party to any of the opposition proceedings in respect of which the impugned common order was passed and as such the appellant has no locus standi

to file the instant appeal against the said common order dated 31/12/2013 passed in opposition Nos. TOP-13 to 17 and TOP 19. It is also pertinent to

note that this appellant suffered an order of rejection from the Registrar of Trade Marks, Pakistan dated 10/05/2008 refusing to register Basmati as a

collective mark and this appellant preferred an appeal against the said order before the High Court of Sindh at Karachi and the said appeal is pending

as on date.

54. It is also relevant to state that this appellant filed opposition No. TOP-18 against the GI Application No. 145 and the said opposition was dismissed

on the ground that the evidence filed in support thereof was time barred and against the said order this appellant preferred OA/7/2014/GI/CH and the

arguments have been heard in the said appeal and we are going to pass orders in the said appeal also. It is for the appellant to agitate their rights and

establish their claims before the High Court of Sindh at Karachi. The appellant without taking steps to substantiate their claim in respect of Basmati

rice in their country namely Pakistan there is no justification for them to intervene and interfere in the proceedings initiated by APEDA in respect of

getting GI Tag for Basmati rice covering the areas within the territory of India as specified in the maps filed alongwith the GI Application.

Accordingly, we are constrained to dismiss OA/8/2014/GI/CH.

XV. WHETHER THE STATE OF MADHYA PRADESH IS ENTITLED TO BE INCLUDED AS BASMATI RICE GROWN AREA IN THE

GI APPLICATION NO. 145 ?

55. This is the crux of the issue involved in this matter in so far as the findings rendered by the Assistant Registrar, Geographical Indications Registry

in the impugned order dated 31/12/2013 holding that the areas mentioned in the oppositions are having Basmati cultivation and need to be included in

the GI Application and consequently allowing the oppositions and directing the appellant/applicant to file an amended GI Application No. 145 including

the uncovered area with the map of the region within a period of 60 days from the date of the impugned order.

56. It is seen that six oppositions have been filed under TOP Nos. 13, 14, 15, 16, 17 and 19 and all the opponents have come forward with a stereo

type and parrot like version claiming that the State of Madhya Pradesh is also to be included in the GI Application No. 145 as Basmati rice grown

area. At the appellate stage in OA/5/2014/GI/CH, the third respondent namely New Darpan Social Welfare Society an NGO organization has been

impleaded and they supported the claim of other opponents for the inclusion of Madhya Pradesh state as one of the Basmati rice grown area in GI

Application No. 145. Mr. Sai Deepak, the learned counsel appearing for the first respondent in OA/1-6 & 8/2014/GI/CH took enormous pain to

contend that Basmati rice is also grown in the State of Madhya Pradesh and placed reliance on the documents filed before the Assistant Registrar to

substantiate their claim. Mr. Sanjay Gandhi the learned counsel for the Respondent No. 3 in OA/5/2014/GI/CH highlighted the disadvantageous of the

farmers who are growing Basmati rice in the state of Madhya Pradesh in the

event of non inclusion of Madhya Pradesh state by placing reliance on the provision under Section 7, 8(4) and 21 of the Act. Mr. Sai Deepak came forward with a categorical statement to the effect that the

respondents/opponents in these matters are seeking the relief of their inclusion as GIs in respect of 13 District alone in the state of Madhya Pradesh.

Viz.(1) Monera, (2) Bhind, (3) Gwalior, (4) Sheopur, (5) Datia, (6) Shivpuri, (7) Guna, (8) Vidisha, (9) Raisen, (10) Sehore, (11) Hoshangabad, (12)

Jabalpur and (13) Narsingpur.

57. So far the Geographical Indication Registry registered and granted GI Tag for 235 goods in India. Only in two matters oppositions have been filed

namely in the instant case and in the matter relating to Payyannur Pavithra Ring challenging the granting of GI registration to Payyannur Pavithra Ring

Artisans and Development Society. As rightly pointed out by Mr. PS Raman, the learned senior counsel that Payyannur Pavithra Ring case is not

applicable to the facts of the instant case. The reading of the decision of IPAB in Payyannur Pavithra Ring dated 14/11/2012 in OA/2/2010/GI/CH

under Order No. 255/2012 reveals that is a case of tussle and conflict between a private society (applicant) and a private jewellery. Further in the said

case, there was no wide publication in the earlier and only on the basis of the direction given by IPAB the appellant in the said case effected

publication in a daily news paper which resulted in filing of number of affidavits who have supported the applicant and the opponent respectively. But

as far as the case on hand is concerned the GI Application No. 145 has been filed by a statutory body created as per the Act of Parliament. Further,

as pointed out earlier the only grievance of the opponents is the non inclusion of the state of Madhya Pradesh as Basmati rice grown area in GI

Application No. 145. But the Payyannur Pavithra Ring case is on other points.

DISCUSSION REGARDING FINDINGS OF THE ASSISTANT REGISTRAR;

58. Let us now consider the findings rendered by the Assistant Registrar in the impugned order relating to the conclusion to the effect that the state of

Madhya Pradesh is also to be included as Basmati rice grown area in GI Application No. 145, in order to test whether the findings are flawless or

suffers from infirmities and illegalities.

59. The perusal of the impugned order reveals that the Assistant Registrar narrated the respective claims and contentions of the appellant/applicant

and the respondent/opponents. The grounds of oppositions have been stated in the order as far as the appellant/applicant is concerned the Assistant

Registrar stated about the specific denials of the appellant/applicant for the claims made by the opponents and also stated about the version of the

appellant/applicant made in the counter statement claiming and alleging that historically and traditionally Madhya Pradesh has never been recognized

or perceived both in India and abroad as a Basmati rice growing region.

60. In respect of the evidence produced by both sides, the perusal of the impugned order reflects that the Assistant Registrar pointed out certain

evidence produced by the appellant/applicant namely affidavits of two renowned food critics Ms. Rashmi Uday Singh and Mr. Vir Sanghvi stating that

Basmati rice famously originating in the northern parts of India, the proceedings of the National Basmati Trials and non inclusion of Madhya Pradesh

in the trial process. The affidavits of food critics have not been rejected and in respect of National Basmati Trial, it is stated by the Registrar that the

mere non participation of Madhya Pradesh in the said trials alone will not affect the case of the opponents. The Registrar also stated about the

evidence filed by the APEDA through the affidavit Mr. A.K. Tripathi, Chairman of APEDA and the evidence by Plant Breeding and Genetic Expert

namely Dr. K.V. Prabhu, but there is absolutely no discussion and finding in respect of the evidence adduced by the APEDA in support of their claim

and contentions.

61. The Registrar placed reliance on the evidence of the opponents namely affidavit of Ms. Anu Sharma, a publication titled as ""Rice Breeding in

Central Provinces"" a document submitted along with the evidence of Ms. Anu Sharma and stating that the said articles reveals the fact that Basmati

was being cultivated in the Central Provinces/Madhya Pradesh as early as in 1930, the annual report of the Department of Agriculture from the State

of Gwalior during 1938-39 along with the affidavit of Mr. Anu Sharma to claim that Basmati seeds were being distributed to cultivators during the

above said period, the supporting affidavit of Mr. Bharat Singh Gurjar claiming that Basmati rice have been cultivated in Gwalior in support of affidavit

of Ms. Anu Sharma, the affidavit of Mr. Vineet Maheswari, the authorized signatory of M/s. Dawaat Food Limited to speak about the Basmati

growth in the state of Madhya Pradesh since 1940, the report of Rice Research

Scheme Central Provinces, Raipur titled as ""Varieties of Rice Grown in the Central Provinces"" by BB Dave, a book titled ""A Treatise on the Scented Rice's of India"" authored by R.K. Singh and U.S. Singh marked as an Annexure F-2 of the affidavit, which refers to a book titled as ""A Textbook of Punjab Agriculture"". The above said documents produced by the opponents have been relied by the Assistant Registrar to arrive at the conclusion that the state of Madhya Pradesh has also producing Basmati rice. In respect of climatic condition in Madhya Pradesh the Assistant Registrar placed reliance on the affidavit of Dr. Manish Bhan, a scientist and the affidavit of Dr. A.K. Rawat, Professor and Head of the Department of Soil Science and Agricultural Chemistry at Jawaharlal Nehru Krishi Vishwavidhyalaya, Jabalpur. Apart from the said evidence the Assistant Registrar placed reliance on the Laboratory Test Reports of Molecular Genetics Centre for DNA, Hyderabad submitted by the opponents/respondents which has conducted a DNA Test on the sample of Basmati rice produced by Madhya Pradesh and certified the same as Basmati.

62. At this juncture, we are constrained to state that the Assistant Registrar has not at all compared the evidence adduced by APEDA with that of the evidence relied by him as produced by the respondents/opponents. The vital documents relied by APEDA more particularly the two affidavits of Dr. K.V. Prabhu, supporting the claim of APEDA and disputing and denying the claim of opponents in respect of the alleged cultivation of Basmati rice in the State of Madhya Pradesh have been neither rejected such evidence nor discussed and rendered any finding on such vital aspects by the registrar..

The counter of the APEDA to the document filed by the opponent under Annexure F-1 - A publication by Department of Agriculture, India regarding the occurrence of ""Basmati"" and ""Basmatia"" in the then Central provinces has been relied by the Assistant Registrar without looking into the said document as APEDA countered and claimed that there is no reference to Basmati and Basmatia in the said Annexure F-1. Annexure F-3 - A publication Titled ""Rice Breeding in Central Provinces"" is also relied by the Assistant Registrar for the cultivation of Basmati rice in MP without considering the counter contention of APEDA. Annexure F-6 - The Annual Report of the Department of Agriculture, Gwalior 1938-39 relied by the Assistant Registrar in favour of Madhya Pradesh without considering the counter

contention of APEDA. Annexure F-8 affidavit of Mr. Manish Bhan

was also considered in favour of opponent without referring to the counter contention of APEDA. The DNA Test Report of Hyderabad under Exhibit

O-4 was also considered by the Assistant Registrar without considering the counter contention of APEDA claiming DNA Test neither corroborates

Basmati cultivation in Madhya Pradesh nor establishes identical characteristics. Last but not the least, infirmity and illegality found in the findings of

the Assistant Registrar is the suo moto reliance placed on an extract from the official website of the Directorate of Rice Development, Government of

India providing the details of the cultivation of Basmati holding that some of the states like Madhya Pradesh, Rajasthan and Bihar are having basmati

cultivation which are left uncovered in the GI Application No. 145 without furnishing the said document either to APEDA or to the opponents.

63. It is pertinent to note that the Assistant Registrar has observed in Para 49 of the impugned order as hereunder:

The documents and evidence filed by the respondent/applicant shows the ""importance, special characters of Basmati but not the actual area of

cultivation. Applicant has therefore failed to satisfy the fundamental requirement of clear, specific and reasoned demarcation of Basmati-cultivation

areas. There is no proper demarcation of cultivation area in the GI application. From the above evidences, it was found that the areas mentioned in the

oppositions are having Basmati cultivation and need to be included in the GI application.

We are constrained to state that the above said observation and finding is unilateral without considering contentions, claims and the evidence of the

appellant/applicant. The materials available on record as produced by the appellant/applicant before the Assistant Registrar shows that the

appellant/applicant not only produce the documents to establish the significance and the special characteristics of Basmati, but also produced

documents to establish the area of cultivation of Basmati as per the three maps annexed along with the GI application No. 145.

64. It is pertinent to note that APEDA strongly placed reliance on the two affidavits of Dr. K.V. Prabhu admittedly an expert in the field of plant

breeding who has disputed the claim of opponents that the Madhya Pradesh has similar soil characteristics and Agro Climatic condition and there is a

cultivation of Basmati rice in the regions of state of Madhya Pradesh pointed out by the opponents. It is relevant to incorporate the relevant portion of

the affidavit of Dr. K.V. Prabhu, Head of Division of Genetics, Indian Agricultural Research Institute (IARI) as hereunder;

I have read the pleadings and evidence filed in these proceedings by the Opponent including the additional evidence filed on January 29, 2012 (a day

before the hearing held on January 30, 2012) in Opposition No. TOP 15 as well as that filed on June 2, 2012 in Opposition No. TOP 19. Based on my

expertise in the area of rice breeding and genetics, I would like to specifically deal with three aspects of the additional evidence filed by the Opponent

in January and June 2012 to support its claim that Basmati rice has been in cultivation in the State of Madhya Pradesh since the early 1900s, vide this

instant common affidavit. These three aspects comprise: (i) germplasm collection and rice breeding, (ii) the Affidavit of Dr. S.C. Ahuja introduced

through the Affidavit filed by Mr. K.C. Paliwal on June 2, 2012 (hereinafter, 'the Paliwal Affidavit) and (iii) certain aspects of the Paliwal affidavit.

The value of a crop variety as a commercial commodity would be established only if there is continuous cultivation of the same for several years by

the farmer himself, without any intervention by research or development agencies, till the variety is bettered. Till such time, any reference to a variety

grown in a village (as a result of the dissemination of the seed by a government agency) should never be equated with the variety being in commercial

cultivation.

It is most likely that in the State of Madhya Pradesh which cultivates a large number of short and medium grain aromatic rice varieties, such varieties

are mistakenly referred to as 'Basmati' because of their aroma.

We are just referring the above said portion of the affidavit of Dr. K.V. Prabhu in order to highlight the erroneous findings of the Assistant Registrar

to the effect that APEDA filed the documents of evidence only to show the importance, special characteristics of Basmati but not in respect of the

actual area of cultivation.

65. The Assistant Registrar has simply Overlooked and brush-aside the said vital evidence adduced by APEDA and there is not a whisper of

discussion in respect of the evidence of Dr. K.V. Prabhu except stating that plant breeding and genetic expert Dr. K.V. Prabhu has deposed in favour

of APEDA in the impugned order. The proper and fair method of appreciation of the evidence relied by both sides is to compare, discuss and to assign

reasons for preferring and relying the evidence produced by one side than that of the evidence produced by the other side.

66. The above said infirmities and illegalities found in the findings rendered by the Assistant Registrar makes it crystal clear that the said findings not

only erroneous but also rendered in flagrant violation of the principles of natural justice. At the risk of repetition it is to be reiterated that the Assistant

Registrar has placed reliance only on the basis of the evidence relied by the opponents and the said evidence are not at all tested and analysed in a

proper manner by comparing such evidence with that of the counter claim and evidence produced by APEDA and their evidence have been simply

brushed aside and over looked.

67. In view of the aforesaid reasons, we are constrained to set-aside the findings of the Assistant Registrar, Geographical Indication Registry, Chennai

in so far as the same relates to the conclusion to the effect that the documents relied by the respondents/opponents are creating a factum of Basmati

production in the state of Madhya Pradesh and further holding that the states like Madhya Pradesh, Rajasthan and Bihar are having Basmati

cultivation and the said area are left uncovered in the GI Application No. 145 and consequently, allowing the oppositions and directing APEDA to file

an amended GI application No. 145 including the uncovered area within a period of 60 days from the date of impugned order.

68. Consequently, we are directing the Assistant Registrar, Geographical Indications Registry, Chennai to consider the matter afresh in relation to the

claim of opponents for the inclusion of state of Madhya Pradesh more particularly in respect of the places mentioned by the learned counsel for the

respondent/opponents namely, (1) Monera, (2) Bhind, (3) Gwalior, (4) Sheopur, (5) Datia, (6) Shivpuri, (7) Guna, (8) Vidisha, (9) Raisen, (10) Sehore,

(11) Hoshangabad, (12) Jabalpur and (13) Narsingpur by affording reasonable opportunity to APEDA and the opponents. It is open to APEDA and to

the opponents to produce any further documents of evidence in support of their respective claims. It is relevant to note that the provision under Section

27 and 29 of the Act empowers the Registrar of Geographical Indication to vary and alter the registration of Geographical Indication on the basis of

the outcome of re-consideration of the above said crucial question. It is made clear that the Registrar of Geographical Indications shall reconsider the above said question without being influenced or carried away by any of our observations in this order. It is further made clear that the above said exercise shall be completed by the Registrar within the period of six months from the date of receipt of the order copy of this Bench.

69. To sum up

1) OA/8/2014/GI/CH filed by Basmati Growers Association, Lahore, Pakistan is hereby dismissed

2) OA/9/2014/GI/CH filed by Dawaat Foods Limited questioning the Locus Standi of APEDA to file GI Application No. 145 is hereby dismissed and

the findings in relation to that aspect of the Assistant Registrar, Geographical Indications in the impugned order dated 31/12/2013 in GI Application No.

145 is hereby upheld.

3) APEDA is entitled to get GI Tag for Basmati rice in respect of the areas and region specified in the certified copies of the maps annexed with the

GI Application No. 145 and consequently, the Assistant Registrar, GI Registry, Chennai shall proceed with the registration and issue the certificate of

registration within a period of four weeks from the date of receipt of the order copy of this Bench.

4) The findings of the Assistant Registrar of Geographical Indications in the impugned order dated 31/12/2013 in so far as the same relates to the

inclusion of state of Madhya Pradesh in the GI Application No. 145 and consequential direction to the appellant/applicant APEDA to amend the GI

application No. 145 including the uncovered area with the map of the region demarcating the area of production within 60 days is hereby set-aside.

5) The Assistant Registrar, Geographical Indications Registry, Chennai shall reconsider the matter afresh in respect of the claim of

respondents/opponents for the inclusion of the areas specified in the state of Madhya Pradesh and other places mentioned in the impugned order by

the Assistant Registrar by affording reasonable opportunity to both sides and by receiving any further evidence from both sides and pass an order in

accordance with law within the period of six months from the date of receipt of the order copy of this Bench.

70. Accordingly, OA/1-6/2014/GI/CH have be allowed and OA/8 & 9/2014/GI/CH

are hereby dismissed. Therefore, the miscellaneous petitions are closed. No order as to costs.