

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

IN THE MATTER OF: - Application to amend numeric value of Registered Variety BUNNY filed by Nuziveedu Seeds.

And

Application to grant opportunity of hearing filed by DCM Shriram consolidated (earlier known as Bio-seeds).

IN THE MATTER OF: -

NUZIVEEDU SEEDS LIMITED

.... REGISTERED BREEDER

-Versus-

**DCM SHRIRAM CONSOLIDATED (EARLIER KNOWN
AS BIO-SEEDS)**

..... INTERVENER

Counsel for Registered breeder : - *Mr .Abhishek Saket,
Advocate M/s. Infini Juridique*

Counsel for Intervener: - *Mr. Anil Dutt and Mr. Sudarshan
Singh, Advocates for M/s. Lakshmikumaran & Sridharan*

ORDER

By this order I shall dispose of the PV-21 (application for correction of National Register of Plant Varieties) filed by the Registered breeder to amend the note value for fibre fineness in respect of their registered variety NCS-145 Bunny (NCHH-145) from '3' to '7' and the application filed by the intervener for grant of hearing in amendment of registration moved by the Registered breeder.

I have allowed both these applications. The case of the parties and the reasonings are hereunder.

FACTS: -

The registered breeder has registered their variety NCS-145 Bunny (NCHH-145) (hereinafter referred to as 'registered variety') and obtained certificate of registration 91/2011 dated 21.10.2011. The registered variety has been registered under the category of Extant Variety (notified under Section 5 of Seeds Act, 1966). On 14.02.13, the intervener has filed a revocation application under section 34 of PPV&FR Act, 2001 for revoking the registration of registered variety before the Ld. Chairperson, PPV&FRA. The same is under the consideration of Ld. Chairperson, PPV&FRA. The registered breeder vide letter dated 04.06.13 addressed to this Registry requested to amend their application for registered variety as to the numeric value for fiber fineness from '3' to '7'. This Registry vide letter dated PPV&FRA/Registrar/18-13/07/655 dated 21.11.2013 replied that there is no provision to amend the application after registration. Then again vide letter dated 10.12.13, the registered breeder filed PV-21 and subsequently vide letter dated 27.01.15 requested for passing appropriate orders on their application.

Subsequently, in the revocation proceedings pending before the Ld. Chairperson, PPV&FRA vide order dated 17.03.15 it was held by Ld. Chairperson, PPV&FRA that the core issue involved in the Revocation application related to numeric value in the character relating to fibre fineness of registered variety and which is also substantially involved in the proceedings before this Registry and accordingly the revocation proceedings have to await the decision of the Registrar on the issue of numeric value of fibre fineness of

the registered variety. Further it was held in the said order that the issue of numeric value of fibre fineness is a pure question of fact relating to registration of the variety. Further it was held that if the revocation applicant (intervener in the instant proceedings) feels their interest would be affected in the proceedings filed by the registered breeder before the registrar they were given liberty to move appropriate application before this Registry for consideration. Consequently, the intervener has also filed an application to intervene in this matter.

The parties were heard in detail and the arguments of the both are summarized hereunder.

CASE OF THE REGISTERED BREEDER:-

The case of the registered breeder is that they have filed FORM PV-21 for correction of Register in respect of denomination NCS-145 Bunny (NCHH-145) which has been registered under the extant variety category (notified under Section 5 of Seeds Act, 1966). The case of the registered breeder is that the certificate of Registration 91/2011 dated 21.10.2011 was issued subsequently it was observed by them that in the application for NCS-145 (NCHH-145) that the reference number given to Fibre: Fineness (Micronaire Value (#35(+)))" is fine (Fine 3.0-3.9) while in the DUS guideline it is given as 7. The said reference refers to Fibre Fineness as Fine 3.0-3.9 and does not alter the character of the application in any manner. The changes shall not alter the basic character of the application or even any of the claimed

distinguishable or essential character. Further in pursuance to their letter No.NSL/TECH/040613/125 dated 4.6.2013 this Registry through PPV&FRA/Registrar/18-13/07/655 dated 21.11.13 informed that there is no specific provision to carry out the required provisions and that there is a specific provision namely section 37 of PPV&FR Act, 2001 read with Rule 60 of PPV&FR Rules, 2003 which provides that Registrar has powers to make the required corrections in the Register on an application made by the breeder of the Registered variety. Further the Registrar has ample powers to make any amendment, alteration, variation of any entry of such variety.

The application for correction has been filed under section 37(2) read with rule 61. The form prescribed for application under section 37 and rule 60 is form PV-21. It is submitted that the registered breeder is seeking an amendment to the entry related to the numerical value of the variety pertaining to the characters. Vide the application the registered breeder is not seeking any amendment to the descriptive character of the characters except the numerical value which has no bearing of the nature of the application or the character claimed. Section 37 read with Rule 60 and Form PV-21 clearly stipulates what amendments can be allowed under the same and it provides for amendment in any entry relating to such variety. Section 13 provides for national register of plant varieties and rule 23 clearly provides for particulars which shall be included. A third party has filed an application for grant of hearing and PPV&FR Act, 2001 does not provide for hearing of a third

party in the amendment application of a registered breeder under section 37. The powers exercised by the Registrar under the provisions of the Act is strictly between the Breeder and the Authority and hence a third party cannot be allowed to be heard in the matter. The application has been filed by the intervener based on the leave granted by the Chairperson. It is a well settled law that merely by virtue of a leave granted the provisions of the Rules and Regulations cannot be extended and such an application for impleadment can be filed on in case the provisions provide for. In Nazir Ahmed's case the judicial committee observed that the principle applied in Taylor -Vs- Taylor that is a Court namely, that where a power is given to do a certain thing in a certain way the thing must be done in that or not at all and that other methods of performance are necessarily forbidden. Further in state of UP -Vs- Singhara Singh 1964 SCR (4) 485 wherein the Supreme Court approved the rule laid down in Taylor -Vs- Taylor. Accordingly, merely on the principles of natural justice and equity no one cannot seek impleadment when the statutory provision clearly provides how an application under section 37 is to be heard. Further in Rajeev Hitendra Pathak & Ors., -Vs- Achyut Kashinath Karekar & Anr., 2011 (9) SCC 541 it has been held that the Tribunals are creatures of the statute and derive their powers from the express provisions of the statute. Further a third party cannot be allowed to argue on the maintainability of the application of the breeder. Further DCM Shriram Consolidated Ltd., has no right to file an application for impleadment as it is not a party in any of the

proceedings nor any authorization is on record as on date. An application for correction can be filed at any stage and the impleadment applicant is merely trying to avoid an infringement action by way of filing frivolous revocation application as well as impleadment applications in order to delay the infringement proceedings. It is further stated that in the proceedings before the High Court in Hyderabad, the impleadment applicant has neither taken any such objection nor has it even made any such ground. It is trying to avoid the DUS test on its variety by using these dilatory tactics. The application of the intervener must be dismissed with costs.

CASE OF THE INTERVENER:-

The registered breeder has obtained registration of two varieties by giving incorrect information. Based on said averment the registered breeder filed letters dated 4.06.13 before this Registry for amending the incorrect information disclosed in the said registered varieties. The fact came to their knowledge when copies of reply dated 4.06.13 before the Authority for amending the incorrect information disclosed in the said varieties. This fact came to their knowledge when copies of reply dated 12.07.13 to the revocation petition were supplied to them wherein the said letters were annexed. When the revocation case filed by them against the registered breeder in respect of their registered variety Bunny which came up for hearing on 16.03.15 and 17.03.15 when they came to know that the said

amendment letters dated 04.06.13 have been converted into section 37 applications in the registered variety which is the subject matter of the instant proceedings.

One of the many grounds on which the revocations have been initiated pertains to the very DUS character that are now being sought to be amended vide the instant amendment application. The act of the registered breeder is going at the back of the revocation applicant/ intervener in the instant case and amending the DUS character smacks of malafide intention. It is a principle of natural justice that all affected parties from an adjudication need to be given a hearing. The amendment is not a matter of right and all material facts must be considered before passing an order thereto. The present intervening application has been filed as per the order of the Ld. Chairperson wherein it was ordered that the intervener and the revocation applicant can file appropriate application before the instant forum for consideration. Accordingly they have filed the application to intervene under principles of natural justice. They may be permitted to file a reply to the said application for amendment moved by the registered breeder.

ISSUE INVOLVED:-

Before going into the merits of the matter, the first issue that has to be considered in this instant matter is whether revocation applicant who has filed a revocation application against a registered variety has a right to be heard in an amendment application filed (after registration) by the

registered breeder under Section 37 of PPV&FR Act, 2001 to amend his application for registration. I called for the records and meticulously examined the matter on hand. The amendment application for registered variety has been filed by the Registered breeder under Section 37 of PPV&FR Act, 2001 read with Rule 60 of PPV&FR Rules, 2003. It is true that neither the Act nor the Rules provides for the hearing of the third party in the amendment application filed by the Registered Breeder under Section 37. Merely because the same is not prescribed in the law it does not mean that the principles of natural justice cannot apply. If a person is interested or aggrieved by virtue of the amendment by a registered breeder he is definitely entitled to be heard. This is "Audi Altarem Partem". This is impregnated in all provisions of PPV&FR Act, 2001 more particularly section 37 of PPV&FR Act, 2001. The revocation proceeding under section 34 of the PPV&FR Act, 2001 can be filed only by the interested party and accordingly if some other collateral or ancillary proceeding is filed by the registered breeder involving the core issue which is the subject matter of the revocation proceeding then it is imperative that the revocation applicant must also be heard in such collateral or ancillary proceeding. The core issue in the revocation proceeding filed by the revocation applicant is that the registered breeder has furnished incorrect information and when the registered breeder wants to correct any material information it becomes the right of the revocation applicant to be heard in that matter, as the impact of this proceeding will affect the revocation proceedings also. Accordingly, I

have no hesitation to conclude that the revocation applicant must be heard in this matter. This observation is limited to this proceeding only and has nothing to do with the merits and locus in the revocation proceedings, which is under the consideration of Chairperson.

Having held that the intervener has a right to be heard the next issue that has to be examined is the maintainability of the instant proceedings filed by the Registered breeder. The bone of contention of the intervener is that already the request for amendment by the registered breeder has been rejected by this Registry and the present application filed by the Registered Breeder is in the nature of review application and the doctrine of res judicata will apply and the Registrar-General cannot sit in appeal against its own decision of rejection vide letter dated 21.11.2013. I examined the said letter and in the same it has been mentioned that there is no provision for amendment after registration and accordingly it was being rejected. It was a mere official letter which does not have the effect of an order issued by the Registrar in exercise of his judicial powers as the party was not heard before the passing of this order. This letter was self-explanatory in nature which shows that if there is any provision to that effect the registered breeder can point it out and accordingly it cannot be argued that a order has been passed by the Registry and it is only a letter issued by this registry. Accordingly this point is ruled in favour of the registered breeder and the instant proceeding cannot be deemed to be a review proceeding by virtue of the letter dated 21.11.2013 issued by this Registry.

The next issue that has to be examined is the argument of the intervener that under section 37 which is meant for correction of Register then how come the Registered breeder can seek to amend the numeric value. Section 37 of the PPV&FR Act, 2001 provides for correction of any error in the Register in the name, address or description of such breeder or any other entry relating to such variety and also for any change in name, address or description of such breeder and also cancel the entry in the Register of the variety and make any consequential amendment or alteration in the certificate of registration. The words 'correction of any error' and 'any other entry relating to such variety' occurring in section 37 makes it clear that it is applicable to correction of any error in any entry in the National Register of Plant Varieties relating to such registered variety. Rule 23 deals with the entries in the National Register of Plant Varieties and Rule 23 (30) provides for entry relating to results of DUS testing. The argument of the intervener is that the 'results of DUS testing' mentioned in Rule 23 (30) does not refer to character value more particularly due to the fact that the registered variety in the instant case never underwent DUS testing as it is a notified variety and the character value sought to be amended are not part of the Register and what is observed in this Registry's letter dated 21.11.13 is correct. I do not agree with this argument of the intervener. The character value claimed in the application is tested in DUS test and in case of instant registered variety notified under Seeds Act, 1996, DUS testing is not done as per Regulation 6 of

PPV&FR Regulations, 2006. In such cases also the claimed characters (both essential and non-essential) are verified and checked as per DUS test guidelines and the application forms part of the registry Record and as far as Rule 23 (30) the words "Results from DUS testing" would mean the DUS test results which includes both character and numeric value and in case of varieties notified under Seeds Act it includes the claimed characters and release proposals (if submitted by the applicant and in the instant case the applicant has submitted the same). Accordingly it would be a far-fetched argument to say that the amendment in numeric value of the character has nothing to do with DUS test result and further Rule 23(30) also includes brief description of the variety which also includes the claimed character in the application. Accordingly it can safely be concluded that the instant application is maintainable to amend the numeric value in the application under section 37 of PPV&FR Act, 2001. It is needless to say that the National Register of Plant varieties is the sanctum sanctorum of the Registry and all the entries are to be precise and there should be no chance of error in the same as it is a public document and accordingly, an amendment must be allowed if it elucidates the true meaning and values.

Now I have to considered the last and most crucial issue whether amendment is to be allowed and consequently entry in the register in the mutated. The entries in National Register of Plant Varieties are made by virtue of entries in the application after due processing and if entries in the register could be corrected under section 37 then there is no

reason for not allowing the amendment in the application after registration as the entries in the application are entered in the National Register of Plant Varieties. Further the release proposal submitted by the registered breeder to the Central Sub Committee on Crops Standards, notification and release of varieties constituted under Seeds Act for notification of varieties under Seeds Act, 1966 shows that the fiber fineness of the registered variety is of 3.8 micronaire value. The DUS test guideline published by the PPV&FR Authority for registration of tetraploid cotton shows that at page no. 25 serial no. 35 for fiber fineness character with respect to 3.8 micronaire value the note value is 7 whereas the applicant inadvertently while filling the form has mentioned the note value for fine as 3 instead of 7. The claim of the character namely Fiber Fineness is fine remains intact and only the note value of the character 'fine' has been entered as 3 instead of 7. The said facts clearly show that the claim of the registered breeder is fine for fiber fineness and there is no confusion about it and only the numeric value has been entered wrongly as 3 instead of 7. This is also corroborated by the fact that the registered breeder in the proposal for notification under Seeds Act has claimed fiber fineness as fine with 3.8 even prior to the filing of the application for registration of the variety before this Registry. Further fibre fineness is not essential character as per DUS test guidelines (under section 15 (2)(b) of PPV&FR Act, 2001, a variety is eligible for registration if it is distinct for one essential character) All these clearly shows that the

registered breeder has made out the case for amendment in the application.

Accordingly the PV-21 filed by the Registered breeder is allowed and the applicant is directed to file amended sheet to the effect that in respect of character fiber fineness the character is fine and the note value is 7 within 10 days from the date of receipt of this order and consequently the entry in the register at Sl. No.30 (results of DUS testing) will be mutated and corresponding entry will also be made in Sl. No. 37 (any change in any entry).

There shall be no order as to costs.

Given under my hand and seal on this the 30th day of August, 2016.

Sd/-
(R.C.AGRAWAL)
REGISTRAR-GENERAL