

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

IN THE MATTER OF: In reference to issue relating to category of applications for registration of four maize varieties with denominations KML2766, KM19SX005, KM19SX007 and KM21SY035 and four cotton varieties with denominations KC19S001T, KC19S002U, KGPGH 231 and KGPGH-142, filed by Kaveri Seed Company Limited

.....Applicant No.1

And

IN THE MATTER OF: -

In reference to issue relating to category of application for registration of NEW Maize Variety denominated as SYN-CO-NPF0054, filed by M/s. Syngenta Crop Protection AG

.....Applicant No.2

And

IN THE MATTER OF: -

In reference to issue relating to category of application for registration of four maize varieties with denominations VSL 50, VSL 51, VBL 101 and VBL 102, filed by ICAR-Vivekananda Parvatiya Krishi Anusandhan Sansthan, Almora.

.....Applicant No.3

And

IN THE MATTER OF: -

In reference to issue relating to category of application for registration of two cotton parental lines NC 6134 Bt2 and NC 7048 Bt2, filed by M/s. Nuziveedu Seeds Limited.

.....Applicant No.4



- 1) M/s Kaveri Seed Company Limited.,
- 2) M/s. Syngenta Crop Protection AG,
- 3) ICAR-Vivekananda Parvatiya Krishi Anusandhan Sansthan, Almora.
- 4) M/s. Nuziveedu Seeds Limited,

.....Applicants

For Applicant No.1: Sh. Abhishek Saket, Advocate for Applicant.

For the Applicant No.2: Sh. Surya Kumar Rao Rongali, Head, Seeds and Traits Regulatory, Syngenta India Private Limited.

For the Applicant No.3: Dr. Lakshmi Kant, Director, ICAR-Vivekananda Parvatiya Krishi Anusandhan Sansthan, Almora.

For the Applicant No.4: Sh. K.V. Girish Chowdary & D. Satya Sai Sumanth, Advocates for Applicant.

ORDER

By this order I shall dispose of the issue as to whether the applications which are the subject matter of the order falls under the category of Extant Varieties Notified under Section 5 of Seeds Act, 1966 or other appropriate categories. Since the issue involved is common in all these applications, a common order is being passed.



BRIEF HISTORY: -

The issue as to whether parental lines of extant varieties notified under Section 5 of Seeds Act, 1966 would fall under the same category that is 'Extant Varieties Notified under Section 5 of Seeds Act, 1966' or any other categories has been a conflicting issue for a long time and hence a brief history of the issue and various orders passed in this regard have to be examined in detail as the Applicants at Sl. No.1, 3 and 4 are relying on the order dated 5th December, 2018 passed by the Registrar of this Authority.

This Registry by order dated 30th September, 2009 rejected the request of the Applicant at Sl. No.4 and held that the parental lines of extant varieties notified under Section 5 of Seeds Act cannot be considered under the category of extant varieties notified under section 5 of Seeds Act, 1966 but can be considered under other eligible categories for registration under PPV&FR Act, 2001. The said order of the Registry was challenged by the Applicant at Sl. No.4 in W.P. No. 26825/2009 before Hon'ble A.P. High Court and other related W.Ps. In the meanwhile, the Ministry of Agriculture vide O.M. No. 3-26/2013-SD.IV dated 04.06.2013 has clarified under Seeds Act and Rules that parental lines of hybrids are deemed to be notified along with the hybrid for multiplication as foundation seeds for producing the certified hybrid seeds and no separate notification is required for the parental lines if the hybrid is notified under Seeds Act, 1966. Then subsequently the Applicant at Sl. No.4 approached the Hon'ble A.P. High Court which by its order dated 05.09.2013 in W.P. No. 26025/2013 has held that this Registry must reconsider the representation dated 13.06.2013 and 12.07.2013 of the said



private company and take a decision thereon without reference to the pendency of writ petition No. 26825/2009 and other three related writ petitions. Accordingly, while granting opportunity of hearing to the Applicant at Sl. No.4 to dispose of their representation, it was also taken note of the fact by the Registry that there were other applicants who have applied their parental lines of extant hybrids notified under section 5 of Seeds Act, 1966 under the different category of extant varieties about which there is common knowledge with this Registry for registration. Accordingly, this Registry then heard all the Applicants involved in the issue at that point of time and passed an order dated 28.10.2013 holding that the parental lines of extant varieties notified under Section 5 of Seeds Act, 1966 cannot be considered under the category of extant varieties notified under section 5 of Seeds Act, 1966 (Section 2(j)(i) of PPV&FR Act, 2001) but can be considered under other eligible categories for registration under PPV&FR Act, 2001 provided they satisfy the other conditions laid down under the law. This order passed by the Registry was again challenged by the Applicant at Sl. No.4 in WP No. 32462/2013 before Hon'ble AP High Court and the same is under the consideration of the Hon'ble AP High Court. However, no interim order was passed in the above matter. Subsequently, the Hon'ble AP High Court vide order dated 13.02.2015 in WP Nos. 26824, 26825, 26826 and 26855 of 2009 passed the following order, the operative portion of which is extracted hereunder:-

“The petitioner is directed to produce the copy of this order along with the copy of the Office Memorandum dated 04-06-2013 of the 2nd Respondent before the 1st Respondent and on such production, the 1st Respondent is directed to pass orders on the basis of the clarification issued by the 2nd Respondent.”



Accordingly in compliance of the said order, this Registry heard the Applicant at Sl. No.4 and an order dated 5th December, 2018 was passed accepting the contention of the said private company that parental lines of hybrids notified under Section 5 of Seeds Act, 1966 will also be considered under the same category of extant varieties notified under Section 5 of Seeds Act, 1966. The operative portion of the order is extracted hereunder: -

“Accordingly, based on the aforesaid reasonings, I hereby conclude that, the parental lines of extant varieties notified under Section 5 of Seeds Act, 1966 should be considered under the category of extant varieties notified under section 5 of Seeds Act, 1966 (Section 2(j)(i) of PPV&FR Act, 2001) only. Both the parent lines and its extant hybrid notified under Section 5 of Seeds Act, 1966 will have uniform period of protection under Section 24(6)(ii) of PPV&FR Act, 2001 that is 15 years from the date of notification under Seeds Act, 1966. The parental lines of new varieties notified under Section 5 of Seeds Act, 1966 should be considered under the category of new varieties notified under Section 5 of Seeds Act, 1966 provided they are filed within a period of one year from the date of commercialization of earliest/ first hybrid.”

As mentioned earlier the Applicants at Sl. No.1, 3 and 4 relies their case on the said order.

The Applicant at Sl. No.1 in the instant matter has filed six applications of cotton and two applications of Maize. All these are parents of hybrids notified under Section 5 of the Seeds Act, 1966 with the following denominations.

Details are tabulated hereunder: -

Sl.No.	Candidate Variety(Parental lines)/ CROP	Hybrid	Gazette Notification Number and Date
1	KML2766/ Maize	KMH 8577	S.O.1560(E) dated 26.03.2024



2	KM19SX005/ Maize	KMH8577	S.O.1560(E) 26.03.2024	dated
3	KM19SX007/ Maize	KMH8121	S.O.1560(E) 26.03.2024	dated
4	KM21SY035/ Maize	KMH8121	S.O.1560(E) 26.03.2024	dated
5	KC19S001T/ Cotton	KCH9323 BG II	S.O. 4065(E) 31.08.2022	dated
6	KGPGH 231/ Cotton	KCH307 BG II	S.O. 500(E) 29.01.2021	dated
7	KGPGH-142/ Cotton	KCH307 BG II	S.O. 500(E) 29.01.2021	dated
8	KC19S002U/ Cotton	KCH9323 BG II	S.O. 4065 (E) 31.08.2022	dated

The Applicant applied under the category of Extant Varieties Notified under Section 5 of Seeds Act, 1966 it by paying a registration fee of Rs.2000/- only. The Registry raised the query that the hybrid of the candidate variety has been notified under Seeds Act and the said hybrid was commercialised more than a year ago (in some cases less than one year) and accordingly, the candidate variety has to be considered under the New/Extant VCK category. Accordingly, this Registry sought remaining registration fee along with DUS test fee. Further seed quantities were also sought for the purpose of conducting DUS test.

The Applicant at Sl. No.1 in their reply to the query of the Registry in all the above-said applications drew attention to the order dated 5th December, 2018 passed by this Registry in reference to order dated 13th February, 2015 in W.P. No.26824, 26825, 268926 and 26855 of 2009 of Hon'ble High Court in Nuziveedu Seeds –Vs- Registrar, PPVFRA. In the said order passed by the Registry, it was held that the parental lines of extant hybrids notified under Section 5 of the Seeds Act, 1966 would be considered under the category of Extant Varieties



Notified under Section 5 of Seeds Act, 1966 (Section 2(j)(i) of PPVFR Act, 2001) only.

Accordingly, it was requested by Applicant at Sl. No.1 to follow the order in letter and spirit for a harmonious process across the system. Further the Applicant at Sl. No.1 stated that since, the parental lines are deemed to be notified in this case the registration fees of Rs.2000/- should be applicable (which has already been paid along with the application) and DUS test fees and additional seed requirement for DUS testing would not be applicable. The Registry issued a show-cause Notice to the Applicant at Sl. No.1 vide Letter No. PPV&FRA/KML2766/2521 dated 27th August, 2024 under Section 20(2)(b) of PPVFR Act, 2001 directing that the Applicant at Sl. No.1 has to amend the application form for registration of plant varieties from the category of Extant Notified Varieties to other categories and the Applicant at Sl. No.1 was directed to be present in person or through attorney and present their case on 2nd September, 2024. Subsequently, vide letter No. PPV&FRA/KML2766/2591 dated 2nd/ 4th September, 2024 it was informed to the Applicant at Sl. No.1 that the matter was postponed from 2nd September, 2024 to 23rd September, 2024. Accordingly, the Applicant at Sl. No.1 was heard in detail on 23rd September, 2024 and they have filed their written submissions also.

The Registry also identified one application of Applicant at Sl. No.2 and four applications of applicant at Sl. No.3 as being involved in the issue under consideration.

Accordingly, the Applicant at Sl. No.2 was heard on 24th April, 2025 and the Applicant at Sl. No.2 has filed their written



submission also. The candidate variety of Applicant at Sl. No.2 which has been filed under the category of new variety, is a female parent of extant hybrid notified under Section 5 of Seeds Act, 1966 namely NK 6801 which was notified vide S.O. 1056 (E) dated 6th March, 2023. The contention of the Applicant at Sl. No.2 is also that the candidate variety must be considered under the category of New variety though the candidate variety being parental line of NK 6801 which has been notified under Section 5 of the Seeds Act, 1966.

The Applicant at Sl. No.3 had four applications of maize varieties and their contention is that parental lines of extant varieties notified under Section 5 of Seeds Act, 1966 must be considered under the same category that is the category of Extant Varieties notified under Section 5 of Seeds Act, 1966. The Applicant at Sl. No.3 was also heard on 24th April, 2025. Subsequently, the Applicant at Sl. No.3 withdrew all the applications which were the subject matter of this order. Accordingly, no effective order can be passed against Applicant at Sl. No.3 in this matter.

This Registry was of the view that there may be other Applicants involved in the issue which is under consideration and hence, they must also be heard to adjudicate judiciously and arrive at a just decision. Accordingly, the Registry issued a Public Notice No.1 of 2025 dated 29th May, 2025 informing that the Registrar-General is seized of the issue whether parental lines of extant hybrids notified under Section 5 of the Seeds Act, 1966 will fall under the category of extant varieties notified under Seeds Act, 1966 or extant varieties about which there is common knowledge or new variety and accordingly, all the concerned



applicants were invited to furnish details of their applications and request an opportunity of hearing on or before 30.06.2025.

The Applicant at Sl. No.4 vide their representation dated 27th June, 2025 submitted a representation stating that parental lines of extant notified hybrids under Section 5 of Seeds Act, 1966 must be considered under the category of extant notified variety only and they must be heard. The two applications of the Applicant at Sl. No.4 namely NC 6134 Bt2 and NC 7048 Bt2 were used in the development of hybrid NCS 8022 Bt2 which was notified under Section 5 of Seeds Act, 1966. The female parent namely NC 6134 Bt2 has been filed under the EDV category and pursuant to the notification of hybrid the Applicant at Sl. No.4 requested for re-categorisation of the female parent from EDV category to Extant Notified Variety category. The male parent NC 7048 Bt2 was filed under the category of Extant Notified Variety Category. The Applicant at Sl. No.4 was heard on 11th March, 2026 and they had also filed their written submissions.

Now the arguments of each of the Applicants are considered separately:

CASE OF THE APPLICANT No.1: -

1. Briefly stated, the fact is that the above applications for the parent lines have been filed under the category of Notified Variety, wherein the hybrids have been notified under the Seeds Act. The applications for the parent lines have been filed, by the applicant, based on the orders of Nuziveedu Seeds Limited pertaining to parent lines NC-71, NC-99, NC-102 and NC-108 cotton varieties and several other



applications, in which case the parent lines of notified hybrids derived were treated as Notified Parent lines based on the OM issued by the Ministry of Agriculture and also the order of the Learned Registrar pursuant to the directions issued by the Hon'ble Andhra Pradesh High Court (Now Telangana High Court). These were notified and the Learned Registrar passed an order which reads as under.

"Accordingly, based on the aforesaid reasonings, I hereby conclude "that, the parental lines of extant hybrids notified under Section 5 of Seeds Act 1966 should be considered under the category of extant varieties notified under section 5 of Seeds Act, 1966 (Section 2 (j) (i) of PPV&FR Act, 2001) only. Both the parentlines (if not notified under Seeds Act, 1966 earlier to the resultant extant hybrid notified under Seeds Act, 1966) and its extant hybrid notified under Section 5 of Seeds Act, 1966 will have uniform period of protection under Section 24(6)(ii) of PPV&FR Act, 2001 that is 15 years from the date of notification under Seeds Act, 1966. The parental lines of new varieties notified under Section 5 of Seeds Act, 1966 should be considered under the category of new varieties notified under Section 5 of Seeds Act, 1966 provided they are filed within a period of one year from the date of commercialization of earliest/ first hybrid.

2. There is no dispute regarding the conditions that have been laid down in the above order of the Learned Registrar of January 5, 2018 as the Applicant also meets the same conditions and therefore the Applications of the Applicant Kaveri should be treated likewise as in other matters.
3. It is a matter of fact that KGPGH 231 and KGPGH-142 are parental lines of Cotton Hybrid KCH307 BGII which is a Notified Hybrid under the Sec. 5 of Seed Act, 1966. Similarly, KC19S001T & KC19S002U are parental lines of KCH9323 BGI1 which is also a Notified Hybrid under



the Sec. 5 of Seed Act, 1966. The Gazette Notification Copy and Notification and Release Proposal are already on record to buttress the case of the Applicant.

4. However, the show cause notice has been issued in the present matter, which has come as a shock and surprise since the matter regarding how the applications for parent lines should be treated was already settled after multiple rounds of litigation and even the direction of the Hon'ble AP High Court.
5. It is important to point out the turn of events that led to the Learned Registrar Mr. Desai passing the order and settling the issue finally.

5.1 Nuziveedu Seeds Limited (NSL) filed various applications of parent lines namely NC-71, NC-99, NC-102 and NC-108 of the notified hybrid varieties under the category of Extant/New Notified variety.

5.2 While deciding the Application for NC-71, NC 99, NC102 and NC 108 the Learned registrar vide order dated September 30, 2009 observed as under:

“A mere reading of these two definitions makes it clear that under Seeds Act, the emphasize in the definition of variety is more on identification by phenotypic characteristics as well as genotype characteristics. Whereas the definition of variety under PPV&FR Act, 2001 is very broad in nature and emphasize is not only on characteristics resulting due to genotypes but also on characteristics (atleast one) which distinguish it from any other plant grouping, apart from being considered as a unit with regard to its suitability of being propagated and that which remains unchanged on such propagation. This makes it clear that each of the parental variety and its hybrid are



considered as distinct and different under PPV&FR Act, 201 though al qualify the definition of variety. Each of the parental varieties (inbred lines) and its hybrid are considered not as a single variety but as different variety fi they possess characteristics distinguishing each from every other varieties and satisfy other conditions laid down under the law. Accordingly, each of the parental varieties and their hybrids are eligible for registration fi they satisfy the conditions laid down under the PPV&FR Act, 2001.

Further the definition of extant variety under the PPV&FR Act, 2001 has also to be analysed. Section 2(j) of the PPV&FR Act, 2001 defines 'Extant Variety' as follows: -

"Extant Variety means a variety available in India, which is-

- i. notified under section 5 of the Seeds Act, 1966 or*
- ii. farmers' variety; or*
- iii. a variety about which there is common knowledge; or any other variety which is in public domain;".*

The use of the word 'means' in the definition of the Extant variety makes it clear that this definition is exhaustive. It is a settled principle in law that when the legislature uses the word "means" it wants to exhaust the significance of the term defined. The word "means" is a term of restriction. When the word "means" is employed in a definition it shows that the definition is hard-and-fast definition and no other meaning can be assigned to the definition than is put down in the definition. This makes it clear that only extant varieties notified under section 5 of the Seeds Act, 1966 would fall under section 2(j)(i) and not parental varieties which are not notified under section 5 of the Seeds Act, 1966 though their hybrids might have been notified under section 5 of the Seeds Act, 1966. To interpret this in other way would mean assigning to the definition a different meaning.



- 5.3. Thereafter, W.P. No. 26824, 26825, 26826 and 26855 of 2009 was filed by NSL before Hon'ble A.P. High Court in Nuziveedu Seeds -Vs- Registrar, PPV &FRA challenging the above order.
- 5.4 During the pendency of the above Writ Petitions, the Ministry of Agriculture issued an O.M. No. 3-26/2013-SD.IV dated 04.06.2013 clarified that under Seeds Act and Rules the parental lines of hybrids are deemed to be notified along with the hybrid for multiplication as foundation seeds for producing the certified hybrid seeds and no separate notification is required for the parental lines if the hybrid is notified under Seeds Act, 1966.
- 5.5 That NSL again approached the Hon'ble A.P. High Court in the pending matter. The Hon'ble vide its order dated 05.09.2013 in W.P. No. 26025/2013 held that this Registry must reconsider the representation dated 13.06.2013 and 12.07.2013 of the Applicant and take a decision thereon without reference to the pendency of writ petition No. 26825/2009 and other three related writ petitions
- 5.6 That despite the clarification issued by the Ministry of Agriculture, and completely ignoring the OM of the Ministry of Agriculture, the Learned Registrar again in a bunch of matters of various seed companies passed the following order while rejecting the submissions of NSL:

Accordingly, I find no merit in the argument that parental lines are to be considered under the



category of extant varieties notified under section 5 of Seeds Act, 1966, (section 2(j)(i) of PPV&FR Act, 2001) if the hybrid developed out of such varieties/ parental lines is notified under Section 5 of Seeds Act, 1966. Of course it is true that without parents the hybrid cannot be produced and notified under Seeds Act, 1966 and for this reason they are documented in the release proposals for notification under Seeds Act, 1966 but they are not tested in field for the reason that they are not commercialized and they are documented and certified only for the purposes of production of hybrids and not for the commercialization purposes as the farmers use only the hybrid seeds for cultivation and accordingly the parental lines cannot be considered as notified under Section 5 of Seeds Act, 1966 for the purposes of registration under PPV&FR Act, 2001.

Further the word 'notified' occurring in section 2(j)(a) of the PPV&FR Act, 2001 namely "Extant varieties notified under Section 5 of Seeds Act, 1966" negates the inclusion of parental lines of extant varieties notified under Section 5 of Seeds Act, 1966 as the said parental lines are not expressly and specifically notified under Section 5 of Seeds Act, 1966.

"Based on the aforesaid reasoning, I have no hesitation to hold that the parental lines of extant varieties notified under Section 5 of Seeds Act, 1966 cannot be considered under the category of extant varieties notified under section 5 of Seeds Act, 1966 (Section 2(j)(i) of PPV&FR Act, 2001) but can be considered under other eligible categories for registration under PPV&FR Act, 2001 provided they satisfy the other conditions laid down under the law".

- 5.7 What is evident from the above two orders of the Learned Registrar is that the reason for not considering the parent lines of Notified Hybrid as Notified Parents was that since the parents were not notified, hence parent lines could not be considered



as Notified and therefore cannot be registered as Notified Varieties.

- 5.8 Thereafter, NSL filed Miscellaneous Applications in the pending Writ Petitions before the Hon'ble AP High Court. The Hon'ble AP High Court (Now Telangana High Court) heard the matter on February 15, 2015 on the miscellaneous application filed by NSL wherein it was informed to the Hon'ble Court that the Ministry of Agriculture had clarified the position vide its OM No. 3-26/2013-SD.IV dated 04.06.2013 and therefore appropriate direction be issued to the Learned Registrar to pass an order on the basis of the said OM while disposing the Writ Petitions. The Hon'ble High Court passed the following order:

"Hence, this Court is of the view that these Writ Petitions can be disposed of with the following directions:

The petitioner is directed to produce the copy of this order along with the copy of the Office Memorandum dated 04-06-2013 of the 2nd Respondent before the 1st Respondent and on such production, the 1st respondent is directed to pass orders on the basis of the clarification issued by the 2nd respondent."

- 5.9 The above order of February 15, 2015 clearly directed the Learned Registrar to pass an order on the basis of the clarification issued by the 2nd Respondent (Ministry of Agriculture) and gave no option or scope to take any different position.

- 5.10 Thereafter, in reference to order dated 13.02.2015 in W.P. No. 26824, 26825, 26826 and 26855 of 2009



of Hon'ble A.P. High Court in Nuziveedu Seeds -Vs- Registrar, PPV &FRA, the Learned Registrar of the PPV&FR passed the following order:

The previous orders of the Registry proceeded on the reasoning that since the hybrid was expressly notified under Section 5 of the Seeds Act whereas its parental lines were not expressly notified, hence in such cases the parental lines of extant varieties notified under Section 5 of Seeds Act, 1966 cannot be considered under the category of extant varieties notified under Section 5 of Seeds Act, 1966. Further it was also reasoned that clarificatory OM issued under Seeds Act cannot be automatically applied to PPV&FR Act, 2001. Having meticulously re-examined the issue, I do not agree with the reasoning of the registry in this regard. The characters of parental lines of extant notified hybrids are documented in the applications for notifications and also in the meetings of subcommittee on Crop Standard and notification and release of varieties for agricultural crops for notification under Seeds Act, 1966. When the parental lines of hybrids notified under Section 5 of Seeds Act, 1966 are deemed to be notified under Seeds Act, 1966 and by adopting the same interpretation in PPV&FR Act, 2001 no harm or prejudice is going to be caused to anyone. In the previous orders on this issue the Registry has omitted to consider a very important point issue which warrants and necessitates a change from the view taken earlier. I agree with the contention of the counsel for applicant that both the parental line and the hybrid must be considered as a unit for the purposes of propagation and stability as the propagating material for hybrid is parental lines. The earlier view taken by the Registry that parental lines of hybrids notified under Section 5 of Seeds Act, 1966 cannot be considered under the category of extant notified variety but under other categories would lead to ever-greening of Intellectual Property Rights in Plant Varieties. The period of protection of extant varieties notified under Section 5 of Seeds Act, 1966 is 15 years from the date of notification under Section 5 of Seeds Act, 1966 under Section 24(6)(ii) of PPV&FR Act, 2001. An apt illustration would be



assuming a variety is notified under section 5 of Seeds Act, 1966 during 2005 and it would go into public domain on 2020 and in 2017 fi the breeder applies for A parental line of the said hybrid and gets registration and thereafter just before the expiry of period of protection of A Parent applies for registration of B parent line and thereby prevents the hybrid from going into public domain for another 30 to 45 years beyond the expiry of period of protection of hybrid. This issue of ever-greening of plant varieties has been dealt by Hon'ble Delhi High Court in a matter relating to the issue of novelty of parental lines whose hybrids fall under the category of extant varieties. The Hon'ble Delhi High Court in by its order dated 09.01.2015 in WP No.4330/2012 in Maharashtra Hybrid Seeds Co., -Vs- UOI held as follows: -

"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."

Though the issue involved in the judgement is related to category of parental lines that is whether they will fall under the category of new or extant when its hybrid falls under the extant variety category. The principle involved in the above cited case against ever-greening squarely applies to the instant case also. 'Evergreening' is an abuse of patent law whereby a patent is tried to be retained even after its expiry! The same can occur in law relating to plant varieties also as it is also a branch of Intellectual Property Law similar to that of Patents Law. Any attempt towards ever-greening of Intellectual Property must be judicially restrained. When with regard to period of protection, both parental lines and hybrid are to be considered as a unit then for the purposes of registration of varieties also both parental lines and hybrid must be considered under the same category as period of protection is different for extant varieties notified under Section 5 of Seeds Act, 1966 and for other new varieties and extant varieties about which there is common knowledge. Public domain is the rule and intellectual property is an exception and if hybrid goes into public domain then its parents cannot be granted fresh period of protection and if done contrarily then hybrid which has gone into public domain will still enjoy indirect protection as its parents are protected. In the instant case on hand also the period of protection for hybrids (of the parental lines which are the subject matter of the judgment) have already expired and accordingly, there is no scope for extending the period of protection of hybrid by considering the parental lines under different category and granting them fresh period of protection.

Accordingly, based on the aforesaid reasonings, I hereby conclude that, the parental lines of extant hybrids notified under Section 5 of Seeds Act, 1966 should be considered under the category of extant varieties notified under section 5 of Seeds Act,



1966 (Section 2(i)(i) of PPV&FR Act, 2001) only. Both the parent lines (if not notified under Seeds Act, 1966 earlier to the resultant extant hybrid notified under Seeds Act, 1966) and its extant hybrid notified under Section 5 of Seeds Act, 1966 will have uniform period of protection under Section 24(6)(ii) of PPV&FR Act, 2001 that is 15 years from the date of notification under Seeds Act, 1966. The parental lines of new varieties notified under Section 5 of Seeds Act, 1966 should be considered under the category of new varieties notified under Section 5 of Seeds Act, 1966 provided they are filed within a period of one year from the date of commercialization of earliest/ first hybrid.

- 6 Thus, it is clear from the above sequence of events that the issue regarding the parent lines of Notified Hybrid has been finally settled by the Registrar pursuant to the O.M. No. 3-26/2013-SD.IV dated 04.06.2013 and the orders of the Hon'ble high Court of Telangana, which did not give any scope of differing with the OM issued by the Ministry of Agriculture.
- 7 It is submitted that once a matter has been settled, the same cannot be altered by any means by this Tribunal as there is no power granted to the Learned Registrar to review its own orders, more so when the matter has been settled by the Hon'ble High Court and pursuant thereto the Authority has taken a decision too. It may also be stated here that the Authority never challenged the order of the Hon'ble AP High Court and in fact acted upon the directions issued.
- 8 Further, it is also a well settled proposition of law that the principle of consistency in judicial decisions is fundamental to maintaining integrity and trust in the legal system. Discriminatory practices by a judicial officer



contravenes ethical standard that is expected from the Tribunal, which may also amount to gross misconduct that damages the foundational principle of justice. In addition, the consistency and uniformity must be maintained.

- 9 Further, the Applicant herein has filed the applications based on legitimate expectation and that its application shall be treated in the same manner as that of the other applicants in identical cases i.e. NC-71, NC-99, NC-102 and NC-108 and several other matters. There has been no change of law since the order was passed by the Learned Registrar pursuant to the issuance of OM by the Ministry of Agriculture and the direction of the Hon'ble AP High Court (Telangana). Even the Ministry has not issued any other direction or clarification, such that the application of the Applicant can be treated differently.
- 10 It may also be relevant to point out that several parent lines of Notified Hybrids have been registered under the PPV&FR Act. A list of such registered varieties were listed out.
- 11 That based on the above submissions, it is most humbly prayed that the parent line applications of the Notified Hybrids of the Applicant be treated likewise and the applications may be processed for registration accordingly. However, if the Learned Registrar differs with the submission of the Applicant, then without prejudice submits that the Applicant's Application may be treated in appropriate category. However, the Applicant also clarifies that it reserves its rights to challenge the order in case the



Learned Registrar differs with the Applicant for registration in the Notified New Variety.

CASE OF APPLICANT NO.2:

NPF0054 is one of the parents of Corn hybrid NK 6801 notified under Section 5 of the Seed Act, 1966 vide S.O. 1056 (E) dated 06/03/2023.

Issue:

Whether the parental line of Extant Variety notified under Section 5 of the Seed Act, 1966 will fall under the category of extant variety notified under Section 5 of the Seed Act, 1966 or other eligible Categories.

Possible scenarios may exist for Parental line source:

01. Own source (Developed by applicant)
02. Own source (Sourced from Affiliates)
03. In licensed (sourced from third party: between private entities, state / National / international institutes)

In case of existence of scenario 2 and/or 3, parental lines ownership (Plant Breeders' Right) can't be issued to hybrid applicant under Section 5 of the Seed Act, 1966.

Case Analysis:

As per Sec 15(2) read with Sec 14 (b) and Sec 2 (i), an extant variety shall be registerable within a specified period if it confirms to such criteria of DUS specified under the regulations.

- PV&FR Authority time to time will notify the timelines for registration of crop species under extant category.



- Hybrids / Varieties notified under Section 5 of the Seed Act, 1966 will be eligible to protect within the specified period.
- As per office memorandum issued by the Ministry of Agriculture, Department of Agriculture & Cooperation on 04.06.2013, the parental lines of the notified hybrids are deemed to be notified along with the hybrid as per provision of Seeds Act, 1966 and Seed Rules, 1968.
- Parental lines of the notified hybrids under Section 5 of the Seed Act, 1966 exploited, in public knowledge, and disposed of, if the hybrid has been already commercialized.
 - In this case, the applicant must be given an option to file the parental applications under NEW category or VCK category.
- In view of above facts:
 - After completion of specified timelines notified for registration of extant category for specific crop specie(s), the hybrid/variety notified under Section 5 of the Seed Act, 1966 may not be eligible for protection under the Extant Category.
 - In case the hybrid notified but not commercialized then the hybrid and its parental lines are under exploitation, and in public knowledge but not disposed so both are eligible for protection under NEW Category.



- Novelty of notified hybrids and its parental lines can't be drawn from AICRP Trials.
- In this case, the notified hybrids and its parental lines may get some advantage from DUS test process for registration:
 - The hybrid should be exempted from DUS trials since it was already undergone the testing process under AICRP Trials. So, it should be verified for its Novelty test only.
 - The Hybrid uniformity and stability depends on its parental line's Uniformity and Stability. In the notified hybrid case, the parental line's Uniformity and Stability has been already observed though its hybrid's Uniformity and Stability for 3 years under AICRP Trials. So, the parental DUS test should be limited to one-year in place of 2 years to confirm its NDUS.

In the instant case, the candidate variety NPF0054, denomination SYN-CO-NPF0054 given for the protection under PPVR Act, 2001, was sourced from Syngenta Crop Protection AG, for the development of Maize hybrid NK 6801, a notified under Section 5 of the Seed Act, 1966. The maize hybrid NK 6801 not yet commercialized by Syngenta.

Accordingly, it is prayed to consider the application filed by Syngenta Crop Protection AG under NEW category.



CASE OF APPLICANT NO.3:

Their submission is that the earlier system of registration wherein the parental lines of the hybrids were deemed to be registered upon the registration of the hybrid under the category of extant variety, may continue to be followed, and accordingly the additional registration fee of Rs. 8,000.00 and DUS test fee of Rs. 30,000.00 may please not be charged for processing of registration application of VSL 51 (male parent of hybrid VL. Madhurima), VSL 50 (female parent of hybrid VL. Madhurima), VBL 102 (male parent of hybrid VL. Vita), VBL 101 (female parent of hybrid VL. Vita).

CASE OF APPLICANT NO.4:

I. Brief List of Events:

Date	Particulars of Event
22.06.2024	The Applicant, Nuziveedu Seeds Limited (NSL) submitted its Application for registration in respect of Female parental line "NC-6134 Bt2 (GMS)" under the EDV category.
08.10.2024	The cotton hybrid variety "NCS-8022 Bt2" was officially notified under Section 5 of the Seeds Act, 1966 through publication in the Official Gazette by the Ministry of Agriculture and Farmers Welfare.
02.12.2024	Pursuant to the notification of the hybrid NCS-8022 Bt2, NSL submitted an amended application before the Registrar, Plant Variety Registry requesting that the application for the parental line NC-6134 Bt2 (GMS), bearing Acknowledgement No. REG/2024/0357, be re-categorized from the EDV category to the "Extant Notified variety" category, in view of the notification of the hybrid under Section 5 of the Seeds Act, 1966.
02.12.2024	The Applicant applied for registration of the hybrid variety



	NCS-8022 Bt2 under the “Extant Notified Variety” category.
02.12.2024	On the same date, an application was filed before the Authority for registration of the Male parental line “NC-7048 Bt2” under the “Extant Notified Variety” category, as it constitutes the other parent used in the development and production of the notified hybrid NCS-8022 Bt2.
08.01.2025	The Registry of the PPV & FR Authority issued an email communication raising certain queries in respect of the applications filed for the parental lines NC-6134 Bt2 GMS and NC-7048 Bt2, and sought additional information such as the Gazette Notification for parent lines, Release Proposal, amended Form-I, and clarification regarding the category of the variety.
13.01.2025	In response to the above communication, Nuziveedu Seeds Limited submitted a representation to the Registrar General seeking clarification on the categorization of its application under the categories of “Extant Notified”, “Extant Variety about which there is Common Knowledge (VCK)”.
15.02.2025	Pursuant to the query issued by the Registry, the applications relating to the parental lines “NC-6134 Bt2 (GMS)” and “NC-7048 Bt2” were amended under protest and categorized under the “Extant Variety” category, pending clarification with regard to the appropriate category in respect of the parental lines of notified hybrid variety.
20.01.2025	The National Seed Association of India submitted a representation to the Chairperson of the PPV & FR Authority, highlighting concerns of the seed industry if the interpretation relating to the categorization of parental lines of notified hybrids is altered in deviation from the settled practice and applicable legal position.
29.05.2025	The Registrar General issued Public Notice No. 1 of 2025, stating that the Authority is seized of the issue concerning the appropriate category for registration of parental lines of extant hybrids notified under Section 5 of the Seeds Act, 1966, and



	invited applicants to furnish details of their applications and request an opportunity of hearing before 30.06.2025.
27.06.2025	In response to the said Public Notice, Nuziveedu Seeds Limited submitted a detailed representation reiterating that the parental lines of hybrids notified under Section 5 of the Seeds Act are deemed to be notified and must therefore be considered under the “Extant Notified” category, in terms of the Office Memorandum dated 04.06.2013 issued by the Ministry of Agriculture, the Judgment of the Delhi High Court in WP(C) 4330/2012, and the Registrar’s Order dated 05.12.2018.
11.03.2026	Hearing held

II. Submissions:-

- 1) Gazette Notification u/s 5 of Seeds Act, 1966 as sought by the PPV & FR Registry in respect of the Parent Lines of the Notified Hybrid is not required as the parental lines of the notified hybrid are deemed to be notified as per the clarification in O.M. dated 04.06.2013 issued by the Ministry of Agriculture.
 - i. At the outset, it is respectfully submitted that the Registry has sought production of the Gazette Notification under Section 5 of the Seeds Act, 1966 in respect of the parental lines forming part of the notified hybrid. It is submitted that no separate Gazette Notification is published for the parental lines, as per the long-standing regulatory practice followed by the Ministry of Agriculture.
 - ii. In this regard, the Ministry of Agriculture has clarified through its Office Memorandum dated 04.06.2013, marked



to the Protection of Plant Varieties and Farmer Rights Authority, that male and female parental lines of a hybrid are deemed to be notified along with the hybrid itself, and therefore separate notification of such parental lines is neither required nor issued under the prevailing regulatory framework.

Relevant portion of Office Memorandum dated 04.06.2013, is reproduced hereunder:-

"Subject: Clarification on certification of male and female parental lines of hybrids

It has been brought to the notice of this Department that State Seed Certification Agencies are insisting upon separate notification of parental lines of hybrids before registering them for certification of Foundation Seeds.

As male and female parental lines are required for hybrid seed production, it is clarified that the parental lines of the hybrids are deemed to be notified along with the hybrid for multiplication as Foundation Seed for producing the certified hybrid seeds, and no separate notification is required for these parental lines if the hybrid is notified as per the provisions of the Seeds Act, 1966 and the Seeds Rules, 1968."

- iii. Accordingly, the requirement of producing a separate Gazette Notification for the parental lines of the notified hybrid is not required in practice, as no such notification exists under the established procedure prescribed by the Ministry of Agriculture. The notification issued for the hybrid under Section 5 of the Seeds Act necessarily encompasses the parental lines used for its production.
- 2) Legal position governing the categorization of parental lines of hybrids notified under Section 5 of the Seeds Act, 1966
- i. It is respectfully submitted that the issue relating to the appropriate category for registration of parental lines of notified hybrid under Section 5 of the Seeds Act, 1966



has undergone changes by way of administrative clarification and judicial directions. Prior to 04.06.2013, the parental lines of hybrids notified under Section 5 of the Seeds Act were not being treated as extant varieties notified under Section 5 of the Seeds Act.

- ii. Subsequently, the Department of Agriculture & Cooperation, Ministry of Agriculture, issued an Office Memorandum dated 04.06.2013, clarifying that separate notification of parental lines is not required, and that the male and female parental lines of a hybrid are deemed to be notified along with the hybrid itself for the purposes of multiplication and certification of hybrid seeds.
- iii. The Hon'ble Andhra Pradesh High Court in W.P. Nos. 26824, 26825, 26826 and 26855, vide its Order dated 13.02.2015, directed the Registrar of the PPV & FR Authority to reconsider the issue in light of the clarification contained in the Office Memorandum dated 04.06.2013.

Relevant Portion of the Order dt 13.02.2015 is reproduced hereunder:-

"4. During the pendency of the writ petitions, the learned counsel for the petitioner filed miscellaneous petitions informing the Court that the 2nd respondent herein by way of Office Memorandum dated 04-06-2013 clarified the position and placed the said order before the Court.

...

"5. Hence, this Court is of the view that these Writ Petitions can be disposed of with the following directions :

The petitioner is directed to produce the copy of this order along with the copy of the Office Memorandum dated 04-06-2013 of the 2nd Respondent before the 1st Respondent and on such production, the 1st respondent



is directed to pass orders on the basis of the clarification issued by the 2nd respondent.”

- iv. Pursuant to the aforesaid direction passed by the Hon’ble Andhra Pradesh High Court, the Registrar, PPV & FR Authority undertook a fresh and detailed examination of the issue by taking into consideration the clarification contained in the Office Memorandum dated 04.06.2013, and by way of a detailed Order dated 05.12.2018, concluded that the parental lines of extant hybrids notified under Section 5 of the Seeds Act, 1966 ought to be considered under the category of “Extant Varieties Notified under Section 5 of the Seeds Act, 1966” for the purposes of registration under the PPV&FR Act.

Relevant portion of the Order dated 05.12.2018, is reproduced hereunder:-

“.....I agree with the contention of the counsel for applicant that both the parental line and the hybrid must be considered as a unit for the purposes of propagation and stability as the propagating material for hybrid is parental lines.....

.....

Accordingly, based on the aforesaid reasonings, I hereby conclude that, the parental lines of extant hybrids notified under Section 5 of Seeds Act, 1966 should be considered under the category of extant varieties notified under section 5 of Seeds Act, 1966 (Section 2G)(i) of PPV&FR Act, 2001) only. Both the parent lines (if not notified under Seeds Act, 1966 earlier to the resultant extant hybrid notified under Seeds Act, 1966) and its extant hybrid notified under Section 5 of Seeds Act, 1966 will have uniform period of protection under Section 24(6) (ii) of PPV&FR Act, 2001 I.e 15 years from the date of notification under the Seeds Act, 1996.”



- v. It is submitted that the Learned Registrar's interpretation, has since been consistently followed in practice by the Authority as well as all stakeholders in the seed industry and agricultural sector. Pertinently, no subsequent regulation, notification, or policy decision has been issued by the Authority or the Central Government departing from the position adopted in the Registrar's Order dated 05.12.2018, and Office Memorandum dated 04.06.2013. In the absence of any such change in law or policy, the settled interpretation laid down by the Registrar continues to govern the field and hence the applications of the Applicant for the parent lines ought to be processed under the category of extant varieties notified under Section 5 of the Seeds Act. Thus, the Order of the Registrar cannot take a divergent stand especially since the Order dated 05.12.2018, was passed based on the direction passed by the Hon'ble High Court to act in accordance with Office Memorandum dated 04.06.2013. Furthermore, there is nothing to suggest that the Order of the registrar dated 05.12.2018, has been appealed or set aside. Therefore, adopting any divergent approach in the categorisation of the present applications would be arbitrary and cause grave prejudice to the Applicant's pending applications for registration of its parent lines, "NC-6134 Bt2 GMS" and "NC-7048 Bt2".

- 3) Change in categorisation of parent lines of notified hybrids will result in unsettling the protection granted to Parent lines registered under the 'extant notified variety' category.



- i. As per the Learned Registrar's Order, the period of protection granted to the parent lines of the notified hybrid is Co-terminus with the notified hybrid i.e 15 years from the date of notification under Section 5 of the Seeds Act, 1996. However, the certificate of registration as per Section 24 (6)(iii) in other cases i.e non notified varieties, is fifteen years from the date of registration of the variety. Thus any change in categorisation departing from the existing framework would necessarily affect the uniform protection granted to notified hybrids and their respective parent lines.
- ii. Further, the legitimacy of Certificates of Registration already granted to parents of notified hybrids would be susceptible to challenge if a new methodology is adopted to categorise the parent lines under extant category and not extant notified variety category. It is respectfully submitted that the categorisation of parent lines of notified hybrid variety under extant variety and not extant notified variety, would result in possible abuse and evergreening of protective rights granted under the PPV &FR Act, 2001. An applicant would first apply for Registration of the notified hybrid and just before the expiry of the Registration Certificate in respect of the notified hybrid variety, register one of the parent variety under extant category and thus extend the period of exclusivity over the hybrid for a further period of 15 years because the protection of even one parent line would practically ensure exclusive rights in relation to the same hybrid variety. In the same manner, the



protection over the hybrid could be extended again for another 15 years by registering the other parent line. *The Hon'ble Delhi High Court in Maharashtra Hybrid Seed Co v U.o.I. W.P. (C) 4330/2012 & batch* at Para 35 had cautioned that the intent of the PPV &FR Act, 2001 ought not to be interpreted to permit “evergreening” of rights in plant varieties.

4) DUS Testing ought not to be insisted upon for the parent lines of Notified Variety.

- i. It is respectfully submitted that there is no requirement for DUS testing of the parental lines of notified hybrids, particularly when the hybrid derived from the said parental lines has already undergone extensive evaluation prior to its notification under Section 5 of the Seeds Act, 1966. The hybrid “NCS-8022 Bt2” was subjected to rigorous multi-location trials under the All India Coordinated Cotton Improvement Project (AICCIP) and was subsequently recommended by the Central Variety Release Committee (CVRC) after evaluation over multiple crop seasons. These trials typically span three years, during which the agronomic performance, stability, and uniformity of the hybrid are comprehensively assessed.
- ii. In this regard, Section 2(j)(i) of the PPV & FR Act, 2001 defines an “extant variety” to include a variety that has been notified under Section 5 of the Seeds Act, 1966. The inclusion of such notified varieties within the definition of “extant variety” reflects the legislative intent to accord protection to varieties that have already



been subjected to a rigorous, multi-tiered evaluation process under the statutory framework of coordinated trials and official release mechanisms. This intent is further reinforced by Rule 29 of the PPVFR Rules, which expressly provides that DUS testing shall be necessary for all new and extant varieties except, inter alia, for varieties notified under Section 5 of the Seeds Act, 1966. Additionally, Rule 29(4A) clarifies that DUS criteria are to be determined on the basis of reports of the All India Coordinated Research Project trials, thereby acknowledging the robustness and sufficiency of such prior evaluations. Thus when read together, Section 2(j)(i), Rule 29, and Regulation 6 form a coherent and harmonized framework, the objective of which is to avoid duplication of testing and to streamline the registration process for notified varieties. Accordingly, once a hybrid has undergone comprehensive testing and has been notified under the Seeds Act, there arises no additional requirement for independent DUS testing of its parental lines.

Section 2(j) of the PPV & FR Act, 2001 is reproduced hereunder:

“2. Definition-

(j) “extant variety” means a variety available in India which is—

(i) notified under section 5 of the Seeds Act, 1966 (54 of 1966); or

(ii) farmers’ variety; or

(iii) a variety about which there is common knowledge; or

(iv) any other variety which is in public domain;”



Rule 29 (4) and (4A) of the PPV & FR Rules, 2003 are reproduced hereunder:

“29. Manner and method for conducting tests under section 19.-

(4). The DUS test shall be necessary for all new and extant varieties except essentially derived varieties and for varieties notified under Section 5 of the Seeds Act, 1966 (54 of 1966)

(4A) The DUS criteria shall be determined based on report of the All India Coordinated Research Project Trails”.

- iii. It is further submitted that the production of hybrid seed inherently requires the consistent use of the same male and female parental lines, which constitute the ‘propagating material’ as defined under Section 2 (r) of the Act. Consequently, the characteristics of the parental lines are inherently reflected in the performance and stability of the hybrid during the multi-year evaluation process undertaken by the regulatory authorities. The parental lines forming part of the hybrid seed production system have therefore already been tested in substance through the evaluation of the hybrid itself, and their characteristics remain documented and available as part of the hybrid development and varietal release process. The Pedigree chart of the Parent lines and DUS Characteristics of the Parental lines are elaborately disclosed in the CVRC proposal submitted by the Applicant.

In such circumstances, any insistence on a separate DUS testing by the Authority for the parental lines, despite the hybrid having undergone extensive regulatory evaluation and official notification, would be redundant



and inconsistent with the scientific and legal framework governing hybrid seed production.

REASONING: -

The only issue that has to be considered is whether the parental lines (applications which are subject matter of proceedings) of extant varieties notified under Section 5 of Seeds Act, 1966 would by default fall under the category of Extant varieties notified under Section 5 of Seeds Act, 1966 or other appropriate categories including extant variety about which there is common knowledge and new variety.

Before advertng to the main issue, I have to examine the provisions relating to different categories for registration of plant varieties under PPV&FR Act, 2001 and their statutory requirements for registration. So that the provisions could be applied to the facts on hand and conclusion could be arrived.

The categories for registration of plant varieties under PPV&FR Act, 2001 are as follows:-

- a) **New Variety** – If a plant variety is commercialized or exploited for a period of less than one year on the date of filing of application then it could be filed under the category of New variety. (Section 15 (3) (a) of PPV&FR Act, 2001)
- b) **Extant Variety**- means a variety available in India and consists of the following four categories as defined in section 2(j) of PPV&FR Act, 2001 namely:-
 - a) Notified under section 5 of Seeds Act, 1966.
 - b) Farmers' Variety or



- c) A variety about which there is common knowledge or
- d) Any other variety which is in public domain.

Apart from this there is essentially derived variety which may be either extant or new can also be registered and testing of the same is determined by the Authority on case to case basis. (Section 23 read with Rule 29 (5) of PPV&FR Rules, 2003).

The extant varieties in public domain are not registered as they are already in public domain. Public Domain is the status of an invention, creative work, commercial symbol, or any other creation that is not protected by any form of intellectual property (*Thomas McCarthy in Trade Marks and Unfair Competition*).

Both new varieties and extant varieties must satisfy the criteria of DUS (Distinctiveness, Uniformity and Stability) for registration in accordance with Section 15(1) and (2) of the PPV&FR Act, 2001. All the categories of plant varieties except EDV and extant varieties notified under Section 5 of Seeds Act, 1966 undergo DUS testing [Rule 29(4) of PPVFR Rules, 2003]. The DUS criteria of Extant Varieties Notified under Section 5 of Seeds Act, 1966 is determined based on report of All India Co-ordinated Research Project Trials [Rule 29(4A) of PPVFR Rules, 2003]. Rule 29(4) and (4A) of PPVFR Rules, 2003 are extracted hereunder: -

“Rule 29 (4) The DUS test shall be necessary for all new and extant varieties except essentially derived varieties and for varieties notified under section 5 of the Seeds Act, 1966 (54 of 1966)

(4A) The DUS criteria shall be determined based on report of the All India Coordinated Research Project Trials”

Accordingly the DUS criteria of Extant Varieties Notified under Section 5 of the Seeds Act, 1966 is determined through All



India Co-ordinated Research Project Trials. It is pertinent to point out here that the parental lines of Extant Hybrids Notified under Section 5 of the Seeds Act, 1966 do not undergo All India Co-ordinated Research Project Trials.

Further under Regulation 6 of PPV&FR Regulation, 2006 the extant varieties notified under Seeds Act are placed before Extant Variety Recommendation Committee which recommends them for registration and thereafter the same is advertised in Plant Varieties Journal of India inviting Oppositions within a period of three months in accordance with section 21. The Extant Notified Variety thereafter proceeds for registration, if no opposition is filed or if opposition filed is rejected. If Opposition is allowed the application is rejected.

The Regulation 6 of PPV&FR Regulations, 2006 is extracted hereunder:-

“Regulation 6-Criteria for registration of extant variety.-

The suitability for registration of extant varieties which have been notified under section 5 of the Seeds Act, 1966 (54 of 1966) shall be examined by the Extant Variety Recommendation Committee to be constituted by the Authority. The Extant Variety Recommendation Committee will be comprised of ten persons including one Farmers' Representative, one representative from the Seed Division of Department of Agriculture and one Seed Industry Representative and other subject matter specialists who shall be nominated by the Authority. The Extant Variety Recommendation Committee shall have three years tenure and Registrar of the Authority shall be the Ex-officio Member Secretary of the Committee. On the basis of the recommendations of the Extant Variety Recommendation Committee, the extant variety of notified variety under the Seeds Act, 1966 shall be registered as per the provisions of the section 28 of the Protection of Plant Varieties and Farmers' Rights Act, 2001. The Criteria of distinctiveness, uniformity and stability for registration of extant variety differ from species to species and they shall be notified by



*the Protection of Plant Varieties and Farmers' Rights
Authority in the Gazette of India."*

On the other hand new varieties undergo DUS testing for two years at two locations in accordance with Rule 29(1)(c) and Rule 29(4) & (4A) of PPV&FR Rules, 2003 which is extracted hereunder: -

"Rule 29(1)(c) The DUS testing shall be field and multi-location based for at least two similar crop seasons and special tests be laboratory based.

Provided that in the case of trees and vines there shall be an option on the manner of the DUS testing that a panel of three experts shall visit the On-farm test sites for two similar crop seasons as may be specified."

In case of extant variety about which there is a common knowledge, DUS testing is conducted for one year at two locations in accordance with Regulation 4 (1) and 5(5) of PPV&FR Regulations, 2009. The relevant portion is extracted hereunder:-

"4(1) Criteria for Distinctiveness, Uniformity and stability for registration of variety about which there is Common Knowledge.- (1) The criteria for distinctiveness, uniformity and stability for registration of a variety about which there is a common knowledge shall be determined by conducting a field test for one season at two locations for the purpose of confirming the distinctiveness, uniformity and stability following the descriptions and plot size as may be specified in the Journal."

"Parental line" has been defined in Regulation 2(f) of PPVFR Regulations, 2006 as meaning the inbred line of immediate parents or 'A' line, 'B' line and 'R' line of hybrids.

These provisions make it clear that DUS testing is mandatory for registration of all varieties and even in case of extant varieties notified under section 5 of Seeds Act, 1966 though the DUS



testing is not conducted the DUS criteria is determined through the report of All India Co-ordinated Research Project Trials. As reiterated earlier, parents of Extant hybrids notified under Section 5 of Seeds Act, 1966 do not undergo Trials under All India Co-ordinated Research Project Trials and it is only the hybrid that undergoes the testing and hence the DUS criteria of hybrid is determined through reports of All India Co-ordinated Research Project Trials. Since, the parental lines of Extant Hybrids Notified under Section 5 of Seeds Act, 1966 do not undergo Trials under All India Co-ordinated Research Project Trials the DUS criteria of parental lines can be determined only through DUS testing.

In light of the above, I am unable to subscribe to the order of this Registry dated 5th December, 2018 wherein it has been held that parental lines of extant varieties notified under Section 5 of Seeds Act, 1966 will also be considered under the category of Extant varieties notified under Section 5 of Seeds Act, 1966. Since, the Applicants at Sl. No.1 and 4 in the instant matter solely rely on the said order of this Registry it has to be examined in detail.

At the outset it is admitted that applications for registration of parent lines which are involved in the subject matter of proceedings have not been specifically and explicitly notified under Section 5 of Seeds Act, 1966 though their hybrids have been notified. Section 2(j)(i) of the Act which defines an extant variety means varieties notified under Section 5 of Seeds Act, 1966. This can mean only explicit and specific notification and not notification by implication, deeming, conjecture or surmise.



Again it is a clear fact that the Parental lines which are involved in the subject matter of instant proceedings have never underwent AICRP Trials. Rule 29(4A) of PPVFR Rules, 2003 makes it clear that it is mandatory for a variety to be considered under the category of Extant Variety notified under Section 5 of Seeds Act, 1966 to have undergone AICRP Trials. In light of Rule 29(4A) of PPVFR Rules, 2003, these varieties which are subject matter of proceedings cannot be considered under the category of extant varieties notified under Section 5 of Seeds Act, 1966.

The Registrar in the earlier order dated 5th December, 2018 has stated that the characters of parent lines of extant hybrids notified under Section 5 of Seeds Act, 1966 are documented in the applications for notifications of hybrid and also in the meetings of sub-committees constituted under Section 5 of Seeds Act, 1966 and the relevant portion of the order is extracted hereunder: -

"The characters of parental lines of extant notified hybrids are documented in the applications for notifications and also in the meetings of subcommittee on Crop Standard and notification and release of varieties for agricultural crops for notification under Seeds Act, 1966."

Actually, Rule 29(4A) of PPVFR Rules, 2003, has been completely ignored in this regard. It is not the question of documentation of characters (which may or may not be DUS characters) that matters it is the question of undergoing AICRP trials and subsequent notification of a variety under Section 5 of Seeds Act, 1966, which are two golden hallmarks for deciding whether a variety fall under category of extant varieties notified under Section 5 of Seeds Act, 1966. But contrarily Registrar in



his order dated 5th December, 2018 has ignored these important aspects.

Exemption from a separate DUS testing has been provided only in case of extant varieties notified under Section 5 of Seeds Act, 1966 for the reason that extant varieties prior to notification under Section 5 of Seeds Act, 1966 undergo extensive VCU (Value for Cultivation & Use) testing for two to three years and whereas their parental lines do not undergo any VCU testing, though parental lines are required for hybrid seed production. Accordingly, parent lines are not expressly and specifically mentioned in the notification under section 5 of Seeds Act, 1966. The exemption from DUS testing under Rule 29 read with Regulation 6 of PPV&FR Regulations, 2006 granted to Extant varieties notified under Section 5 of Seeds Act, 1966 cannot be extended to parental lines of extant hybrids notified under section 5 of Seeds Act, 1966 unless they are also expressly and specifically notified.

The Registrar in his order dated 5th December, 2018 has combined both the parental line and hybrid as a unit but the fact is that it cannot be considered as a unit for registration which is totally against the law. The relevant portion of the order of the Registrar is extracted hereunder: -

"I agree with the contention of the counsel for applicant that both the parental line and the hybrid must be considered as a unit for the purposes of propagation and stability as the propagating material for hybrid is parental lines."

The said finding of the Registrar in his order dated 5th December, 2018 that both the parental line and the hybrid must be considered as a unit for the purposes of propagation and



stability, as the propagating material for hybrid is parental lines must be examined from in light of definition of “variety” under Section 2(za) of the Act which is extracted hereunder: -

“Variety means a plant grouping except micro-organism within a single botanical taxon of the lowest known rank which can be-(i) defined by the expression of the characteristics resulting from a given genotype of that plant grouping;

(ii) distinguished from any other plant grouping by expression of at least one of the said characteristics; and

(iii) considered as a unit with regard to its suitability for being propagated which remains unchanged after such propagation and includes propagating material of such variety, extant variety, transgenic variety, farmers’ variety and essentially derived variety”

The definition of the ‘variety’ makes it clear that the variety must be distinguished from any other plant grouping by expression of at least one of the said characteristics. This makes it clear that each of the parents and its hybrid would qualify the definition of ‘variety’. Accordingly, each of the parental lines and its hybrids are independently and separately eligible for registration as they are distinct from each other on several characters. Further each of the parental lines and its hybrid must satisfy the criteria of DUS for registration. Further to be eligible for registration the hybrid must be distinct from its parents and each of the parents must also be distinct *inter se* and also with respect to hybrid. Collectively enabling parents of extant notified varieties under Section 5 of Seeds Act, 1966 for registration merely on the basis of registration of hybrid would negate the very definition of variety itself as parent lines *inter se* and with respect to hybrid will differ from each other on their characteristics. Merely because the word ‘propagating material’ is mentioned in the definition of Variety occurring in Section 2(za) of PPV&FR Act,



2001 and the propagating material of the hybrid is parental lines, it does not mean that parent and its hybrid can be combined together for the purposes of registration as the each of the parents and its hybrid differ from each other in their characters. The propagating material of the hybrid may be parental line but it does not entitle the parental lines automatically for registration merely on the basis of registration of hybrid as each of the parents must satisfy the criteria of DUS under Section 15 of the Act. By virtue of Rule 29(4A) if they are not notified under Section 5 of Seeds Act, 1966 then they have to undergo DUS testing also.

The next finding of the Registrar that hybrids cannot be stable without parental lines have to be examined. The stability as defined in section 15(3)(d) of PPV&FR Act, 2001 is extracted hereunder;-

“stable if its essential characteristics remain unchanged after repeated propagation or in the case of a particular cycle of propagation at the end of each such cycle.”

The finding that the definition of stability cannot be made applicable to hybrids without reference to parental line is a misnomer for the reason the parental lines are covered under the first part of stability definition namely “if its essential characteristics remain unchanged after repeated propagation” and hybrid is covered under the second part of stability definition namely “in the case of a particular cycle of propagation at the end of each such cycle” and the stability character of hybrids must be determined with reference to hybrids itself and not with reference to parental lines as hybrids must be stable at the end of the particular cycle of propagation and not for the next generation.



The next issue that has to be examined is the OM relied upon by the Registrar in his order dated 5th December, 2018. The relevant portion of the order is extracted hereunder: -

“Further it was also reasoned that clarificatory OM issued under Seeds Act cannot be automatically applied to PPV&FR Act, 2001. Having meticulously re-examined the issue, I do not agree with the reasoning of the registry in this regard.”

The Office Memorandum cited by the Registrar in his order dated 5th December, 2018, was issued by Ministry of Agriculture, Govt. of India namely No. 3-26/2013-SD-IV dated 04.06.2013 to State Seed Certification Agencies stating that no separate notification is required for registering parent lines as Foundation Seeds for further multiplication of hybrids. The operative portion of the OM is extracted hereunder:

“It has been brought to the notice of this Department that State Seed Certification Agencies are insisting upon separate notification of parental lines of hybrids before registering them for certification of Foundation Seeds. As male and female parental lines are required for hybrid seed production, it is clarified that the parental lines of the hybrids are deemed to be notified along with the hybrid for multiplication as Foundation Seed for producing the certified hybrids seeds and no separate notification is required for these parental lines if the hybrid is notified as per provision of Seeds Act, 1966 and Seed Rules, 1968. State Seed Certification Agencies may accordingly register the parental lines of hybrids as Foundation Seed for further multiplication without insisting on separate Gazette Notification for the parental lines.”

This OM applies only in regard to certification of parental lines as foundation seeds for hybrid production under Seeds Act, 1966.



The said OM cannot be automatically applied while interpreting the provision of PPV&FR Act, 2001. The latin maxim "*Noscitur a sociis*" which literally means "a word is known by the company it keeps". A concept from one enactment cannot be transposed into another enactment. It is settled in law that a word is a chameleon which takes its color from its surroundings. Accordingly, a concept takes colour from the context in which it is used. A term or concept, having a particular meaning in one discipline may have totally different meaning in another discipline. 'Greed' in criminology and victimology has different shades of the same meaning. It is settled principle of law that a concept in one enactment cannot be given the same meaning when the concept is occurring in other enactment. Defamation and Negligence in civil law cannot be assigned the same meaning as in criminal law. The subject and object of the civil and criminal proceedings in case of defamation and negligence would be distinct and different. The word "sale" occurring in Sale of Goods Act requires transfer of property for a price but the same word "sale" occurring in GST could mean inter-state transfer of goods without price between branch offices, if branch offices have separate GSTINs

It is a golden principle that a statute has to be interpreted in the context in which the words are used in that particular statute. In Kohinoor Elastics Pvt. Ltd., -Vs- Commissioner of Central Excise [MANU/SC/2754/2005] the Supreme Court had to deal with the meaning of the word "brand name" and 'trade name' in a central excise notification. The Tribunal had interpreted these expressions with reference to the same words used in the Trade Marks Act. The Supreme Court pointed out that the context in



which those terms had been used in the Trade Marks Act was not relevant for the purpose of interpreting them in a notification in the Central Excise Act. Similarly in PC Cheriyan –Vs- Barfi Devi Case [MANU/SC/0498/1979] the Hon'ble Supreme Court held that definition of manufacture in the Central Excise Act or the Factories Act should not be applicable in other Acts such as Transfer of Property Act. In MSCO Pvt. Ltd., -Vs- Union of India and Ors., [MANU/SC/0138/1984] the Hon'ble Supreme Court held that the meaning given to "Industry" in Industrial Disputes Act, 1947 could not be depended upon while construing other statutes such as Central Excise Act.

The object of the Seeds Act, 1966 is regulatory in nature for seed production and sale whereas the object of the PPV&FR Act, 2001 is granting of IPR and accordingly if the OM issued for clarification purposes under Seeds Act, 1966 is applied to PPV&FR Act, 2001, then the parental lines of extant varieties notified under Section 5 of Seeds Act, 1966 which have not underwent AICRP trials would also by-pass the DUS testing under PPVFR Act, 2001 and violate Rule 29(4A) of PPVFR Rules, 2003. This is not the mandate of the law. Hence, I am unable to agree with the finding of the Registrar in his order dated 5th December, 2018 that no prejudice would be caused by application of the said OM.

Further the said OM relied upon by the Registrar in his order dated 5th December, 2018 utmost is only an administrative instruction which can have the force of law only with respect to State Seed Certification Agencies involved in implementation of Seeds Act, 1966 it would have no legal effect in the law relating to plant varieties protection. My view is fortified by the



judgement of the Hon'ble Supreme Court in UOI –Vs- Ashok Kumar Aggarwal [2013 16 SCC 147] wherein it was held that OM could not supersede Recruitment rules under Article 309 of the constitution of India. It was held that an OM, being an executive instruction could only supplement the statutory Recruitment Rules and could not supplant it.

The Applicant at Sl. No.1 argued that Registrar has no power to review his own order. I agree with this point completely. There is no provision in the law providing for review of the order passed by Registrar of Plant Varieties Protection in the PPVFR Act, 2001. The Hon'ble Supreme Court in State of West Bengal & Ors., -Vs- Jai Hind Pvt. Ltd., [2026 LiveLaw (SC) 126] has held that quasi-judicial authorities aren't empowered to exercise review jurisdiction unless statutorily empowered to do so. The *ratio decidendi* is extracted hereunder:

“48. We therefore, must eschew any such interpretation of the statute which seeks to confer a blanket power of the Civil Court, including the power of review to such administrative authority in exercise of quasi judicial power”

Accordingly, Registrar by his order dated 5th December, 2018 should not have reviewed the earlier order of this Registry dated 28th October, 2013 which categorically held that parental lines of notified hybrids would be considered under any category other than extant varieties notified under Section 5 of Seeds Act, 1966. The Registrar by his order dated 5th December, 2018 should have followed the order dated 28th October, 2013 of this registry even based on the orders of the Hon'ble AP High Court to consider the issue in light of the clarificatory OM issued by the Nodal Ministry as the said OM was already considered in the order dated 28th October, 2013 itself, that too after hearing the



Applicant at Sl. No.4. Accordingly, the Registrar by his order dated 5th December, 2018 should not have reviewed the order dated 28th October, 2013 when more particularly the clarificatory OM was cited by Applicant at Sl. No.4 (who were Applicant at Sl No.7 in the order dated 28th October, 2013) and the same was considered and a reasoned order was passed. The Registrar in simple sense was bound by the order dated 28th October, 2013 and accordingly having been bound he cannot hold it otherwise. The relevant portion is extracted hereunder:

“Further the argument of the Applicant at (Sl. No.7) that the OM is conclusive in nature and this Registry is bound to apply the same is also not acceptable. The said clarificatory OM of Ministry of Agriculture is of deeming in nature and that cannot be extended for all purposes beyond the purpose for which it is deemed namely the purposes of certification of seeds. Further the discretion must be exercised in examining any document and it cannot be accepted blindly.”

Accordingly, it is a clear cut case of *res judicata*. The matter has already been heard and adjudicated by a competent authority involving the same party and it cannot be raised again.

The Applicant at Sl. No.1 argued that there is legitimate expectation that the Registry ought to follow its order dated 5th December, 2018. The doctrine of Legitimate Expectation coined by Lord Denning means expectation of an ordinary man to have relief based on the express or implied order made by the administrative authority. This can flow only when the order is legitimate and not otherwise.

The last point that I have to deal is the issue of ever-greening of IPR in plant varieties raised by the Registrar in his order dated 5th December, 2018 for upholding the point that



parents of extant varieties notified under Section 5 of Seeds Act, 1966 can be considered under the same category of extant varieties notified under Section 5 of Seeds Act, 1966. The Registrar had specifically stated that if the hybrid goes into public domain then its parents must also go into public domain which cannot be out rightly accepted.

The relevant portion of the order is extracted hereunder: -

“The earlier view taken by the Registry that parental lines of hybrids notified under Section 5 of Seeds Act, 1966 cannot be considered under the category of extant notified variety but under other categories would lead to ever-greening of Intellectual Property Rights in Plant Varieties. The period of protection of extant varieties notified under Section 5 of Seeds Act, 1966 is 15 years from the date of notification under Section 5 of Seeds Act, 1966 under Section 24(6)(ii) of PPV&FR Act, 2001. An apt illustration would be assuming a variety is notified under section 5 of Seeds Act, 1966 during 2005 and it would go into public domain on 2020 and in 2017 if the breeder applies for A parental line of the said hybrid and gets registration and thereafter just before the expiry of period of protection of A parent applies for registration of B parent line and thereby prevents the hybrid from going into public domain for another 30 to 45 years beyond the expiry of period of protection of hybrid. This issue of ever-greening of plant varieties has been dealt by Hon’ble Delhi High Court in a matter relating to the issue of novelty of parental lines whose hybrids fall under the category of extant varieties. The Hon’ble Delhi High Court in by its order dated 09.01.2015 in WP No.4330/2012 in Maharashtra Hybrid Seeds Co., -Vs- UOI held as follows:-

“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.”

Though the issue involved in the judgement is related to category of parental lines that is whether they will fall under the category of new or extant when its hybrid falls under the extant variety category. The principle involved in the above cited case against ever-greening squarely applies to the instant case also. ‘Evergreening’ is an abuse of patent law whereby a patent is tried to be retained even after its expiry. The same can occur in law relating to plant varieties also as it is also a branch of Intellectual Property Law similar to that of Patents Law. Any attempt towards ever-greening of Intellectual Property must be judicially restrained. When with regard to period of protection, both parental lines and hybrid are to be considered as a unit then for the purposes of registration of varieties also both parental lines and hybrid must be considered under the same category as period of protection is different for extant varieties notified under Section 5 of Seeds Act, 1966 and for other new varieties and extant varieties about which there is common knowledge. Public domain is the rule and intellectual property is an exception and if hybrid goes into public domain then its parents cannot be granted fresh period of protection and if done contrarily then hybrid which has gone into public domain will still enjoy indirect protection as its parents are protected. In the instant case on hand also the period of



protection for hybrids (of the parental lines which are the subject matter of the judgment) have already expired and accordingly, there is no scope for extending the period of protection of hybrid by considering the parental lines under different category and granting them fresh period of protection.”

The decision dated 9th January, 2015, of Hon’ble Delhi High Court in Maharashtra Hybrid Seeds Co. -Vs- UOI [WP No.4330/2012] relied on by the Registrar in the above order was with reference to parents of hybrids filed under Extant Variety about which there is common knowledge whether they would fall under new category or extant category. The Hon’ble High Court held that the parents of the Extant Hybrids about which there is common knowledge would fall under the category of extant category. This decision is not applicable to the instant matter on hand which relates to parents of extant varieties notified under Section 5 of Seeds Act, 1966.

Further the OM cited by the Registrar creates a fiction that parents are deemed to be notified for certification and it cannot be extended beyond its purpose. In this regard the golden legal maxim is “*fictio legis neminem ladit*” meaning legal fiction can injure no one. In CfT –Vs- Elphinstone Spinning & Weaving Mills Co., Ltd., [1960 AIR 1016] the Hon’ble Supreme Court held as follows:

“In our opinion, the fiction cannot be carried further than the purpose for which it has been put in the statute. The Income-tax Act creates an assessment year and a corresponding previous year. Assessment to tax in any assessment year can only be in respect of the profits of the immediately preceding previous year. All that the fiction does is to bring profits of back years into the immediately preceding previous years, so that the requirements of the Income-tax law may be complied with. As we have already stated, this fiction cannot be carried further than what it is



intended for; it cannot be used to make these profits take the place of total income, which did not exist in the previous year and to which the rate is to be applied under the terms of the proviso.”

Again in *CfT v. Amarchand N. Shroff*, 1963 AIR 1448, the court was to interpret the fiction contained in S. 24B(1) of 1922 Act making a legal representative an assessee in respect of the income which the deceased would have earned had he not died. Attempt was made to extend the fiction to post-death income as well. The court disapproved extending the fiction. The legitimate purpose of which was to tax income earned upto the year in which death took place. As a result, the 1961 Act made a specific provision in S. 168 to cover income upto the date of complete distribution of assets.

In the instant case on hand, the fiction is in an administrative instruction issued to State Seed Certification Agencies operating under Seeds Act and hence the said OM has no role to play in the PPVFR Act, 2001.

The Applicant at Sl. No.4 has raised four contentions and the first and second contention taken together is that position as in clarificatory OM dated 04.06.2013 issued by Ministry of Agriculture and Farmers' Welfare be followed and the same has been dealt above elaborately. The third contention of the Applicant is that if change in re-categorisation is directed it would result in unsettling the protection granted to parental lines registered under the extant notified variety category. This would not be so, as any judgement takes prospective effect only and cases already registered are outside the scope of this order. The fourth Contention of the Applicant is that DUS testing ought not to be insisted upon the parental lines of notified variety and this



contention is totally untenable and it would violate Section 15 read with Rule 29 as parental lines then in such case would undergo neither AICRP Trials nor DUS test which is not the mandate of the Act.

The Applicant at Sl. No.2 has argued that if the parental line of the notified hybrid has to be considered under the category of 'New Variety'. This can happen if on the date of filing of application of any of the parental line of extant variety (notified under Section 5 of Seeds Act, 1966), the earliest hybrid developed out of the said parental lines and notified under Section 5 of the Seeds Act, 1966 has not been commercialised or commercialised for a period of less than one year. This is because under Section 15 of the Act, novelty of a variety is affected if it is commercialised for more than a year or exploited for more than a year by commercializing the earliest hybrid. In the instant case, if it is not commercialised or exploited for more than a year by commercializing the earliest hybrid, then the same would fall under new variety category though the hybrid by virtue of notification under the Section 5 of Seeds Act, 1966 may fall under the category of Extant Notified Variety category. The Authority has issued Public Notice No.10 of 2019 that all varieties notified under Section 5 of Seeds Act, 1966 would fall only under the category of varieties notified under Section 5 of the Seeds Act, 1966. The said Public Notice is not applicable on the parental lines of extant varieties notified under Section 5 of the Seeds Act, 1966. My reasoning is based on a simple point that the extant varieties has been defined in Section 2(j) of the Act and mentioned about the Extant Varieties Notified under Section 5 of Seeds Act, 1966 in Section 2(j)(i) does not include



parental lines of the same unless they are notified under the Seeds Act, 1966.

Last but not the least, if the contention that parental lines of hybrids notified under section 5 of the Seeds Act, 1966 are deemed to be notified along with their hybrids, is accepted, then there may be chances where any one of the parent can be deemed to be notified for two or more hybrids, in such case if the said two or more hybrids belongs to different entities then all the said entities would claim proprietorship over the common parental line from which different hybrids belonging to different entities were developed. This would lead to fragmentation of a single Intellectual Property Right over a parental line among multiple persons. This would also lead to Plant Varieties thicket just like patents thicket when too many people hold the right over the same resource with a right to exclude others. This may also lead to what is commonly known as “tragedy of the anti-commons” which occurs when too many people hold the right to exclude others over the same product. Accordingly, in the interest of justice this should be avoided.

To sum up, all varieties have to satisfy DUS criteria for registration under Section 15 of the Act. DUS criteria are tested by DUS testing under Section 19 read with Rule 29. In case of Extant Varieties Notified under Section 5 of Seeds Act, 1966, though they are legally exempted from DUS testing, their DUS criteria is determined through the AICRP trial reports. Accordingly, parental lines of extant varieties notified under Section 5 of Seeds Act, 1966, as per Rule 29(4) of PPVFR Rules, 2003 must undergo DUS testing as they do not undergo AICRP trials as in case of their hybrids. This is the mandate of law.



CONCLUSION:

Based on the aforesaid reasonings, I hereby clarify that parental lines of varieties notified under Section 5 of Seeds Act, 1966 cannot be considered under the category of Extant Varieties Notified under Section 5 of Seeds Act.

The Registry in all future cases must adopt the following course of action:

- a) Parental lines of Extant Notified Varieties (under Section 5 of Seeds Act, 1966) cannot be considered under Section 2(j)(i) that is under the category of Extant Varieties Notified under Section 5 of Seeds Act, 1966.
- b) On the date of filing of application for registration of any of the parental line of Extant hybrid Variety notified under Section 5 of Seeds Act, 1966, if the earliest notified hybrid developed out of the said parent has been commercialised for more than a year, then the said parental line of such hybrid (notified under Section 5 of Seeds Act, 1966) would fall under the Extant varieties about which there is common knowledge [(Section 2(j)(iii)]
- c) On the date of filing of application for registration of any of the parental line of Extant Hybrid Variety notified under Section 5 of Seeds Act, 1966, if the earliest notified hybrid developed out of the said parent and has not been commercialised or commercialised for a period of less than a year, then the said parental line of such hybrid (notified under Section 5 of Seeds Act, 1966) would fall under the category of New Variety. [Section 15 (1) of the Act.]

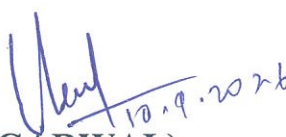


- d) It is further clarified that Essentially Derived Varieties falling under the category of extant or new by virtue of Section 23(7) of the Act, will also be processed as per 'b' and 'c' above, based on extant or new category in which they are filed.
- e) Registry is to examine each application which is the subject matter of this order in light of the above clarifications and process and communicate the same to the Applicants within a month from the date of receipt of this order.
- f) If found appropriate, direction will be issued under Section 20(2)(a) of the PPVFR Act, 2001 to the Applicants to amend their application for re-categorisation, and for submission of remaining registration fees and deposit additional quantities of seeds, if required, as per norms. The entire exercise should be completed within a period of one month.
- g) If any of the Applicant fails to comply with the same, notice will be issued under proviso to Section 20(2)(b) of PPVFR Act, 2001.
- h) The case of the Applicant at Sl. No.3 need not be considered as they have withdrawn their applications.

There shall be no order as to costs.

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




(D.K. AGARWAL)
REGISTRAR GENERAL