

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

**IN THE MATTER OF: Opposition filed by M/s Nuziveedu Seeds  
against registration of**

1. Application No. N66/ GH49/ 08/ 275 - C5096 - filed by MAHYCO.
2. Application No. N64/ GH47/ 08/ 273 - C5195 - filed by MAHYCO
3. Application No. N55/ GH36/ 08/ 262 - MRC 6029 Bt - filed by MAHYCO
4. Application No. N105/ GH112/ 08/ 362 - MRC 7045 BG II - filed by MAHYCO
5. Application No. N29/ GH2/ 08/ 227 - MRC 7347 BG II - filed by MAHYCO
6. Application No. N35/ GH10/ 08/ 235 - MRC 7929 BG II- filed by MAHYCO
7. Application No. N30/ GH05/ 08/ 230 - MRC 7017 - filed by MAHYCO
8. Application No. E206/GH37/08/263-MRC 6322 Bt filed by MAHYCO

**AND**

**IN THE MATTER OF: PV-5 filed by Applicant seeking time  
extension for two months for filing of their evidence.**

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

**For the Applicant: Sh. Anil Dutt, Advocate for M/s.  
Lakshmikumaran & Sridharan**

**ORDER**

A common order is passed in these matters since the issues  
involved at this stage are common.

**FACTS:-**

The applicant has filed a PV-5 (Petition to extend the time for filing their evidence) seeking two months' time for filing their evidence. The Applicant was originally to file the evidence on 12<sup>th</sup> June, 2019. The Applicant filed PV-5 and vide order dated 31<sup>st</sup> day of July, 2019 in these instant matter two months' times was granted for filing of the Applicant's evidence upto 13<sup>th</sup> August, 2019. Subsequently, the Applicant has filed the instant PV-5 seeking further extension of two months.

**APPLICANT'S CASE: -**

The case of the applicant is that they received the final opposition and evidence on 13.05.2019 and the applicant under Rule 33(2) of PPV&FR Rules, 2003 was bound to file their evidence by 12.06.2019.

**CASE IN MRC 7017: -**

The Applicant also need to refer to the varietal development records of the candidate variety and the same are voluminous and it is not possible for the Applicant to retrieve all such relevant documents within a period of 30 days only. Grounds raised by the opponent in the final opposition as also in the evidence are formal and hyper technical in nature and relate to the standard procedure adopted by the Authority before publishing the application for candidate variety. Such issues are the prerogative of the Authority and have been found to be in order by the Authority. The averments made by the Opponent are conjectures and prima facie frivolous. These grounds have been taken by the Opponent only to add volume to its pleadings and waste invaluable time of the Authority. The

Opponent has raised grounds such as advertisement before DUS test and which has burdened the Opponent and would require time to prepare inputs.

**CASE IN MRC 6322 BT, C 5096, MRC 7347 BG II, MRC 7929 BG II, MRC 6029 BT, MRC 7045 BG II:-**

The Applicant has been unable to finalise the evidence affidavit and Applicant would require some more time to peruse and verify the same and prepare its evidence. Further the Opponent has filed new pleadings in Final Opposition following the amended opposition allowed by the Registrar subject to costs vide order dated 23.5.2014. In view of the allegations of the Opponent regarding the development of the candidate variety and ownership thereof, the Applicant may also need to refer to the varietal development records of the candidate variety and they are voluminous and due to the same. It has not been possible for the Applicant to retrieve all such relevant documents within the extended period. It is submitted that the breeders are busy in the recently concluded crop season and collating research data taking time more than expected.

#### **OPPONENT'S CASE**

The counsel for opponent objected to the same. He stated that time extension is not necessary in the instant matter. The grounds taken are repeatedly being pleaded.

#### **ANALYSIS:-**

Based on the arguments of the parties and pleadings filed in this regard, I am of the firm view that PV-5 filed by the applicant

seeking a time extension of further two months for filing of evidence. Applicant has shown sufficient cause to extend the time for filing of evidence by two months. Sufficient Cause shown in a Petition for Time extension of evidence ought to be construed liberally.

I hereby extract the following judgments of IPAB in Tarlochan Singh Vs-Prern Flour Mills & Others reported in 2009 (41) PTC 559 (IPAB) wherein it was held that delay ought to be condoned even if delay has not been reasonably explained:-

*“Though the delay has not been reasonably explained, we are of the view, in the interest of justice, the delay has to be condoned and evidence be taken on record. It is worth mentioning the observation made by this Appellate Board in a judgment reported in 2008 (36) PTC 627 IPAB, Prabha Shankar Agarwal and others v. Deputy Registrar of Trade Marks and Others, “As a general rule, evidence upon what a party relies is not to be shut out. Courts have leaned in favour of affording opportunity to a party to give evidence whenever justice of the case requires it. However, negligent or careless may have been the first omission and however late the proposed evidence, Courts have allowed it to be taken on record, if it can be done without injustice to the other side.”*

Time extension for filing of evidence ought to be followed by payment of costs.

#### **CONCLUSION: -**

Accordingly, the instant second PV-5 filed by the Applicants seeking time extension of further two months for filing of their evidence is allowed subject to the condition of payment of costs of Rs.5,000/- (Rupees Five Thousand Only) for each of the Oppositions to

National Gene Fund within two weeks from the date of receipt of this order. Consequently, applicant can file their evidence by 14<sup>th</sup> October, 2019 (as 13<sup>th</sup> October, 2019 is a Sunday). The Applicants should serve an advance copy to the opponent before filing the same in the Registry. The date of final hearing will be informed to the parties separately.

Given under my hand and seal on this the 6<sup>th</sup> day of September, 2019.

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