

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

**IN THE MATTER OF: - :- Identical Similarity between KMH-25  
K 55- REG/2009/345 (Reg. No.118/2012) - and P3436 -  
REG/2011/426 - Crop - Maize -Applicant -Pioneer Overseas  
Corporation .- Hearing.**

**For the Applicant: - Dr. Neeti Wilson, Advocate, M/s Anand and  
Anand.**

**ORDER**

**ISSUE INVOLVED :-**

By this order, I shall dispose of the preliminary issues, involved  
in this matter which are as follows:-

- a) What are the documents on which basis the findings of identical  
similarity has been arrived must be furnished to the applicant  
whose variety is alleged to be identically similar with other  
variety? and
- b) Whether the copies of the same can be furnished to the applicant  
in respect of whose variety there is a prima facie finding of the  
Registry that it is identically similar with other varieties ?

**FACTS OF THE CASE:-**

The Registry has issued a show-cause notice No.  
PPV&FRA/LEGAL/19/2018/1130 dated 08.08.2018 to the applicant  
informing that their variety is identical with that of a registered variety  
belonging to another party with denomination KMH-25-K 55  
(Reg/2009/345). The said notice was issued under proviso to Section  
20(2)(b) show-causing the applicant as to why their variety should not be

rejected as it is similar with the already registered variety KMH-25-K 55 (Reg/2009/345). In response to the same, the applicant submitted a letter dated 24<sup>th</sup> August, 2018 claiming that the subject letter issued by the Registry does not contain DUS test result which compares the applicant's variety P3436 with that of KMH-25-K-55. Accordingly this Registry vide letter No. PPV&FRA/Legal/19/2018 dated 28.08.2018 informed the applicant that they must file PV-33 to obtain certified copy of DUS test result of KMH-25-K-55 and till the said document is furnished the hearing would be deferred. The Counsel for applicant was heard in detail on 28.08.2018.

**ARGUMENTS OF THE APPLICANT:**

The counsel for applicant made arguments on the preliminary issue that as per the principles of natural justice they must be provided the document based on which the finding of identical similarity has been arrived without insisting on PV-33 as requested vide this Registry letter No. PPV&FR/Legal/19/2018/1198 dated 28<sup>th</sup> August, 2018. Further they can contest the matter only after the documents are provided to them.

**ISSUES:-**

The following preliminary issues are framed hereunder:-

- a) What are the documents which form the base for arriving at the finding of identical similarity?
- b) Whether the copy of those document on which basis the findings of identical similarity has been arrived must be furnished to the applicant?

**REASONING: -**

The first issue does not need detailed examination as the documents which were the basis of the Registry in arriving at the prima facie and preliminary finding of identical similarity of Applicant's variety P 3436 and another breeder's registered variety KMH-25-K-55 are the following namely:-

- a) DUS test result of P3436
- b) DUS test result of KMH-25-K-55 registered variety and
- c) inter se comparison between the two.

With regard to the second issue, the Hon'ble Delhi High Court by order dated 30.11.2011 in WP (C) 8431/2011 relating to furnishing of documents under Section 84 of PPV&FR Act, 2001 held as follows:-

*"13. The complete disclosure has to be made by the registration seeker/applicant alongwith the application, and any person wishing to raise an objection is entitled to receive complete information, so that he may raise one or more of the available objections to the registration of the claimed plant variety.*

*.....For this purpose, and to empower the interested person to effectively raise any objection, it is obvious that the complete information is required to be provided by the Registrar. There is no scope for any secrecy or confidentiality in the entire process, and it has to be transparent so as to defeat any false claim of invention or new development of a plant variety. As aforesaid, a complete disclosure is mandated also for the reason that, at the expiry of the statutory protection period, any person should be able to exploit the invention/plant variety developed by the registration applicant, without having to turn to the said applicant for any other information.*

*.....As extracted above, Section 84 is absolute in its terms and the authority or the Registrar are bound to provide certified copies and inspection of any entry in the Register or any document or any proceedings under the Act pending before the such authority or Registrar. The objections raised to an application for registration are certainly "proceedings" under the Act. The only exception found in the Act is contained in section 78 of the Act, which entitles the Authority or the Registrar not to disclose information relating to registration of a variety which is considered prejudicial to the interest of the security of India. Even this provision, it appears, comes into play post registration, and not during the consideration of an application for registration or during the consideration of the objections to a registration application. It is not the petitioners case that the present case is covered by section 78 of the Act."*

Though the above decision relates to an application under PV-33, the principle involved is applicable to the instant case also as the words

*“any person wishing to raise an objection is entitled to receive complete information, so that he may raise one or more of the available objections to the registration of the claimed plant variety.”* In the instant matter, the applicant wishes to raise an objection to the stand of the registry which is against the registration of his variety, then in such case the applicant is entitled to receive complete information so that he may raise one or more of the available objections against Registry’s stand of rejecting the registration of the variety under Section 20(2)(b) of PPV&FR Act, 2001. Accordingly, I fully agree with the arguments of the counsel for applicant that documents ought to be furnished else it would violate principles of natural justice.

**CONCLUSION:-**

At the cost of repetition it is hereby clarified that no opinion has been expressed on the issue of identical similarity between applicant’s P3436 and registered variety KMH-25-K-55.

Based on the aforesaid reasoning, I hereby order that the copies of the DUS test results of applicant’s variety P3436, other breeder’s registered variety KMH-25-K-55 and inter se comparison be furnished to the applicant by the Registry within a period of 15 days from the date of issue of this order. There shall be no order as to costs.

Given under my hand and seal on this the 23<sup>rd</sup> day of October, 2018.

Sd/-

(RAVI PRAKASH)  
REGISTRAR

**To: Dr. Neeti Wilson,**  
M/s Anand and Anand,  
B-41 Nizamuddin East,  
New Delhi - 110 013

**Copy to: Smt. Jasbir Madan, RA to comply the order by furnishing copies of P3436 and KMH-25-K-55 and inter se comparison.**