

BEFORE THE PLANT VARIETIES REGISTRY

AT NEW DELHI

IN THE MATTER OF: - MAHARASHTRA HYBRID SEEDS

COMPANY LIMITED

Sr. No	Denomina tion	Type	Date of Application	REG No.
Cotton				
1	C 5009	New	2nd April, 2008	REG/2008/279
2	C 5081	New	2nd April, 2008	REG/2008/282
3	C 5096	New	2nd April, 2008	REG/2008/275
4	C 5118	New	2nd April, 2008	REG/2008/278
5	C 5193	New	2nd April, 2008	REG/2008/271
6	C 5195	New	2nd April, 2008	REG/2008/273
7	C 5196	New	2nd April, 2008	REG/2008/274
8	C 5524	New	2nd April, 2008	REG/2008/247
9	C 5534	New	2nd April, 2008	REG/2008/272
10	C 5538	New	2nd April, 2008	REG/2008/265
11	C 5605	New	2nd April, 2008	REG/2008/266
12	C 5610	New	2nd April, 2008	REG/2008/267
13	C 5618	New	2nd April, 2008	REG/2008/248
14	C 5622	New	2nd April, 2008	REG/2008/261
15	C 5623	New	2nd April, 2008	REG/2008/270
16	C 5624	New	2nd April, 2008	REG/2008/268
17	C 5625	New	2nd April 2008	REG/2008/260
18	C 5626	New	2nd April, 2008	REG/2008/249
19	C 5629	New	2nd April, 2008	REG/2008/269
20	C 5703	New	2nd April, 2008	REG/2008/252
21	C 5705	New	2nd April, 2008	REG/2008/244
22	C 5706	New	2nd April, 2008	REG/2008/250
23	C 5708	New	2nd April, 2008	REG/2008/251
24	C 5707	New	2nd April, 2008	REG/2008/237
25	C 5710	New	2nd April, 2008	REG/2008/236
26	C 5711	New	2nd April, 2008	REG/2008/258
27	C5712	New	2nd April, 2008	REG/2008/257
28	C 5713	New	2nd April, 2008	REG/2008/256
29	C 5714	New	2nd April, 2008	REG/2008/245
30	C 5715	New	2nd April, 2008	REG/2008/246
31	C5801	New	15th Sept. 2009	REG/2009/369
32	C5802	New	15th Sept. 2009	REG/2009/368

33	C 5718	New	11th March 2011	REG/2011/173
34	C 5719	New	11th March 2011	REG/2011/174
35	C 5199	New	5th July 2012	REG/2012/292
36	C 5722	New	09-May-16	REG/2016/438
Sorghum				
1	J 1061	New	21-May-07	REG/2007/8
Bajra				
1	B 2037	New	21-May-07	REG/2007/18
2	B 2038	New	21-May-07	REG/2007/20
3	B 2133	New	21-May-07	REG/2007/21
Maize				
1	M 3432	New	08-Dec-08	REG/2008/514
2	M 3434	New	08-Dec-08	REG/2008/515
Sunflower				
1	SF 4127	New	01-Jun-10	REG/2010/134
Castor				
1	CA 8603	New	01-Jun-10	REG/2010/127
2	CA 8602	New	01-Jun-10	REG/2010/128
3	CA 8646	New	01-Jun-10	REG/2010/130
4	CA 8618	New	01-Jun-10	REG/2010/129
Tomato				
1	TM 61481	New	23-Dec-10	REG/2010/379
2	TM 61455	New	23-Dec-10	REG/2010/380
3	TM 61483	New	23-Dec-10	REG/2010/382
4	TM 61486	New	23-Dec-10	REG/2010/385
5	TM 61487	New	23-Dec-10	REG/2010/389
6	TM 61478	New	23-Dec-10	REG/2010/391
7	TM 61476	New	23-Dec-10	REG/2010/398
8	TM 61460	New	23-Dec-10	REG/2010/401
9	TM 61469	New	23-Dec-10	REG/2010/397
10	TM 61485	New	23-Dec-10	REG/2010/386
Okra				
1	MOK60034	New	23-Dec-10	REG/2010/384
2	MOK60036	New	23-Dec-10	REG/2010/388
3	MOK60029	New	23-Dec-10	REG/2010/392
4	MOK60027	New	23-Dec-10	REG/2010/383
5	MOK60052	New	12-Feb-15	REG/2015/381
6	MOK60041	New	12-Feb-15	REG/2015/382
Brinjal				
1	BJ 60210	New	23-Dec-10	REG/2010/369
2	BJ 60218	New	23-Dec-10	REG/2010/370
3	BJ 60282	New	23-Dec-10	REG/2010/372

4	BJ 60248	New	23-Dec-10	REG/2010/393
5	BJ 60259	New	23-Dec-10	REG/2010/394
6	BJ 60205	New	23-Dec-10	REG/2010/402
7	BJ 60214	New	23-Dec-10	REG/2010/403
8	BJ 60213	New	23-Dec-10	REG/2010/405
9	BJ 60255	New	23-Dec-10	REG/2010/406
10	BJ 60209	New	23-Dec-10	REG/2010/407
11	BJ 60287	New	23-Dec-10	REG/2010/409
12	BJ 60301	New	23-Dec-10	REG/2010/410
13	BJ 60252	New	23-Dec-10	REG/2010/411
14	BJ 60283	New	23-Dec-10	REG/2010/412
15	BJ 60223	New	23-Dec-10	REG/2010/414
16	BJ 60281	New	23-Dec-10	REG/2010/415
17	BJ 60308	New	15-JunA2	REG/2012/208
18	BJ 60309	New	15-Jun-12	REG/2012/209
19	BJ 60310	New	15-Jun-12	REG/2012/210
20	BJ 60311	New	15-Jun-12	REG/2012/211

WAIVER OF NAME OF HYBRID AND COPY OF FIRST SALE OF FIRST HYBRID OR DISPENSE WITH REQUIREMENT OF SUBMISSION OF NAME OF FIRST HYBRID AND ALSO DISPENSE WITH REQUIREMENT OF SUBMISSION OF COPY OF INVOICE OF FIRST SALE OF HYBRID MADE USING THE CANDIDATE PARENTAL LINE.

For the Applicant: - Mr. Anil Dutt and Sudarshan Singh Sekhawat, Advocates for M/s. Lakshmikumaran & Sridharan,

ORDER

The issue involved in the instant matter as framed by the applicant is

“whether the commercial name of the first hybrid of a given candidate parental line along with copy of the invoice of first sale of said first hybrid is mandatory under the Act and Rules?”

The issue is while determining novelty of a parental line applied for registration, the Plant Varieties Registry requires the name and date of

first sale of first/ earliest hybrid developed out of its parental lines. The applicant is disputing this and states that they will not submit the name of the hybrid but will give the details and similarly they will not submit the invoice showing the first sale of first hybrid (developed out of the parental line applied for registration) or if they submit the invoice they will redact the name of the hybrid in the invoice.

THE LEGAL AND FACTUAL BACKGROUND IS AS FOLLOWS:-

The novelty of parental line is determined with reference to the commercialisation of first/ earliest hybrid of parental line and accordingly this Plant Varieties Registry is seeking the name and details of first hybrid along with the copy of invoice of first sale of earliest /first hybrid. This was based on the judgement of the registry which was upheld by Hon'ble Delhi High Court in WP No (C) 4330/2012, 4365/2012, 4366/2012, 6199/2012 and 7853/2012.

The legal provision regarding novelty is enshrined in section 15(3)(a) of PPV&FR Act, 2001.

Section 15 (3)(a) of PPV&FR Act, 2001 provides that a variety which has been applied for registration is novel if on the date of filing of the application the variety has not been commercialised or otherwise disposed of for the purpose of exploitation of the variety within a year or in case of outside India four year in case of field crops and six years in case of trees and vines.

Section 15 (3)(a) of PPV&FR Act is extracted hereunder

“15 (3) For the purposes of sub-sections (1) and (2), as the case may be, a new variety shall be deemed to be -

(a) novel, if, at the date of filing of the application for registration for protection, the propagating or harvested material of such variety has not been sold or otherwise disposed of by or with the consent of its breeder or his successor for the purposes of exploitation of such variety -

(i) in India, earlier than one year; or

(ii) outside India, in the case of trees or vines earlier than six years, or in any other case, earlier than four years."

A question arose whether parental lines which are not commercialised but are exploited for the development of the hybrids and if the said hybrids are in commercialisation for more than a year and have been applied under extant variety category whether such parental lines would fall under new variety or extant variety. This Registry by order dated 24.05.12 held them that they will fall under extant variety category the operative portion of the order is extracted hereunder:-

"Based on the aforesaid reasonings, I hereby conclude that legally and logically if the hybrid falls under the category of extant variety about which there is common knowledge then its parental lines cannot be treated as new variety and the said parental lines can be considered for registration under the category of extant variety provided they satisfy the other conditions laid down under the law. If the earliest hybrid developed out of the parental lines fall under the new variety category then its parental lines can also be considered for registration as new variety provided if such parental lines are filed within a period of one year from the date of commercialization of earliest hybrid. These applications which are the subject matter of hearing are at various stages of examination. Accordingly, in light of the reasoning and conclusion given above the Registry is directed to consider and proceed further with these applications in accordance with law"

The said order was challenged before Hon'ble Delhi High Court and the order of the Registry was upheld by Hon'ble Delhi High Court in W.P. (c) 4330/2012, 4365/2012, 4366/2012, 6199/2012 and 7853/2012.

ARGUMENT OF THE APPLICANT:-

It was submitted that parental lines for the Applicant are a critical intellectual property of the Applicant as they may take more than ten to fifteen years to develop with their unique characteristics, both phenotypic and genotypic, and are further used in various combinations to make novel commercial hybrids based on geographic, climate and technical requirement. Such parental lines form the bedrock of seed business and R&D activities of the Applicant. It was submitted that after the decision of the Hon'ble Delhi High Court in January 2015 in WP(C) 4330/2012, the hybrids varieties were deemed to be the harvested

material of the parental lines from which such hybrids were developed. Pursuant thereto, the authority started issuing notices seeking dates and proof of first sale of first hybrid made using every parental line for which there was an application pending. The issue to be determined in such notices was whether the parental line, in view of the Hon'ble High Court's said judgement and Section 15(3)(a), would be categorised as novel or extant. In other words, the central issue in these notices was whether, for an application for registration of parental line, is it mandatory to submit the name of its first commercial hybrid along with invoice thereof? It was submitted that there exists no provision under the Protection of Plant Varieties and Farmers' Rights Act, 2001 ("**Act**") or the Protection of Plant Varieties and Farmers' Rights Rules, 2003 ("**Rules**") prescribing the above requirement of submitting the commercial name of the first hybrid or the proof of first sale by invoice. Section 15(3)(a) only provides that in order to determine the novelty of a candidate variety the relevant fact is whether it was commercialised prior to one year of the date of the application. Thus, the relevant fact, for determining the novelty of the parental line would be the 'date of first sale' of hybrid made using the candidate parental line and not the invoice or the commercial name of the hybrid. It was also submitted that Form 1 under the Protection of Plant Varieties and Framers' Rights Regulations, 2006 ("**Regulations**"), i.e. the form required for filing an application for registration of a variety under the Act, also stipulates that in case the candidate variety has been commercialised, then **only** the date of first sale of such a variety is to be provided. It was pointed out that in the present cases, not only were the date of the first sale of the hybrid of a given candidate parental line provided, the same was provided by way of affidavits duly executed by an authorised signatory of the Applicant. Accordingly, a sworn statement of an authorised signatory, including the above said declaration would suffice for ascertaining novelty. The

invoice for such a sale and the commercial name are proprietary and confidential information of the Applicant and bringing the same on public record, especially for the parental line, could be prejudicial to the interest of the Applicant. It was further submitted that in these cases, the Applicant, on its own, is changing the status of the parental line applications from 'novel' (new) to 'extant' (wherever applicable) based on an affidavit that says that the date of first sale of hybrid was prior to one year of the date of the application for parental line. There is no benefit being gained by the Applicant from such a step. Thus, by withholding the name of commercial hybrid and not providing copy of invoice, Applicant is not gaining any undue advantage. In fact, registration period for both categories are same. It was also submitted that the issue of novelty is not fatal to an application in the present cases. It is not as if, in case this Registry does not accept the affidavit of first sale, the application would become liable to be rejected. The consequence of the proof of first sale under the Act is merely the categorisation between new or extant (variety of common knowledge) and to see if the candidate varieties have been commercially exploited for a period which is more than the period for which they are entitled to protection. This is because if there is a candidate variety which has been known and commercially exploited for more than 15 years prior to the date of application, the registration would grant a period of protection of another 15 years from the date of registration. This was also the basis for amendment in Rule 22 in 2015 where Rule 22(2A) was inserted to ensure that extant varieties which are more than 15 years old are not eligible of registration. No such circumstances exist in the present case. Thus, it is not as if the Applicant is trying to suppress some vital or fatal information but is only trying to avoid filing of its proprietary and confidential information.

REASONING/ ANALYSIS: -

Accordingly, the legal position can be summed up as follows:-

The hybrid varieties are harvested material of parental lines and exploitation of parental line for development of a hybrid may affect the novelty of a parental lines if the hybrid has been commercialised for more than a year as on the date of filing of application for registration of its parental line. Now the grievance of the applicant is that whether the commercial name of the first hybrid and copy of the invoice of first sale of first hybrid is mandatory under Act or Rules. The main bone of contention of applicant is that there exists no provision for prescribing the above requirement of submitting the commercial name of the first hybrid or proof of first sale by invoice. Further that the application form for registration of plant varieties that is Form-I also stipulates that in case the candidate variety is commercialised then only the date of first sale is to be provided and a sworn statement of authorized signatory including the declaration that the date of first sale of hybrid without its invoice and commercial name would suffice.

At the outset I do not agree with this argument of the applicant, that the commercial name of the first hybrid of the parental line along with the copy of the invoice of the first sale of first hybrid is not mandatory under Act or Rules. Section 20(1) of PPV&FR Act, 2001 empowers the Registrar to seek for any document which he feels necessary to substantiate any claim of the applicant. Section 20 (1) of PPV&FR Act, 2001 is as follows:-

“20. (1) On receipt of an application under section 14, the Registrar may, after making such inquiry as he thinks fit with respect to the particulars contained in such application, accept the application absolutely or subject to such conditions or limitations as he deems fit.”

The words “as he thinks fit” occurs in Section 123(1) of Indian Evidence Act also with regard to power of head of department to

furnish a document. While commenting on this provision the Hon'ble Supreme Court in State of UP -Vs- Raj Narain AIR 1975 SC 865 has held that the words "as he thinks fit" confer an absolute discretion on the head of the department to give or withhold such permission. Further again the Hon'ble Supreme Court while examining the expression "as he thinks fit" occurring in Section 30(4) of J&K State Evacuees Administration of Property Act, 2006 held that it indicates the extent of power conferred on revisional authority which cannot be limited or circumscribed. Again the Hon'ble Delhi High Court in Madho Lal vs Roop Chand And Ors ILR 1970 Delhi 230 while examining the expression "as he thinks fit" held as follows:-

"Bhandari C.J. on a consideration of the above provisions, observed as follows:- "The legislature imposes a statutory obligation on the Controller to fix the fair rent of the premises after holding such inquiry as "the Controller" may think fit. The emphasis is on the words "Controller" and it is for him to decide upon the nature of the enquiry to be held, the nature of the witnesses to be examined and documentary evidence to be produced. In most cases the evidence produced by the parties is sufficient to enable him to determine the rent without calling for further evidence or embarking upon an inquiry of his own. In such cases all that is necessary to be done is to pronounce orders in the case. But there can be cases like the present in which the parties omit to produce the necessary evidence. In such cases the Controller is not expected to be a mute spectator of the events which take place before him and to make his order solely on the basis of the evidence which the parties have chosen to lead. The law requires "him" to make an inquiry and it is "his" duty to make one by calling additional evidence if he finds that the evidence produced by the parties is inherently defective or is insufficient to enable him to assess the fair rent or to pronounce judgment in the case. If he fails to perform the duty which devolves upon him, it is open to the District Judge in appeal either to remand the case to the Controller for further inquiry or to hold a

further inquiry himself. The legislature requires the Controller, and failing him the District Judge, to determine the fair rent and neither of them can be allowed to defeat the intention of the legislature by simply declaring that there is no evidence on the basis of which such rent can be determined."

All the above decisions lay down that fortify my view that the Registrar in exercise of his discretion can seek for the name of the earliest/ first hybrid and a copy of its invoice in case of application for registration of parental line.

Further there is no confidentiality in the process of registration of plant varieties and there can be no protection from divulging the name of hybrid or parental line in case of application for registration of parental line or hybrid as the case may be. The Hon'ble Delhi High Court in W.P. (C) No.8431 of 2011 by order dated 30.11.2011 while emphasising there is no confidentiality in the process of registration of plant varieties held as follows: -

"The complete disclosure has to be made by the registration seeker/applicant alongwith the application, and any person wishing to raise an objection is entitled to receive complete information, so that he may raise one or more of the available objections to the registration of the claimed plant variety.

14. *The disclosure is made to the Registrar, who then publishes the same and invites objections. The objections are made to the claims of development/invention made in the application, and not merely to the information which may be published. The advertisement, in most cases, possibly cannot be with respect to the entire application and all the information furnished along with it, for it may run into hundreds of pages. Therefore, Rule 30 provides the salient features that need be published. However, any person from the public is entitled to scrutinize the application and all the information furnished by the applicant, and to challenge the claim made by the applicant on the grounds available in law to oppose the grant of registration. For this purpose, and to empower the interested person to effectively raise any objection, it is obvious that the complete information is required to be provided by the Registrar. There is no scope for any secrecy or confidentiality in the entire process, and it has to be*

transparent so as to defeat any false claim of invention or new development of a plant variety. As aforesaid, a complete disclosure is mandated also for the reason that, at the expiry of the statutory protection period, any person should be able to exploit the invention/plant variety developed by the registration applicant, without having to turn to the said applicant for any other information.

15. The argument of Mr. Jain that because the advertisement is not required to be published of the entire application and the information furnished with it, the Registrar gets vested with discretion to decide, whether, or not to part with the complete information on an application being made in form PV-33 is misplaced. Firstly, the words used in Rule 30 is "shall include". Therefore, the list of information that may be published is not exhaustive. Rule 30 merely lays down the minimum information that should be published. Secondly, this submission is not supported by the plain language of Section 84 and Rule 76. As extracted above, Section 84 is absolute in its terms and the authority or the Registrar are bound to provide certified copies and inspection of any entry in the Register or any document or any proceedings under the Act pending before the such authority or Registrar. The objections raised to an application for registration are certainly "proceedings" under the Act. The only exception found in the Act is contained in section 78 of the Act, which entitles the Authority or the Registrar not to disclose information relating to registration of a variety which is considered prejudicial to the interest of the security of India. Even this provision, it appears, comes into play post registration, and not during the consideration of an application for registration or during the consideration of the objections to a registration application. It is not the petitioners case that the present case is covered by section 78 of the Act.

16. The submission of Mr. Jain that if the complete information is disclosed to the respondent competitor, it may resort to misuse of that information by undertaking reverse engineering process to put up a false claim of prior user is also misplaced. Under section 24(5) of the Act, the Registrar is empowered to issue such directions to protect the interests of a breeder against any abusive act committed by any third party during the period between filing of registration application and decision taken by the authority on such application. Moreover, the application is required to be disposed of in a time bound manner. Reference may be made to section 24(3) in this regard.

17. Reliance placed on Section 8(1)(d) of the RTI Act, 2005 is also misplaced for the couple of reasons. Firstly, the Protection of Plant Varieties and Farmers' Rights Act, 2001 and the Rules framed thereunder are a complete code in themselves and reference to the provisions of the RTI Act to determine what information can be disclosed with regard to an application for registration of a

plant variety is, therefore, misplaced. Secondly, even under Section 8(1)(d) the competent authority is obliged to disclose information which is of commercial confidence or a trade secret or intellectual property, if he is satisfied that larger public interest warrants the disclosure of such information. The scheme of the Protection of Plant Varieties and Farmers' Rights Act, 2001, and particularly, Section 84 clearly shows that public interest lies in disclosure of the applications, all information contained therewith and the proceedings undertaken under the aforesaid Act.

18. Reliance placed on Nagarjuna Construction Co. Ltd. (supra) is also misplaced for the reason that there is no right vested in the petitioner to oppose the application made in Form PV-33. Consequently, there is no obligation to give any notice to, or grant any hearing to the registration applicant before providing the information/documents sought under section 84, read with Rule 76, read with Form PV-33. There is no right vested in the petitioner to be heard on the issue whether or not the said application should be allowed and, if so, to what extent.

19. For all the aforesaid reasons, I find no merit in this petition. The same is, accordingly, dismissed"

The acceptance of the argument of the applicant would lead to an anomalous situation where the Plant Varieties Registry would be placed in such a situation when the application for each of the parental lines and its hybrid are pending separately then the Plant Varieties Registry would be unable to match which hybrid has been developed out of which parent. The Plant Varieties Registry in a clear and précised manner must be able to say with regard to the applications pending before it which hybrid has been developed out of which parent. The Plant Varieties Registry cannot be kept in dark with regard to the details of the hybrids like commercial name/denomination and details of its first sale. As mentioned earlier, the novelty of a parental line is determined on the basis novelty of a hybrid. Hence for determining the novelty of parental lines the name and details of commercialisation of earliest hybrid is vital.

The applicant also contends that in case of requirement of NOC for transgenic varieties the Authority has decided that only declaration

under 18 (1)(h) is essential. The issue of NOC cannot be compared with the instant issue as both are based on different set of facts and law.

The Registrar in exercise of his discretion can seek the name of the first hybrid and copy of its first sale invoice. The prayer of the applicant is on two counts that is they will submit the detail of the hybrid without the name of the hybrid cannot be accepted and similarly they will be submit the invoice redacting the name of the hybrid OR to waive off the submission of the name of the first/earliest hybrid and also to waive off the submission of invoices of first sale of earliest hybrids made using the parental line which has been applied for registration. Both these prayers cannot be accepted as submitting the details of the hybrid without its name and submitting the invoice hiding the name of the hybrid is not proper. There is no provision for redacting any of the details in the documents submitted before the Plant Varieties Registry. The only point of the applicant regarding non-furnishing of the name of the hybrid is that prejudice will be caused if the name of the hybrid is disclosed in the application of parental line as the name of the hybrid is proprietary and confidential information. While submitting the application for a hybrid, the applicant is bound to furnish the details of its parental line and pedigree in the technical questionnaire of the application form and further under Rule 30 of PPV&FR Rules, 2003 the name, passport data and source of parental line or initial variety used to develop the variety has to be advertised in the plant variety journal of India. Being so when there is no harm in divulging the name of the parents what harm would arise in divulging the name of its hybrid. The applicants

have no problem in furnishing the detail of parental line in the application for hybrid but the applicants are not ready to furnish the name of the hybrid in the application for registration of parental line. This stand of the applicant cannot be countenanced in law. When the applicants have no problem in submitting the detail of the parental line in application for hybrid they should have no problem vice-versa also that is submitting the name of the hybrid in the application for parental line.

The other argument of that applicant that there is no benefit or that no fatality would be caused by their request as the consequence of proof of first sale is related merely to categorisation between new and extant varieties without affecting the period of protection as well. This argument is also far-fetched. The categorisation between New and Extant Plant varieties relates to Section 15(3) and Section 15(1) of PPV&FR Act, 2001 and the categorisation is done on substantial provisions of law and the registration fees and period of DUS testing and eligibility criteria are different for new and extant plant varieties. Hence, the categorisation between new and extant plant varieties is based on law and cannot be ignored.

CONCLUSION: -

Based on the aforesaid reasonings, I have to reject the claim of the applicant that under the law they are not bound to furnish the name of the hybrid in the application for registration of its parental line. I have no hesitation to conclude that for determining the novelty of the parental line the applicants are bound to furnish the

name of the first/ earliest hybrid supported by a copy of invoice without redacting the name of the hybrid.

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

