

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

A No.1 of 2021

IN THE MATTER OF: - Petition against Nuziveedu Seeds Ltd., under Section 24(5) of PPV&FR Act, 2001 filed by Advanta Enterprises Limited (Successor/Assignee of UPL) Ltd., in respect of application filed by them for registration of Okra Variety V130014(RAADHIKA) (REG/2018/164).

IN THE MATTER OF: -

**Advanta Enterprises Limited.,
(Successor/Assignee of UPL Ltd.)**

.... APPLICANT

-Versus-

Nuziveedu Seeds Ltd.

..... RESPONDENT

For the Applicant: - Sh. Adarsh Ramanujan, Advocate.

For the Respondent: - Sh. K.V. Girish Chowdhary, Advocate.

ORDER

By this order I shall dispose of the Application filed by Applicant against Respondent under Section 24(5) of the PPVFR Act, 2001 claiming damages and for directing the Respondent to render accounts on affidavit of the units sold, sale revenues accrued and profits made from the production, sale, offer for sale, export, import etc., of the Respondent's Okra varieties denominated as 'Bindu'/'NBH-45' and/ or under any other denomination.



FACTS OF THE CASE: -

On 5th April, 2018, the Applicant filed Application No. N2-AE2-18-164 seeking registration of their Okra variety denominated as V130014(Raadhika). While the application was under consideration for registration, on 14th June, 2024 the Applicant filed the instant Section 24(5) application against the Respondent alleging that Respondent is abusing Applicant's variety V130014(Raadhika) by commercially dealing with 'Bindu'/'NBH-45'. The said application was dismissed as not-maintainable by this Registry by order dated 25th July, 2022 on the ground that a petition under Section 24(5) of the Application can be filed only after registration. The Applicant aggrieved by the said order dated 25th July, 2022 of this Registry challenged the same before the Hon'ble Delhi High Court. The Applicant's variety V130014(Raadhika) was advertised in PVJ Vol-17 No.12 published on 1st January, 2024 inviting oppositions. On 22nd February, 2024, the Learned Single Judge of the Delhi High Court set aside the order dated 25th July, 2022 of this Registry and restored the instant application for *de novo* adjudication. Aggrieved by this order, the Respondent filed a Letters Patent Appeal before the Hon'ble August Bench of Delhi High Court being LPA 348/2024. By an order dated 8th May, 2024 the Hon'ble August Bench of Delhi High Court directed that though the Registrar may pronounce the judgement in the instant matter, yet the parties were directed not to implement the same till further orders from the Hon'ble August Bench of Delhi High Court. The relevant portion of the said order is extracted hereunder:



“Though the Registrar may pronounce the judgement, yet the parties are directed not to enforce/ implement the same till further orders.”

The Respondent filed the Opposition on 28th March, 2024 against the registration of Applicant's variety V130014(Raadhika) under Section 21 of the Act.

This Registry by order dated 17th June, 2025 rejected the Opposition filed by the Respondent and the Applicant's variety was registered on 30th June, 2025. The Respondent challenged the said order before Hon'ble Delhi High Court by filing C.A. (COMM.IPD-PV) No.1 of 2025.

The parties have filed their pleadings, evidences and written submissions in this matter. All are taken on record. The parties were finally heard and the matter was reserved for judgement on 12th March, 2026.

CASE OF APPLICANT:

Immediately after the commercial success of Applicant's variety V130014(Raadhika), the Applicant in February, 2020 in the ordinary course of business learnt that the Respondent's variety Bindu had the same characteristics as that of Applicant's variety V130014(Raadhika). Accordingly, the Applicant undertook a comprehensive comparative DUS testing of its Okra hybrid alongside the infringing hybrid of Respondent's "Bindu" between July, 2020 and November, 2020. The said DUS testing confirmed that all 31 morphological characteristics of Respondent's variety 'Bindu' is identical to that of Applicant's variety V130014(Raadhika). It further came to the Applicant's attention in August 2020 that Nuziveedu had released yet another Okra hybrid under the denomination "NBH-45" and it was



apparent that this was the same as their other hybrid 'Bindu' but just under a different denomination. Further a DNA fingerprinting analysis of both Applicant's hybrid V130014(Raadhika) and Respondent's hybrids 'Bindu and NBH-45' confirms that they are identical hybrids. The DNA fingerprinting analysis was conducted at the "Centre for DNA fingerprinting and Diagnosis" which is an accredited institute/lab of the Department of Biotechnology, Ministry of Science and Technology, Government of India also known as CDFD. CDFD was provided inter alia with various DNA samples of Applicant's hybrid V130014(Raadhika) and the infringing hybrids of Respondent "Bindu and NBH-45" as well as several other commercially sold okra hybrids. The Applicant out of abundant caution sourced and obtained various samples of Respondent's infringing hybrid "Bindu" and "NBH-45" from various locations across India. CDFD which is an accredited Institute has confirmed that Respondent's hybrids "Bindu and NBH-45" are genetically identical to Applicant's hybrid V130014(Raadhika). The Applicant also obtained the opinion of an independent expert Dr. H.E. Shashidhar, who further studied the aforesaid reports and concluded that in his expert opinion the Respondent's hybrid 'Bindu and NBH-45' are identical with Applicant's hybrid V130014(Raadhika). The Applicant has also submitted the true copies of invoice, photographs and seed packets. The Applicant's case is further that the Respondent has not denied that the varieties commercialised by them currently under the names 'Bindu' and 'NBH-45' are identical to 'V130014(Raadhika)'. Consequently, there is also no denial that the parental lines are also identical to that of V130014(Raadhika)'s parental lines that is AV 508 and AV 509.



Instead, the Respondent has intentionally attempted to conflate and misrepresent the prior use license to conduct research/ experimental trials accorded by Department of Agriculture under the Seeds Control Order for purported varieties under the names 'Bindu' and NBH-45 since 2004/ 2012. It is well known that the name is not relevant in determining/ identifying a variety under the PPVFR Act but rather it is the characteristics and the underlying genotype. Identity in name in no way proves identity in characteristics and genotype. The Reply filed by the Respondent provides no basis to conclude that what was purportedly labelled as 'Bindu' and 'NBH-45' in 2004/2012 is the same variety (determined by characteristics and genotype) as is sold today by the Respondent. V130014(Raadhika) and its parents are entirely new, proprietary variety and developed by the Applicant and fulfils the requirements under PPVFR Act. While Respondent claims that Bindu and NBH-45 were developed by them and even much popular before 2012 they did not even bother to seek registration of the same. The comparative DUS testing as well as the DNA fingerprinting of the Respondent's Okra hybrid as "Bindu" and "NBH-45" currently being sold are identical to that of Applicant's okra hybrid under the denomination "V130014(Raadhika)". The Applicant also submitted that the decisions cited by Respondent namely Prabhat Agri Biotech Ltd., case and Sungro Seeds case has no relevance to the instant case. As far as the decision of Hon'ble Delhi High Court in Prabhat Agri Biotech Ltd., the same has been stayed by the Hon'ble Supreme Court vide order dated 31.07.2017 and accordingly has no reliance. Similarly, the decision of the Hon'ble Delhi High Court in Sungro Seeds case is also misplaced as in the Sungro Seeds case the question before



the Hon'ble Court was whether it could entertain a commercial suit and grant injunctive relief to a party whose application for registration was pending under the Act. The Hon'ble High Court while dismissing the petition also observed that there is a statutory bar to courts entertaining such an application, as under the PPVFR Act, 2001 it is only the Registrar who could determine the rights of a breeder. The Applicant also argues that the Respondent is in fact surreptitiously trying to assert a right over the variety developed by the Applicant merely on the fact that it purportedly had an earlier license to trial/ deal with "some" variety carrying the name 'Bindu' and "NBH-45" (or their parental lines) are the same as the varieties being commercialised by them today under the same name. The Applicant's comparative DUS testing and DNA fingerprinting establish that the Respondent is indulging in abusive act and is infringing upon the rights of the Applicant. The statement of the Respondent that it has developed the variety under the names 'BINDU' and "NBH-45" along with the parental line is false and unsubstantiated and ought to be disregarded as without merit. The Respondent has not placed any material on record to establish the DUS characteristics of what was purportedly licensed to them by the Department of Agriculture under the name 'Bindu' / "NBH-45" are the same as the varieties being commercialised by them today under the same name.

The parent lines of Applicant's hybrid V130014(Raadhika) namely AV 508 (female parent) and AV 509 (male parent) developed from Applicant's predecessor in interest's in-house germplasm. The Applicant initially crossed AV 509 X AVV 509 at their Research Station in Telangana and in 2018 they commercialised its hybrid V130014(Raadhika). On 26th



February, 2018 they applied for registration and obtained certificate on 18th June, 2025. The Applicant used comparative DUS testing to be conducted between Applicant's variety V130014(Raadhika) and Respondent's variety 'Bindu' during the period between 11.07.2020 and 22.02.2021 at their R&D farm in Yellampet Village Medchal District Telangana under the supervision of Sh. Venugopal Reddy and Dr. Elangovan Mani. The DUS test report was examined for all characteristics as prescribed in DUS test guidelines for Okra dated 3rd November, 2009. The results conclusively established that the Respondent's variety "Bindu" was identical to Applicant's variety "V130014(Raadhika)" across all characteristics. In hybrid crops, genetic and phenotypic identity of the hybrid across all DUS characteristic necessarily implies the repeated use of the same or genetically identical parental lines. Such complete identity cannot arise independently or by chance and therefore establishes that the parental lines used by the Respondent are identical to the Applicant's proprietary parental lines AV-508 and AV-509. The identity across all morphological characteristics is incontrovertible evidence that the varieties are one and same.

The Applicant also undertook DNA fingerprinting conducted at the Centre for DNA fingerprinting and Diagnostics (CDFD), an accredited institute of the DBT. This DNA testing was undertaken for both the varieties namely "Bindu" and 'V130014(Raadhika)'. The molecular analysis confirmed at the genetic level that both varieties of the Respondent namely Bindu and NBH-45 share the same genotype as Applicant's variety V130014(Raadhika). The DNA fingerprinting report dated 12.02.2021 concluded that Bindu samples from multiple locations across India, NBH-45 samples and V130014(Raadhika)



are genetically identical with the SSR markers tested in the study. The expert Dr. H.E. Shasidhar an expert in Genetics and plant breeding for nearly 30 years has also concluded that Respondent's varieties 'Bindu' and "NBH-45" and 'V130014(Raadhika)' are genetically and phenotypically identical and are one and the same hybrid. The respondent has not taken license or permission from the Applicant and thus a clear case of 'abusive act' as required under Section 24(5) of the Act has been made out. The Applicant also submits that the Respondent does not dispute the evidence and in fact, admits the identity in varieties. Regarding the allegation of institutional bias by the Respondent, the Applicant argues that an institution's discharge of its statutory duty to place its interpretation of the law before the highest court of the land cannot by any stretch of reasoning constitute bias in adjudicating proceedings that arise under the very same provision.

The Applicant argues that the contention of the Respondent that the use of the word 'may' (*'the Registrar may pronounce the judgement'*) in the order dated 8th May, 2025 of Hon'ble Division Bench of Delhi High Court in LPA 348/2024 (wherein interim order to the effect that Registrar may pronounce the judgement yet the parties are directed not to enforce/ implement the same till further orders) confers discretion on Registrar to refrain from deciding the matter is untenable. The word 'may' in the context of the Division Bench order is enabling and permissive, removing the impediment to the Registrar pronouncing the judgement that might otherwise have existed on account of the appeal. The restriction imposed by Division Bench is only for implementation/ enforcement and not for adjudication. With regard to the Respondent's contention



that 'abusive act' is undefined the Applicant argues that an abusive act for the purposes of Section 24(5) of the Act is any during the pendency of registration which would amount to infringement under Section 28 read with Section 64 to Section 66, if carried out after the grant of registration. The concept is self-evident from the statutory scheme and requires no separate definition. With regard to the contention of the Respondent that DNA testing is not recognized under the Act, the Applicant states that as a matter of law, it is not necessary for the scientist who physically conducted the DNA test at CDFD to depose in these proceedings. The report from an accredited government laboratory carries its own institutional credibility. The Respondent had neither disputed the methodology of the CDFD report nor produces any counter molecular evidence, nor has it advanced any scientific argument explaining why the report is incorrect. A bare assertion that the report is not proved cannot dislodge the findings of an accredited government institution.

The Respondent had full opportunity to seek cross-examination of both witnesses who had conducted DUS and DNA test but chose not to do so. Having foregone the opportunity to cross-examine, the Respondent cannot now complain that the witness was not presented. It is settled law that evidence that is placed on record and not challenged by cross-examination is deemed to be accepted.

The Applicant also states that the Respondent has raised a cluster of interrelated arguments centered on an alleged mismatch between DUS characteristics of V130014(Raadhika) as stated in the application under Section 24(5) of the Act and as stated in the PVJ issue January, 2024. The Applicant also submits that this line of argument is not part of the Respondent's



pleaded case. The Respondent cannot raise factual arguments and construct a new defense without amending its pleadings. Of the 31 DUS characteristics of V130014(Raadhika), the Respondent's own comparison table identifies differences in only six characteristics. The Applicant has submitted arguments on each of the six characteristics which demonstrates that none of the purported discrepancies is a genuine difference in the characteristics of the variety. Three of the six alleged discrepancies are attributable solely to a change in nomenclature or measurement scales resulting from the revision of the DUS test guidelines for Okra by the Authority. The Original DUS test guidelines for Okra (Published with PVJ dated 3.11.2009) used certain terminology and scales which were replaced by the revised DUS test guidelines for Okra (effective 01.04.2022). The three characteristics falling in this category are Characteristic No.3 Stem: Diameter (at 10 cm above ground level). Under the old guidelines, a diameter of 1-1.5 cm was described as 'Medium (5)'. Under the revised guidelines, a diameter of less than 2 cm is described as 'Thin (3)' The actual physical measurement is same only the descriptive label and note have changed. There is no difference in the characteristic itself. The other characteristic No.5 Leaf Blade: Length (CM): under the old guidelines, the state was described as "Medium (5)". Under the revised guidelines, the corresponding state is described as 'Long (>15(7))'. This is purely a change in terminology with no change in the observed trait. The characteristic No.25 that is Fruit: shape of Apex: under the old guidelines the state was 'Narrow Acute (1)'. Under the revised guidelines, there is no separate 'Narrow Acute' category; the classification has been reorganized.



Thus, three of six purported discrepancies are not discrepancies at all.

The remaining three alleged discrepancies relate to characteristics that are inherently variable depending on agro-climatic conditions namely: Characteristic No.2-Stem: Node number at which first flower opens: The section 24(5) application recorded this as 'Few (<5)' based on sowing at Hyderabad during the *Kharif* / rainy season. The PVJ records 'Medium (5-8)(5)' based on sowing at IIVR Varanasi. The node number at which the first flower opens is a metric trait known to vary with sowing window, season, location, temperature, humidity and the number of rainy days. The purported difference is trivial and within expected tolerances.

The Characteristics No.22-Fruit: surface between ridges: The section 24(5) application recorded this as 'Flat (5)' based on observations at Hyderabad. The PVJ records 'Concave (3)' based on observations at IIVR, Varanasi. The fruit surface between ridges is a metric trait that varies with the sowing window, season, location and stage of observation. The V130014(Raadhika) hybrid initially displays Concave (3) but the surface becomes Flat (5) as growth progresses. This is a well-known growth pattern in Okra and within expected tolerances.

The characteristic No.29-Plant: number of productive Branches: The section 24(5) application recorded this as 'Medium (2-4)(5)' based on cultivation at Hyderabad with the package of practices described at Page 193 of the Application. The PVJ records 'Few (1-2)(3)' based on sowing at IIVR Varanasi. The number of productive branches is a metric trait that varies with soil health, packages of practices, sowing



window, season, location, temperature, humidity and number of rainy days.

Critically all three of these characteristics are marked with the (*) symbol in the Revised Indian DUS guidelines for Okra (valid from 01.04.2022) denoting characteristics whose expression is influenced by environmental conditions. These are recognized as quantitative or pseudo- qualitative characteristics under the UPOV framework. The Respondent's contention that the Act does not recognize the distinction between qualitative and pseudo-qualitative characteristics is without merit. The classification of characteristics as qualitative, quantitative, or pseudo-qualitative is not a statutory creation but a scientific methodology integral to DUS testing. The Authority's own DUS test guidelines [Pages 5-6 Section VI (3), Guidelines for the conduct of test for Distinctiveness, Uniformity and Stability dated 01.04.2022] provides as follows:

“(*) Characteristics that shall be observed during every growing season on all varieties shall always be included in the description of the variety, except when the state of expression of a preceding phenological characteristic or by environmental conditions of the testing region. Under such exceptional situations, adequate explanation shall be provided.”

The Respondent's argument that India is not a signatory to UPOV convention and that UPOV documents are not binding is wholly misconceived. The UPOV documents are cited not as a binding authority but as evidence of internationally accepted scientific principles of plant variety characterization. In any event the morphological evidence is corroborated by DNA fingerprinting from CDFD which establishes the genetic identity



at the molecular level, unaffected by environmental variation, and conclusively establishes that the Respondent's varieties are the Applicant's variety sold under a different name.

The Respondent claims that it has been selling its varieties "NBH-45" and "BINDU" since 2004 and 2012 respectively, relying on seed licenses from the States of Maharashtra and Andhra Pradesh. The Respondent further contends that its licenses were periodically renewed and that its varieties were well established in the market before V130014(Raadhika). In reply to this the Applicant contends that a seed license under the Seeds Act, 1966 merely authorizes sale of seeds of a particular variety under a particular tradename. It does not prove the varietal characteristics at all. A seed license under the Seeds Act, 1966 does not confer any rights over the variety itself, nor does it establish varietal identity, independent development, or ownership. The identity of a plant variety is determined by its morphological characteristics and genotype, not by the commercial name under which it is sold. The Respondent has not placed on record any evidence of independent breeding or development of varieties. The Respondent has never sought registration of "Bindu" or "NBH-45" under the Act, despite the Act being in force since, 2001. The failure to seek registration itself is a significant indicator of the absence of any varietal development. Crucially, the Respondent has not denied that Bindu/ NBH-45 are identical to V130014(Raadhika)/AV-508/AV-509 in morphological characteristics and genotype. The Respondent's defence is limited to claiming prior sales without establishing that such sales were of seed that had the same morphological characteristics not independent varietal development. The Applicant contends that they have discharged



their burden of proof and is shifted to the Respondent. Accordingly, the applicant submits that the burden of establishing that the characteristics of 'Bindu' and "NBH-45" as sold in 2004 and 2012 are different from the current varieties (and from V130014(Raadhika)) rests squarely and exclusively on the Respondent. The respondent has not discharged this burden and accordingly the instant application be allowed with damages and costs.

CASE OF RESPONDENT:

The case of the Respondent is that the variety 'Bindu' was developed through their own efforts and research and development. It was commercialised much prior to even the Applicant developed the alleged parental-lines AV-508 and AV-509 in *Kharif* 2012 and the hybrid in summer of 2015. It is submitted that the Respondents' hybrids 'Bindu' and 'NBH-45' are popular and commercialised much earlier. The Maharashtra Government has issued licence dated 28th May, 2024 for NBH-45. The Maharashtra Government issued the renewal license extending the license from 12th May, 2004 to 11th May, 2007 vide License dated 28th May, 2004. The said license also included the variety NBH-45. The Respondent has produced the Government issued licenses which are in public domain to support its case being earlier in the market than the admitted case of the Applicant. Applicant, admittedly, developed its parental-lines only in 2012 and only in 2018. While the Respondent developed its hybrid and commercialised much prior to 2012 for which the license was issued in 2004 itself and these facts can be adduced from the license in favour of the Respondent Company. The Andhra Pradesh Government has issued licence dated 20th April,



1998 and amended on 17th December, 2012 for Okra variety 'Bindu' for storage and sale under Seeds (Control) Order, 1983. The said permission for Bindu was for trial marketing from April, 2012. The Maharashtra Government issued the renewal license extending the license from 12th May, 2004 to 11th May, 2007 vide license dated 28th May, 2004. That basing on these facts the Respondent's contention is that their varieties were developed and commercialised much earlier than the admitted date of commercialization by the applicant. The Respondent has produced the Government issued licenses which are also in public domain to support its case of being earlier to develop the variety and being earlier in the market than the admitted case of the Applicant. The Respondent contends that the Applicant admittedly developed its parental-lines only in 2012 and in 2018. While the Respondent developed their hybrid and commercialised much prior to 2012 for which the license was issued in 2004 itself and these facts can be adduced from the license in favour of the Respondent Company. The Applications for registration of V130014(Raadhika) and its parent lines AV-508 and AV-509 are liable to be not only rejected but the Applicant is also liable for prosecution for false deposition. The Respondent also states that the Applicant has also made false submissions on oath stating that it came to know of Respondent's varieties BINDU and NBH-45 only in 2020 whereas the fact remains that the hybrid NBH-45 of the Respondent has been in the market since 2004. The Applicant has intentionally picked up a later date to show that BINDU and NBH-45 were developed later and came in the market later. This is a deliberate attempt to mislead PPVFR Authority. It is a settled law that when a person based on false submissions, false documents and plays fraud on



the Hon'ble Tribunals then in such circumstances the Courts/Tribunals must initiate appropriate perjury proceedings and also oust such person by dismissing the proceedings. The Respondent's contention is that the Applicant in its application has filed an alleged DUS test and has concluded that V130014(Raadhika) is identical to BINDU and NBH-45 and that neither BINDU nor NBH-45 could have been developed without misappropriating the proprietary lines. Accordingly, the Respondent's contention is that Applicant cannot have any claim on either V130014(Raadhika) or its parental lines. The Respondent also cites the judgement of the Division Bench of Hon'ble Delhi High Court in W.P. (C) No.250/2011 that until a right is established under the PPVFR Act, 2001 no right can be invoked under Section 24(5) of the Act. The Respondent also cited the judgement dated 15th May, 202 in CS (OS) No.1163/2013 in Sungro Seeds –Vs- S.K. Tripathi & Ors., wherein a similar right was being invoked by the Plaintiff against the Respondents including the Respondent herein. The Hon'ble High Court held that what follows is that the plaintiff prior to obtaining registration under the PPVFR Act, 2001 cannot maintain a suit to restrain the defendants from infringing the rights which are yet to be conferred on the Plaintiff on grant of registration.

The Respondent also contends that the Respondent company is a recipient of DSIR Award and on the other hand, Applicant is a new entrant in the market having negligible presence. It has been purchasing seeds from various companies in India and marketing them. The Applicant has also been purchasing Okra hybrid seeds from the Respondent. Being so, the Applicant attempts to mischievously and falsely make out a



case that it is neither aware of the Respondent's varieties nor has it ever dealt with Respondent and that only in 2020 it came to know of an alleged variety BINDU and NBH-45 from allegedly some farmers. The Applicant is fully aware of Respondent's Okra Hybrid varieties and has made bulk purchases of OKRA hybrid seeds at least since 2013. The Applicant is setting up a false case against the Respondent. The Respondent is a pioneer in Okra breeding. The Respondent further contends that the Applicant cannot claim either the hybrid V130014(Raadhika) or its parent lines AV-508 and AV-509 which are also claimed as new. It is clear case of deception. The Applicant being a later entrant into the market could only have copied Respondent's hybrid BINDU and NBH-45 with false denomination of V130014(Raadhika) and the parental-lines. It is an admitted fact by the Applicant that V130014(Raadhika) and AV-508 and AV-509 are identical to BINDU and NBH-45, hence, neither the application for registration is maintainable nor the application under section 24(5) is maintainable. If the DUS test conducted by the Applicant is assumed to be gospel truth then the variety V130014(Raadhika) or its parental-lines AV-508 and AV-509 are not entitled to be registered. If the DUS test conducted by the Applicant is faulty then the application under Section 24(5) of the PPVFR Act is not maintainable. The Respondent contends that the Applicant set up a totally different case in its rejoinder by making wild allegation that the BINDU variety and NBH-45 sold earlier were different than the one being sold now. The Applicant has failed to substantiate its case and it has not produced a single evidence to prove that the BINDU and NBH-45 varieties sold in two different time period are different. The Applicant must produce evidence to substantiate its claims and should not make



baseless statements. Another new case that has been set up by the Applicant is that if the variety “BINDU” and “NBH-45” were highly popular then why no registration under the PPVFR Act was sought. The Respondent contends that the registration under PPVFR Act is not mandatory for a variety to be sold or commercialised. Merely because they are unregistered it does not mean that the Applicant can choose to not only copy the Respondent’s hybrid but also go to the extent of filing application for registration of the said copied hybrid and also file application under Section 24(5) against the Respondent. The 24(5) application of the Respondent based on their own DUS test or DNA finger printing test cannot be granted since the evidence being manufactured by the Applicant himself without any authenticity. Any orders granted based on self-serving in-house DUS/DNA test by the Applicant who is an interested/ prejudice party can lead to a bad precedent leading to grave injustice to others. The Applicant has indulged in deceit and has also been poaching on the employees of the Respondent company. The Applicant benefitted by poaching the employees from the Respondent in 2017 as the Applicant Company curiously shows tremendous jump in the volume of Okra hybrid seeds sale which is evidence from the para 7 of the application filed under Section 24(5) in the instant matter. The Respondent sums up stating that no two varieties can be identical unless the same parental varieties/ lines are used to create the hybrid. It is also the admitted position of the Applicant that V130014(Raadhika) is identical to NSL’s BINDU and NBH-45. Thus, the Respondent states that Applicant cannot assert any claim on parental lines that is AV-508 and AV-509. The Respondent also contends that the Applicant has submitted a false declaration in support of the



application for registration of V130014(Raadhika)and its parental-lines. Accordingly, the instant application be rejected with heavy costs.

The Respondent submits that there is a reasonable apprehension of bias and prejudice that may arise in the adjudication of the present matter if the Authority is to decide the question on maintainability of the present application.

The Applicant has taken contradictory stands in the Section 24(5) Application and in the Rejoinder, thereby completely undermining the credibility of its case. In the application under Section 24(5) of the PPV&FR Act, 2001, the Applicant has categorically asserted that the Opposite Party's varieties "Bindu" and "NBH-45" are identical to the Applicant's candidate variety "V130014(Raadhika)," on the basis of alleged DUS testing and expert opinion. The Applicant has gone to the extent of alleging that such identity is only possible if the Opposite Party has illegally accessed and used the very same parental lines of "V130014(Raadhika)." The relevant portion of the said statements in Application No.1 of 2021 (Section 24(5) Proceedings is reproduced hereunder: -

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

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13. The Applicant has also obtained the opinion of an independent expert. Dr. H.E. Shashidhar, who further studies



the aforesaid reports and concluded that, in his opinion, Nuziveedu's Okra hybrid 'Bindu' and 'NBH-45' are identical to UPL's Okra hybrid pending registration.

....

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

However, in stark contrast, in the Applicant's Rejoinder, the Applicant has taken a completely inconsistent stand by asserting that identity of varieties cannot be established merely by name, and that the Opposite Party has failed to demonstrate similarity in characteristics, genotype, genealogy or parentage. The Applicant has further contended that there is no material to what was purportedly labelled as 'Bindu' and 'NBH-45' in 2004/2012 incorporated the same characteristics and genotype of "Raadhika".

Relevant portion of the said statement in Rejoinder is reproduced hereunder: -

"5. It is well known that the name is not relevant in determining/identifying a variety under the PPV& FR Act but rather it is the characteristics and the underlying genotype. Identity in name in no way proves identity in characteristics and genotype. The reply provides no basis to conclude that what was purportedly labelled as "Bindu" and "NBH-45" in 2004/2012 is the same variety (determined by characteristics and genotype) as is sold today by the Respondent.....



The Applicant has yet to provide credible evidence to support its position that the "Bindu" and "NBH-45" varieties, as

sold since 2020, are not the same as those released in 2012/2004 respectively.

Contradictions in the DUS Characteristics of 'V130014(Raadhika)' relied on in the Section 24(5) Application and DUS Results of 'V130014(Raadhika)' published by the PPV & FR Authority in the PVJ Journal.

- The reliance placed by the Applicant on its alleged internal DUS comparison dated 22.02.2021 (*@ Pg No. 180 of the Section 24(5) Application*) is wholly unreliable, untenable and cannot form the basis for any directions sought to be issued under Section 24(5). The characteristics of "V130014(Raadhika)" as recorded in this internal report are inconsistent with at least with 6 characteristics from the published DUS results of "V130014(Raadhika)" notified by the PPV&FR Authority in its Journal, Volume 17, No.12 dated 01.01.2024, at Page No. 620 (*@ Pg No. 61, Exhibit RW-1/7 of the additional documents application*).
- It is submitted that the Applicant has indulged in a clear abuse of process by filing the present application on the basis of a misleading internal DUS characteristics report purportedly conducted by Dr. Elangovan Mani and Mr. Venugopal Reddy, who are admittedly the employees of the Applicant. It is further submitted that, thereafter, the Applicant proceeded to obtain registration of the candidate variety "V130014(Raadhika)" on the basis of a different set of DUS characteristics as officially published and notified by the Learned Authority in its Journal, Volume 17, No.12 dated 01.01.2024. It may also be noted



that, the Applicant didn't even wait for a moment and has taken the registration certificate within few hours after submission of the amended sheet of column 10 (a) of the application as directed by the Registrar General in the opposition order dated 17-06-2025.

- More importantly, even though there are clear differences between the characteristics originally stated by the Applicant in its internal DUS report (*@ Pg No. 180 of the Section 24(5) Application*) and those officially published by the Authority in its PPV & FR Journal dated 01.01.2024(*@ Pg No. 61, Exhibit RW-1/7 of the additional documents application*), the Applicant deliberately and mischievously did not taken any steps to amend its pleadings. Instead, the Applicant continues to rely on its original claims, even though they are now contradicted by the Authority's DUS findings. This shows that the Applicant is deliberately maintaining inconsistent positions to suit its convenience and mislead the Learned Authority.
- It is further submitted that, pursuant to the Public Notice dated 06.06.2019, issued by the Learned Registrar General under Section 19 read with Rule 29 of the PPV&FR Rules, 2003, all characteristics in the DUS test guidelines are to be treated as essential characteristics. The earlier distinction based on asterisk (*) has been expressly taken away with, thereby making every recorded characteristic determinative for the purpose of assessing distinctiveness. In such a regulatory framework, even a single variation is sufficient to negate identity. The existence of at least six



(6) differing characteristics, therefore, conclusively disproves the Applicant's assertion of identity.

- It is further pertinent to note that the Guidelines for the Conduct of Test for Distinctiveness, Uniformity and Stability (DUS) for Okra/Lady's Finger, effective from 01.04.2022, assign an asterisk (*) to all the listed characteristics, thereby signifying that each of such characteristics is an essential characteristic for the purpose of assessment under the PPV&FR Act, 2001.
- It is further submitted that any reliance placed by the Applicant on UPOV guidelines is wholly misplaced and untenable in the present proceedings. The Protection of Plant Varieties and Farmers' Rights Act, 2001 is a sui generis legislation, enacted with its own distinct statutory framework. Significantly, India is not a signatory to the UPOV Convention, and therefore, UPOV guidelines do not have any binding or persuasive value in the interpretation or application of the provisions of the PPV&FR Act, 2001.
- The reliance placed by the Applicant on the judgment in *Bachhaj Nahar v. Nilima Mandal and Another (2008) 17 Supreme Court Cases 491*, is wholly misconceived and inapplicable to the facts of the present case. The said judgment lays down the settled principle that no relief can be granted in the absence of pleadings and that a Court cannot make out a new case without affording an opportunity to the opposite party. However, the present case stands on an entirely different footing, both on facts and in law. In view of the above, the ratio of Bachhaj



Nahar has no application to the present case. The Opposite Party is not setting up a new case beyond pleadings, but is only substantiating its existing defence by placing reliance on official and binding material brought on record with the leave of the Learned Registrar General. Accordingly, the Applicant's reliance on the said judgment is entirely misplaced and rendered infructuous.

The alleged "independent expert opinion" provided by Mr. H.E. Shashidhar (*@ Pg No. 110 of the Section 24(5) Application*) cannot be considered the best evidence and should not be given any evidentiary value. In the absence of Mr. Shashidhar being formally made a witness in these proceedings, the document remains unverified and inadmissible. Similarly, the DNA fingerprinting report dated 12.02.2021, (*@ Pg No. 121 of the Section 24(5) Application*) cannot be considered as the evidence, as the person who conducted the analysis, Dr. K. Anupama, has never been brought forward as a witness in these proceedings. Without Dr. Anupama's sworn testimony or formal evidence affidavit to authenticate the findings, the report remains unverified and inadmissible. Consequently, the DNA fingerprinting report cannot be treated as the best evidence in these proceedings, and no undue reliance should be placed on this uncorroborated document.

Accordingly, the Respondent concludes that the instant application be dismissed with heavy costs.

ANALYSIS:

Having perused the pleadings, evidence and after hearing the parties, upon meticulous consideration the following issues are framed:



- a) Whether Respondent's varieties 'Bindu'/'NBH-45' are being sold since 2004/2012?
- b) With what characteristics the Respondent has been selling 'Bindu'/'NBH-45' since 2004/2012 respectively?
- c) Whether Applicant's hybrid variety "V130014(Raadhika)" and Respondent's varieties 'Bindu'/'NBH-45' can be treated as identical based on the statement or confession of the Applicant in the instant proceeding?
- d) Whether the Applicant can base the claim over their variety V130014(Raadhika) and its parental lines?
- e) Whether the difference of six characteristics of Applicant's variety V130014(Raadhika) relied on in the Section 24(5) application and DUS test results published in PVJ, is fatal to the case?
- f) Whether Applicant's variety V130014(Raadhika) and Respondent's variety 'Bindu'/'NBH-45' are identical or distinct?

The first three issues have already been decided between the same parties by this Registry order dated 17th June, 2025 in the Opposition proceedings filed by the Respondent against the registration of the Applicant's variety V130014(Raadhika). The first three issues and the conclusion arrived therein in the Registry's said order are tabulated hereunder: -

S. No.	Issue	Conclusion
a.	Whether Respondent's varieties 'NBH-45' and 'Bindu' are being sold since 2004/2012?	Respondent has been selling Okra varieties including 'NBH-45' and 'Bindu' which has been



		commercialised since 2004 and 2012 respectively.
b.	With what characteristics the Respondent has been selling 'NBH-45' and 'Bindu' since 2004/2012 respectively?	There is no evidence on record to show the essential characters either morphological or agronomical of Respondent's Okra Varieties 'Bindu' and 'NBH-45'.
c.	Whether Applicant's hybrid variety "V130014(Raadhika)" and Respondent's varieties "Bindu' and 'NBH-45' can be treated as identical based on the statement or confession of the Applicant in the instant proceeding?	'Bindu' and 'NBH-45' of Opponent cannot be treated as identical to Applicant's variety "V130014(Raadhika) merely on the basis of statement of the Applicant.

d) Whether the Applicant can base the claim over their variety V130014(Raadhika) and its parental lines?

The Respondent's contention is that the Applicant can have no claim on their variety V130014(Raadhika) and its parental lines. This argument of the Respondent is based on the point that Applicant has admitted that their hybrid variety V130014(Raadhika) is identical to Respondent's variety 'Bindu'/'NBH-45', both of which



have been commercialised prior to V130014(Raadhika). Hence, Applicant cannot have claim on their variety V130014(Raadhika).

This contention of the Respondent has to be rejected out rightly. The Applicant's variety V130014(Raadhika) has been registered on 30th June, 2025 under Section 24(1) and the Applicant being breeder has full exclusive rights granted under Section 28 of the Act subject to the other conditions laid down under the Act. Accordingly, Applicant has exclusive rights and can claim full rights over their hybrid variety. Respondent cannot discredit the same.

e) Whether the difference of six characteristics of Applicant's variety V130014(Raadhika) relied on in the Section 24(5) application and DUS test results published in PVJ, is fatal to the case?

The Respondent contends that there are contradictions in the DUS Characteristics of 'V130014(Raadhika)' relied on in the instant Section 24(5) Application and DUS Results of 'V130014(Raadhika)' published by the PPV & FR Authority in the PVJ Journal.

The Applicant also submits that this line of argument is not part of the Respondent's pleaded case. Of the 31 DUS characteristics of V130014(Raadhika), Respondent identifies differences in only six characteristics.

The Applicant has submitted arguments on each of the six characteristics. Three of the six alleged discrepancies are attributable solely to a change in



nomenclature or measurement scales resulting from the revision of the DUS test guidelines for Okra by the Authority. The Original DUS test guidelines for Okra (Published with PVJ dated 03.11.2009) used certain terminology and scales which were replaced by the revised DUS test guidelines for Okra (effective 01.04.2022).

Thus, Applicant states that three of six purported discrepancies are not discrepancies at all as they are mainly due to revision of DUS test guidelines.

The Applicant's contention is that remaining three alleged discrepancies relate to characteristics that are inherently variable depending on agro-climatic conditions.

I am of the firm view that there can be no doubt that only characteristics recorded in DUS testing has legal value and not the one that has been claimed in the instant Section 24(5) Application.

The issue of difference of six characteristics of Applicant's variety V130014(Raadhika) relied on in the instant Section 24(5) application and in the DUS test results published in PVJ, is not material to adjudicate the case. Of course the Applicant could have amended the instant application based on this Registry's DUS test report of their variety V130014(Raadhika) but again not doing so also is not fatal to the case as the DUS test report of any variety issued by this Registry alone can be relied upon.

Now, the real issue that has to be adjudicated is whether the Applicant's variety and Respondent's variety



are identical or distinct and not whether there is a mismatch between the characters claimed in the instant Section 24(5) Application filed by the Applicant and among the Characters recorded in DUS test of Applicant's variety.

Accordingly, this issue is not material to adjudicate the case. Hence, this issue is answered in favour of the Applicant.

f) Whether Applicant's variety V130014(Raadhika) and Respondent's variety 'Bindu'/'NBH-45' are identical or distinct?

There is no evidence on record to show that both the Applicant's variety and Respondent's variety are distinct and different. Merely by conduction of DUS test on their own and a bland allegation, cannot prove that both the Applicant's variety and Respondent's variety are identical. It has to be borne out of evidence through DUS testing conducted by this Registry. Accordingly, in the instant case further evidence is required in the form of DUS testing by this Registry and hence direction has to be issued under Rule 33(3) for further evidence. Rule 33(3) provides that no further evidence shall be submitted by either party except by leave or directions of the Registrar.

The District & Sessions Court, Jalgaon in Nirmal Seeds Pvt., Ltd., -Vs- Yashoda Hybrid Seeds Pvt. Ltd., - RCS No.3 of 2017 vide letter dated 1.10.2019 issued to this Registry directed as follows: -

"...the plaintiff has filed application Exh.69 to this court sought DUS test of its product 'Yashoda-58' Black Gram



Seed Variety and Court passed order on 29.07.2019 and 09.08.2019.

The sealed packet of 2 kg of 'Yashoda-58' Black Gram Seed Udid produced by Defendant No.6. The Deft. No.6 stated in his affidavit vide Exh. No.75 that, the particulars like Lt No, date etc are appearing on the seed bag have effaced with the lapse of time. The sample of Yashoda-58 Black Gram Seed Udid is forwarded along with this letter through court Commissioner namely Adv. Rahul Rajaram Rokade, appointed by this court. Please acknowledgement the receipt of the Sealed packet containing sample forwarded along with this letter.

Further you are directed to conduct the DUS ttest of the above said seed variety as per order passed on Exh. No.69 which is enclosed herewith and report in regard to the same to this court at earliest.

The charges in regard to the DUS test and other charges, if any applicable be collected from the plaintiff company accordingly"

Again, vide letter dated No.7825/2019 dated 7th October, 2019 it was informed by Superintendent, District and Sessions Court, Jalgaon to this Registry as extracted hereunder:

".....the seed sample of Yashoda-58 black grams seeds is forwarded to your office along with letter referred above with Court Commissioner of this Court Adv. Mr. Rahul Rajaram Rokade. However, inadvertently it ermined to be mentioned in the letter referred above that by doncuting DUS test of the above sample of Yashoda-58 its characters comparison is required to be made with the DUS characters of 'Vishwas (NUL-7)' black gram variety of plaintiff Nirmal Seeds Pvt. Ltd., which is registered with you. So it is directed to do needful accordingly."

DUS testing by Registry is mandatory for arriving at the finding of identicalness or distinctiveness between the Applicant's Variety V130014(Raadhika) and Respondent's



Variety 'Bindu'/'NBH-45'. In the instant matter, the DUS test report of Applicant's variety generated by this Registry is available on record but not that of the Respondent's variety which is the subject matter of issue. The Applicant has submitted the seeds of Respondent's variety 'Bindu'/'NBH-45', along with the application. But the same has been procured by the Applicant during 2020 as evidenced in (A-7 to A-11 annexed along with the Application) and hence its viability is doubtful. However, the same can be used for DUS testing along with the seeds of the Respondent's variety 'Bindu'/'NBH-45' to be procured from the open market.

A Commission has to be issued under Section 11 of the Act to collect the seeds of the Respondent's Variety 'Bindu'/'NBH-45'. Section 11 of the PPVFR Act, 2001 provides that the Registrar shall have powers of civil court for issuing commissions for the examination of witnesses. Section 11 of the Act is extracted hereunder: -

"Power of Authority- In all proceedings under this Act before the Authority or the Registrar-

(a) the Authority or the Registrar, as the case may be, shall have all the powers of a civil court for the purposes of receiving evidence, administering oaths, enforcing the attendance and issuing commissions for the examination of witnesses;

(b) the Authority or the Registrar may, subject to any rules made in this behalf under this Act, make such orders as to cost as it considers reasonable and any such order shall be executable as a decree of a civil court."

In fact, in the instant matter the vital evidence is seeds of Respondent's Variety 'Bindu'/'NBH-45' which is a live material. The issue of Commission for examination of



witnesses under Section 11 of the Act, also extends to live material objects, which in the instant matter is seeds of Respondent's Variety 'Bindu'/'NBH-45', as the witnesses have to testify based on the material objects which are the main evidence in deciding the disputes between the parties.

In Autodesk, Inc & Anr –Vs- Arup Das & Anr, [Order dated 22nd October, 2013 in CS (OS) No.947 of 2011] wherein the Hon'ble Delhi High Court held that a local commissioner appointed by the Court is an extended arm and agent of the Court. The Local Commissioner is appointed by the Court because a Judge, normally, cannot personally step out of the precincts of his Court to see for himself the situation prevailing at the relevant site. The relevant portion is extracted hereunder: -

“A Local Commissioner appointed by the Court is an extended arm and agent of the Court. The Local Commissioner is appointed by the Court because a Judge, normally, cannot personally step out of the precincts of his Court to see for himself the situation prevailing at the relevant site. Therefore, a Local Commissioner is appointed to act as the eyes and ears of the Court so that local investigation could be carried out for the purpose of elucidating the matters in dispute. In matters involving allegations of infringement of intellectual property rights, the execution of the local commission and the report furnished by the Local Commissioner assumes great significance, as the breach of copyright in softwares - which resides in electronic form, may go undetected unless computer systems of the defendant are examined and investigated before the defendant gets a chance to destroy the evidence of use of such software by deleting the software from the computer system.”

The seeds of the Respondents' varieties 'Bindu'/'NBH-45' are to be secured independently from the commercial



market also. Hence, in the interest of justice, a Commission has to be issued to procure the seeds of Respondent's Variety 'Bindu'/'NBH-45' from the open market which can be subjected to DUS testing and thereafter a DUS analysis of the Applicant's Variety already available with the Registry and that of Respondent's variety to be generated in pursuance of the instant order, which can be compared to determine the identicalness or distinctiveness between Applicant's Variety V130014(Raadhika) and Respondent's variety 'Bindu'/'NBH-45'.

Order XXVI Rule 10B of Civil Procedure Code also provides for appointment of Commissioner *suo sponta* or *suo motu* by the Court for performance of a ministerial act, where the Court is of the opinion that is expedient in the interest of justice to do so. Order XXVI Rule 10B of CPC is extracted hereunder:

“Order XXVI Rule 10B Commission for performance of a ministerial act.-(1) Where any question arising in a suit involves the performance of any ministerial act which cannot, in the opinion of the Court, be conveniently performed before the Court, the Court may, if for reasons to be recorded, it is of opinion that it is necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to perform that ministerial act and report thereon to the Court.

(2) The provisions of rule 10 of this Order shall apply in relation to a commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.”

It is also pointed out that though the provisions of Civil Procedure Code are not applicable *per se*, the principles of the



same applies, as the Registrar and Authority are endowed with the powers of Civil Court for specific purposes.

DUS TESTING OF RESPONDENT'S VARIETY:

Accordingly, Sh. R.S. Sengar, working as Consultant Technical (Shivamogga), PPVFR Authority is appointed as a Commissioner to purchase the seeds of the Respondent's variety 'Bindu'/'NBH-45' having the reasonable duration of viability and at least minimum germination percentage as prescribed in Indian Minimum Seed Certification Standards supported by due invoice in presence of two representatives each of Applicant and Respondent and with two independent witnesses and forward the same to the Authority. The Commissioner before executing the Commission shall issue notice to the parties. The fee of the Commissioner is fixed at Rs.25,000/- (Rupees Twenty-Five Thousand Only) which will be borne by the Applicant. The fee to the Commissioner shall be paid in advance. Commissioner shall file the report within two weeks of the execution of the warrant. The Commissioner shall along with the report forward the original invoice and seeds of the Respondent's Variety 'Bindu'/'NBH-45' duly purchased to the Authority for conduct of DUS test. The seeds (for DUS testing) of the Respondent's Varieties 'Bindu'/'NBH-45' shall be purchased from seed sellers in Maharashtra, Andhra Pradesh and Telengana. The travel expenses of the Commissioner will be borne by the Applicant. If willing to do so, the Respondent may also submit the seeds of 'Bindu'/'NBH-45' duly supported by an affidavit for DUS testing. The said seeds along with the seeds of Respondent's variety 'Bindu'/'NBH-45' procured by the Applicant and secured by the Local Commissioner will be forwarded by the Authority to the ICAR-IIVR, Varanasi, DUS centre for conducting DUS



test of Respondents' Varieties 'Bindu'/'NBH-45' in the coming *Kharif* 2027.

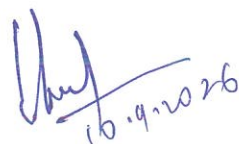
The seeds of 'Bindu'/'NBH-45' submitted by the Applicant along with the instant application, seeds of 'Bindu' / 'NBH-45' submitted by Respondent, if any and secured by the Commissioner shall not be mixed up and be grown and DUS characters be recorded separately by the DUS centre. The representatives of Applicant and Respondent can inspect the DUS centre subject to prior permission and payment of fees as per the norms. After the conduct of DUS test, the report would be forwarded to the Authority by the respective DUS centre in a sealed cover.

The Registry will post this matter for further hearing after the receipt of the said reports. A copy of the DUS test reports of Respondent's variety 'Bindu'/'NBH-45' shall be provided by the Registry to both Applicant and Respondent.

However, there shall be no order as to costs.

Before parting with, it is made clear that this instant matter is subject to the outcome of LPA No.348/2024 under the consideration of Hon'ble Delhi High Court.

Given under my hand and seal on this 10th day of September, 2026.



(D.K.AGARWAL)
REGISTRAR GENERAL

