

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

IN THE MATTER OF: - Renewal fee payment for W6001 and W6301 registered wheat varieties of Maharashtra Hybrid Seeds Co. Pvt. Ltd., under Rule 39 of PPV&FR Rules, 2003.

IN THE MATTER OF: -

M/s Maharashtra Hybrid Seeds Co.,

..... Registered Breeder

For the Registered breeder: - Mr. Anil Dutt, Advocate, M/s. Lakshmikumaran & Sridharan.

ORDER

The important issue that arises for consideration in this matter is whether the renewal fee for extended period of registration of plant varieties would be payable

a) as per Rule 39(3)(a) of PPV&FR Rules, 2003

or

b) renewal fees would be payable as per Second Schedule of PPV&FR Rules, 2003.

In other words, that is the renewal fee would be the average annual fee levied during last two years of initial period of registration or the renewal fee would be as per Sl. No.9 of Second Schedule of PPV&FR Rules, 2003 that is Rs.80,000/- per year.

There is also other important issue that is indirectly connected that is whether annual fee and renewal fee are same for the extended period of registration of plant varieties. The registered breeder is contending that for the

extended period of registration he is liable to pay only one fee as under Rule 39(3)(a) of PPV&FR Rules, 2003 that is only the average annual fee of the last two years of the initial period of registration. The registered breeder's contention is that this would suffice the payment of annual fee and renewal fee for the extended period of registration. The contention of the Registry is that the renewal fee would be based not on Rule 39(3)(a) of PPV&FR Rules, 2003 but as per Sl. No.9 of Second Schedule of PPV&FR Rules, 2003.

The issue involved is common for both the registered varieties namely W6001 and W6301 of Registered Breeder and accordingly common order is passed in respect of both the registered varieties.

FACTS OF THE CASE:-

The two registered varieties namely W6001 and W6301 belonging to the registered breeder were registered under PPV&FR Act, 2001 on 21.12.2009. Accordingly the registered breeder by relying on Rule 39(3)(a) of PPV&FR Rules, 2003 has paid average annual fee of the last two years of initial period of registration that is Rs.2000/- for each of the registered varieties and has requested to renew the varieties for remaining period of registration. The Registry by letter dated 30.12.2015 informed the registered breeder that they are required to submit fees as per Sl. No.9 of Second Schedule of PPV&FR Rules, 2003. Since there was conflict between the view of the registered breeder and the view of this Registry the registered breeder was called for hearing in this issue. The registered breeder was fully heard on

16.3.2016. The registered breeder has filed written submission which has been taken on record.

ARGUMENT OF THE REGISTERED BREEDER:-

The registered breeder's argument is that under Section 24(6) of PPV&FR Act, 2001 a certificate can be renewed beyond the initial period of registration which in the present case for wheat crops is six years from registration in December, 2009. Section 24(6) lays down that renewal fees is to be provided by PPV&FR Rules, 2003 as amended in 2015. Therefore, the relevant Rule 39 provides mechanism for determination of renewal fee. Rule 39(1)(b) provides that the application for renewal of registration shall be made in Form PV-6 which is provided in First Schedule. The manner of payment of fee is provided in Rule 39(2) which says that payment has to be one time for whole of the remainder period or such period as that may be chosen by the registered breeder. Rule 39(3)(a) provides that fee payable for period beyond initial period of six years. This annual fee which has been paid by the registered breeder under section 35(1) read with gazette notification dated 26th August, 2009 for last two years was Rs.2000/- for each of the registered variety as there were no sales. Thus, renewal fee for the next nine years would be Rs.18,000/- for each variety which has been duly paid by cheque within the prescribed for both the varieties. In none of the provisions in the Act or Rules there is any reference to Second Schedule in the context of renewal of certificate of registration. Entry No.9 in Second Schedule of PPV&FR Rules, 2003 without any legal basis in a manner completely

contradictory to Rule 39 (3) (a), the Second Schedule of PPV&FR Rules, 2003 as amended in 2015 provide for a fixed fee of Rs. 80000/- per year for renewal of registration of certificate it is well staled that schedule in the hierarchy of law comes below Rules and Act and cannot over rule of supersede the letter and in this regard reliance was placed on the decision of Hon'ble Apex Court in Govt. of AP -Vs- Smt. P. Laxmi Devi (2008) 4 SCC 720. It is submitted that Schedule cannot prevail against express enactment relying on Alphali Pharmaceutical Ltd. -Vs- State of Maharashtra and Ors (1989) 4 SCC 378. The case of Jagdish Prasad -Vs- State of Rajasthan and Ors., (2011) 7 SCC 789 the Hon'ble Supreme Court rendered the judgement that the Schedule of the Rules has to be in conformity with the Rules and is required to advance the object of the primary statutory provision. Further there is a discrepancy in Hindi and English versions of entry 9 that the English version of the Second Schedule envisages Rs,80,000/- as renewal fee for commercials whereas the Hindi version demands Rs.50,000/- as renewal fee for commercial entities. It therefore suffers from the vice of uncertainty, unreasonableness, arbitrariness and being self-contradictory. The other important argument of the registered breeder is that Rule 8 is a general provision and Rule 39 is a special provision. The registered breeder also cited the legal maxim *Generalia Specialibus Non Derogant*. In this regard the registered breeder cited the judgment of the Hon'ble Supreme Court in JK Cotton Spinning and Weaving Mills Co., Ltd., -Vs- The State of Uttar Pradesh and Ors., AIR 1961 SC 1170 that a general provision cannot prevail over a

special provision and the said ruling was again upheld in recent judgment of Apex Court Sri Jagannath Temple Managing Committee -Vs- Siddha Math and Ors., AIR 2016 SC 564.

Therefore, in light of the above, Rule 39 will prevail over Rule 8 as it is a special provision and its mandate is more specific. Another contention of the registered breeder is that the renewal fee is in the nature of license fee and not tax. The quid pro quo required for its levy can't be excessive and arbitrary. The levy of the renewal fees is for the services rendered towards maintaining the registration in the plant variety register to the benefit of the prayer that is the registered breeder or the registered breeder. It is settled principle that there is a distinction between tax and fee where in the latter case there exists a quid pro quo between the payer and the state body charging the levy. It is submitted that there always has to be a co-relation between the fee levied and the benefit granted to the payer. The Hon'ble Supreme Court in Sri Krishna Das -Vs- Town Area Committee Chirgaon (1990) 3 SCC 645 held as follows:-

"A fee is a payment made for some special benefit enjoyed by the payer and the payment is proportional to such benefit."

In the present case, the renewal fee is undoubtedly excessive and arbitrary. Not only the fee is arbitrary and without legal basis the same is excessive. Further charging a fee which is cumulative of Rule 8 (entry 9 of Second Schedule) and Rule 39(3)(a) would certainly be unreasonable and excruciatingly high. Both the above scenarios individually could deter

breeders and assigns to apply for protection under PPV&FR Act, 2001. Further there is no correlation with the service fee paid to the Registry and the benefit of the registered breeder in case of fixed fee specified in the Second Schedule. On the other hand, there exists a reasonable co-relation and proportionality between the fee and benefit available to the registered breeder under Rule 39(3)(a) where the fee is based on average of the annual fee levied under section 35(1) which in turn is based on sales of the registered variety. The fee in entry 9 in second schedule is arbitrary and unreasonable in the sense that Second Schedule while stipulating the renewal fee there is no basis on which the figure of Rs.80,000/- was determined. A commercial entity which has earned huge profits owing to his registered plant/seed would not find it difficult for paying the exorbitant renewal fee of Rs.80,000/- but another commercial entity which has been hapless in terms of profit and is clinging on to the hope that sales would augment and profit will accrue, will find it crumbling and oppressing to shell out that exorbitant amount of renewal fees. Such levy irrespective of the pockets of the commercials neither falls within the realm of logic nor in the empire of the law. In the present case the fee for renewal would very substantially exceed the actual sales of the registered varieties. The registered varieties themselves are parental lines which are not sold in the market but used in developing hybrids which are sold in the market. The renewal fee for such hybrids would commensurate with their sales and annual fees thereto if charged as per rule 39 (3)(a) which can be said to be rationale. The renewal fees for

registration cannot be levied under Rule 8 as well as Rule 39(3)(a) as that would be devoid of any reason. This would amount to levying of fees twice for a single service act performed by the Authority.

Accordingly, the registered breeder has prayed that the renewal fee prescribed under entry 9 is without basis and arbitrary and accept the renewal for Rs.18000/- each as determined under Rule 39(3)(a) for above two registered varieties W 6001 and W 6301 and withdraw the demand of fees based on entry 9 second schedule vide letter No. PPVFRA/Registrar/12-01/2015/3690 dated 30.12.2015 for above two cases and renew the registration certificates of two varieties namely W 6301 and W 6001.

ANALYSIS:-

At the outset it stems from the arguments of the registered breeder that both the renewal fee and annual fee are same for the extended period of registration and accordingly under Rule 39(3)(a) of PPV&FR Rules, 2003 if average of annual fees of the last two years of the initial period of registration is paid it would suffice for both annual fee and renewal fee for the remaining period of registration. This argument is far-fetched.

The arguments of the registered breeder have to be examined in light of statutory provisions. Section 35 of the Act

*35. Payment of annual fee and forfeiture of registration in default thereof:- (1) the Authority may, with the prior approval of the Central Government, by notification in the Official Gazette, impose **a fee to be paid annually**, by every breeder of a variety, agent and licensee thereof registered under this Act determined on the basis of benefit or royalty gained by such breeder, agent or licensee, as the*

case may be, in respect of the variety, for the retention of their registration under this Act.

(2) If a breeder, agent or licensee fails to deposit the fee referred to in sub-section (1) imposed upon him under that subsection in the prescribed manner up to two consecutive years, the Authority shall issue notice to such breeder, agent or licensee and on service of such notice if he fails to comply with the direction in the notice, the Authority shall declare all the protection admissible under the registration certificate issued to such breeder or agent or licensee forfeited.

(3) the arrears of the fee imposed under sub-section (1) shall be deemed to be the arrears of land revenue and shall be recoverable accordingly. (Emphasis supplied)

Section 35 of the Act provides that the annual fee has to be paid annually by every registered breeder or his agent or his licensee. The word “annually” clearly means that the annual fee has to be paid every year that is till the completion of period of registration which is 15 years in case of crops and 18 years in case of trees and vines.

Section 24(6) of the Act is as follows

*“24(6) The certificate of registration issued under this section or sub-section (8) of section 23 shall be valid for nine years in the case of trees and vines and six years in the case of other crops **and may be reviewed and renewed for the remaining period on payment of such fees as may be fixed by the rules made in this behalf** subject to the condition that the total period of validity shall not exceed, -*

(i) in the case of trees and vines, eighteen years from the date of registration of the variety;
(ii) in the case of extant variety, fifteen years from the date of the notification of that variety by the Central Government under section 5 of the Seeds Act, 1966; and
(iii) in other cases, fifteen years from the date of registration of the variety.”(Emphasis Supplied)

From the above it is clear that the certificate of registration is valid for an initial period of 6 years for crops and 9 years in case of trees and vines and on payment of renewal fee the registration is further extended for a period of 9 years in case of all crops, trees and vines accordingly the

total period of registration for trees and vines is 18 years and for field crops is 15 years.

Thus annual fee has to be paid every year for the entire period of registration including initial and extended this is fortified by the use of the word 'annual' in section 35 (1). The renewal fee must be paid for extended period of registration which is very clear from section 24 (6) which makes it clear that renewal fee must be paid for extended period of registration only. Both section 35 (1) and section 24 (6) are different and distinct and accordingly annual fee and renewal fee are different. Rule 39 (3) (a) which provides that the fee payable for extended period of registration shall be based on average annual fee levied during last two years of initial period of registration is totally against section 35 of the Act as Rule 39 (3)(a) restricts the payment of annual fee for the extended period of registration to average annual fee for the last two years of initial period of registration. Whereas as per section 35 of the Act, the annual fee must be paid every year for the extended period of registration that is 9 years in cases of all varieties of crops, trees and vines. Rule 39(3)(a) is inconsistent and contrary to Section 35 of the Act. It is a settled principle in law that Rules are subservient and subordinate to the Act. Accordingly, Section 35 of the Act, prevails over Rule 39(3)(a) of PPV&FR Rules, 2003 and also eclipses the Rule 39(3)(a). The rule cannot override the provisions of the Act. In other words rule 39 (3)(a) must be muted in light of section 35 of the Act. Accordingly, rule 39 (3)(a) cannot override section 35 of the Act. The contention of the registered breeder that they will make payment of

annual fee for the extended period of registration (9 years for all varieties) in accordance with rule 39 (3) (a) limited to average annual fee for the last two years of initial period of registration and not for every year of extended period of registration as laid down under Section 35(1) of the Act is not tenable. Rule 39(3)(a) is defective and cannot be relied on. Section 35 prevails over rule 39 (3)(a).

Rules 39 (3)(b) provides that the annual fee shall be uniform for the extended period of registration and be payable in advance in single installment is also inconsistent and against section 35. The annual fee contemplated under section 35 of the Act varies from year to year depending on the benefit or royalty gained by the breeder. Being so how come the annual fee can be uniform as mentioned in rule 39 (3)(b). Like rule 39 (3)(a), the rule 39 (3)(b) also stands eclipsed and muted before section 35 of the Act as Rule 39(3)(b) is inconsistent with Section 35 of the Act.

Rule 39 (3)(a)&(b) cannot be given effect as they are contrary and inconsistent with section 35 of the Act. Accordingly, as per section 35 of the Act the registered breeder has to pay annual fee for every year till the end of the period of the registration based on gazette notification dated 26.08.2009.

The registered breeder interprets in way that annual fee must be paid for initial period of registration and for the extended period of registration only the average annual fee of the last two years of the initial period of registration be paid and that would be payment of both annual fee and renewal fee for the extended period of registration. I cannot

accept this interpretation which is not supported in any law. Having held that Rule 39(3)(a) and Rule 39(3)(b) stands subservient to Rule 35 and cannot override Section 35 and being contrary and inconsistent with Section 35 the said Rule 39(3)(a) and (b) stands muted in light of Section 35 and accordingly the registered breeder is bound to pay annual fee for every year till the entire period of registration completes and renewal fee must be paid for the extended period of registration that is 9 years in case of crops, trees and vines in accordance with Rule 8 read with Second Schedule of PPV&FR Rules, 2003.

The differences between annual fee and renewal fee are elucidated hereunder:-

Annual Fee	Renewal Fee
Section 35 deals with it.	Section 24(6) and Rule 39 deals with it.
Notified in the Official Gazette Vide S.O. No.2182(E) dated 26.08.2009	Notified in the Second Schedule of PPV&FR Rules, 2003.
After, issuance of certificate of registration falls due every year on the date of issue of certificate of registration. (Section 35)	Falls due on 12 to 18 months prior to the expiry of initial period of registration that is four and half to fifth year in case of field crops and eight and half to nine years in case of trees and vines. (Rule 39(1)(b))
Applies to both initial and extended period of registration.(Section 35(1))	Applies only to extended period of registration of nine years.(Section 24(6))
To be paid by Registered breeder, his registered agent and registered licensee.(Section 35 (1))	To be paid by registered breeder only. (Section 24 (6))
Credited in Gene Fund under Section 35(1)(b) of PPV&FR Act, 2001	Credited in the Authority Fund under Section 61(1)(b) of PPV&FR Act, 2001.
Utilised for Benefit sharing under section 26, compensation under section 41 (3), expenditure for in situ and ex situ collections and for	Utilised for salaries, allowances and other remuneration of Chairperson, officers and other employees

granting of Plant Genome Saviour Community Awards, Plant Genome Saviour Recognition, Plant Genome Saviour Reward.	of the Authority and other expenses of the Authority in connection with the discharge of its function and for the purposes of this Act.
Annual Fee return form must be submitted.	PV-6 application is submitted for renewal. (Rule 39)
<p>The rate of annual fee are as follows:-</p> <p><u>Extant variety notified u/s 5 of Seeds Act, 1966</u>-Rs.2,000/-</p> <p><u>New Variety</u> - Rs.2,000/- (Rupees Two Thousand Only)+0.2% of sales value of seeds of registered variety during the previous year+1% of the royalty, if any, received during the previous year from the sale proceeds of the seeds of the registered variety.</p> <p><u>Extant Variety about which there is common knowledge</u>- Rs.2,000/- (Rupees Two Thousand Only)+0.1% of sales value of seeds of registered variety during the previous year+0.5% of the royalty, if any, received during the previous year from the sale proceeds of the seeds of the registered variety. (Notified in the Official Gazette Vide S.O. No.2182(E) dated 26.08.2009</p>	Individual-Rs.7000/- Educational-Rs.10000/- Commercial-Rs.80,000/- Farmers - Nil (Per Year) (Sl. No.9 of Second Schedule of PPV&FR Rules, 2003.)
Arrears of Annual Fee is recovered as arrears of land revenue.(Section 35(3))	Failure to pay renewal fee would lead to non renewal of registration certificate and accordingly the question of arrears of renewal fee does not arise. (Section 24(6))

The above table clearly illustrates the difference between annual fee and renewal fee and accordingly both are distinct and different and cannot be the one and the same.

Accordingly, based on the aforesaid reasonings, I hereby sum up that

- a) annual fee must be paid for every year including the initial period of registration (six years for field crops

and nine years for trees and vines) and for the extended period of registration (nine years in case of all varieties).

- b) The Renewal Fee must be paid for the extended period of Registration (that is nine years after the initial period of registration) in accordance with the Sl. No.9 of Second Schedule of PPV&FR Rules, 2003 in one lumpsum by filing PV-6 in triplicate between (four and half to fifth year in case of field crops) and (seven and half to eighth year in case of trees and vines.) failing which the registered variety cannot be renewed.
- c) Rule 39(3)(a) and 39(3)(b) of PPV&FR Rules, 2003 are totally contrary and inconsistent with section 35 of the PPV&FR Act, 2001 and accordingly cannot be given effect to.

Based on the aforesaid reasonings, I hereby direct that the Registered breeder is bound to pay the renewal fee in accordance with Sl. No.9 of Second Schedule of PPV&FR Rules, 2003 within a period of 15 days from the date of receipt of this order failing which further action will be taken in accordance with law and the annual fee, if any also due, be paid in accordance with law.

Given under my hand and seal on 21st day of October, 2016.

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