

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

**Oppn. No.1 of 2022**

**IN THE MATTER OF: Notice of Opposition filed by PAN Seeds Private Limited against Application No. N15 OS68 13 293 denominated as BANGABANDHU-1 filed by Mali Agri Tech Pvt. Ltd., for registration of Rice variety.**

**IN THE MATTER OF: -**

**M/S. PAN SEEDS PVT. LTD.,**

**..... Opponent**

**-Versus-**

**M/S. Mali Agri Tech Pvt. Ltd.,**

**..... Applicant**

**For the Opponent: Mr. Abhishek Saket, Advocate for M/s. Infini Juridique.**

**For Applicant: Dr. Anushri Gupta, Attorney for M/s. Anushri Gupta & Associates.**

**JUDGEMENT**

By this order I shall dispose of the PV-3 Notice of Opposition filed by Opponent to oppose the registration of New Rice Variety denominated as **BANGABANDHU-1** 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 19<sup>th</sup> March, 2025.

**I. FACTS OF THE CASE: -**

The facts of the case as per the Opponent are that Applicant's variety BANGABANDHU-1 is identical with Opponent's registered variety PAN-804. The contention of the Opponent is that both the grouping characteristics and agronomic and commercial attributes of BANGABANDHU-1 and PAN-804 are one and same. The core contention of the Opponent is also that one Seed Association of Bengal has filed an application for revocation of the Opponent's registered rice variety PAN-804 and in that they have filed a DNA testing report from one Gubba Biotech Lab which shows that both the Opponent's registered variety PAN-804 and Applicant's registered variety BANGABANDHU-1 are identical and hence registration cannot be granted to Opponent's variety BANGABANDHU-1.

The facts of the case as per the Applicant are that BANGABANDHU-1 is distinct from PAN-804 as grouping characters and agronomic and commercial attributes are different. The Applicant based on the report of ICAR- National Rice Research Institute, Cuttack which has conducted tests and provided quality parameters analysis report of variety BANGABANDHU-1 and PAN-804. This report confirms distinctiveness between variety BANGABANDHU-1 and PAN-804 in some major characters like protein content, zinc content, water uptake, elongation ratio, head rice recovery, chalkiness and length breadth ratio. Therefore, it is their case that their variety BANGABANDHU-1 and PAN-804 are not identical as alleged. Further the contention of the Applicant is based on the report



from National Genomics Core-CDFD (Centre for DNA fingerprinting and Diagnostics) which provides that the Applicant's variety BANGABANDHU-1 and its parents LCM 101 & LCN 11 have common ancestry and in the said report the Opponent's variety PAN-804 was also examined. It is also the case of the Applicant that the Opponent is blowing hot and cold that in the Revocation proceedings (filed by a Third Party for revoking the Opponent's registered variety PAN-804) he is disputing the DNA test report of Gubba Biotech Lab but in the instant proceedings he is relying on the same to oppose the registration of Applicant's variety BANGABANDHU-1.

The Opponent's rice variety PAN-804 was registered on 28.03.2018 vide registration number 51 of 2018. The Applicant on 1<sup>st</sup> May, 2013 has filed application No. N15 OS68 13 293 for registration of rice variety denominated as "BANGABANDHU-1" under new variety category with Acknowledgement Receipt No.REG/2013/293. The same was advertised in Plant Variety Journal Vol.15 No.12, 1<sup>st</sup> December, 2021 uploaded on the website with digital signature of Registrar on 6<sup>th</sup> January, 2022 inviting for Oppositions under Section 21 of the PPV& FR Act, 2001. The Opponent filed PV-3 (Notice of Opposition) against the registration of said variety. On 10<sup>th</sup> May, 2022, the Opponent filed the Opposition without fees. Under Rule 8(2)(d) of PPVFR Rules, 2003, the date for filing Notice of Opposition shall be considered as the date on which the entire fee is paid. The Opponent deposited the fees for Notice of Opposition on 26<sup>th</sup> May, 2022 and accordingly as per Rule 8(2)(d) of PPVFR Rules, 2003, the date of payment of fees for Notice of Opposition that is 26<sup>th</sup> May, 2022 is taken as date of filing of the instant Opposition. It is to be noted that in accordance with Public



Notice No.1 of 2022, the time limit for filing notice of opposition in respect of applications advertised in PVJ issue of December, 2021 is 31<sup>st</sup> May, 2022 in accordance with the order dated 10.01.2022 of Hon'ble Supreme Court in SWP (C) No.03 of 2020 (In RE: Cognizance for Extension of Limitation).

The Notice of Opposition was forwarded to the Applicant by Letter No. PPVFRA/Legal/01/2022/490 dated 31<sup>st</sup> May, 2022/ 1<sup>st</sup> June, 2022 for filing of counter-statement in accordance with Section 21(4) of the PPVFR Act, 2001. The Applicant duly filed the Counter-Statement on 29<sup>th</sup> July, 2022 which was taken on record.

As per Section 21(5) of PPVFR Act, 2001, the Counter-Statement was forwarded to the Opponent vide this Registry Letter No. PPVFRA/Legal/01/2022/1986 dated 10<sup>th</sup>/12<sup>th</sup> August, 2022 for filing of Final Opposition and Evidence under Rule 31(6) and Rule 33(1) of PPVFR Rules, 2003 respectively. The Counter-Statement was forwarded to the Opponent vide Speed Post Article Number ED 102594123IN dated 12<sup>th</sup> August, 2022. The same was received by the Opponent on 13<sup>th</sup> August, 2022 as per the speed post tracking records on file. Accordingly, as per Rule 31(6), the final opposition has to be filed within a period of thirty days from the receipt of the Counter-Statement and the evidence has to be filed within a period of one month from the date of receipt of Counter-Statement under Rule 33(1). Accordingly, the Final Opposition should have been filed by 12.09.2022 and the evidence should have been filed by 13.09.2022 as the date of receipt of counter statement of the Applicant by the Opponent is on 13<sup>th</sup> August, 2022. The Opponent filed the Final Opposition on 13.09.2022. There was one day delay in filing Final Opposition. Accordingly, the



Opponent filed PV-5 (Petition to extend time for filing Final Opposition by one day) which was conditionally allowed by this Registry by order dated 7<sup>th</sup> December, 2022 on payment of costs which the Opponent complied by paying the costs. The Opponent filed evidence within the time that is on 13<sup>th</sup> September, 2022 as declared in the order dated 7<sup>th</sup> December, 2022 in the instant matter. The Registry vide letter No.PPVFRA/Legal/01/2022/2906 dated 27<sup>th</sup> December, 2022 forwarded both the Final Opposition and Evidence filed by the Opponent to the Applicant. The Applicant received the Evidence filed by the Opponent on 28<sup>th</sup> December, 2022. As per Rule 33(2) of PPVFR Rules, 2003 any evidence upon which the Applicant may rely shall be submitted within 30 days of the receipt of Opponent's Evidence. Accordingly, the Applicant filed their evidence within the time on 27<sup>th</sup> January, 2023 itself which is within 30 days from the receipt of Opponent's evidence on 28<sup>th</sup> December, 2022. The said Evidence filed by the Applicant was forwarded to the Opponent also and the same was received by the Opponent on 27<sup>th</sup> January, 2023. Thereafter, the matter was posted for final hearing on 21<sup>st</sup> February, 2023.

During the final hearing on 21<sup>st</sup> February, 2023, the Opponent filed an application to conduct DUS test in the field as well as DNA testing on Applicant's and Opponent's varieties namely BANGABANDHU-1 and PAN 804 to establish the identity of two varieties and also allow the Opponent to cross-examine the witness of the Applicant. The said application was disposed of by this Registry by order dated 3<sup>rd</sup> June, 2024. The Operative portion of the order is extracted hereunder: -

*“Based on the aforesaid reasoning, the instant application dated 21<sup>st</sup> February, 2023 filed by the Opponent for conduct of*



*DUS/SPECIAL TEST between BANGABANDHU-1 and PAN-804 and for cross-examination of witness, cannot be considered due to non-filing of an application under Rule 32 and consequent absence of special order under Rule 32 extending the time limit for filing further evidence. Accordingly, the instant application is dismissed.”*

As cited above, the said application filed by the Opponent for DUS and DNA test and to cross-examine the witness was dismissed by this Registry for the want of special order under Rule 32. While the matter was fixed for final hearing on 15<sup>th</sup> July, 2024, the Opponent filed a PV-5 application on 2<sup>nd</sup> July, 2024 seeking five months or such period extension for cross-examining the witness of the Applicant. The said PV-5 application filed by the Opponent was dismissed by this Registry by order dated 6<sup>th</sup> January, 2025. The operative portion of the order is extracted hereunder: -

*“The instant PV-5 is bound to be dismissed as the Opponent has not provided sufficient cause as to why and how he was prevented from filing the request to cross-examine the witness of the Applicant before the closure of his evidence on 13<sup>th</sup> September, 2022 or subsequent after the closure of evidence till the date of filing of application [seeking DUS and DNA test between Applicant’s and Opponent’s Variety and to cross-examine the Applicant’s witness] filed during final hearing on 21<sup>st</sup> February, 2023.”*

Thus, the PV-5 application filed by the Opponent was dismissed on the ground that the Opponent has not shown sufficient cause as to why and how he was prevented from filing the request to cross-examine the witness of the Applicant before the closure of his evidence.

The following annexures has been enclosed by the Opponent, namely:

- i). **Exhibit -OW1/1-** Copy of the said Board Resolution dated February 15, 2022.



- ii) **Exhibit -OW1/2-** Copy of the publication in Journal dated December 19, 2017 of the variety PAN-804.
- iii) **Exhibit -OW1/3-** Copy of the Registration Certificate issued by the PPV&FR Authority.
- iv) **Exhibit -OW1/4-** Copy of the publication in Journal dated January 6, 2022 of the variety BANGABANDHU-1.
- v) **Exhibit -OW1/5-** Copy of the DNA test conducted by third parties in which PAN-804 and BANGABANDHU-1 has been compared and analysed.

The following annexures has been enclosed by the Applicant, namely:

- i) **Exhibit-1-A** true copy of the board resolution dated 16.06.2022
- ii) **Exhibit-2-** A copy of case law Rangammal -vs- Kuppuswami & Anr (May 13, 2011)
- iii) **Exhibit-3-** A copy of the Opponent's Exhibit- OW 1/1, Board resolution dated 15.02.2022 of the Opponent.
- iv) **Exhibit-4-** A true copy of the certified copy of the letter no. F.No. PPVFRA/R-III-NGB/Annual fees/2020/1199 dated 01.11.2021 of the Protection of Plant Varieties and Farmers' Rights Authority.
- v) **Exhibit-5-** A true copy of the extracts from the certified copy of the Opponent's written statement on Form PV- 16 in Revocation proceeding.
- vi) **Exhibit-6-** A copy of the company registration certificate of the Applicant.



- vii) **Exhibit-7-** A copy of the recognition certificate of the Applicant.
- viii) **Exhibit-8-** A true copy of the publication in Journal dated 06.01.2022 of Applicant's variety BANGABANDHU-1.
- ix) **Exhibit-9-** A true copy of the publication in Journal dated 19.12.2017 for PAN 804.
- x) **Exhibit-10-** A true copy of report issued by ICAR-National Rice Research Institute, Cuttack.
- xi) **Exhibit-11-** A true copy of report issued by Centre for DNA fingerprinting and Diagnostics.

No witnesses were listed in this matter.

Finally, in the instant Opposition, the parties were heard and the judgement was reserved on 19<sup>th</sup> March, 2025.

## **II. CASE OF THE OPPONENT**

1. That the present opposition is being filed on the ground that the variety BANGBANDHU -1 is identical to PAN-804 which will be seen from the grounds of opposition.
2. The Opponent has filed the Opposition, which is based on the information derived from the publication in the PPV&FR Journal dated January 6, 2022. The said publication has revealed that **BANGBANDHU 1** of Mali Agri is nothing but PAN-804 as the grouping characters are same.
3. The agronomic and commercial attribute is also identical for the two i.e. PAN-804 and BANGBANDHU – 1. The two varieties are identical is also to be seen from the DNA testing that was conducted by the Gubba Biotech Lab. The



said test was conducted at the behest of certain infringers of PAN -804 through an association namely Seed Association of Bengal, Kolkata. The same was filed by the said Seed Association of Bengal in the revocation proceedings before this Authority against the variety PAN-804. Nonetheless, what is important is that a third party has conducted the DNA Fingerprinting Test, which has concluded that the two varieties are identical i.e. BANGBANDHU – 1 and PAN-804. Thus, it is humbly submitted that registration cannot be granted to BANGBANDHU-1.

4. The Applicant has furnished wrong information as the variety BANGBANDHU -1 is nothing but PAN-804 and the same has not been revealed in the application or the reference varieties intentionally.
5. Further, BANGBANDHU – 1 and PAN – 804 application also reveals that the two varieties are rainfed varieties having identical agronomic attributes. Hence, the variety BANGBANDHU-1 is not entitled to registration.
6. The breeder i.e. Mali Seeds is not the actual breeder of the variety in question and infact the same is also claimed in a fraudulent manner. The breeder has no role to play in the development of **BANGBANDHU–1** and cannot be the breeder.
7. The two varieties have not been tested by the Authority to conclude that the same are distinct. In fact, the publication itself reveals that the two varieties are identical.
8. It is stated that PAN 804 of the Opponent has not been tested by the Authority along with Applicant's variety BANGBANDHU 1.



9. It is also submitted that the test conducted by the PPV&FR Authority under Section 19 is not a conclusive proof of the fact that the variety is distinct with that of the Opponent.
10. The Applicant in its reply has assumed that there is no provision for either conducting the DUS test in an opposition proceeding or even for cross examination.
11. It has also been held that in the case of the Opposition, where two varieties are in question, the Registrar must test them for their distinctiveness as a special test in the field and also, if required DNA fingerprinting can be done in cases were desired.
12. In the present matter, no such test was conducted by the Learned Registrar despite specific request having been made. Further even the cross examination was not permitted by the Learned Registrar of the affidavit that was filed by the Applicant.
13. On the basis of the Publication in the Journal as well as the DNA Test report, which has remained unrefuted by the Applicant, it is submitted that the two varieties are identical. Moreover, the Opposition has been filed on the basis of the identity of the two varieties in the journal, which clearly reveals identity, hence the Applicant's variety cannot be registered.
14. The advertisement is also not in accordance with the provisions of the PPV& FR Act and Rules thereto. The advertisement does not fulfill any of the conditions as laid down under the PPV&FR Rules as cited above. It is mandatory for applicant to provide Passport data of the parental line from which the variety has been derived. That



the Applicant has falsely given the parent lines as **LCM 101 and LCN 11.**

### **III. CASE OF APPLICANT**

That the Opponent's Notice of Opposition, Final Opposition, Evidence, Rejoinder are bundle of lies and distorted facts, half-truth and deliberate to misguide the Hon'ble Registrar-General.

1. It was argued that the Notice of Opposition, Final Opposition and Evidence of the Opponent are not duly executed as per the mandate of the Opponent's board resolution dated 15.02.2022 submitted by the Opponent. The extract of the Opponent's board resolution dated 15.02.2022 is as under

“ .....that Mr. Debraj Kanrar and Mr. Avijit Das are hereby authorized to sign pleading, petitions, applications, affidavits , and any other document .....” ( **para 3 , lines 8-9 of the board resolution dated 15.02.2022 of the Opponent**). It was argued that as per the board resolution the Notice of Opposition, Final Opposition and the Evidence of the Opponent are to be signed jointly by Mr. Debraj Kanrar and Mr. Avijit Das but these documents are signed by Mr. Avijit Das only. Therefore, Notice of Opposition, Final Opposition and the Evidence of the Opponent are not duly executed as per the mandate in aforesaid board resolution. Therefore, the Notice of Opposition, Final Opposition and the Evidence have no legal force and are time barred. Therefore, the present proceedings become infructuous. The Hon'ble Registrar-General is requested not to take the Notice of Opposition, Final Opposition and the Evidence of the Opponent on Record and dismiss the present proceedings *in limine*. A copy of the



Opponent's EXHIBIT-OW 1/1, board resolution dated 15.02.2022 of the Opponent has already been filed at the Registry in the Respondent/Applicant's Evidence on 27 January, 2023 as **Exhibit-3**.

2. The legal position of "Evidence-Burden of Proof" in law is well settled as decided in number of cases by the Apex Court and the necessity of proof always lies with person who lays charges and in case of **Rangammal vs Kuppuswami & Anr (May 13, 2011, para 14, page 5)**,. Therefore, it is submitted that the Opponent has miserably failed to discharge his burden of proof to establish his case and there is no cause of action in favour of the Opponent. The Hon'ble Registrar-General is requested to dismiss the Notice of Opposition and Final Opposition *in limine*.
3. It was argued that the Notice of Opposition and Final Opposition are liable to be dismissed out rightly as the Opponent Company has not made on any of the grounds under Section 21(3) to Oppose Applicant's application in accordance with the scheme of **the Protection of Plant Varieties and Farmers' Rights Act, 2001**(hereinafter referred to as "**the Act**").
4. It was argued that Opponent has no right to make the Notice of Opposition and Final Opposition as annual fee is not paid by the Opponent for the continuation of registration of variety PAN-804 as per the provisions under the Act and the Rules, 2003 and as a result the registration of variety PAN -804 vide registration no. 51 of 2018 is not valid and is not in existence.
5. That during the hearing the Opponent stated that the Opponent's variety PAN-804 is developed from the parents



LCM 101 and LCN 11 and these are the parental lines of their variety PAN-804. The Respondent/Applicant vehemently argued and denied this claim of the Opponent as false. As a matter of fact, the parental material of the variety PAN-804 is MTU 7029, which was published by the Authority in the Journal dated December 19, 2017.

6. Without prejudice to aforesaid, it was argued that the variety BANGABANDHU-1 is developed through pedigree Selection following hybridization between LCM 101 (female) x LCN 11 (male) and Respondent/Applicant has rightly claimed the parental lines LCM 101 and LCN 11 and this is also supported by whole genome sequencing report, phylogenetic tree showed the lineage i.e. common ancestry of the three genomes (BANGABANDHU 1; LCM 101 and LCN 11) and observed a common root for all the three genomes. BANGABANDHU-1 is closely associated with LCN11 than LCM101 sharing same branch also proved that BANGABANDHU-1 is inherited from LCN11 and LCM 101. This test is conducted on behalf of the Respondent/Applicant by National Genomics Core- CDFD (Centre for DNA fingerprinting and Diagnostics). It is reiterated that BANGABANDHU-1 has parent lines LCM101 and LCN 11 A true copy of report issued by Centre for DNA fingerprinting and Diagnostics has already been filed at the Registry in the Respondent/Applicant's Evidence on 27 January, 2023 as **Exhibit -11**.
7. That the Opponent alleged in Notice of Opposition, Final Opposition and Evidence that variety BANGABANDHU-1 is identical to variety PAN-804 and relied only on two documents which were-



(i) Publication of Respondent/Applicant's variety BANGABANDHU-1 in the Journal dated 06.01.2022 and publication of Opponent's variety PAN-804 in the Journal dated December 19, 2017.

(ii) Alleged DNA testing conducted by the Gubba Biotech Lab on behalf of an extraneous party in an extraneous revocation proceeding to which the Respondent/Applicant is not a party but the Opponent is a party to that extraneous revocation proceedings.

(a) It was argued that the Opponent dishonestly and frivolously compared only the Grouping characteristics of variety PAN-804 and variety BANGABANDHU-1 from the published information in the Journal dated December 19, 2017. It is submitted that the Opponent is fraudulently ignorant of the fact that the DUS testing guidelines on rice which specifies the characteristics of the varieties to be used for the grouping of rice varieties for conducting DUS testing to facilitate the assessment of distinctiveness of the candidate variety. A true copy of the publication in Journal dated 06.01.2022 of Respondent/Applicant's variety BANGABANDHU-1 has already been filed at the Registry in the Respondent/Applicant's Evidence on 27 January, 2023 as **Exhibit -8**.

(b) It was argued that as per DUS test conducted by the Registry the distinct characteristic of the variety BANGABANDHU-1 is Short Bold shape of decorticated grain from reference variety, Karjat 4. It



is also submitted that Short Bold decorticated grain shape is one of the essential characteristics out of 62 essential characteristics listed in DUS guidelines on Rice.

- (c) It was argued that the Opponent has falsely and dishonestly did not compare the DUS test report of BANGABANDHU-1 published in the Journal dated 06.01.2022 with the DUS test report of PAN-804 conducted by the Registry. It was argued that variety BANGABANDHU-1 has ample distinct essential characteristics over variety PAN-804 on comparing the published DUS test reports of BANGABANDHU-1 published in the Journal dated 06.01.2022 with the DUS test report of PAN-804 conducted by the Registry. It is submitted that table 1 below, which has already been filed at the Registry in the Respondent/Applicant's Evidence on 27 January, 2023, establishes and depicts the distinct essential characters of Respondent/Applicant's variety BANGABANDHU-1 to variety PAN-804:

**TABLE 1: Distinguishing characters of BANGABANDHU- 1 and PAN 804**

Rice		IIRR Hyderabad	
DUS Sl. No.	DUS Characteristics	Bangabandu-1 State (Note)	PAN 804 State (Note)
8	Leaf Pubescence of Blade Surface	7	5
16	Leaf : length of	3	5



	blade		
38	Lemma and Palea: colour	4	2
45	Panicle: attitude of branches	3	7
48	Leaf: senescence	3	5
60	Varieties with endosperm of amylose absent only Polished grain: expression of white core	3	1

*Source: Comparison done from Plant Variety Journal of India, Vol.15, No.12, December 01, 2021, published on January 06, 2022. Certified copy of DUS Report of PAN 804 received from PPV & FRA.*

As per above table-1, the Respondent/Applicant's variety BANGABANDHU-1 has 6 distinct essential characteristics over variety PAN-804

- (d). It is submitted that the Respondent/Applicant's variety BANGABANDHU-1 has ample differences in agronomic and commercial attributes in comparison to variety PAN-804.
- (e). It was further submitted that on behalf of the Respondent/Applicant, ICAR- National Rice Research Institute, Cuttack conducted tests and provided quality parameters analysis report of variety BANGABANDHU-1 and PAN-804. This



report confirms distinctiveness between variety BANGABANDHU-1 and PAN-804 in some major characters like protein content, zinc content, water uptake, elongation ratio, head rice recovery, chalkiness and length breadth ratio. Therefore, it is submitted that the variety BANGABANDHU-1 and PAN-804 are not identical as alleged. A true copy of the report issued by ICAR- National Rice Research Institute, Cuttack has already been filed at the Registry in the Respondent/Applicant's Evidence on 27 January, 2023 as **Exhibit -10**.

- (f). It was argued that Opponent frivolously opposed registration of the Respondent/Applicant's variety BANGABANDHU-1 being identical relying on DNA testing conducted by a extraneous party to this opposition proceedings, Gubba Biotech Lab on behest of an extraneous party to this opposition proceedings, Seed Association of Bengal in a revocation proceedings before this Registry against variety PAN-804 to which Opponent is a party. It is important to note that the Respondent/Applicant is not a party in this revocation proceedings pending before this Registry. It is submitted that the Opponent not only fraudulently relying on the alleged DNA test but also admitting to an alleged extraneous DNA test in present proceeding, however in revocation proceeding vide Rev.Appln.No.1 of 2022 pending before the Registry to which the Opponent is a party has not admitted the alleged DNA test and also negated the alleged DNA test



which is established in his reply in the said revocation application on page no. 34, lines 17-18 that “ *That the contents of the corresponding is denied on the ground that alleged DNA test report does not show that it was prepared by the alleged Dr.N Saha. The said report is undated*” and on page 35, lines 14-21 that “*....Though the alleged DNA test of the Revocation Applicant confirms the position of Registered Breeder that BB-11 is an infringing variety, however it may also be added here for the sake of legal argument that DNA testing is neither notified nor the basis on which registration is granted. There are several markers and each marker will give different result.*” It is well settle in principle in law, the admission is best evidence, thus Opponent’s denial to admit DNA test report in the pending revocation application proves that the Opponent has no legal basis to oppose the registration of the Respondent/Applicant’s variety on alleged DNA test and is clearly abusing the due process of law and filed Notice of Opposition with malafide and dishonest intention. Therefore, it is submitted that the Opponent is **estopped** from asserting DNA testing the present opposition proceedings.

Further, without any admission to the contents of the paragraph no. 22 on page 10 the Final Opposition submitted by the Opponent is being reproduced as under:



“ ..... However, it is to be added here that in the said revocation proceedings the same DNA test has been filed by the Revocation Applicant's which suggests that **BANGBANDHU-1 is identical to PAN-804**”. Respondent/Applicant argued that with plain reading of aforesaid paragraph 22, the Opponent has made admission that this alleged DNA reports **only suggest** of being two varieties identical and not conclusively proves that the two varieties are identical. This proves that present opposition proceeding are initiated by the Opponent on frivolous ground.

Without prejudice to aforesaid, it was argued that DNA fingerprinting is a sensitive technology and may be conclusive when carried out using specific and precise molecular test. The alleged DNA fingerprinting report provided by the Opponent vide opponents EXHIBIT-OW1/5 filed in their Evidence, using 20 SSR molecular markers do not represent the DNA sequences of each chromosome of rice to establish that the two varieties are identical. It is submitted that the alleged gel images are also not legible. It is submitted that the alleged DNA test report provided by the Opponent is not reliable at any rate.

Further it was argued that Whole Genome Sequencing of four rice varieties namely BANGABANDHU-1, PAN-804 , LCM101 and LCN11 were done on the Illumina Platform by National Genomics Core-CDFD (Centre for DNA



Fingerprinting and Diagnostics) on behalf of the Respondent/Applicant to identify the distinctiveness of variety BANGABANDHU-1 and PAN 804, and identified that the variety BANGABANDHU-1 has 2,279,342 Single nucleotide polymorphisms: A, C, G, T bases (hereinafter referred as to “SNP”) whereas variety PAN 804 has 2,251,932 SNP (Refer page no. 14-16 of the report issued by Centre for DNA fingerprinting and Diagnostics, Exhibit No.-11 submitted at the Registry in the Respondent/Applicant’s Evidence on 27 January, 2023). It is submitted that not only SNP, functional class genes, transitions / transversions, no. of Homo/Heterozygous Variants – all showed variations between two varieties which proves that the two varieties BANGABANDHU-1 and PAN 804 are distinct.

- (g). It was argued that the Respondent/ Applicant has followed the due procedure established in law to make Application for registration of the variety BANGABANDHU-1 and provided all correct information including the reference variety and had filed relevant documents including the assignment.
- (h). That during the hearing the Opponent was merely reading selectively the contents of the judgment dated 01.07.2019 in “Pioneer Overseas Corporation Vs Kaveri Seeds Limited”. It was argued that this judgment is not applicable in the present matter.



- (i). it is humbly prayed that the Opposition be rejected and application proceed for registration and costs may be awarded in favour of the Applicant.

#### **IV. ANALYSIS**

The main case of the Opponent is that their registered rice variety PAN-804 is identical to BANGABANDHU-1 which is the Applicant's variety. The Opponent's PAN-804 application was filed on August 23, 2010 as New Variety. The said variety was published in PV Journal Volume 11, No. 12 of December 19, 2017. Thereafter the variety PAN-804 was registered on March 28, 2018 vide registration No. 51 of 2018. The registration of PAN-804 is valid and in existence.

**ISSUE NO:1-** The first issue that arises for consideration is whether the Notice of Opposition, Final Opposition and Evidence filed by the Opponent have been executed as per the mandates of Opponent's Board of Resolution dated 15<sup>th</sup> February, 2022?

It is the contention of the Applicant that the Notice of Opposition, Final Opposition and the Evidence of the Opponent are to be signed jointly by Mr. Debraj Kanrar and Mr. Avijit Das but these documents are signed by Mr. Avijit Das only. Therefore, Notice of Opposition, Final Opposition and the Evidence of the Opponent are not duly executed as per the mandate in aforesaid board resolution. Therefore, the Notice of Opposition, Final Opposition and the Evidence



have no legal force and are time barred. At the outset, I do not agree with the contention of the Applicant in this regard, as Board Resolution of Opponent's company shows that both Mr. Debraj Kanrar and Mr. Avijit Das have been appointed as authorised signatories on behalf of the Opponent's Company. It means that either Mr. Debraj Kanrar or Mr. Avijit Das can execute the document. In the case of appointment of attorneys they can operate jointly or severally. Appointment of authorised signatories means that each can operate separately unless it has been expressly stated that they have to operate jointly. In the instant case, the Board Resolution never provides for joint operation by Sh. Debraj Kanrar and Sh. Avijit Das and hence, they can operate separately or severally and contrary contention of the Applicant cannot be accepted. I decide this issue in favour of the Opponent that the pleadings signed by Sh. Avijit Das on behalf of Opponent are valid in law and can be taken on record.

Now the core point that has to be considered is whether BANGABANDHU-1 and PAN-804 are identical. The adjudication of the core point involves the consideration of the following issues:

**ISSUE NO. 2: –**

Whether the grouping characteristics alone can be relied to decide Applicant's variety BANGABANDHU-1 and Opponent's variety PAN-804 are identical or distinct?



**ISSUE NO. 3: -**

Whether identicalness of BANGABANDHU-1 and PAN-804 can be decided based on agronomic and commercial characters?

**ISSUE NO. 4: -**

Whether both BANGABANDHU-1 and PAN-804 can be stated to be distinct based on the quality analysis report of ICAR-NRRI, Cuttack?

**ISSUE NO. 5: –**

Whether DUS test conducted by the PPVFR Authority can be relied on to decide the identicalness or distinctiveness between Applicant's Variety (BANGABANDHU-1) and Opponent's variety (PAN-804)?

**ISSUE NO. 6: –**

Whether the Opponent is to be estopped from approbating and reprobating on the report of Gubba Biotech Lab?

**ISSUE NO. 7: –**

Whether based on DUS test report the identicalness or distinctiveness between Applicant's Variety (BANGABANDHU-1) and Opponent's variety (PAN-804) can be decided?

**ISSUE No. 8: - Other miscellaneous issues.**

Each issue involved is separately examined hereunder: -

**ISSUE NO. 2: –** Whether the grouping characteristics alone can be relied to decide Applicant's variety BANGABANDHU-1 and Opponent's variety PAN-804 are identical or distinct?



The Opponent alleges that BANGABANDHU-1 and PAN-804 are identical in all the eight grouping characteristics of Rice as per the DUS test guidelines and DUS tests conducted by the Authority. My firm view is that identicalness of the variety cannot be adjudged based on the grouping characters as grouping is done for the purpose to determine reference varieties. The object of grouping characters is to determine a closest reference variety which can be used in the DUS testing to determine distinctiveness. Accordingly, grouping characters are not the only DUS characters and they alone do not form the base for determining distinctiveness, uniformity and stability. Hence, mere identicalness in grouping characters of BANGABANDHU-1 and PAN-804 cannot mean that both are identical. This issue is answered in favour of the Applicant.

**ISSUE NO. 3:-**The other issue to be determined is whether identicalness of BANGABANDHU-1 and PAN-804 can be decided based on agronomic and commercial characters?

The contention of the Opponent is that agronomic and commercial characters of both BANGABANDHU-1 and PAN-804 are identical. *Per contra* the contention of the Applicant is that both BANGABANDHU-1 and PAN-804 differ in agronomic and commercial attributes relating to days of



flowering, 1000 grain weight, grain yield, tolerance to sheath blight and L/B ratio. My view is that there is no need to go into this issue, as criteria for registration of a variety is only distinctiveness, uniformity and stability as per the DUS test Guidelines and as enshrined under Section 15 of the Act. It is well settled that agronomic and commercial attributes may not be DUS characters which form part of the registration. Since, agronomic and commercial attributes may not be the DUS characters the identicalness of two varieties cannot be decided on the basis of agronomic and commercial attributes. Hence, in either way the arguments of the counsels that agronomic and commercial attributes of BANGABANDHU-1 and PAN-804 are identical or different has no relevance. Hence, this issue is of no relevance.

**ISSUE No. 4: -** The next issue that has to be decided is whether both BANGABANDHU-1 and PAN-804 can be stated to be distinct based on the quality analysis report of ICAR-NRRI, Cuttack?

The Applicant vide Exhibit-10 has marked in evidence the report dated 27<sup>th</sup> January, 2023 issued by ICAR-National Rice Research Institute, Cuttack ICAR- National Rice Research Institute, Cuttack. This report states distinctiveness between variety BANGABANDHU-1 and PAN-804 in some major characters like protein content, zinc



content, water uptake, elongation ratio, head rice recovery, chalkiness and length breadth ratio. I do not agree with this argument also because all the characters stated in the report marked as Exhibit-10 are not the DUS characters and they relate to nutritional content, milling and physical properties of the grain. Accordingly, the contention of the Applicant in this regard cannot be countenanced. Exhibit-10 cannot be relied upon by the Applicant to prove the distinctiveness between Opponent's variety BANGABANDHU-1 and Applicant's variety PAN-804. This issue is answered in favour of the Opponent.

**ISSUE NO. 5:-** The next important issue that has to be decided is whether DNA test conducted by third party can be relied upon to decide the identicalness or distinctiveness between Applicant's Variety (BANGABANDHU-1) and Opponent's variety (PAN-804)?

The Opponent is relying on the DNA test conducted by a third party. As a matter of fact, a revocation application has been filed by the Seed Association of Bengal against Opponent Company for revoking Opponent's registered variety PAN-804. In the said proceeding the Revocation Applicant had submitted a DNA test report of nine rice varieties from Gubba Biotech Lab. In the said report after analysing nine rice varieties namely



Jamun, BB-11, Duronto, BB-11-2, Chamak SS-403, MEGHNA, GK-DAYA, BANGABANDHU-1 (Applicant's variety) and PAN-804 (Opponent's variety) it was concluded that the said nine rice varieties were showing similarity among all 9 varieties of rice for 20 SSR markers. The bone of contention of the Opponent is that since a third party has conducted DNA Fingerprinting test which has concluded that two varieties namely BANGABANDHU-1 and PAN-804 are identical and hence registration certificate cannot be issued to BANGABANDHU-1.

Similarly the Applicant is relying on the Exhibit No.11 namely the report issued by Centre for DNA fingerprinting and Diagnostics to show that the whole genome sequencing report, phylogenetic tree showed the lineage that is common ancestry of three genomes BANGABANDHU-1 (Applicant's Variety) and LCM 101 and LCN 11 (both parents of BANGABANDHU-1). The report concludes that BANGABANDHU-1 is closely associated with LCN 11 and LCM 101 sharing same branch and all the three genomes show common ancestry. PAN-804 (Opponent's variety) was also the subject matter of study. The Applicant relies on this report to discredit the Opponent's claim that BANGABANDHU-1 and PAN-804 are identical.



At the outset I cannot accept the contention of both the counsels in this regard. As reiterated earlier, the Authority has neither notified guidelines nor empanelled centres for conducting DNA fingerprinting tests. Further distinctiveness of a variety is based on DUS criteria under Section 15 of the Act which is determined through DUS tests as per DUS test guidelines under Rule 29 of the PPVFR Rules, 2003 which do not provide for DNA fingerprinting tests.

Accordingly, I hold that based on DNA fingerprinting tests conducted by a third party laboratory, the identicalness or distinctiveness between the Applicant's variety (BANGABANDHU-1) and Opponent's Variety (PAN-804) cannot be decided. Accordingly, the said DNA test reports can neither be used by Applicant nor Opponent to corroborate or contradict the identicalness or distinctiveness between BANGABANDHU-1 and PAN-804. This issue is decided against both the parties.

**ISSUE NO.6:-** The other issue that has to be considered is whether the Opponent is to be estopped from approbating and reprobating on the report of Gubba Biotech Lab?

The Opponent in the PV-16 filed in the Revocation Application filed by the Seed Association of Bengal for revoking the



Opponent's registered variety PAN-804 has negated the DNA test Report of Gubba Biotech Lab and in the instant proceeding the Opponent is relying on the same report to discredit the registration of Opponent's variety BANGABANDHU-1. In page No.34 (lines 17-18) of the said PV-16 (marked as Exhibit-5 by the Applicant) the Opponent disputed the preparation of the DNA test report. The relevant portion is extracted hereunder: -

*“That the contents of the corresponding is denied on the ground that alleged DNA test report does not show that it was prepared by the alleged Dr. N. Saha. The said report is undated.”*

Again in page 35 (lines 14-21) of the said PV-16 the Opponent stated that DNA testing is neither notified nor the basis on which registration is granted and that there are several markers and each marker will give different result. The relevant portion is extracted hereunder: -

*“...Though the alleged DNA test of the Revocation Applicant confirms the position of Registered Breeder that BB-11 is an infringing variety, however, it may also be added here for the sake of legal argument that DNA testing is neither notified nor the basis on which registration is granted. There are several markers and each marker will give different result.”*

Having taken a stand against the DNA test report of Gubba Biotech Lab in the said Revocation proceedings the Opponent in the instant Opposition proceedings relies on the same report to substantiate his contention that



Applicant's variety BANGABANDHU-1 cannot be registered. The contention of the Opponent in Page 10 of PV-3 para D is extracted hereunder:-

*“D. The two varieties are identical is also to be seen from the DNA testing that was conducted by the Gubba Biotech Lab. The said test was conducted at the behest of certain infringers of PAN-804 through an association namely Seed Association of Bengal, Kolkata. The same was filed by the said Seed Association of Bengal in the revocation proceedings before this Authority against the variety PAN-804. Nonetheless, what is important is that a third party has conducted the DNA Fingerprinting Test, which has concluded that the two varieties are identical i.e., BANGABANDHU-1 and PAN-804. Thus, it is humbly submitted that registration cannot be granted to BANGABANDHU-1.”*

Again in paragraph no. 22 on page 10 the Final Opposition, the Opponent has submitted that BANGABANDHU-1 and PAN-804 are identical based on DNA test report filed in the Revocation Proceedings. The relevant portion is extracted hereunder: -

“ ..... However, it is to be added here that in the said revocation proceedings the same DNA test has been filed by the Revocation Applicant's which suggests that BANGBANDHU-1 is identical to PAN-804”.

The Opponent is relying on the DNA test report from another proceeding to which the Applicant is not a party and the Applicant has no privity to the report. The said report filed in another proceeding of which the Applicant has no knowledge cannot be relied against the



Applicant in the instant matter. I agree with the Applicant that the Opponent has to be estopped from relying on the report of Gubba Biotech Lab in the instant case to discredit the registration of Applicant's variety BANGABANDHU-1. The Hon'ble Supreme Court of India in Rajasthan State Industrial Development & Investment Corporation –Vs- Diamond & Gem Development Corporation Ltd., [2013 (5) SCC 470] made an observation that a party cannot be permitted to “blow hot & cold”, “fast and loose”, or “approbate and reprobate”. Again their Lordships of Hon'ble Supreme Court in Union of India and Others – Vs- N. Murugesan and Others, (2022) 2 SCC 25 held as follows: -

*“Approbate and reprobate*

*26. These phrases are borrowed from the Scots law. This would only mean that no party can be allowed to accept and reject the same thing and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again it is a principle of equity coming under the contours of common law.”*

Section 121 of the Bharatiya Sakshya Adhinyam, 2023 defines estoppel as follows: -

*“When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself*



*and such person or his representative, to deny the truth of that thing.”*

The principle of approbate and reprobate is based on the maxim “*allegans contraria non est audiendus*” which simply means that “a person alleging contradictory things is not to be heard”.

The Opponent is blowing hot and cold in the same breath. On the one hand he is disputing the report of Gubba Biotech Lab in the Revocation Proceedings and he relies on the same in the instant proceedings to reject the registration of Applicant’s variety BANGABANDHU-1. Hence, the Opponent cannot be allowed to rely on the report of Gubba Biotech Lab in the instant proceedings. This issue is answered in favour of the Applicant.

**ISSUE NO. 7: -** The last important issue for analysis is whether DUS test conducted by the PPVFR Authority can be used to determine the identicalness or distinctiveness between Applicant’s Variety (BANGABANDHU-1) and Opponent’s variety (PAN-804) can be decided?

Both the Applicant’s variety (BANGABANDHU-1) and the Opponent’s variety (PAN-804) have already been tested following DUS test guideline at the notified centres of the PPVFR Authority. The



distinctive characters of these two varieties are compared to their respective reference varieties and are tabulated hereunder -

Candidate Variety	Distinct Character of candidate variety	Reference Variety	Distinct character of reference variety	PVJ Publication
PAN 804	spikelet: colour of stigma: White	Rasi	spikelet: colour of stigma: purple	Plant Variety Journal Vol.11 No.12, dated December 19, 2017
BANGABAN DHU-1	short bold decorticated grain shape	Karjat 4	medium slender decorticated grain shape	Plant Variety Journal Vol.15 No.12, 1st December, 2021 uploaded on the website with digital signature of Registrar on 6th January, 2022

Based on the above PAN-804 was registered on 28.03.2018 vide registration number 51 of 2018. The Applicant's variety BANGABANDU-1 has now independently qualified DUS testing and is the subject matter of instant Opposition. The *inter se* DUS



comparison of Applicant's Variety BANGABANDHU-1 and Opponent's Variety PAN-804 was also carried out. These two varieties in fact were tested and DUS characters were recorded during 2014 at the same location that is IIRR (Indian Institute of Rice Research, Hyderabad). The distinctive features are given in the table hereunder: -

DUS. No	DUS Characters	IIRR Hyderabad	
		PAN 804 (REG/2010/252)	Bangabandu-1 (REG/2013/293)
8 (*)	Leaf pubescence of blade surface	Medium (5)	Strong (7)
38 (+)	Lemma and palea colour	Gold and gold furrows on straw background (2)	Brown furrows on straw (4)

As evident, the DUS characters recorded for both shows distinctiveness on *inter se* comparison. Section 15(3)(b) of the Act provides that a variety is distinct if it is clearly distinguishable by at least one essential characteristic from any other variety whose existence is a matter of common knowledge. Hence, the Applicant's variety can proceed for registration, as there is no legal and technical bar to stop the registration of the same.

#### ISSUE NO. 8: - OTHER MISCELLANEOUS ISSUES

The other miscellaneous issues raised related to the one raised by the Opponent stating that the advertisement published in Plant Variety Journal for inviting Opposition in respect of Applicant's



variety BANGABANDHU-1 was not published as per the law as passport data of parents was not published. It is very clear that under Rule 30(3)(a) of PPVFR Rules, 2003 only the passport data of the candidate variety (the variety which is the subject matter of registration) is published and not of its parents.

The next issue raised by the Applicant is that the Opponent cannot cite the judgement dated 01.07.2019 of Hon'ble Delhi High Court in Pioneer Overseas Corporation –Vs- Chairperson, PPVFRA and Others [W.P. (C) No.6470/2013 & 6208/2014] as they have not cited the same in their pleadings. The citation of judgement is not dependent upon mentioning of the same in pleadings or evidence.

The next issue raised by the Opponent is that in accordance with the said judgement of Pioneer Overseas Corporation –Vs- Chairperson, PPVFRA and Others, DUS testing and DNA testing should have been conducted by the Authority in respect of Applicant's variety BANGABANDHU-1 and Opponent's variety PAN-804. As a matter of fact is that the Opponent filed a separate application in this regard to conduct DUS test and DNA test of Applicant's and Opponent's variety and the same was rejected by the order dated 3<sup>rd</sup> June, 2024 of this Registry in the instant matter for want of special order under Rule 32 and



subsequently an application under Rule 32 was rejected for not showing sufficient cause. Accordingly, Opponent cannot re-agitate the same issue in the final hearing.

Another issue raised by the Applicant is that Annual Fee has not been paid in respect of Opponent's registered variety PAN-804 has no relevance in the instant proceeding which is mainly concerned with the registration of Applicant's variety BANGABANDHU-1. The judgement cited by Counsel for Applicant in **Rangammal Vs Kuppuswami & Anr** relating to burden of proof has no relevance to the instant case.

Having held in the instant Opposition that:

- Opposition has been duly signed by the authorised signatory,
- identicalness or distinctiveness between BANGABANDHU-1 and PAN-804 cannot be decided based on the grouping characters alone,
- agronomic and commercial attributes, quality analysis report of ICAR-NRRI, Cuttack and DNA test reports cannot be relied upon.
- DNA test report of third party laboratories cannot be relied upon to determine the identicalness or distinctiveness of Applicant's Variety and Opponent's Variety



- based on DUS test report of BANGABANDHU-1 and PAN-804 both are distinct and
- Opponent is estopped from relying on the DNA test report of Gubba Biotech Lab.

Based on the above findings, now the only conclusion that could be arrived, is to allow the registration of the Applicant's variety BANGABANDHU-1.

**V. ORDER: -**

Accordingly, I hereby reject the instant Opposition under Section 22 of the Act. There shall be no order as to costs.

Given under my hand and seal on this the 18<sup>th</sup> day of September, 2025.



  
**(D K AGARWAL)**  
**REGISTRAR GENERAL**