

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

Oppn. No.2 of 2024

IN THE MATTER OF: Notice of Opposition filed by M/s. Nuziveedu Seeds Limited against registration of Okra variety denominated as V130014(Raadhika) with Application No. N2-AE2-18-164 filed by M/s. Advanta Enterprises Ltd.,

IN THE MATTER OF: -

M/s. Nuziveedu Seeds Limited

..... Opponent

-Versus-

M/s. Advanta Enterprises Ltd.,

..... Applicant

For the Opponent: Sh. K.V. Girish Chowdary, Sh. D. Satya Sai Sumanth, Advocates.

For the Applicant: Sh. Adarsh Ramanujan, Advocate.

ORDER

By this order I shall dispose of the PV-3 (Notice of Opposition filed by Opponent) to oppose the registration of New Okra Variety denominated as V130014(Raadhika) filed by the Applicant. The Applicant has applied for the registration of the said variety, which the Opponent is opposing for registration. Pleadings and evidence are complete and the parties were heard on 20th February, 2025.



FACTS OF THE CASE: -

On 5th April, 2018, the Applicant filed Application No. N2-AE2-18-164 seeking registration of their Okra variety denominated as V130014(Raadhika). The same variety was advertised in PVJ Vol-17 No.12 published on 1st January, 2024 inviting oppositions. The Opponent filed the instant opposition on 28th March, 2024 and fees for opposition was deposited on 26th March, 2024. The Notice of Opposition was received by the Applicant on 11th April, 2024 and the Counter statement was filed by Applicant on 7th June, 2024. Both the opposition and the counter-statement were filed within the prescribed time limit by Opponent and Applicant respectively. On 3rd July, 2024, the Opponent also filed PV-33 requesting for certified copies of Amended application, TQ, and all the relevant documents that were submitted in 2023 and reply and DUS report of V130014(Raadhika) in the application which is the subject matter of Opposition. The requested documents were furnished to the Opponent on 26th July, 2024 and the PV-33 (Form for request of documents) was consequently disposed of. The Opponent is bound to file final opposition within a period of 30 days from the date of receipt of counter statement as per Rule 31(6) and evidence within a period of one month as per Rule 33(1) of PPVFR Rules, 2003. The counter-statement in the instant matter was received by the Opponent on 5th July, 2024 and hence evidence should have been filed by 5th August, 2024 but instead the Opponent filed PV-5 petition seeking one month extension for filing the evidence. The said PV-5 petition was allowed by this Registry on 23rd August, 2024 subject to payment of costs of Rs.10,000/- to the National Gene Fund. The said



order was complied with and the Opponent filed their evidence on 03.09.2024. The Opponent also filed a PV-5 petition on 22.08.2024 to condone the one-day delay in filing the final opposition. The Opponent filed their final opposition on 06.08.2024. The applicant communicated no objection to the one-day delay in filing of the final opposition by the Opponent. Accordingly, one delay in filing of final opposition was condoned by the Registry by order dated 25th September, 2024.

The said copies of final opposition and evidence of the Opponent was served on the Applicant on 30.10.2024. From the said date, the Applicant had to file their evidence within 30 days in accordance with Rule 33(2) of PPVFR Rules, 2003. Complying the same, the Applicant filed their evidence on 19th November, 2024.

The list of documents submitted and marked in evidence by both the parties are as follows: -

Opponent Evidence:

Exhibit PW-1/1:	Board Resolution dated 13.12.2021, passed by Nuziveedu Seeds Limited in favour of Shri Mahesh Nagappa Sajjan, General Manager Breeding to sign all papers on behalf of Opponent.
Exhibit PW-1/2:	License issued by the Commissionerate of Agriculture; State of Maharashtra vide communication dated 28.05.2004 to carry on business of a dealer in certain bhendi varieties including NBH-12, NBH-225, NBH-235, NBH-245, NBH-18, NBH-45, NBH-55 and NBH-27.
Exhibit PW-1/3:	License issued by the Government of Andhra Pradesh; Department of Agriculture vide



	letter dated 17.12.2012 granting centralized seed license.
Exhibit PW-1/4:	Application No. REG/2018/164 H filed by the Respondent for registration of the variety "V130014(Raadhika)" dated 20.03.2018.
Exhibit PW-1/5:	Application for registration of the parental line AV-508 (Female) dated 17.09.2020.
Exhibit PW-1/6:	Application for registration of the parental line AV-509 (Male) dated 17.09.2020.
Exhibit PW-1/7:	Invoices issued by the Opponent to various buyers in respect of its Okra Varieties BINDU and NBH-45.
Exhibit PW-1/8:	Invoices issued by the Opponent to the erstwhile Applicant M/s. United Phosphorus Limited in respect of the sale of its Okra varieties.
Exhibit PW-1/9:	Application under Section 24 (5) filed by Advanta Enterprises Limited.

Applicant Evidence:

Exhibit A:	Board Resolution dated 08 th May, 2024 authorising Shri Prashant Belgamwar to sign legal proceedings under PPVFR Act, 2001 on behalf of the Applicant.
Exhibit B:	Public record of marketing campaigns done by Nuziveedu Seeds Ltd for Bindu and NBH-45

List of Witnesses was not furnished by both the parties. The matter was fixed for final hearing on 20th February, 2025. On the said day, the parties were heard and the judgement was reserved.

CASE OF THE OPPONENT: -

1. The brief factual background leading to the present proceedings are chronologically tabulated herein below:



Date	Particulars of Event	Exhibit No
28.05.2004	The Opponent, M/s Nuziveedu Seeds Limited secured a license from the Commissionerate of Agriculture, Maharashtra for the commercialization of its proprietary Okra variety 'NBH-45.' The license was periodically renewed under Rule 7 of The Seeds (Control) Order, 1983 and is currently valid up to 08.05.2027.	Exhibit PW1/2
17.12.2012	The Opponent received a license from the Department of Agriculture, Andhra Pradesh for the Okra variety 'Bindu.' The license was periodically renewed under Rule 7 of The Seeds (Control) Order, 1983 and is currently valid up to 09.04.2027.	Exhibit PW1/3
2102-2017	The Opponent has been selling its hybrid varieties 'NBH-45' and 'Bindu' in the open market to various seed distributors. Sample	Exhibit PW1/7



	invoices of Sales made during the period 2012-2017 have been annexed along with the Evidence Affidavit.	
Kharif 2012	The Applicant allegedly initiated the process of developing its hybrid Okra variety 'V130014(Raadhika)' by crossing its parental lines AV-508 (Female) and AV-509 (Male).	Exhibit PW1/4
Summer 2013	Initial Hybrid Trials (IHT) were allegedly conducted by the Applicant for the hybrid Okra variety 'V130014(Raadhika).'	Exhibit PW1/4
2013-2017	The Applicant (UPL) purchased bulk quantities of Okra hybrid seeds from the Opponent. Sample invoices of Sales made during the period 2013-2017 have been annexed along with the Evidence Affidavit.	Exhibit PW1/8
Summer 2014	Advanced Hybrid Trials (AHT) for 'V130014(Raadhika)' were allegedly conducted by the	Exhibit PW1/4



	Applicant.	
Summer 2015	The Applicant allegedly completed its Multi-Location Trials (MLT) for 'V130014(Raadhika)'.	Exhibit PW1/4
13.01.2018	The Applicant allegedly commenced its first commercial sale of its hybrid Okra variety 'V130014(Raadhika).'	Exhibit PW1/4
20.03.2018	The Applicant submitted its Application No. N2-AE2-18-164 for the registration of the hybrid Okra variety 'V130014(Raadhika)' under the PPV & FR Act, 2001. The application was filed as an assignee, without valid authorization and assignment deeds.	Exhibit PW1/4
24.09.2020	The Applicant filed applications for registration of its parental lines AV-508 (Female) and AV-509 (Male) under the PPV & FR Act, 2001. The applications in respect of the parent lines were filed over two years after the commercialization	Exhibit PW1/5 & PW1/6



	of the hybrid variety 'V130014(Raadhika).'	
2021	The Applicant instituted proceedings under Section 24 (5) of the PPVFRA, 2001 against the Opponent herein alleging that ' <i>Nuziveedu's Okra hybrids 'Bindu' and 'NBH-45' are identical to and an infringement of UPL's Okra Hybrid.</i> '	Exhibit PW1/ 9
01.01.2024	Application No. N2-AE2-18-164 for varietal denomination V130014(Raadhika) filed by the Applicant Advanta Enterprises / UPL was published in the Plant Variety Journal Vol 17 No.12 at Pg. 618-620	
28.03.2024	The Opponent filed its Notice of Opposition under Section 21 of the PPV & FR Act, 2001, challenging the registration of the hybrid variety 'V130014(Raadhika).'	
07.06.2024	The Applicant submitted its Counter Statement to the	



	Notice of Opposition filed by the Opponent (NSL).	
05.08.2024	The Opponent submitted its Final Opposition under Section 21 read with Rule 31(6), reiterating its objections to the registration of the Applicant's hybrid variety 'V130014(Raadhika).'	
03.09.2024	The Opponent filed its Evidence Affidavit along with (9) exhibits in support of its opposition to Application No. N2-AE2-18-164 of the Applicant.	
14.11.2024	The Applicant submitted its Evidence Affidavit along with (1) exhibit containing selective unauthentic face book and YouTube marketing campaign of the Opponent during the period 2019-2021.	

2. Submissions on behalf of the Opponent: -

A. The Applicant's candidate hybrid variety "V130014(Raadhika)" is not registerable under the PPVFRA, 2001



- i. Section 15 of the PPVFRA, 2001 mandates that a 'new' variety shall be registerable under the Act only if it confirms to the test of novelty, distinctiveness, uniformity and stability.
- ii. It is submitted that the Applicant in its application for registration of its **new** variety "V130014(Raadhika)" stated the followings facts: -
 - That the Applicant's candidate hybrid variety "V130014(Raadhika)" was released for commercial sale on 13.01.2018.
 - That the parent lines of the candidate variety AV-508 (f) and AV-509 (m) were developed in Kharif of 2012.
- iii. In the proceedings under Section 24(5) of the PPV & FR Act, 2001, the Applicant on affidavit before this Hon'ble Authority
- iv. expressly admitted that the Opponent's prior-developed varieties, "BINDU" and "NBH-45," are identical to the Applicant's hybrid variety, "V130014(Raadhika)".
- v. The Opponent's varieties "BINDU" and "NBH-45" were commercialized much prior to the date of commercialization of Applicant's hybrid variety "V130014(Raadhika)". The variety "NBH-45" was commercialized even before the parent lines of the candidate variety were conceptualised, following the issuance of the requisite license by the Commissionerate of Agriculture, Maharashtra, on



28.05.2004. Similarly, “BINDU” was developed and introduced in the market in 2012, with a commercialization license granted by the Department of Agriculture, Andhra Pradesh, on **17.12.2012.**

- vi. The date of commercialisation of the Varieties “Bindu”, “NBH-45” and “V130014(Raadhika)” is tabulated below: -

	Applicant's Variety	Opponent's Varieties	
Particular	“V130014 (Raadhika)”	“Bindu”	“NBH-45”
Date of commercialisation.	13.01.2018	License to sale was issued on 17.12.2012.	License to sale was renewed on 28.04.2004

- vii. It is submitted that from the aforesaid facts it is evident that the variety “Bindu” and “NBH-45” were developed by the Opponent through its own efforts, research and were commercialized much prior to alleged date when the Applicant developed the parent lines AV-508 and AV-509 in kharif 2012 and the hybrid “V130014(Raadhika)” in Summer 2015.
- viii. It is further submitted that the Applicant's prior knowledge and use of the Opponent's OKRA varieties further support the Opponent's claims that the candidate variety is nothing but the Opponents variety which is in public domain and about which



there is common knowledge. Between 2013 and 2017, the Applicant purchased bulk quantities of OKRA varieties from the Opponent, indicating a clear acknowledgment of the commercial presence of Opponent's Okra varieties and Applicant depended on Opponent's varieties to establish their market supply.

- ix. The Applicant having asserted on affidavit before this Hon'ble Authority that its candidate variety is identical to the Opponent's variety cannot be permitted to make a contrary assertion in the present proceedings before the same authority. It is settled Law that a party cannot be permitted to approbate and reprobate. Reliance in this regard is placed on the following Judgments of the Hon'ble Supreme Court and Delhi High Court in: *Salem Muslim Burial Ground Protection Committee v State of T.N. 2023 SCC Online SC 656 Para 44 and Raman Kwatra v KEI Industries 2023 SCC Online Del 38 Para 43.*
- x. Lastly, Rule 13 of The Seeds Rules, 1968 provides for a person selling seeds to maintain a complete record of each lot of seeds sold only for a period of 3 years and seed samples may be discarded one year after the lot has been discarded. Thus, it is impossible for the Opponent as contended by the Applicant to establish that the characteristics of 'Bindu' and 'NBH-45' sold prior to 2018 is the same as that sold after 2018.



- B. The grant of certificate of registration to the Applicant is not in public interest in terms of Section 21 (3)(b) since the Application is in violation of the PPVFR Act, 2001 and the PPVFR Rules, 2003.

It is submitted that the application was filed by Shri Prashant Belgamwar, who is described as the 'Business Director - South Asia, Sales & Marketing.' However, the application fails to disclose or furnish the necessary particulars of authorization conferred upon him by the Applicant to act in this capacity

It is submitted that on 20.03.2018, Shri Prashant Belgamwar purportedly authorized the breeder, Dr. Elangovan, by issuing Form PV-1 under Rule 25 of the PPV & FR Rules, 2003. However, this authorization is rendered defective and meaningless since Shri Prashant Belgamwar himself does not have the requisite authority to act on behalf of the Applicant. (@Exhibit PW1/4, Pg No. 48 of the Evidence Affidavit)

It is submitted that the absence of a valid authorization renders the application procedurally defective and *void ab initio*. Further, Shri Prashant Belgamwar has no *locus standi* to file the application or act on behalf of the Applicant. In accordance with Rule 25 of the PPV & FR Rules 2003, the natural person acting on behalf of a legal entity must possess the authority to do so. The lack of such authority in this case invalidates the application.

- i. Glaring contradictions in the application for registration of the candidate variety "V130014(Raadhika)"



C. It is submitted that the Deed of Assignment dated 20.03.2018 submitted along with the application for registration is unstamped and lacks the signature of a witness. The said deed qualifies as an "instrument" under Section 2(14) of the Indian Stamp Act, 1899, and is chargeable with stamp duty in accordance with Section 3 and Entry 11 of Schedule I of the Indian Stamp Act, 1899. Under Section 33(1) of the Act, an unstamped instrument is liable to be impounded when produced before an authority. Further, Section 35 the Indian Stamp Act, 1899 renders such instrument inadmissible in evidence until duly stamped and the penalty is paid. In the absence of a valid and enforceable Deed of Assignment, Form PV-2 under Rule 27(2) of the PPV&FR Rules, 2003, is invalid. It is also to be noted that the lack of valid Deed of Assignment as per Section 18 read with Rule 27(1) is non rectifiable issue and makes this application invalid and non-registerable as per Section 21 (3) of the PPV&FR Act, 2001.

D. The Declaration under Section 18(1)(h) of the PPV&FR Act, 2001, classifies the candidate variety 'V130014(Raadhika)' as an 'extant variety,' whereas in response to Column 5 of the Application, it is categorized as a 'new variety.'

E. The candidate variety 'V130014(Raadhika)' is alleged to be the result of a cross between AV 508 (Female) and AV 509(Male). However, the Assignment Deed for the parental lines was executed on 30.07.2020 that is Over two years after the Assignment Deed for the candidate variety



that is 20.03.2018. The deed mentions the effective date as “the date of appointment of the breeder,” but no specific dates or documentary proof of the breeder's employment with UPL have been furnished nor it has been mentioned in their counter or evidence. Thus, in the absence of the Applicant securing proprietary rights of the parent lines, the Applicant could not have created the hybrid candidate variety ‘V130014(Raadhika)’.

Thus, for all the reasons cited above the Application of the Applicant deserves to be rejected under Section 22 of the PPVFRA, 2001.

CASE OF THE APPLICANT: -

A. FACTUAL BACKGROUND

- i. The Opponent has preferred the captioned opposition under Section 21 of the Act against the Applicant’s Application No. N2-AE2-18-164 seeking registration of a varietal denomination V130014(Raadhika) published in Plant Variety Journal Vol 17 No.12 at Page No. 618-620 dated 1st January 2024.

About the Okra hybrid plant variety V130014(Raadhika)

- ii. It is submitted that the Applicant Advanta Enterprises Limited, (*hereinafter "Applicant"*) developed a new Okra hybrid variety “V130014(Raadhika)”, the F1 Hybrid made from crossing AV508 (Female) and AV509 (Male) which were stable parental lines (developed before 2012) in the Kharif season of 2012. Thereafter, the Initial Hybrid Trial (IHT) was done in the summer of 2013 and the Advance Hybrid Trial (AHT) was



conducted in the Summer of 2014. The Multilocal Trial (MLT) was conducted by the Applicant in the Summer of 2015. The resultant plant variety was a new Okra hybrid plant variety with distinctive characteristics.

The Applicant started commercialization of its new Hybrid “V130014(Raadhika)” by way of commercial sales on 13th January 2018. The said variety has been a highly successful product since then, showing tremendous year-on-year growth as is evident from the commercial sales data below:

PERIOD	QUANTITY (KGS)	VALUE (RS. LAKH)
FY 2017-18	13,479	531.4
FY 2018-19	1,27,738.25	4,723
FY 2019-20	2,42,149	10,280
FY 2020-21	2,17,565	10,859
FY 2021-22	247,696	12,876
FY 2022-23	122,965	6,652

B. PROCEDURAL HISTORY

- The present Opposition was filed by Nuziveedu Seeds Limited (*hereinafter* “*Opponent*”) under Section 21(2) of the Plant Protection Variety and Farmer’s Rights Act (*hereinafter* “*PPVFRA*”) against the Applicant’s Application No. N2-AE2-18-164 seeking registration of a varietal denomination V130014(Raadhika) on 28.03.2024.



C. PRELIMINARY SUBMISSIONS

- i. An 'exhaustive' list of grounds on the basis of which an opposition can be filed under the Act is given under Section 21(3). Alleged defects in the underlying applications, such as lack of authorization, unstamped assignment deed, lack of witness to the assignment deed, reassignment of the same variety by the same person, assignment of parental lines after assigning the hybrid and incorrect technical particulars in the PVP application, are irrelevant under Section 21(3).

D. SUBMISSIONS ON THE ALLEGED DEFECTS IN THE UNDERLYING PVP APPLICATION THAT CAN BE RAISED ONLY IN PROCEEDINGS UNDER S. 20 AND NOT IN THE INSTANT PROCEEDINGS UNDER SECTION 21(3). WITHOUT PREJUDICE, ALL THE AFORESAID TECHNICAL OBJECTIONS ARE WITHOUT MERIT AND OUGHT TO BE DISMISSED.

- i. The Opponent has raised the following alleged deficiencies in the underlying PVP Application:
 - a. The Application for Registration of Hybrid variety V130014(Raadhika) was submitted by an individual without authorisation. *[paras 5(i)-5(iii) at pages 10-11 of the Notice of Opposition].*
 - b. The deed of assignment for the hybrid variety is unstamped and the assignment deed lacks witness; *[at paras 6(i)-6(iv) at pages 11-13 of the Notice of Opposition].*



- c. Parental Line assignment took place after the hybrid was assigned; *[para 25 on page 16 of the final Notice of Opposition]*.
- d. Two assignments from the same person for the hybrid variety; *[para 24 at pages 15-16 of the final Notice of Opposition]*.
- e. Incorrect technical particulars in the declaration accompanying the application *[paras 7(i)-7(ii) at page 14 of the Notice of Opposition]*.

These technical objections are not the grounds for Opposition under Section 21(3). Without prejudice, Parliament consciously limited opposition grounds under Section 21(3) while providing broader grounds under Section 20 and Section 34.

E. NON-MAINTAINABLE OBJECTION RAISED BY THE OPPONENT FOR THE FIRST TIME AT THE ORAL HEARING STAGE, THAT IS THE GRANT OF THE PRESENT APPLICATION WOULD BE VIOLATIVE OF PUBLIC INTEREST.

F. APPLICANT'S NEW HYBRID VARIETY V130014(Raadhika) IS REGISTERABLE AS IT FULFILLS THE CRITERIA OF NOVELTY AND DUS STANDARDS UNDER THE ACT.

The Opponent Has Failed to Establish Prior Commercialisation Of "BINDU" and "NBH-45"

- i. The Opponent had raised a positive averment at page 7 of its Notice of Opposition that it had previously commercialised "Bindu" and "NBH-45",



- ii. Therefore, whether the Opponent commercialised “Bindu” and “NBH-45” before “V130014(Raadhika)” is a disputed question of fact. When such a disputed question of fact arises, as a matter of settled law, the burden of proof rests on the person making the positive assertion. Reliance is placed on Section 101 of the Indian Evidence Act, 1872, as interpreted by the Hon’ble Supreme Court of India:
- iii. Firstly, the evidence in the form of **Exhibit PW 1/7**, all purported invoices on the sales of “Bindu” and “NBH-45” are all suspect and not credible on the face of it. They are all unilateral documents prepared by the Opponent and do not carry the receiver’s signature. In some cases, the invoices do not carry a TIN No. or CST No. In other cases, the TIN No. and the CST No. are not consistent. On one page, the logo of the Opponent is also different. Thus, it is submitted that these invoices are not credible, are fabricated as an afterthought and are insufficient to establish prior commercialization of the variety.
- iv. Secondly, in a classic attempt to mislead and misdirect the Hon’ble Registrar, the Opponent has placed on record some of the invoices, all of which *ex facie* relate to a completely different variety by the name of “NBH 203”. This has no relation whatsoever to the present proceeding.
- v. Thirdly, it is submitted that had the Opponent developed such a successful hybrid variety, “Bindu” and “NBH 45”, it is highly suspicious as to why all the public



records of the marketing campaigns done for these varieties, as evidenced by their extensive Facebook and YouTube campaigns all begin from the year 2020 and not from 2004/2012 when according to the Opponent, it had developed the said variety.

- vi. Fourthly, the document **Exhibit PW 1/2 [Opponent evidence, pages 13-18]** and **Exhibit PW 1/3 [Opponent evidence, pages 19-25]** purportedly relate to seed licenses issued by the State Government of Maharashtra and Andhra Pradesh, respectively. In both cases, the reference to “Bindu” and “NBH 45” is only in the category of “*research varieties*”.
- vii. Fifthly, it is equally suspicious that the Opponent has not once provided the details of the denomination/name of the parental varieties used to produce “Bindu” and “NBH 45”.
- viii. The details of the parent, the pedigree, the date of development, and the breeding cycle are matters of special knowledge of the Opponent and the burden is squarely on the Opponent to produce the same. Their failure to even make a mention of the same is highly suspicious.
- ix. Sixthly, it is highly suspicious that if these varieties were so popular and highly commercialised as alleged, the Opponent has been unable to lead any evidence of the actual sales of such varieties in terms of the volume/revenue.
- x. Seventhly, it is also equally suspicious that despite claiming that “Bindu” and “NBH-45” were the



Opponent's products of research and development, the Opponent chose not to file any PVP application for the same.

- xi. Finally, if the Opponent had such strong genetics of combined virus tolerance coupled with medium tall plant and superior fruit quality in 2004 /2012, they would have developed several products by 2020, which they didn't, even no commercially successful hybrid release from them. Okra seed company in India.
- xii. Thus, it is humbly submitted that in the light of the above, the Opponent has miserably failed in establishing its positive assertion that it had commercialised hybrids by the name of "Bindu" and "NBH 45" before "V130014(Raadhika)" was released in 2018 by the Applicant.

Without Prejudice, the Opponent has Failed to Establish Prior Commercialisation Of "BINDU" And "NBH-45" With the Same Characteristics As "V130014(Raadhika)"

- xiii. Without prejudice to the above, the Opponent has failed to prove that "BINDU" and "NBH-45", as sold by them since 2004/2012, had the same characteristics as "V130014(Raadhika)".
- xiv. Therefore, merely because Nuziveedu Seeds Ltd. sold hybrids by the name Bindu or NBH-45 since 2012, which is not true, it does not mean that at that time those hybrids carried the same characteristics as those carried by the hybrids being sold by them today under the same names.



- xv. The present proceeding is under Section 21(3) of the PPV&FR Act, 2001, where varietal characteristics matter. It is not a trademark dispute on whether Opponent sold a hybrid earlier under the same name. Identity in name cannot prove identity in characteristics and genotype.
- xvi. The Opponent sold *some* hybrids/varieties under the name of “Bindu” and “NBH-45”. The Opponent has not placed any material on record to establish the DUS characteristics of what was purportedly licensed to them/commercialised by them since 2004/2012.
- xvii. It is suspicious that such evidence was never presented to the Hon’ble Registrar because this is clearly within the special knowledge of the Opponent (if at all they were commercialising them in 2004/2012). The Opponent would have had to produce the details of such traits/characteristics when obtaining the purported seed licenses they have placed on record. Yet, no such evidence was led by the Opponent. The Opponent did not produce any DUS testing reports and/or DNA fingerprint analysis from that period of 2002/2012, and the onus and burden of proving the same squarely rested on the Opponent under *Section 101 and 106 of the Indian Evidence Act*.
- xviii. Accordingly, even if the Opponent’s evidence were to be considered for a moment on a without prejudice basis, the Opponent’s case is devoid of any merit.
- xix. Accordingly, the Opposition must be rejected.



ANALYSIS: -

FACTS IN NUTSHELL: - The Applicant has filed for the registration of their new hybrid okra variety V130014(Raadhika) on 5th April, 2018. The variety was advertised in PVJ Vol-17 No.12 published on 1st January, 2024. The Applicant has initiated a parallel proceeding against the Opponent under Section 24(5) of the Act alleging that Opponent's varieties Bindu and NBH-45 are identical to that of Applicant's hybrid variety V130014(Raadhika). It is the case of the Opponent that the said Bindu and NBH-45 are in sale since 2004 and 2012 respectively and accordingly the claim of the Applicant should be rejected. The Opponent also filed the instant Opposition on the same ground that their varieties are in commercialization prior to Applicant's variety.

ISSUES: -

At the first instance after analysing the pleadings filed by both the parties and their evidences, I have to frame the following issues.

Issue No:1 - The first issue that arises for consideration is that the Opponent has raised the five alleged deficiencies in the application filed by the applicant for registration of Hybrid Okra variety V130014(Raadhika) which is the subject matter of registration as well as of opposition in the instant proceedings. Accordingly, whether those alleged deficiencies, if found true, are fatal to registration?



The contention of the Counsel for Applicant is that these deficiencies alleged by the Opponent cannot be the grounds for Opposition under Section 21(3) of the Act. In support of this contention he cites the decision of the Hon'ble Delhi High Court in Delhi High Court in *Pioneer Overseas Corporation v. Chairperson, Protection of Plant Varieties and Farmers' Rights 2019 SCC OnLine Del 8994 at para 62* wherein it has been specifically held that opposition can be filed 'only' on the specific grounds given under Section 21(3) of the Act. He further cites the decision of the Hon'ble Delhi High Court in *Nuziveedu Seeds Pvt. Ltd. v. The Protection of Plant Variety and Farmers Rights Authority 2023:DHC:8595 at paras 13-15* to prove the point that grounds for Opposition in Section 21(3) are exhaustive and not inclusive in nature. **My view is that there can be no denial that Opposition can be filed only on the grounds mentioned in Section 21(3) of the Act but deficiencies in the application can definitely be a ground of opposition.** It can fall under Section 21(3)(a) of the Act which provides that where an application can be opposed on the ground that variety is not registerable under the PPVFR Act, 2001. Deficiencies in the application can be a ground for Opposition under Section 21(3)(a) of PPVFR Act, 2001. Of course, whether the deficiencies are fatal or



curable depends upon facts and circumstances of each case. Accordingly, in this regard, I reject the contention of the Applicant and state that the deficiencies found in the application which is the subject matter of Opposition can be a ground for opposition.

Accordingly, I have to adjudicate on the each of the five deficiencies cited by the Opponent: -

I. The Application for Registration of Hybrid variety V130014(Raadhika)was submitted by an individual without authorisation.

The main contention of the Opponent in this regard is that the Application was made by one Shri Prashant Belgamwar, the alleged signatory of the Applicant (then known as UPL Ltd). The said application does not disclose the particulars or authorization issued by the Applicant in favour of Shri Prashant Belgamwar. The contention of the Applicant in this regard is that when the name of the Applicant got amended from Advanta Enterprises Limited to UPL, at the direction of this Registry, all the paperwork had to be refiled in the context of the change of name of applicant and appropriate amendments have been undertaken. Thus, the issue is mute.

The fact is that on 5th April, 2018, the application for registration of new Okra



hybrid variety “V130014(Raadhika)” was filed by the then Applicant (UPL Ltd). Subsequently, the applicant vide letter dated 28th March, 2023 informed the Registry that the erstwhile Applicant’s (UPL Limited) seed business division was transferred to M/s. Advanta Enterprises Limited under business transfer agreement and accordingly the amended application was submitted by the Applicant vide their letter dated 14th June, 2023. Under Section 16(1)(e) any person authorized by a successor or assignee or farmer can file the application. In the instant matter, Dr. Aruna Nadipalli, is the agent of the Applicant and the Applicant is an assignee. The Director of the Applicant (authorized vide Exhibit A filed by Opponent) has authorized the agent through PV-1. The breeder of the Applicant has assigned to the Applicant the variety which is the subject matter of opposition. PV-2 along with the assignment deed has been filed assigning the variety in question from the breeder to the Applicant. Hence, the application in favour of the present application has been duly submitted. The deficiencies, even if any, in unamended application has no legal consequence as the same is not on record and only the amended application is legally on record. Accordingly, there seems to be no deficiency in this regard.



My view is fortified by the decision dated 9th January, 2024 of the August Bench of Hon'ble Delhi High Court in Pepsico India Holdings Pvt., Ltd., -Vs- Kavitha Krurganti [LPA Nos.590 & 644/2023] wherein it was observed as follows: -

“61. As is manifest from a reading of Section 16(1)(c), the said clause enables a person being the assignee of the breeder to apply for registration. However, clause (c) also employs the expression —in respect of the right to make such application. Thus, the said provision enables not only the assignee of the breeder but even one who may have been empowered by the assignee to make such an application. The distinction between clauses (c) and (e) of Section 16(1) is evident when one bears in mind the fact that the Section 16(1)(e) applicant is merely enabled by virtue of an authorization to act as an agent of any of the category of persons who may fall within clauses (a) to (d) to prosecute and pursue an application before the Registrar. That person does not claim or seek a registration in favour of itself. All that clause (e) of Section 16(1) does is to enable any of the persons falling in clauses (a) to (d) to authorize and empower a person to pursue an application for registration before the Registrar. This position is further fortified from a reading of Section 18(3), which again speaks of assignment of the right to apply for registration. This would again expand the field of persons who are rendered eligible to apply for registration beyond a mere assignee of the breeder to even one who has been assigned the right to apply for and seek registration in its own name”

The judgement also clearly shows that a person authorized in Section 16 (1) (a) to (e) can apply which is as done in the instant case.

Accordingly, I reject the contention of the Opponent that the application has been made by a person who is not authorized.



II. The deed of assignment for the hybrid variety is unstamped and the assignment deed lacks witness

According to the Opponent, the Deed of Assignment not signed by witnesses and unstamped, cannot be acted upon unless it is impounded, duly stamped and subsequent penalty is paid, and duly signed by witnesses. Thus, the application submitted by the Applicant is invalid. The Applicant contends that the alleged non-stamping and alleged lack of a witness are not grounds for opposition under Section 21(3).

I have to make it clear that the Opponent points out the deed of the assignment in the unamended application which is not on record and what is on record is the amended application where the Deed of Assignment dated 8th June, 2023 has been duly signed by the breeder and applicant. It is duly stamped for a value of Rs.100/- non-judicial stamp paper. It is also notarized. Further though signature of witness is not present in Deed of Assignment it does not affect the validity of the same as Form PV-2 (Proof of right to make application) accompanying the assignment deed has been duly signed by the applicant, two witnesses and the breeder.

Hence, I reject the contention of the



Opponent that the Deed of Assignment is unstamped and lacks signature of witness.

III. Parental Line assignment took place after the hybrid was assigned;

The contention of the Opponent is that the assignment deed of parent lines AV 508 (Female) and AV 509 (Male) dated 30th July, 2020 came into force almost two years after the execution of deed of assignment of new hybrid which is the subject matter of the opposition proceedings.

My view is that the Application for registration of hybrid in question has been made on 5th April, 2018 and the amended application in favour of the present applicant was filed through their letter dated 14th June, 2023 subsequent to the assignment of parental lines on 30th July, 2020. **Accordingly, I do not find any deviation in this regard. The parental lines vested with the erstwhile applicant (UPL Ltd.,) came to be vested with the present applicant (Advanta Enterprises Ltd.,) due to business transfer agreement of present applicant with the erstwhile applicant. Hence, no deficiency is observed in this regard.**



The counsel for applicant cited the Judgement of the Division Bench of the Delhi High Court in *Pepsico India Holdings Pvt.*

Ltd. v. Kavitha Kuruganti, 2024 SCC OnLine Del 153 (hereinafter, "PepsiCo, 2024"), at para 76, that a subsequent authorization letter ratified the earlier deficiency. It cannot invalidate the rights of the Applicant. Thus, even if the deed of assignment for the parental lines had been executed after the deed of assignment for the hybrid variety, the same cannot be fatal to the application.

IV. Two assignments from the same person for the hybrid variety;

The contention of the Opponent is that Dr. Elangovan has assigned the rights to Shri Prashant Belgamwar and he could not have re-assigned it to M/s. Advanta Enterprises. **I do not agree with this as it again refers to unamended application which is not on record.** The Applicant's contention is totally false as the erstwhile Applicant's seed business got transferred to the present Applicant and the breeder who has assigned it to the erstwhile Applicant also submitted a fresh deed of assignment in favour of present Applicant. The breeder and applicant (by virtue of BTA) are both common and hence even assuming there are two assignments from the same person for the same hybrid variety to the same person it has no negative consequence. The point to be noted here is



that both the erstwhile Applicant (UPL Ltd.) and present Applicant (Advanta Enterprises Ltd.) have entered into Business Transfer Agreement, and Shri Prashant Belgamwar has been representing as a natural person for the erstwhile Applicant (UPL Ltd.) and the present Applicant (Advanta Enterprises Ltd.). Accordingly, there is no question of re-assignment to a new entity as raised by the Opponent. In the amended application, Breeder has assigned to the present Applicant who has stepped into the shoes of erstwhile Applicant by way of Business Transfer Agreement. Accordingly, there could be no harm in it as the same has been done on abundant caution due to Business Transfer Agreement between erstwhile Applicant and Present Applicant. Accordingly, the notion that what has been assigned already cannot be re-assigned to a new entity is totally false.

V. Incorrect technical particulars in the declaration accompanying the application

Opponent contends that in declaration under Section 18(1)(h), the applicant has declared the variety in question as an extant variety. I perused the same. In the declaration under Section 18(1)(h) dated 8th June, 2023, both Extant/New Variety has been mentioned and in the new variety part a tick {✓} has been made and hence the option “new variety” has



been chosen. Further declaration under Section 18(1)(h) is also inbuilt in the declaration which forms part of the application form. **Hence, I do not find any lacunae in this regard as declaration under Section 18(1)(h) has been made in respect of the variety in question as new variety only.**

The next point of contention of the Opponent is that in Column 10(a) with respect to the column containing the query that “parental lines required for repeated propagation of the hybrid are bred exclusively by the Applicant” the Applicant has mentioned “Not applicable”. In this regard, the Applicant has pointed out that it was due to inadvertence and further the Applicant has also filed applications for registration of their parental lines namely male line and female line and accordingly there is no adverse legal consequence.

In my view this is a curable defect and amended sheet can be obtained from the Applicant as there is no doubt that the Applicant has filed applications for registration of male parent, female parent and its hybrid.

I have to hold the first issue in favour of the Applicant as there are no deficiencies



**in the application which is the subject
matter of Opposition.**

Issue No:2 - The second important issue, I have to deal is a question of fact whether Opponent's varieties NBH-45 and Bindu are being sold since 2004/2012?

The Opponent's case is that they have secured licenses from the Governments of Maharashtra and Andhra Pradesh as early as 28th May, 2004 and 17th December, 2012 in respect of their Okra varieties "NBH-45" and "Bindu", respectively. The said license issued by Government of Maharashtra on 28th May, 2004 has been marked as Exhibit PW-1/2 and the license issued by Government of Andhra Pradesh on 17th December, 2012 has been marked as Exhibit PW-1/3. The Opponent further has marked Exhibit PW 1/7 & 1/8, collectively enclosing several invoices as evidences to show that their Okra varieties NBH-45, BINDU, NOKH-1001, NBH-203 have been in sale during 2012, 2013, 2014, 2015, 2016 & 2017. The invoices enclosed also show that the Opponent has supplied their Okra varieties other than "Bindu" and "NBH-45" to the Applicant during 2013 itself.



The contention of the Applicant is that firstly, the evidence in the form of Exhibit PW 1/7, that is all purported invoices on the sales of "Bindu" and "NBH-45" is suspicious and not

credible on the face of it. Further that they are all unilateral documents prepared by the Opponent and do not carry the receiver's signature. It was also argued that in some cases the invoices do not carry a TIN Number or CST Number. In other cases, the TIN Number and the CST Number are not consistent. It was also submitted that in one particular invoice, the logo of the Opponent is also different. Thus, it was submitted that these invoices are not credible and are fabricated as an afterthought and are insufficient to establish prior commercialization of the variety. The Applicant also submits Exhibit B in evidence to show that the marketing campaign for "Bindu" and "NBH-45" by the Opponent were during the years from 2020 & 2021. Further the Applicants have also deposed in their evidence that these electronic records are stored in computer resources under their control.

My view on this issue is that the Opponent's evidence PW-1/2 shows that the license issued by Government of Maharashtra on 15th May, 1995 has been renewed upto 11th May, 2007 in respect of notified and research varieties. The said license is to carry on the business of a dealer in seeds. However, there is a mention of "NBH-45" reflected in it.

Further in the Opponent's evidence marked as PW-1/3 that is the license issued by Government of Andhra Pradesh on 17th



December, 2012 which provides that the same is issued under Clause 17 of the Seed Control Order 1983 and the same is valid upto 2nd May, 2013. The said license is to carry on sale, storage, processing and packaging of several varieties which include “Bindu” but not NBH-45. Accordingly, these licenses prove the fact that the Opponent has been dealing with Okra varieties including “NBH-45” as early as 2004 and “Bindu” as early as 2012.

I do not agree with the contention of the Applicant in this regard that the invoices submitted through Exhibit PW 1/7 are fabricated as the burden to prove that the invoices are fabricated is on the Applicant only. There is no proof to show that the documents are fabricated. The contention of the Applicant that TIN number and CST number are not consistent cannot be adjudicated by this Authority. The Applicant has not discharged their burden of proof in this regard. I have to hold that based on deposition of Opponent corroborated by Exhibits PW-1/2, PW-1/3 and PW 1/7 that Opponent has been selling Okra varieties including “NBH-45” and “Bindu” which has been commercialised since 2004 and 2012 respectively. This issue is answered in favour of the Opponent.



Issue No:3 - Now the third important issue that arises for consideration is with what characteristics the Opponent has been selling “NBH-45” and “Bindu” since 2004/2012 respectively?

I agree with the arguments of the Applicant in this regard that that under Section 106 of the Indian Evidence Act, 1872, the burden rests on the Opponent to establish the alleged characteristics of such varieties namely, NBH-45 & Bindu which is stated to have been commercialised before Applicant’s hybrid variety “V130014(Raadhika)”. Of course, at that time of commercialisation of “NBH-45” during 2004, the PPVFR Act, 2001 had not come into force and consequently, at that point of time the DUS test guideline of Okra would not have been developed by PPVFR Authority. The DUS test guideline of Okra was developed and notified by the PPVFR Authority for registration vide S.O.2883 (E) dated 2nd December, 2010. The said DUS test guideline was revised on 1st April, 2022. The fact is that irrespective of the DUS characters, the morphological/ agronomic characters of “Bindu” and “NBH-45” would have been documented but the same has not been submitted by the Opponent in evidence. The burden of proof in this regard, that is proving the characteristics of “Bindu” and “NBH-45” is on the Opponent and the Opponent has failed to discharge the burden. If the characteristics of “Bindu” and “NBH-45” have



been submitted it would have facilitated to ascertain its DUS characters through corresponding note and subject value from the Crop Specific DUS test Guideline of Okra and thereafter to compare the same with that of the Applicant's hybrid variety "V130014(Raadhika)". Now the same is not possible. Nothing prevented the Opponent from obtaining the registration of their Okra varieties "Bindu" and "NBH-45" under PPVFR Act, 2001 though the same was not compulsory but only optional. Both PW-1/2 and PW-1/3 marked as Opponent's evidence namely the license issued by Government of Andhra Pradesh and Maharashtra, respectively do not contain the any character of the said "Bindu" and "NBH-45". It is a mere license to sale but the characteristics have not been recorded in it. Accordingly, they do prove that "Bindu" and "NBH-45" have been commercialised since 2004 and 2012. However, evidence of license does not prove that Opponent's varieties Bindu and NBH-45 possess the same characteristics as that of Applicant's hybrid variety "V130014(Raadhika)".



Further I do not also agree with the Opponent's argument that under Rule 13 of the Seeds Rules, 1968, they are bound to maintain a complete record of each lot of seeds sold only for a period of 3 years and seed samples may be discarded one year after the lot has been discarded. This may be applicable to Seeds Act

which is of regulatory in nature but not to PPVFR Act, 2001 which is meant for intellectual proprietorship over the seeds developed or varieties bred by a breeder. To succeed in an Opposition proceeding under Section 21(3)(a) of PPVFR Act, 2001, on the ground that the Opponent is entitled to breeder's right against the Applicant, it is imperative that the records documenting the characters of the variety/ seed developed by the breeder have to be proved. If the same is not done, then Opposition cannot succeed. In the instant case, there is no such documentation evidencing the characteristics of Opponent's Variety "Bindu" and "NBH-45"

Accordingly, I have to hold that there is no evidence on record to show the essential characters either morphological or agronomical of Opponent's Okra Varieties "Bindu" and "NBH-45".

Issue No:4 - The fourth and final issue that I have to deal is whether Applicant's hybrid variety "V130014(Raadhika)" and Opponent's varieties "Bindu" and "NBH-45" can be treated as identical based on the statement or confession of the Applicant in a parallel proceeding?

Before advertng to this issue, it has to be reiterated that the Applicant has also initiated a parallel proceeding namely A. No.1 of 2024 before this Registry under Section 24(5) of the PPVFR



Act, 2001 against the Opponent stating that the Opponent is committing abusive act in respect of Applicant's hybrid variety "V130014(Raadhika)". In the said proceedings Applicant has stated that Respondent's Okra hybrid "Bindu" is identical to that of Applicant's hybrid Okra Variety "V130014(Raadhika)" in respect of 31 morphological features and further Applicant's hybrid variety V130014(Raadhika) is also identical to Opponent's Variety "NBH-45." Hence, it is the case of the Opponent that the Applicant has admitted that their hybrid variety "V130014(Raadhika)" is identical to Opponent's variety "Bindu" and "NBH-45". Further the case of the Opponent is that the in-house trials of Applicant's hybrid variety V130014(Raadhika) has been conducted since 2004 and development has been initiated since 2012 whereas the Opponent's varieties "Bindu" and "NBH-45" have been licensed since 2012 and 2004 respectively. Accordingly, the Opponent states that the Applicant's variety V130014(Raadhika) miserably fails the test of novelty and distinctiveness under Section 15(1) and 15(4) and is liable to be rejected under Section 20 of the Act.

It is the case of the Applicant that the burden of proof is upon the Opponent to prove that the Applicant has been selling "Bindu" and "NBH-45" with the same characteristics and genotype since 2012 and 2004 to establish that Applicant's hybrid



variety V130014(Raadhika) is neither novel nor distinct. Further the Applicant states that the Opponent does not have any registration under the PPVFR Act, 2001. The Applicant also argues that the Opponent sold some other hybrids/varieties under the name of “Bindu” and “NBH-45” and has not placed any material on record to establish the DUS characteristics of what was purportedly commercialised by them since 2004/2012. It is also the case of the Applicant, that the Opponent should have produced the details of such traits/ characteristics when obtaining the purported seed licenses which they have placed on record. Yet, no such evidence was laid by the Opponent. Further the Opponent did not produce any DUS testing reports and/or DNA fingerprint analysis from that period of 2002/2012.

Regarding this vexed issue, I have to state that the Opponent relies solely on the statement of the Applicant in a parallel proceeding under Section 24(5) of the Act titled as A. No.1 of 2021 between the same parties and in respect of the Applicant’s hybrid variety V130014(Raadhika). The relevant portion of the said statement is extracted hereunder: -



“10. Accordingly, UPL undertook a comprehensive comparative DUS testing of its Okra hybrid pending registration ‘Raadhika’, alongside the infringing hybrid of Nuziveedu ‘Bindu’ between July 2020 and November 2020. Said DUS testing confirms that all thirty one (31) morphological characteristics of the Nuziveedu’s okra hybrid ‘Bindu’ is identical to that of UPL’s hybrid pending registration ‘Raadhika’ In

particular, the DUS testing establishes that Nuziveedu's Okra hybrid 'Bindu' carries all the distinctive characteristics of UPL's 'Raadhika' hybrid.

.....
13. The Applicant has also obtained the opinion of an independent expert. Dr. H.E. Shashidhar, who further studies the aforesaid reports and concluded that, in his opinion, Nuziveedu's Okra hybrid 'Bindu' and 'NBH-45' are identical to UPL's Okra hybrid pending registration

.....
15. It is submitted that no two hybrids can be identical unless the very same parental varieties/lines are used to create the hybrid. The distinctive characteristics of 'Raadhika' are derived from the parents. Nuziveedu's Okra hybrid 'Bindu' and 'NBH-45' are identical to an infringement of UPL's Okra hybrid. It is submitted that this is not possible unless Nuziveedu has illegally accessed, produced and is using the very same parents of 'Raadhika' covered under PVP Applications Nos.REG/2018/164 P1 and REG/2018/163 P2"

The Opponent is characterising this statement of the Applicant as an admission. The question whether two varieties are identical in nature or not, can be decided only on the basis of evidence of technical findings which can be corroborated or contradicted by the parties. No amount of statement or even admission, without technical evidence can decide the issue of similarity/identicalness of the varieties. Accordingly, without technical findings and evidence, the identicalness between both the varieties cannot be decided *aliunde*. Even assuming for a moment without advertng to the fact that it is an admission, it must be pointed out that Section 25 of the Bharatiya Sakshya Adhiniyam, 2023 provides that admissions are not conclusive proof



of the matters admitted but they may operate as estoppels as per the law. Accordingly, it is clear that even in case of admission, it cannot be treated as conclusive proof and the person admitting the fact cannot go back in word or conduct. Here though the Applicant has stated that “V130014(Raadhika)” and “Bindu” and “NBH-45” are identical, they have not gone beyond that in word or conduct. Accordingly, by any stretch of imagination the said statement of the Applicant cannot be taken as an admission against the Applicant.

I reject the contention of the Opponent to treat the statement as an admission and as a conclusive proof and further solely based on the said statement to allow the Opposition and reject the application for registration of “V130014(Raadhika)”. Further accepting the contention of the Opponent to treat the said statement of the Applicant as conclusive proof and allow the Opposition and reject the application of the Applicant under Section 20 of the Act would negate the very Section 20 of the Act as the said Section 20 clearly provides that no application can be rejected without giving a reasonable opportunity to the Applicant to present their case. Section 20 never provides for rejection of an application by an admission.

I also do not agree with the contention of the Opponent that the Applicant having taken a



stand that the Applicant's and Opponent's varieties are identical in parallel proceeding cannot assert contrarily in the instant proceedings for the simple reason that the issue whether both the varieties are identical or not cannot be decided merely based upon statement of parties but by evidence based on technical findings and accordingly the judgements cited by the Opponent in this regard [*Salem Muslim Burial Ground Protection Committee v State of T.N.* 2023 SCC Online SC 656 Para 44 and *Raman Kwatra v KEI Industries* 2023 SCC Online Del 38 Para 43] are not relevant.

Hence, I have to answer this issue in favour of the Applicant and accordingly "Bindu" and "NBH-45" of Opponent cannot be treated as identical Applicant's variety "V130014(Raadhika) merely on the basis of statement of the Applicant.

Having held that there are no deficiencies in the application filed by the Applicant and though the Opponent's Okra Varieties "Bindu" and "NBH-45" have been commercialised since 2012 and 2004 respectively their characters have not been documented and merely based on the statement of the Applicant in a parallel proceeding the Applicant's Variety "V130014(Raadhika)" and the Opponent's Varieties "Bindu" and "NBH-45" cannot be treated as identical. Accordingly, there is nothing on record to show that Opponent's Varieties "Bindu" and "NBH-45" have been commercialised since 2012 and 2004 respectively with same characters as that of Applicant's hybrid



variety “V130014(Raadhika)”. Hence, there is no option other than to reject the instant Opposition.

The other contention of the Opponent that the Applicant’s hybrid variety V130014(Raadhika) is neither novel nor distinct falls flat as the said Applicant’s hybrid variety has qualified DUS testing and has found to be distinct for green fruit colour and hence the variety is entitled to be registered.

The other ground that Opponent has cited is that Applicant’s variety which is the subject matter of proceedings cannot be registered on ground of public interest as Shri Prashant Belgamwar is not authorized to file the Application. At the outset it is pointed out that public interest cannot be a ground for opposition though it may be a ground for revocation. Further Shri Prashant Belgamwar is Director of Applicant Company and is the natural person representing the Applicant which is the legal person and authorisation in favour of Sh. Prashant Belgamwar, Director of Applicant is also produced by the Applicant as Exhibit A.

Accordingly, I hereby reject the instant Opposition under Section 22 of the Act. The Applicant is directed to file amended sheet of 10(a) of the Application after serving a copy to the Opponent. There shall be no order as to costs.

Given under my hand and seal on this the 17th day of June, 2025.




(D K AGARWAL)
REGISTRAR GENERAL