

BEFORE THE PLANT VARIETIES REGISTRY**AT NEW DELHI**

IN THE MATTER OF: - Representation dated 08.03.2017 in respect of applications form C 5625 of Tetraploid Cotton - ACK No. REG/2008/260- Maharashtra Hybrid Seeds Co. Pvt. Ltd., AND Representation dated 08.03.2017 in respect of application form C 5703 of Tetraploid Cotton- ACK No. REG/2008/252.

For the Applicant: - Sh. Anil Dutt and Sh. Sudarshan Singh Shekawat, M/s. Lakshmikumaran & Sridharan

ORDER

The issue involved in the matter is this Registry whether the applicant is required to deposit fee for registration as per revised fee structure notified in PPV&FR Amendment Rules, 2015 in respect of applications filed before coming into force of the said Amendment Rules.

Heard the applicant on 06.09.2017.

ARGUMENTS OF THE APPLICANT

The applicants filed Applications dated April 2, 2008 for registration of the tetraploid cotton variety having denomination C 5703 and C 5625 under the Protection of Plant Varieties & Farmers' Rights Act, 2001. The Registry vide letter dated 07.02.2017 asked the applicant to deposit fee for registration' as per revised fee structure under the Gazette of India notification no. G.S.R. 494(E) dated 15 June 2015.

The applicant's at the outset submit that there is no "fee for registration' as such prescribed under the Act or the Protection of Plant Varieties and Farmers' Rights (Amendment) Rules, 2015. However, a fee is payable that must be "accompanied" along with the Form of application under Section 18(1)(g) of the Act. We submit that in the present case on the date of filing of the captioned application i.e. April 2, 2008, there was no fee prescribed under the Second Schedule of the Rules as per Section 18(1)(g)

of the Act which was to be accompanied along with the application. Thus, no fee is payable for the captioned application and if during the pendency of the application, the rules are amended to the extent that now a fee has been prescribed to be paid along with the application the same can be applied to the Applicant. This is also borne out from the fact that Rule 1(2) of the Amended Rules expressly state that the said Amended Rules shall come into force from the date of its publication in the gazette i.e. 16 June 2015 and NOT retrospectively.

Therefore, the captioned application is required to be processed for registration as it complies with all other requirements and the present demand by the Authority for "fee for registration" is without any basis in law.

The applicant's cited the case of W6001 of wheat variety, application no. REG/2007/22 (and at least two other cases), where a similar issue had arisen and application fee under Section 18(1)(g) was sought to be imposed retrospectively by way 2009 amendment of the Rules where a fee of Rs. 10,000/- was sought to be imposed retrospectively. The Applicant had approached the Hon'ble High Court of Delhi on the said issue and the learned Single Judge, while holding in favour of the Applicant therein had inter alia, held vide order dated 28 April 2010 that the then amended Rules cannot be applied retrospectively and the Application did not become defective because of nonpayment due to non-prescription of fee under Section 18(1)(g) at the time of making the application in 2008. The order also held that application fee under Section 18(1)(g) is payable, if prescribed, at the time of filing of application and cannot be said to be 'fee for registration' that can be collected at the time of registration. The said order of the learned Single Bench, in paragraph 19, ordered the Authority to refund the fee of Rs. 10,000 collected by retrospective application of the 2009 amendment of the Rules. Against the said order of the Single Bench dated 28 April 2010,

the Union of India and the Authority appealed before the Division bench of the Hon'ble High Court of Delhi in LPA 491, 492 495 of 2010 whereby the Hon'ble Division Bench, vide order dated 26 July 2010 while issuing notice, admitted the appeals and ordered stay ONLY of operation of the direction of the Single Bench in paragraph 19 regarding the refund of fees. Therefore, it is clear that the law settled by the learned Single Bench of the High Court against the retrospective application of the "application fee" under Section 18(1)(g) notified by the 2009 amendment to the Rules still holds good and any demand of fee by way of retrospective application of the amended Rules is a violation of the said order.

Therefore, the present demand of Rs.50,000 towards fee of registration for the present application dated April 2, 2008 under the Amended Rules, 2015 is without any basis in law and must be withdrawn. Therefore request for withdrawal of the present demand of Rs.50,000/- as 'fee for registration' and proceed for Registration of the said tetraploid cotton variety C5703 and grant the certificate thereto.

Before examining the arguments of the applicant, the facts of the case have to be examined.

FACTS OF THE CASE

The applicant filed the application for registration of the cotton variety having denomination C 5703 on 02.04.2008 and at that point of time no fees were notified in the official gazette. Subsequently on 13th May, 2009 the PPV&FR (Amendment) Rules, 2009 came into force prescribing the fees for registration of new/extant variety. This Registry by order dated 12.11.2009 in A. No.2 of 2009 (in which the applicant was a party) has directed that the fees must be paid nevertheless of the fact that when the application was filed no fees were prescribed. However, the seniority and protection relating to date of filing was preserved in the said order.

The operative portion of the order is extracted hereunder:-

“At the time of filing of application for registration of MRC 7351 under section 14 no fees was prescribed in the Rules. I agree with the contention of the applicant placing reliance on the decision of the Hon’ble Supreme Court in Orissa State P&C Pollution Board-Vs-M/s. Orient Paper Mills (AIR 2003SC1966) that the words ‘as may be prescribed’ means ‘if any prescribed’. Accordingly prior to the Gazette Notification No.275 dated 13.5.2009, the words ‘as may be prescribed ‘occurring in section 18(1)(g) has to be interpreted as ‘if any prescribed’. I am of the view that if Rules are not prescribed at relevant point of time it cannot take away the substantive right granted by the Act. My view is that Rule 8(2)(d) which states that the date on which the entire fee is paid shall be the date of filing of application cannot be applicable at a point of time when fees were not prescribed as the substantive right granted by the Act under section 14 takes priority over procedural rules. A section or rule must be interpreted only when it serves a purpose. Accordingly, I have to hold that the date (2.4.2008) on which the application for registration of MRC 7351 was filed is the date of filing and consequently application under section 14 for registration of MRC 7351 is maintainable. But however it is needless to say that the applicant must comply with section 18(1)(g) and must deposit the fees forthwith (if not deposited earlier) as notified in Gazette No.275 dated 13th May 2009. However, the date of filing of application under section 14 in the instant matter shall relate back to date on which the application for registration under section 14 was filed under Rules 6(5) of the Rules. It is however clarified that in respect of application filed for registration of new varieties or an extant varieties about which there is a common knowledge on or after 13th May, 2009, the date on which the entire fee is paid as per the said notification will be the date of filing of the application. I have to declare 13th May, 2009 as decisive date for determining the date of filing of application for registration of extant varieties about which there is a common knowledge or new varieties as it is the date on which the Protection of Plant Varieties and Farmers’ Rights (Amendment) Rules, 2009 fixing fees for registration of a variety about which there is common knowledge or new varieties came into force. Thus the date of filing before 13th May, 2009 in respect of applications for registration of extant varieties about which there is common knowledge would be the actual date of filing under Rule 6(5) of the Rules and all applications for registration of extant varieties about which there is common knowledge filed on or after 13th May, 2009 the date of filing of applications for registration under section 14 would be the date on which the entire fee is paid. In the instant case the application under section 14 has been filed before 13th May, 2009 and accordingly the factual date of filing of application under Rule 6(5) of the Rules would be the date of filing and hence the Appl. No.2 of 2008 is maintainable.”

The Registry consequently made a demand for registration fees in respect of the applicant’s applications, which was challenged by the applicant in W.P. (C) No.852 of 2010 before Hon’ble Delhi High Court. The said writ petition was allowed by the Hon’ble Delhi High Court. Consequently this Registry appealed to the Hon’ble August Bench of

Delhi High Court vide LPA No 491, 492 and 495 of 2010. The Division Bench by order dated 26th July, 2010 stayed the order of the single judge of Hon'ble Delhi High Court. The order of the Division Bench is extracted hereunder:-

“Having heard Mr. A.S. Chandiok, learned Additional Solicitor General appearing on behalf of appellants and Mr. R. Parthasarthy, learned counsel appearing for respondents, it is directed that there shall be stay of the operation of direction contained in paragraph 19 of the order passed by the learned Single Judge on 28th April, 2010 in W.P.(C) 852/2010 and other connected writ petitions till further orders. ”

Thereafter the PPV&FR (Amendment) Rules, 2015 came into force on 16th June, 2015 in the official gazette and since the fee for registration was not paid by the applicant the Registry demanded the fee as per the revised fee structure. The applicant is objecting to the same. Had the applicant had paid the fees before the coming into the force of PPV&FR Amendment Rules, 2015 then the applicant would have paid only the fee as per PPV&FR Amendment Rules, 2009 and since the fees remained unpaid till the coming into force of PPV&FR Amendment Rules, 2015 on 16.06.2015. The applicant is bound to pay fees as per PPV&FR Amendment Rules, 2015.

REASONING/ANALYSIS

At the outset the issue is sub-judice before Hon'ble Delhi High Court and this Registry is bound by the decision of Hon'ble Delhi High Court in letter and spirit. The contention of the applicant that only para 19 regarding refund of fees by single judge alone has been stayed and remaining law settled by Ld. Single Judge remains is per se not acceptable. This registry cannot interpret the order of the Hon'ble Delhi High Court and it is bound to follow order of the court in letter and spirit. The order of the High Court

has to be seen holistically and cannot be dissected on piece meal manner. I also do not agree with the applicant's contention that present demand of Rs. 50,000/- is not valid in law. It is needless to say that the payment of fee by the applicant under PPV&FR Amendment Rules, 2009 is subject to the outcome of LPA Nos.491, 492 and 495 of 2010 and accordingly no prejudice would be caused to the applicants by paying the fees.

Based on the aforesaid reasoning, I hereby conclude that the issue of payment of fees under section 18(1)(g) in respect of applications filed before the coming into force of PPV&FR Amendment Rules, 2009 is sub judice before Hon'ble Delhi High Court and accordingly this Registry is bound by the outcome of the LPA Nos.491, 492 and 495 of 2010 before the Hon'ble Delhi High Court and based on its outcome a decision will be taken on the instant issue raised in this matter that is whether the applicant is bound to pay fee for registration as per PPV&FR Amendment Rules, 2015 and till then there is no legal bar and accordingly, the applicant is bound to pay the registration fee as demanded in accordance with PPV&FR Amendment Rules, 2015.

There shall be no order as to costs.

Given under my hand and seal on this the 8th day of May 2018.

Sd/-

(R.C. AGRAWAL)

REGISTRAR-GENERAL