

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

IN THE MATTER OF: Notice Opposition filed by M/s Nuziveedu Seeds Ltd against registration of Cotton (*Gossypium hirsutum* L.) variety with denomination C 5195 filed by M/s Maharashtra Hybrid Seed Company Limited.

NUZIVEEDU SEEDS LTD.

...OPPONENT

VERSUS

MAHARASHTRA HYBRID SEEDS COMPANY LTD.

...APPLICANT

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

For the Applicant: Dr. Malathi Lakshmikumaran, Attorney for M/s. Lakshmikumaran & Sridharan.

JUDGMENT

By this order I shall dispose of the Opposition filed by the Opponent against the registration of cotton variety with denomination C 5195 filed under the category of new variety by the Applicant.

FACTS OF THE CASE:

On 2nd April, 2008, the Applicant filed the application for the registration of their new cotton variety denominated as C 5195.

The same variety was advertised in Plant Variety Journal of India Vol. 2 No.12 dated 1st December, 2008. The Opponent filed the instant Opposition on 26th February 2009. The DUS testing of the



variety was conducted during 2009-10 and 2010-11 at Dharwad and Nagpur. The pleadings and evidence were complete during 2010. However, after the receipt of DUS test results the Opponent amended the Notice of Opposition during 2014. Inadvertently, the variety was advertised during 17th December, 2018. But subsequently, a corrigendum was published in Plant Variety Journal of India Vol.14 No.3 dated 28th February, 2020, informing that the advertisement was published inadvertently and the advertisement is withdrawn as Opposition is pending. Then the pleadings and evidence got completed during 2019. Subsequently, the main issue in this matter as to whether DUS test should precede advertisement published in Plant Variety Journal of India was *sub judice* before Hon'ble Delhi High Court in W.P. (C) No.4312/2014, W.P. (C)-IPD 8 of 2022, W.P. (C)-IPD 10 of 2022, W.P. (C)-IPD 9 of 2022 and W.P. (C)-IPD 4 of 2023 [Nuziveedu Seeds Pvt Ltd., -Vs- PPVFRA & Ors., Nuziveedu Seeds Ltd., -Vs- UOI, NSL Seeds Pvt. Ltd., -Vs- PPVFRA, Nuziveedu Seeds Pvt Ltd., -Vs- PPVFRA & Anr., Nuziveedu Seeds Pvt Ltd., -Vs- Registrar, PPVFRA]. The decision in the said matter was pronounced on 30th November, 2023 wherein it was categorically held that DUS test should precede advertisement. Then the Parties were finally heard on 02.03.2026.

I. CASE OF THE OPPONENT

1. That the present matter related to Opposition to the Plant Variety denomination C 5195. The Opponent most humbly submits that one of the grounds of Opposition was that the Variety C 5195 was published in the journal



without conducting the DUS Test apart from other grounds including using the incomplete passport data of the parent material and other details as provided under PPV&FR Act and the variety being claimed as NEW.

2. Briefly the list of date of the Application is as under and the same is also undisputed:

PARTICULARS	RELEVANT DATA
Date of filing of Application	2007-2008
Application Advertised in the PPV Journal	December 1, 2008
Opposition filed by Opponent	February 26, 2009

SUBMISSION ON PUBLICATION WITHOUT CONDUCTING DUS TEST

3. That Opponent submits that an application under Section 20 can be accepted only after the NDUS test is performed on the variety as provided under Section 19 and only thereafter the publication in the journal could have been done. In the instant case, application was published even before the acceptance, which is evident from the record. Even until 2018 the Application was still under the stage of acceptance.
4. Section 19 which is a preceding provision provides for performance of NDUS Test and Section 19 (3) which is mandatory and does not give any discretion to the authority to either forego the test or to conduct the test at a later stage. The provision is mandatory and clearly states that “the tests referred to in subsection (1) **shall** be conducted in such manner and by such method as may be



prescribed. The emphasis is on the word SHALL and it does not give any scope of foregoing the test or to delay the test or to conduct the test at a later stage. Thus, acceptance can only be made under Section 20 of the Act once test is performed under Section 19 (3) of the PPV&FR Act and therefore any publication has to be done in the journal after the application has been formally accepted subject to any condition as may be laid down by the Registrar. In the instant case, the Registrar has advertised the application without performing DUS Test. Further, there is no clarity as to whether the candidate variety meets the criteria laid down under Section 15(3)(a) of the PPV&FR Act, 2001. Due to lack of clarity with the registry on novelty of the candidate variety, the said candidate variety cannot be considered to have been accepted under section 20 of the PPV&FR Act and thereby the advertisement is contrary to the provisions of section 21(1) of the PPV&FR Act, 2001.

5. The Opponent had raised even this issue in various Writ Petitions before the Hon'ble Delhi High Court which has not been decided in favour of the Opponent. The present Application has been published without following the process i.e. (i) Testing, (ii) Acceptance and then (iii) Publication.
6. It is humbly submitted that the issue has now been settled in two judgments of the Hon'ble Delhi High Court namely **(i) Pioneer Overseas Corporation Vs Kaveri -**

"43. It is apparent from the Scheme of Chapter III of the Act that on receipt of an application under Section 18 of the Act, the Registrar is required to



make an enquiry as it thinks fit in respect of the particulars contained in such application and, thereafter, either accept the application absolutely or subject to certain conditions or limits as he deems fit. In terms of Section 19(1) of the Act, every applicant is required to make available to the Registrar such quantity of seeds of the variety for the purposes of conducting tests to evaluate whether the seeds of such variety conform to the standards, as may be specified by Regulations. It, plainly, follows that on receipt of an application, the Registrar is required to conduct the test as referred to under Section 19 of the Act.

44. One of the principal controversy raised in the present petition is whether Section 19 of the Act refers to a DUS test or a limited test for evaluating whether the seeds and the parental material conform to the standards as specified. It is Pioneer's case that the test to be conducted in terms of Section 19 of the Act is a DUS test and an application for registration cannot be accepted unless such test has been conducted.

57. The contention that the Registrar can accept the application results awaiting the DUS Test, is erroneous. The Scheme of the Act is unambiguous. Once the Registrar accepts an application, he is bound to register the variety unless an opposition is filed under Section 21 (3) of the Act and the Registrar finds merit in such opposition. This is clear from the provisions of Section 24(1) of the Act, which expressly provides that the Registrar shall register the variety and issue a certificate of registration in cases where an application for registration of a variety (other than an essentially derived variety) has been accepted and either (a) the application has not been opposed and the time of notice of opposition has expired; or (b) the application has been opposed and opposition has been rejected.

58. It is clear from the above that the Registrar had no discretion to reject an application once he has accepted the same and no opposition has been filed by any person on advertisement of such application. It follows from the above that the Registrar must be fully satisfied that the candidate variety conforms to the DUS criteria before accepting the application for registration of the variety. He is, thereafter, required to advertise the said application and his examination is confined to the opposition that may be filed pursuant to such advertisement."



7. Reference is also made to 2023 SCC Online Del 7596.

The relevant parts of the judgment are reproduced hereunder:

“37. In fact, Section 24(1)(a) is itself a clear indicator of the legislative intent that DUS testing must precede advertisement of the application. The mandate to register the plant variety after advertisement, where no sustainable opposition to registration has been raised, obviously presumes that the plant variety has already successfully weathered DUS testing prior to advertisement. To hold that DUS testing need not precede advertisement of the plant variety and that, even after advertisement, DUS testing could be conducted and registration refused if the test result is adverse, would, therefore entirely rewrite the statutory scheme.

44. The sequitur has inexorably to follow. In all these cases, the applications of the private respondents proceeded to advertisement without prior DUS testing. That being so, the advertisements are liable to be quashed and set aside.

*45. In that view of the matter, it is not necessary for me to enter into any of the other prayers contained in these writ petitions. Nor is it necessary for me to consider the aspect of delay in filing of the opposition against the applications of the private respondents, as one of the views expounded in **Pioneer Overseas Corporation** is that the very occasion for filing an opposition would arise only if the advertisement of the application, in the first instance, is preceded by DUS testing.*

46. Accordingly, the advertisements issued by the Authority in respect of the applications forming subject matter of all these writ petitions, except the plant varieties MRC 7326 BG II, MRC 6301 Bt, MRC 6025 Bt and MECH 12 Bt which already stand registered, are quashed and set aside.

*47. The corresponding applications filed by the concerned private respondents (Mahyco and Sungro) for registration, which form subject matter of the aforesaid writ petitions, are remanded for a fresh consideration to the Authority which will, in the first instance, conduct DUS testing and thereafter follow the procedure as outlined by Bakhru, J. in **Pioneer Overseas Corporation**.*



**SUBMISSION ON THE PUBLICATION ITSELF
BEING INCOMPLETE AND CONTRARY OF RULE
30 OF THE PPV&FR ACT.**

8. It is also humbly submitted that applications should not only be published strictly in accordance with the details given under Rule 30 but should also be done after the DUS studies have been done and such details are also given to the Opponent. In the absence of DUS Test conducted by the Registry, the Opposition will be at a further disadvantage as he will be left to compare the variety only on the basis of advertisement published with token information and photographs and false claims, which were not confirmed in DUS tests. In the present case, the photographs depicting general view of the crop or green house photographs of the crop are published, which serve no purpose and help no way in studying the characteristics. Publication of such photographs may merely appear like completion of a formality but in law and effect suffer from serious illegality and infirmity, besides assisting the Applicant in evading a genuine opposition. If test reports are also published, then the Opponent will be able to compare the variety.
9. It may also not be out of context to mention here that variety has to be compared by its test report conducted by the Authority and not merely based on photographs provided by the Applicant, which does not reveal either the morphological characteristics or the genetic



characteristics. Photographs are only relevant for comparison for physical characteristics. Under the provision of the Act, Distinctiveness, Uniformity and Stability can only be compared by test reports which should be conducted by the registry prior to publication and also published alongwith the Application. At present the Opponent is left to compare only the physical characteristics based on which he can file an opposition. This is highly disadvantageous to Opponent and general public but also prejudicing the interest of the General Public. Prior conducting of DUS Test by Registry is essential to confirm and establish the correctness or otherwise of the DUS characters, claimed by the Applicant, before publication for opposition.

10. That it may be pointed out that the PPV Authority is the custodian of public interest and it must at all cost protect the public interest and also act in a manner as provided under law. By adopting a method contrary to the provisions of the Act, the Authority is acting in a manner which is not in the public interest.

11. In the instant case it is humbly submitted that the advertisement has not been made in accordance with Rule 30 of the PPV&FR Rules and is therefore liable to be published again. According to Rule 30 (2) of the PPV& FR Rules every such application under Sub-rule (1), the Registrar shall mention that place or places where a specimen of the variety may be inspected. The Opponent craves leave to file opposition to the present application once the advertisement is published strictly



in accordance with the Rule 30 of the PPV& FR Rules and also Dust test conducted by the Registry is handed to the Opponent.

SUBMISSION ON CLAIM OF VARIETY BEING “NEW”.

12. One issue relates to parentline being claimed as New. This matter has also been decided substantially against the Applicant, wherein the Learned Registrar held that the Parentlines cannot be claimed as new if it has been used to develop and propagate hybrids which was claimed to be extant. The said order was therefore challenged before the Hon’ble High Court of Delhi in WP(C) 4330/2012, which was rejected and the Hon’ble High Court upheld the order of the Learned Registrar.
13. In the Writ Petition No. 4330/2012 a specific prayer was made by the Applicants that a direction be issued to the Registrar to not to re-publish the Applications. The Hon’ble Court dismissed the petitions of the Applicant and also refrained to pass any other order including the Applicant’s prayer to not publish the Applications. The relevant part of the order is.

“ In my view, a plain reading of Section 15(3) of the Act would indicate that if the seeds of parent lines have been commercially sold, the breeders cannot claim the parent lines to be novel. As I see it, even if one was to consider that language of Section 15(3) of the Act was ambiguous on the issue, the same would have to be resolved against the petitioners. This is so because it is well settled that in case of ambiguity in the language of a statute, a purposive interpretation that furthers the intention of the Legislature must be adopted. The Legislative intent of the Act is to protect



the rights of the farmers' and plant breeders. India had ratified the TRIPS agreement and, therefore, was obliged to protect the intellectual property rights in certain plant varieties. The protection as envisaged under the Act is to provide certain exclusive rights for a specified period of time. By virtue of Section 24(6) of the Act, the registration certificate issued in respect of a plant variety could be extended for a period up to 18 years from the date of registration in case of trees and vines and 15 years from the date of registration in other cases. In the case of extant varieties the validity of the registration certificate can be extended upto 15 years from the notification of that variety under Section 5 of the Seeds Act, 1966. In other words, the Parliament in its Legislative wisdom considered that providing exclusivity as specified under Section 24(6) of the Act was sufficient protection to the plant breeders. If the provisions of Section 15(3) of the Act are read in a manner as suggested by the petitioners, the effect would be to extend that period of protection many times over. In the first instance, a breeder would get protection in respect of the hybrid variety and assuming that there are two parent lines, the breeder could just before the expiry of the Registration Certificate in respect of a hybrid variety, register one of the parent variety and thus, extend its period of exclusivity for a further period of 15/18 years because protection of even one parent line would practically ensure exclusive rights in relation to the hybrid variety. In the same manner, before expiry of the registration period of that parent line, the breeder could register the other parent line as a new variety. In this manner a breeder could extend the protection for a period up to maximum 45/54 years instead of 15/18 years as contemplated under the Act. Clearly, this is not the legislative intent of the Parliament.

14. The Opponent is not aware how the Applicant is claiming novelty to its parentlines when the Hybrid is already claimed to have been filed under Extant Variety. The Applicant's claim of novelty on C 5195 cannot be accepted.
15. In view of the above submission, it is most humbly prayed that the Opposition be allowed on the ground of



publication being contrary to statutory provision and also well settled law. Further, the Application for registration cannot be accepted under Section 20 even on the ground of the Parentline being claimed as NEW when the hybrids have been filed as EXTANT.

16. The Opponent reserves its rights to agitate on other issues when the Application is accepted and published in terms of the provisions of the act and in terms of the well settled law and in this respect para 45 of the judgment is relied upon in 2023 SCC Online Del 7596:

*45. In that view of the matter, it is not necessary for me to enter into any of the other prayers contained in these writ petitions. Nor is it necessary for me to consider the aspect of delay in filing of the opposition against the applications of the private respondents, as one of the views expounded in **Pioneer Overseas Corporation** is that the very occasion for filing an opposition would arise only if the advertisement of the application, in the first instance, is preceded by DUS testing.*

17. In view of the above submission, the Opposition be allowed and the Application for registration be rejected.

II. CASE OF THE APPLICANT

1. The Learned Registrar (Ld. Registrar) was pleased to grant the Applicant a hearing in reference to Opposition against the captioned application no. N64-GH47-08-273 (hereinafter “present application”), under Section 21 (6) of the Protection of Plant Varieties and Farmers’ Rights Act, 2001 (hereinafter “the Act”) through video conferencing. The hearing



was attended by Ms. Malathi Lakshmikumaran (Agent for the Applicant) and Mr. Prashant Phillips (Attorney) for and on behalf of the Applicant.

Facts of the Application:

Activity	Date
Date of the first advertisement of the Application	01 December 2008
Opposition filed by the Opponent	26 February 2009
Counter statement filed by the Applicant	11 May 2009
Final Opposition filed by the Opponent	22 September 2009
Final Evidence filed by the Opponent	09 June 2010
Final Counter Statement filed by the Applicant	01 September 2010
Final Evidence filed by the Applicant	08 October 2010
DUS Test completed and reports made available	2009 to 2011
Amended Opposition filed by the Opponent	04 June 2013
Readvertisement of the Application in plant journal	17 December 2018



Counter Statement filed by the Applicant in view of the amended opposition	18 March 2019
Final Opposition and Final Evidence filed by the Opponent	11 May 2019
Reply to Final Opposition, i.e., Final Evidence filed by the Applicant	14 October 2019

2. Before proceeding with the submissions, the Applicant considers it necessary to summarize the procedural history of the present Application. The Application was first published in the Plant Variety Journal, Vol. 02 No. 12, at pages 11-13, along with photographs, on 01 December 2008. Pursuant to this advertisement, the Opponent filed an Opposition, to which the Applicant submitted its Counter Statement on 11 May 2009. Thereafter, the Opponent filed the Final Opposition along with Evidence, and the Applicant responded on 22 September 2009 and 09 June 2010, respectively. A further Final Counter Statement and Evidence were filed by the Applicant on 01 September 2010 and 08 October 2010, respectively. Thus, the entire opposition proceedings stood concluded by October 2010.

3. While the Applicant was awaiting a hearing, the Opponent filed an amended opposition on 04 June 2013. The Applicant strongly objected to the



acceptance of such amended opposition, as the Opponent had already been afforded more than adequate time to present its case and supporting documents. Despite this, the amended opposition was accepted by the Authority, and the Applicant filed its counter statement on 18 March 2019. The Opponent's conduct, viewed in totality, reflects a mala fide effort to derail and delay the Applicant's registration. Nonetheless, subsequent Final Oppositions and evidence were filed by the Opponent and the Applicant on 11 May 2019 and 14 October 2019, respectively.

4. It is significant that the Application was readvertised on 17 December 2018, i.e., after the due completion of DUS testing. However, during the hearing, the Applicant was informed by the Authority that the Publication dated 17 December 2018 had been withdrawn due to the existence of a "pending opposition." At the hearing held on 02 March 2026, the Opponent argued, as an opening remark, that the Application must be readvertised in view of the judgement issued in the matter of *Pioneer Overseas Corporation v. Chairperson Protection of Plant Varieties Rights* (262 (2019) DLT 411), which states that advertisement of an application can only be done after the completion of DUS testing.
5. It is submitted that the readvertisement dated 17 December 2018 was issued only after the DUS trial was completed and the Application accepted in



accordance with Section 20(1) of the Act. In paragraph 3 of its Counter Statement dated 14 October 2019, the Applicant specifically stated: “*The Application has been accepted by the Registry and succeeded in the DUS trial.*”. In fact, in its Final Evidence dated 11 May 2019, the Opponent has referred to the DUS reports of the candidate variety and provided an alleged comparison of characteristics between varieties C 5195 and NC 1051 (refer paragraph 34 of the Opponent’s Final Evidence). It was therefore incorrect for the Authority to subsequently withdraw the readvertisement, since the advertisement was done after the completion of the DUS testing.

6. Without prejudice to the above, the Applicant understands that since the 2018 publication has been withdrawn, the present proceeding for the candidate variety is based on the first advertisement (2008).
7. In the hearing dated 02 March 2026, the only submission made by the Opponent was that the present application must be readvertised, and the previous publication (of 2008) should be quashed. The Opponent had also sought further opportunity of filing an opposition subsequent to the advertisement of the Application. In view of the foregoing, the Applicant is unable to comprehend the basis on which the Opponent now demands yet another readvertisement. The Opponent has had multiple opportunities to inspect the Application, has



admittedly conducted its own observations at the DUS test centre, and has filed submissions after allegedly conducting such examinations.

8. Although the Opponent repeatedly claims technical expertise in this field, its conduct demonstrates otherwise, as it continues to seek extensions and fresh opportunities without justification. The Opponent has even attempted to question the veracity of the Authority's own DUS testing.
9. The Applicant seriously questions the bona fides of the Opponent's conduct. The Opponent has already filed at least three oppositions in relation to the present Application and, on each occasion, claimed lack of sufficient time or information, despite repeatedly being granted access to the complete record. Notably, the amended opposition filed on 04 June 2013 was submitted after the Opponent had inspected the Applicant's file and obtained all relevant information, and the Final opposition and evidence was filed after the DUS reports of the candidate variety was available with the Opponent. Yet each opposition contains repetitive assertions of lack of information. This pattern of conduct establishes a calculated design to impede and prolong the statutory registration of the Applicant's variety.
10. The cumulative conduct of the Opponent clearly establishes mala fide intent to delay and obstruct the registration of the Applicant's variety. Despite being afforded repeated and extraordinary opportunities, the



Opponent seeks further time solely to prolong the proceedings, evidently aware of the weak technical grounds underlying its objections. The Applicant has nevertheless responded comprehensively to every objection raised by the Opponent, including those of a frivolous and procedural nature.

11. The Applicant reiterates that the basis of the entire Final Opposition and evidence (filed on 11 May 2019) is the Opponent's allegation that the Applicant's candidate variety is identical to the Opponent's line NC 1051. The Opponent has provided no basis for this allegation and is effectively conducting a fishing and roving inquiry, contrary to basic principles of logic.
12. Without prejudice, the Opponent has failed to show successful comparisons between NC 1051 and C 5195. The Opponent has presented contradictory characteristics of NC 1051 throughout the Final Evidence (dated 11 May 2019).
13. The comparisons in paras 16-18 of the Final Evidence are false and misleading for the following reasons:
 - (a) The Opponent has provided selective and improper characteristic data comparisons; and
 - (b) The Opponent has made false statements regarding DUS characteristics of NC 1051, demonstrated in the following table:



Characteristic Serial No.	Characteristics	Reported by Opponent in Evidence Affidavit for NC 1051 in 2019	Characteristic of NC 1051 from Technical Questionnaire submitted in Application	DUS Test Report of the PPV&FR Authority	
				DUS Centre 1	DUS Centre 2
2	Leaf Colour	2	1	2	1
11	Plant: Height (cm)	3	9	3,3,5	7
12	Plant Growth Habit	5	3	3	5
17	Flower Position of Sigma	3	5	3	5
23	Boll: Shape (longitudinal section)	5	7	5	5
27	Boll: Weight of seed cotton / boll	3	5	3,1,3	3
28	Seed: Fuzz	5	3	5	5
29	Seed: Fuzz colour	2	1	2	3
30	Seed: size	7	5	5,5,7	7



	(100 seed wt.)				
32	Fibre: colour	1	2	1	1
33	Fibre: length (2.5% span length)	5	7	5,5,3	7
34	Fibre: strength	3	5	3	5
36	Fibre: uniformity	9	7	9	9

14. It is clear that the Opponent has misrepresented the characteristic data of NC 1051 in order to mislead the Ld. Registrar General. For instance, for the characteristic plant growth habit (characteristic no. 12), in the TQ, the Opponent has provided a value of 3; further the observation from two DUS centres have been noted as 5 and 3, however, the Opponent has simply chosen plant growth habit as 5. A similar observation may be made for flower position of stigma (characteristic no. 17). Therefore, the Opponent has chosen a value as per its convenience and not based on the actual results. Such conduct amounts to a gross abuse of law, and the Opposition is liable to be dismissed on this ground alone. All the above has already been submitted in the Applicant's Final Evidence.

15. Nearly eighteen years have elapsed since the Applicant first filed the present Application for registration of variety C 5195. The Applicant is deeply concerned and disappointed by the manner in



which the Application has been handled and seeks a just and expeditious resolution.

16. In light of the above, the Applicant respectfully submits that the Opponent's conduct reflects a sustained pattern of obstruction and procedural abuse, devoid of substantive merit. The Applicant has complied with every statutory requirement under the PPV&FR Act, including successful completion of DUS testing, and has responded comprehensively to every opposition and every observation issued by the Authority, multiple times, over an eighteen-year period. The Opponent, meanwhile, has repeatedly sought to reopen concluded stages, challenge advertisements under which it has itself filed oppositions, and demand opportunities far beyond what the Act or natural justice contemplates.
17. The Applicant therefore prays that the Authority reject the Opponent's renewed request for another readvertisement or further opportunity, dismiss the opposition in its entirety, and proceed to grant registration of variety C 5195 without further delay. The ends of justice, procedural fairness, and statutory mandate all require that this prolonged matter now be concluded.
18. Even assuming, without admitting, that any further readvertisement of the present Application were considered necessary, the Opponent cannot be afforded yet another opportunity to file additional oppositions. The Opponent has already been given far



more opportunities than contemplated under the PPV&FR Act to raise objections, inspect the record, and file multiple rounds of evidence. The proceedings must now be concluded on the basis of the extensive material already on record.

19. Without prejudice, the Applicant reserves the right to further substantiate its case by facts, grounds, or additional documents in subsequent proceedings in defence of its Application.

20. In view of the above submissions, it is respectfully prayed to the Registrar to

- a. Grant the present Application at the earliest in accordance with law;
 - b. Award heavy and exemplary costs in favour of the Applicant and against the Opponent for filing a frivolous and *mala fide* opposition; and
- Pass any such further order(s) as the Registrar may deem fit in the facts and circumstances of the case.

ANALYSIS:

The main issue that has to be decided is whether the instant matter is covered by the decision dated 1st July, 2019 of Hon'ble Delhi High Court in W.P. (C) No.6470 of 2013 and W.P. (C) No. 6208 of 2014 [Pioneer Overseas Corporation -Vs- Chairperson, PPVFRA & Ors., and Pioneer Overseas Corporation -Vs- UoI & Ors.,] and decision dated 30th November, 2023 of Hon'ble Delhi High Court in W.P. (C) No.4312/2014, W.P. (C)-IPD 8 of 2022, W.P. (C)- IPD 10 of



2022, W.P. (C)-IPD 9 of 2022 and W.P. (C)-IPD 4 of 2023 [Nuziveedu Seeds Ltd., -Vs- PPVFRA & Ors.,- Nuziveedu Seeds Ltd., -Vs- UOI, NSL Seeds Pvt. Ltd., -Vs- Registrar, PPVFRA, Nuziveedu Seeds Ltd., -Vs- PPVFRA & Anr., Nuziveedu Seeds Ltd., -Vs- Registrar, PPVFRA.].

Before advertenting to the other issues raised by the parties it is essential to decide the applicability of the said judgements in the instant matter. The Applicant filed the instant application on 02.04.2008 for registration of their cotton variety denominated as C 5195 under new variety category. The same variety was advertised in Plant Variety Journal of India Vol. 2 No.12 dated 1st December, 2008. The Opponent filed the instant Opposition on 26th February 2009. The DUS testing of the variety was conducted during 2009-10 and 2010-11 at Dharwad and Nagpur. Thus it is factually, clear that the variety was advertised prior to DUS testing but legally a variety has to be advertised after DUS testing.

The law in this regard is well settled and the instant matter is squarely covered by the decision dated 1st July, 2019 of Hon'ble Delhi High Court in W.P. (C) No.6470 of 2013 and W.P. (C) No. 6208 of 2014 [Pioneer Overseas Corporation -Vs- Chairperson, PPVFRA & Ors., and Pioneer Overseas Corporation -Vs- UoI & Ors.,]. The relevant portion is extracted hereunder:

“50. Sub-rule (2) of Rule 29 of the 2003 Rules makes it clear that after initial scrutiny, if the Registrar is satisfied that the application is in order, he shall call upon the applicant to deposit the requisite fee within a period of two months for conducting the DUS Test.

51. In view of the above, there can be little doubt that on receipt of the application, if the same is found to be in



order then the next stage is to conduct the tests under Section 19 of the Act, which is the test to ascertain whether the Authority conforms to the DUS criteria.

52. The next question to be examined is whether the DUS test have to be conducted prior to acceptance of the application as contemplated under Section 20 of the Act.

53. It is Pioneer's case that an application can be accepted only once a DUS test has been conducted. This is disputed by Kaveri and it is contended on its behalf that the DUS test could be conducted at any time and the same is not necessary for acceptance of an application.

54. As observed above, the first stage after receipt of the application for registration under Section 14 of the Act is to examine whether the same is in order. If the application is complete and in order, the Registrar is required to notify the applicant to deposit the fees for conducting the DUS Test. In terms of Sub-rule (3) of Rule 29 of the 2003 Rules, the application can be considered for further processing by the Registrar only after the fee demanded for conducting the DUS Test is deposited. Thus, plainly, the application cannot be accepted unless the fee for the DUS Test is deposited.

55. In terms of Section 20 of the Act, the Registrar is required to accept the application filed after making such enquiry as it thinks fit with respect to the particulars contained in such application. It is open for the Registrar to accept the applications absolutely, or subject to such conditions as may deem fit. At this stage, the Registrar can also reject the application if he finds that it does not comply with the requirements of the Act or the Rules and Regulations made thereunder.

56. The language of Section 20 of the Act is wide. Although, it does not expressly mandate that the Registrar is required to await the result of the DUS Test before accepting the application, however, it does require the Registrar to make an enquiry in respect of the particulars contained in the application in order to make an informed decision whether to accept the application or reject the same. If on making an enquiry, the Registrar is of the view that the application does not comply with the requirements of the Act, Rules or Regulations made thereunder, he may either call upon the applicant to amend the application or reject the same. It is not necessary for the Registrar to await the results of the DUS Test if he is otherwise satisfied that the application does not comply with the requirements of the Act. However, if he is otherwise finds no reason to reject the application outrightly, it would be necessary for him to await the DUS Test as the said test would confirm whether the variety conforms to the DUS criteria. Concededly, conformity with the DUS



Criteria is essential for any variety to be registered. Therefore, it would not be possible for the Registrar to accept an application if he is not satisfied that the variety conforms to the DUS criteria.

57. The contention that the Registrar can accept the application results awaiting the DUS Test, is erroneous. The Scheme of the Act is unambiguous. Once the Registrar accepts an application, he is bound to register the variety unless an opposition is filed under Section 21(3) of the Act and the Registrar finds merit in such opposition. This is clear from the provisions of Section 24(1) of the Act, which expressly provides that the Registrar shall register the variety and issue a certificate of registration in cases where an application for registration of a variety (other than an essentially derived variety) has been accepted and either (a) the application has not been opposed and the time of notice of opposition has expired; or (b) the application has been opposed and opposition has been rejected.

58. It is clear from the above that the Registrar had no discretion to reject an application once he has accepted the same and no opposition has been filed by any person on advertisement of such application. It follows from the above that the Registrar must be fully satisfied that the candidate variety conforms to the DUS criteria before accepting the application for registration of the variety. He is, thereafter, required to advertise the said application and his examination is confined to the opposition that may be filed pursuant to such advertisement.

59. If Kaveri's contention is accepted that it is not necessary for the Registrar to await the results of the DUS Test before accepting an application, it would lead to an unacceptable situation in a case where no opposition is filed and the DUS test are negative. In such cases, by virtue of Section 24(1)(a) of the Act, the Registrar would be required to register the variety even though it is not registrable on account of failing the DUS Test. The Scheme of Chapter III of the Act regarding registration of the varieties makes it clear that qualifying the DUS test is an essential criterion for acceptance of an application under Section 20 of the Act.

84. This Court is also of the view that the said decision is erroneous for several reasons. First of all, the Registrar should not have proceeded on the basis that the DUS Test was final and binding on Pioneer. As observed earlier, the entire procedure adopted by the Registrar/Authority was contrary to the scheme of the Act. The Registrar could not have accepted Kaveri's application for registration of KMH-50 without the said variety qualifying the DUS Test. The question of accepting the application and inviting objections



would only arise after KMH-50 had qualified the DUS Test. As stated hereinbefore, the DUS Test report is not final and binding on the opponent and it was open for Pioneer to raise any objections regarding the restorability of the said variety in terms of Section 21(3)(b) of the Act. This would, obviously, include objections to the DUS Test. Kaveri would be well within its right to contend that the DUS Test was not conclusive to establish that KMH 50 was not distinct from 30V92. However, since the application was advertised prior to the DUS Test report being made available, such objections could not be included in the opposition..”

(Emphasis supplied)”

The said decision was followed with great respect in order dated 30th November, 2023 of Hon’ble Delhi High Court in W.P. (C) No.4312/2014, W.P. (C)-IPD 8 of 2022, W.P. (C)- IPD 10 of 2022, W.P. (C)-IPD 9 of 2022 and W.P. (C)-IPD 4 of 2023 [Nuziveedu Seeds Pvt Ltd., -Vs- PPVFRA & Ors., Nuziveedu Seeds Ltd., -Vs- UOI, NSL Seeds Pvt. Ltd., -Vs- PPVFRA, Nuziveedu Seeds Pvt Ltd., -Vs- PPVFRA & Anr., Nuziveedu Seeds Pvt Ltd., -Vs- Registrar, PPVFRA]. The parties in the said matter are the same parties in the instant opposition also. The relevant portion from the said order is extracted hereunder:

“14. So pellucid, indeed, is the enunciation of the legal position in the above passages, that any attempt at paraphrasing would do injustice.

15. The position in law, as expostulated in the afore-extracted passages from Pioneer Overseas Corporation is clear and unambiguous. Bakhru, J. has held, without any equivocation whatsoever, that the exercise of DUS testing has mandatorily to be carried out prior to advertising of an application under Section 19 of the PPV Act for registration of a new plant variety.

16. Mr. Parthasarthy, sought to draw attention to what he perceived to be an error in Bakhru, J’s reasoning in Pioneer Overseas Corporation, in observing thus (in para 59 of the decision):

“If Kaveri’s contention is accepted that it is not necessary for the Registrar to await the results of the DUS Test before accepting an application, it would lead to an unacceptable situation in a case where no opposition is filed and the DUS test are negative. In such cases, by virtue of Section



24(1)(a) of the Act, the Registrar would be required to register the variety even though it is not registrable on account of failing the DUS Test.”

Mr. Parthasarathy submits that this observation suffers from an error of perception, as, if the DUS test is negative, there is no question of the plant variety proceeding to registration at all, or of any prejudice resulting to the opponent who seeks to oppose the application. The submission does not appear, to me, to be correct. Section 24(1)(a) of the PPV Act requires every plant variety which has been advertised, and which has either not been opposed within time, or the opposition filed in respect of which has been rejected, to be registered. Bakhru, J., therefore, is clearly correct in his view that, if DUS testing were not required to mandatorily precede advertisement of the application, then there could be no question of any objection to registration on the basis of the DUS test results, and, therefore, irrespective of the test results, the plant variety would necessarily have to be registered. The DUS test results, therefore, even if adverse, would not inhibit registration. Mr. Parthasarathy does not, therefore, appear to be correct in his submission that, if the result of the DUS test, conducted after advertisement of the application, were found to be negative, the application for rejection could be rejected. Section 24(1)(a) does not permit it.

17. In fact, Section 24(1)(a) is itself a clear indicator of the legislative intent that DUS testing must precede advertisement of the application. The mandate to register the plant variety after advertisement, where no sustainable opposition to registration has been raised, obviously presumes that the plant variety has already successfully weathered DUS testing prior to advertisement. To hold that DUS testing need not precede advertisement of the plant variety and that, even after advertisement, DUS testing could be conducted and registration refused if the test result is adverse, would, therefore, entirely rewrite the statutory scheme.

22. The view expressed in Pioneer Overseas Corporation is therefore, in tune with the prevailing philosophy of the PPV Act and therefore, in my respectful opinion, commends itself entirely to acceptance.

23. I, therefore, respectfully concur with the view expressed by the Coordinate Bench in Pioneer Overseas Corporation.

24. The sequitur has inexorably to follow. In all these cases, the applications of the private respondents proceeded



to advertisement without prior DUS testing. That being so, the advertisements are liable to be quashed and set aside.

25. In that view of the matter, it is not necessary for me to enter into any of the other prayers contained in these writ petitions. Nor is it necessary for me to consider the aspect of delay in filing of the opposition against the applications of the private respondents, as one of the views expounded in Pioneer Overseas Corporation is that the very occasion for filing an opposition would arise only if the advertisement of the application, in the first instance, is preceded by DUS testing.

26. Accordingly, the advertisements issued by the Authority in respect of the applications forming subject matter of all these writ petitions, except the plant varieties MRC 7326 BG II, MRC 6301 Bt, MRC 6025 Bt and MECH 12 Bt which already stand registered, are quashed and set aside.

28. Where the DUS test already stands carried out, no fresh DUS testing would have to be undertaken. However, the results of the DUS test would be provided to the petitioners in these writ petitions so that they could file their oppositions or comments in respect thereof.

29. Mr. Parthasarthy submits that, owing to pendency of these writ petitions, considerable time has been lost in prosecution of the applications for registration, filed by Mahyco and Sungro.

30. The merits of the application as well as the oppositions of these petitions would be holistically concerned by the Registrar, who is directed to take a decision in the matter as expeditiously as possible and, at any rate, within 6 months from today.

31. The petitioners would be at liberty to raise all contentions available in law. The petitioners as well as the private respondents would also be granted an opportunity of hearing by the authority before any view is taken in the matter. ”

Subsequently, as per the above cited order of the Hon'ble High Court the advertisements which were already published stood cancelled. In the said matters, the Registry heard the parties (who are the parties to the instant opposition also) on 4th October, 2024. The Registry in the said matters passed an order dated 4th October, 2024, directing the Registry to process the DUS test



results of the applications which are the subject matter of said Oppositions and thereafter re-advertise the same in Plant Variety Journal in accordance with law. The operative portion of the order is extracted hereunder:

“In all these applications which are the subject matter of oppositions, DUS testing U/s 19 read with rule 29 of PVFR Rules 2003, has been conducted subsequent to the advertisement of these applications U/s 21 of PPV&FR Act, 2001.

The Hon'ble High Court of Delhi in the said matters have categorically held that if DUS testing is conducted post advertisement, advertisement is liable to be set aside. Accordingly, the advertisement published in all these applications stands cancelled by virtue of the said decision of the Hon'ble High Court of Delhi.

I hereby direct the registry to process the DUS test results of the applications which are the subject matter of Oppositions and thereafter re-advertise the same in Plant variety Journal in accordance with law.”

The said decision squarely applies to the instant matter also as the advertisement published in Plant Variety Journal of India Vol. 2 No.12 dated 1st December, 2008 for the variety C 5195 which is the subject matter of Opposition stands cancelled by virtue of *ratio* laid down in order dated 30th November, 2023 of Hon'ble Delhi High Court in W.P. (C) No.4312/2014, W.P. (C)-IPD 8 of 2022, W.P. (C)- IPD 10 of 2022, W.P. (C)-IPD 9 of 2022 and W.P. (C)-IPD 4 of 2023 [Nuziveedu Seeds Pvt Ltd., -Vs- PPVFRA & Ors., Nuziveedu Seeds Ltd., -Vs- UOI, NSL Seeds Pvt. Ltd., -Vs- PPVFRA, Nuziveedu Seeds Pvt Ltd., -Vs- PPVFRA & Anr., Nuziveedu Seeds Pvt Ltd., -Vs- Registrar, PPVFRA].

The well-established legal maxim *ubi eadem ratio, ibi idem jus* dictates that where the underlying reason is identical, the applicable law is the same. Consequently, the rationale requiring the DUS test to be conducted prior to advertisement



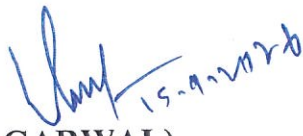
applies squarely to the instant case, rendering it a binding upon the parties as a matter of law.

Accordingly, by virtue of the aforesaid decisions, the advertisement of C 5195 in Plant Variety Journal of India Vol. 2 No.12 dated 1st December, 2008 stands cancelled. Since the DUS testing of C 5195 has been completed, Registry may process the DUS test results and thereafter re-advertise the same in Plant Variety Journal in accordance with law.

There shall be no order as to costs.

Given under my hand and seal on this the 15th day of September, 2026.




(D.K. AGARWAL)
REGISTRAR GENERAL