

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

Oppn. No.1 of 2022

IN THE MATTER OF: PV-5 in Application for DUS and Special Test and cross examination of witnesses filed by Opponent in Opposition filed by PAN Seeds against registration of 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.

**ORDER**

(Matter heard through hybrid mode)

By this Order I shall dispose of the Form PV-5 (Request for Extension of Time) dated 2<sup>nd</sup> July, 2024 requesting for extension of time or such period as may be deemed fit and the Opponent be allowed to cross examine the witness of the Applicant.

For the sake of convenience parties are referred to in the nomenclature as in the opposition proceedings.



## FACTS OF THE CASE: -

On May 01, 2013 the Applicant has filed an application for registration of new rice variety for the registration having denomination BANGABANDHU-1 of Crop- RICE (Oryza Sativa L.). The application was advertised in Plant Variety Journal of India, Vol.15, No.12, December 01, 2021, published on January 06, 2022. The Opponent filed the instant opposition on 26<sup>th</sup> May, 2022.

While the opposition was proceeding, both the parties filed their pleadings and evidence and the matter was posted for final hearing on 21<sup>st</sup> February, 2023. During the final hearing the applicant filed the 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.*

*There shall be no order as to costs.*

*Post this matter for final hearing on 15th July, 2024 at 03:00 PM."*

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 the instant 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. In response to the PV-5 application filed by the Opponent, the Applicant had filed the counter to PV-5 application and the Opponent had filed Rejoinder and both the parties have filed their written arguments. The parties were heard on 15<sup>th</sup> July, 2024.

**CASE OF THE OPPONENT: -**

The Opponent states that the application for cross examination of witness was filed to bring out the truth of witness as he has made several statements which are false and incorrect. The application for cross examination of witness of applicant was not entertained merely that it was not filed with PV-5. Opponent is seeking time examination under Rule 32 for extension of time for allowing to cross examine the witness of applicant. The Opponent had earlier filed application for allowing it to cross examine the witness of applicant however, the same was not accepted on the ground that no special order has been passed under Rule 32 due to non-filing of an application under Rule 32.

The Opponent by leave is seeking to cross examine the witness of applicant who has falsely deposed on behalf of the applicant. It is necessary to cross examine the witness of the applicant. The witness of the applicant has made several statements in his affidavit that both varieties have been tested together and the Authority has found them to be distinct and however there is no such record. Similarly, several other statements have been made unsubstantiated by any document or evidence and in this respect the opponent has taken specific plea in its response.





The application for cross-examination and special test was filed to verify the authenticity of the witness statement and the said application was not accepted merely on technical ground.

Opponent has filed the instant application for condonation of delay and for special order for cross-examination of witness. Opponent has filed application for cross examination on 21<sup>st</sup> February, 2023 and therefore the Opponent is seeking a condonation of delay of 5 months from 13 September 2022 to 21<sup>st</sup> February, 2023 and fees have been paid in this regard. The Opponent further undertakes to deposit additional fee in case the delay is held to be of more than 5 months. The Opponent has been vigilant enough to file opposition well within time. Cross-examination of witness is an essential aspect and it is a well settled law that statement of witness cannot be a gospel truth and must be cross examined. It is a well settled law that a witness presented by the Opposite party must be examined to verify the correctness of the statement. Section 138 of Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by opposite party. The scope of the provision is enlarged by Section 146 of the Evidence Act by allowing a witness to be questioned to test his veracity, to discover who he is and to shake his credit by injuring his character. The Opponent shall suffer irreparable harm if the delay is not condoned and witness of the applicant is not examined in cross examination. Opponent is opposing the application which is actually the variety of the Opponent and the applicant has filed the application with a different denomination. If delay is not condoned the Opponent would be put to serious prejudice. The Applicant shall not suffer any harm nor there is any statutory right created in its favour. The balance of convenience lies in favour of the Opponent. Requisite fee is paid along with the application and Opponent undertakes to pay deficit amount if any held by this registry for extension of time under Rule 32.



The Registrar has the authority to grant extension of time under Rule 32. The present extension is sought in the interest of justice for 5 months to cross examine the witness of the applicant. If no opportunity is given to cross-examine a witness his evidence must not be considered. It was also submitted that under Section 11 of the PPV&FR if no opportunity is given to cross-examine a witness his evidence must not be considered. In the case of Gopal Sarvan v. Satya Narayan (1988), 1989 SCC (3) 56 the Supreme Court observed that if a witness, after being examined in chief does not appear for Cross Examination, no value can be attached to his testimony. It is also submitted that under Section 11 of the PPV&FR Act, the Learned Registrar has the powers as that of civil court for the purpose of receiving evidence, administering oaths etc. Further, under the Evidence Act, which is applicable on all civil courts for the purpose of evidence, it is submitted that Section 137 of the Indian Evidence Act, 1872 also provides for Witness' evidence which includes Examination in Chief, Cross Examination as well as Re-Examination. All the three aspects are intertwined to one another and unless the witness has been cross examined, the statement given on oath cannot be relied upon. Section 138 of the Evidence Act also lays down the manner in which the testimony of the witness is to be recorded i.e. First Examination in Chief, (ii) then Cross examination. At para No.2 in his written submission the Opponent states that after evidence of the parties the Registrar should have placed the matter for further direction asking the parties whether they wanted to cross-examine the witness or not. The matter was fixed for final argument without even the Opponent being given an opportunity to being heard or even his closing the opportunity to cross examine. Accordingly the PV-5 application must be allowed.

**CASE OF THE APPLICANT: -**

Opponent did not seek leave or direction of the Registrar-General to file any application to file further evidence under Rule 33(3)





by on or before 13.09.2022. As matter of fact no application for filing further evidence is ever filed by the Opponent in compliance of Rule 33 (3).

The pleadings by the both the parties (Opponent and Applicant) were completed, Opponent never provided the list of witness before the expiry of time to file evidence itself (13.09.2022) and even in evidence nothing regarding DUS test and special test between Applicant's Variety and Opponent's Variety and cross examination of witness was mentioned, and evidence of the both parties were closed and matter was posted for final hearing on 21.02.2023.

On final hearing date 21.02.2023, the Opponent filed application for special test and for cross examination of the witness, wherein, the Opponent has fraudulently alleged in the application date 21.02.2023 that " that the Learned Registrar has fixed present matter for final hearing, without allowing the Opponent to either cross examine the witness or conducting the Test in an opposition proceedings and it amount to denial of natural justice", which is absolutely false and is blatant misuse of due process of law.

The Opponent filed form PV-5 dated 02.07.2024 under Rule 32 for cross examination of witness of the Applicant and extension of time/condonation of delay.

It is submitted that the instant Application filed by the Opponent is belated and afterthought and wholly untenable in law under the provisions of the Act, 2001 and the Rules, 2003. The instant Application by the Opponent was filed despite having no legal basis under well thought design to harass the Applicant and to delaying the Registration process of the Applicant's Variety.

It is submitted that by plain reading of Rule 32, the Rule is mandatory in nature to adhere to time schedule prescribed under Rules and extension of time limit is exception. Under Rule 32 powers given to



Authority/ Registrar shall be used judiciously for extension of time limit and Authority / Registrar shall not ordinarily extend time limit except by special order. The Hon'ble Supreme Court of India has held that even though limitation harshly affect rights of a party, but it has to be applied with all its rigor when prescribed by a statute.

It is further submitted that Form PV-5 is to request extension of time under Rule 32, However the Opponent has filed instant Form PV-5 dated 02.07.2024 without having legal right to request extension of time, and for cross examination of Applicant that to Opponent never provided the list of witness before the expiry of time to file evidence itself (13.09.2022) and even in evidence nothing regarding cross examination of witness was mentioned.

It is further submitted that Form PV-5 has limited purpose to request extension of time wherein the opponent is required to state cogent reason/ sufficient cause making application under Rule 32, implying that the Opponent is required to state cogent reason/sufficient cause for not able to comply the time schedule for notice of opposition, final opposition, evidence, intervention, written statement and reply as the case may be.

Any request for extension of time prescribed by these Rules for doing any act or taking of any proceedings thereunder shall be made before the expiry of such time prescribed in these Rules. Any other interpretation of condonation of delay as extension of time is not legal and any such interpretation shall mean giving extrajudicial meaning to mandate under Rule 32, this is not permitted in law.

It is submitted that under the Act, 2001 and the Rules, 2003, there is no provision conferring power to Authority or Registrar to grant condonation of delay. The power to extend prescribed time schedule with Authority or Registrar under Rule 32 is restricted.





It is submitted that the Instant application filed by the Opponent is frivolous and filed with malafide intention and with an ulterior motive and is adopting tactics to delaying the process of registration of the Applicant's Variety and causing harassment to the Applicant.

The Hon'ble Supreme Court has gone to state that equity is not ground to extend the limitation period by condoning the delay if there is no "sufficient cause". The reason assigned by the Supreme Court is that and unlimited period of litigation would have an impact of rendering a sense of insecurity and uncertainty, depriving a successful party of enjoying the fruits of litigation as a finality to a judgment postponed.

It is submitted that the prescribed time limit to file evidence by the Opponent was on or before 13.09.2022 and therefore, the time limit of filing evidence by the Opponent was closed on 13.09.2022. In the facts and circumstance of the case the Opponent has filed instant Application after 659 days of the prescribed time schedule, therefore the instant Application is neither admissible nor maintainable and Hon'ble Registrar-General is requested to dismiss the instant Application in the interest of justice.

A plain reading of Section 21(6) of the Act, 2001 read with Rule 33(2) of the Rules, 2003 establishes that there is no provision for cross examination and even no provision to take oral evidence in lieu of, or in addition to any evidence.

For this reason the Legislature has taken away right of cross examination and provided for evidence to be submitted for a limited nature of enquiry which Hon'ble Registrar is required to conduct.

It is evident that in the instant Application the ground of request of the Opponent is bald in itself and is devoid of cogent, *bona fide* and strong reasons to invoke inherent power of the Hon'ble Registrar.





The adjudication by Hon'ble Registrar-General depends whether the conditions of registration of a variety are satisfied or not, based on the documents submitted, other documentary material on records and appreciation thereof by the Hon'ble Registrar-General and not to the opinions submitted by the parties.

The opponent's request cannot be allowed as there is no legal provision in the Act and by no rate occasion to invoke inherent power of the Hon'ble Registrar.

Without to prejudice aforesaid, the Applicant wishes to bring to kind notice of the Hon'ble Registrar-General that it is settled law that if a party felt that cross-examination of any person was necessary for establishing its case it was incumbent upon such party to make such prayer before adjudicating authority during the pleading. If a party fails to avail of the opportunity to cross-examine a person at appropriate stage in the proceeding, the said party would be precluded from raising such issue at later stage of proceeding.

Applicant vehemently opposes to take the instant Application on case file as the Opponent was required to file the evidence by on or before 13.09.2022, therefore the Opponent has exhausted his right to file any application after 13.09.2022 under Rule 32 and any application filed under Rule 32 after 13.09.2022 is barred under the scheme of the Act, 2001 and the Rules, 2003, and it cannot be taken on case file.

Accordingly, the instant PV 5 applicant filed by Opponent must be dismissed.

**ANALYSIS: -**

Upon meticulously considering the pleadings and arguments of the parties, I hereby pass the following order: -

The PV-5 dated 2<sup>nd</sup> July, 2024 has been filed by the Opponent to extend the time by five months from September, 2022 to February, 2023



to cross examine the witness of the Applicant namely Sh. Rajarshi Kundu.

The following tabular chart shows the dates and provisions under which the pleadings and evidences were filed: -

S. No	Pleadings/ Evidence	Filed by	Date of filing	Last date for filing as per law	Under Section/Rule
1.	Opposition	Opponent	26.05.2022	30.05.2022	Section 21 (2)
2.	Counter Statement	Applicant	29.07.2022	04.08.2022	Section 21(4)
3.	Final Opposition	Opponent	13.09.2022 One day delay condoned under Rule 32 by order dated 7 <sup>th</sup> December, 2022	12.09.2022	Rule 31(6)
4.	Evidence	Opponent	13.09.2022	13.09.2022	Section 21(6) read with Rule 33(1)
5.	Evidence	Applicant	27.01.2023	27.01.2023	Section 21(6) read with Rule 33(2)
6.	Fresh application seeking DUS and DNA test between Opponent/ Applicant's varieties and to cross-examine applicant's witness.	Opponent	21.02.2023	-	Treated as application under Rule 33(2) by order dated 3 <sup>rd</sup> June, 2024.
7.	Form PV-5 - seeking five months extension for cross-examining applicant's witness	Opponent	02.07.2024	-	Rule 32





The above table clearly shows that under Rule 33(1) the time limit for filing evidence by the Opponent ended on 13.09.2022 itself. Thereafter, the Applicant also filed the evidence on 27.01.2023 under Rule 33(2). Accordingly, under Section 21(6) and (7) 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 seeking DUS and DNA test between Applicant's variety and Opponent's variety and to cross-examine Applicant's witness.

The Opponent, both in their evidence and in the said application filed during final hearing (seeking DUS and DNA test between Applicant's and Opponent's Variety and to cross-examine the Applicant's witness) has not mentioned the name of the witness to be cross-examined. It is only in the instant PV-5 filed by Opponent and which is the subject matter of adjudication the name of the applicant's witness has been mentioned.

By order dated 3<sup>rd</sup> June, 2024, the said application (DUS and DNA test between Applicant and Opponent's Variety and to cross-examine the Applicant's witness) was dismissed. In the said order it was held that as already the Opponent has exhausted his right to file evidence, Opponent's application seeking DUS and DNA test between Applicant's variety and Opponent's variety and to cross-examine Applicant's witness is to be treated in substance as an application for filing further evidence, as subsequently, Applicant have also filed their evidence. The said application was dismissed for the following reasons:

- (1) PV-5, the application seeking time extension for filing further evidence in respect of DUS and DNA test between Applicant's and Opponent's variety and to cross-examine the Applicant's witness was not filed



- (2) No order on the said PV-5 under Rule 32 has been passed extending the time for conducting DUS and DNA test between Applicant and Opponent's variety and for cross-examining the Applicant's witness.

The instant PV-5 filed in consequence of the said order is not *in toto* for the entire further evidence sought to be filed by the Opponent namely, DUS and DNA test between Applicant's and Opponent's variety and to cross-examine the witness of applicant. It is only partially limited to seeking time extension for cross-examination of witness and not for seeking time extension for DUS and DNA test.

The only issue that survives for consideration in the instant matter is whether the PV-5 application filed by the Opponent has to be allowed. The provision relating to allowing/rejecting of PV-5 is contained in Rule 32 which is extracted hereunder: -

*"32. Compliance with time schedule- The time schedule provided under these rules for notice of opposition, final opposition, evidence, intervention, written statement and reply shall not ordinarily be extended except by special order of the Authority or Registrar given on an application filed by the person seeking extension of time and on payment of the fee specified in the Second Schedule and such an application for extension shall be in Form PV-5 of the First Schedule"*

Thus a perusal of Rule 32 clearly shows that PV-5 has to be allowed by the special order. Though it is not expressly mentioned in Rule 32, it is well settled that special order extending the time limit can be passed only when sufficient cause is shown by the person seeking extension of time. This has been reiterated by this Registry in orders passed in several matters. Even in the instant case by order dated 7<sup>th</sup> December, 2022, the one day delay in filing final opposition was condoned under Rule 32.

The relevant portion of the order is extracted hereunder: -





*"The next important issue I have to consider is whether the Opponent has shown sufficient cause in extending time for filing final opposition by one day. It is also well settled that sufficient cause has to be construed liberally and no technical approach could be adopted and delay could be condoned by costs."*

Now it has to be examined whether the Opponent has shown sufficient cause to extend the time to cross-examine the witness of the Applicant.

A perusal of PV-5 clearly shows that the Opponent in the entire PV-5 has dealt only with the mere merits of cross-examining the Applicant's witness and nowhere it has been stated why the list of witness to be cross-examined has not been filed on or before 13<sup>th</sup> September, 2022 the day on which the time-limit for filing Opponent's evidence ended or subsequently 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. Sufficient Cause is not related to the merits of the matter but the *bona fide* cause which prevented the Opponent from submitting the list of witness to be cross-examined till the termination of time limit for filing the Opponent's evidence and also subsequently till the period covered under PV-5 in respect of which time extension is sought.

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.



The contention of the Opponent in the written statement at para No.2 is that after evidence of the parties the Registrar should have placed the matter for further direction asking the parties whether they wanted to cross-examine the witness or not is totally untenable. This contention of the Opponent has not been raised in PV-5 but only in the written statement. Rule 33 which provides for filing of evidence by Applicant and Opponent, contains only the word "evidence" and it is well settled that word "evidence" includes chief examination, cross-examination and re-examination. Further Rule 33(3) specifically provides that no further evidence shall be submitted by either party except by leave or directions of the Registrar. The contention of the Opponent in this regard is also negated by Section 21(6) and 21(7) of PPVFR Act, 2001 which is extracted hereunder: -

*"Section 21(6) - Any evidence upon which the opponent and the applicant may rely shall be submitted, in the manner prescribed and within the time prescribed, to the Registrar and the Registrar shall give an opportunity to them to be heard, if so desired.*

*Section 21(7) - The Registrar shall, after hearing the parties, if so required, and considering the evidence, decide whether and subject to what conditions or limitations, if any, the registration is to be permitted and may take into account a ground of objection whether relied upon by the opponent or not."*

Section 21(6) provides that any evidence upon which the opponent and applicant may rely shall be submitted as prescribed in Rule 33 and the Registrar shall give an opportunity to them to be heard and Section 21(7) provides that the Registrar shall after hearing the parties, if so required and considering the evidence decide whether and subject to what conditions or limitations, if any the registration is to be permitted and may take into account a ground of objection whether relied upon by opponent or not. The hearing mentioned in Section 21(6) can only refer to final hearing and not as argued by the Opponent that





of seeking the parties whether they have to cross-examine the witness. This legal position is clear by Rule 33(3) framed under Section 21 which provides that after filing of evidence by the parties under Rule 33(1) and (2), no further evidence shall be filed by either parties except by leave or direction of the Registrar and such leave or direction can be obtained only under Rule 32 by filing PV-5 [seeking extension of time] with sufficient cause. In the instant cause no sufficient cause has been shown by the Opponent for extending the time to cross-examine the witness.

The other contention of the Opponent in his written submission that the matter was fixed for final argument without even the Opponent being given an opportunity to being heard or even his closing the opportunity to cross examine is also not tenable as the Opponent has for the first time raised this plea in his written submission it was neither raised in the PV-5 nor in the application dated 21<sup>st</sup> February, 2023 filed by the Opponent during the final hearing. This proves itself that it is an afterthought. In fact the time for filing of evidence by Opponent under Rule 33(1) has well ended on 13<sup>th</sup> September, 2022 and the Opponent after the closure of their evidence, can subsequently cross-examine only with the leave of the Registrar under Rule 33. Without obtaining the leave at that point of time and alleging that the opportunity was closed is not legally in order.

Based on the aforesaid reasoning, I find no merit in the instant PV-5 filed by the Opponent and hence the same is dismissed. However, there shall be no order as to costs.

Post this matter for final hearing on 4<sup>th</sup> March, 2025 at 15:00 Hrs.

Given under my hand and seal on this 6<sup>th</sup> day of January, 2025.



(D.K. AGARWAL)  
REGISTRAR GENERAL