

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 07.01.2019

+ **W.P.(C) 788/2017**

**MAHARASHTRA HYBRID SEED CO PVT LTD  
(PREVIOUSLY KNOWN AS MAHARASHTRA  
HYBRID SEEDS CO LTD)** ..... Petitioner

versus

**UNION OF INDIA & ANR** ..... Respondents

**Advocates who appeared in this case:**

For the Petitioner : Mr R. Parthasarathy, Mr Anil Dutt, Mr  
Aditya Kaushik, Mr Sudarshan Singh  
Shekhawat.

For the Respondents : Mr Arun Kumar and Mr Kushal Raj Tater,  
Advocates along with Mr Raj Ganesh,  
Legal Advisor and Ms Shaheen, Legal  
Assistant for R-2.

**CORAM  
HON'BLE MR JUSTICE VIBHU BAKHRU**

**JUDGMENT**

**VIBHU BAKHRU, J**

***Introduction***

1. The controversy that falls for consideration of this Court in this petition relates to the levy of renewal fee in respect of registration of plant varieties. Rule 39 of the Protection of Plant Varieties and Farmers' Rights Rules, 2003 (hereafter 'the said Rules') provides for the renewal fee to be computed based on the average annual fee levied during the last two years of the initial period of registration. Inconsistent with this position, Entry 5 of the Second Schedule to the

said Rules provides for a flat rate of payment of renewal fee (₹80,000/-). There is, thus, an apparent conflict in the said provisions. Whilst, the petitioner contends that the renewal fee is payable in terms of Rule 39 of the said Rules, the respondents insist that the same is payable as per the Second Schedule to the said Rules.

2. The Registrar of the Plant and Varieties appointed under Section 12(4) of the Protection of Plant Varieties and Farmers' Rights Act, 2001 has passed an order dated 21.10.2016 (hereafter 'the impugned Order') to the aforesaid effect rejecting the petitioner's contention.

3. Aggrieved by the same, the petitioner has filed the present petition, *inter alia*, challenging the impugned order and further praying that directions be issued to the respondents for renewing the registered varieties in question on payment of the renewal fee as computed by the petitioner.

### ***Factual context***

4. On 21.05.2007, the petitioner had applied for registration of two wheat varieties referred to as 'W6001' and 'W6301' under the Protection of Plant Varieties and Farmers' Rights Act, 2001 (hereafter 'the Act'). The said varieties were registered in favour of the petitioner on 21.12.2009 vide registration No. 118/2009 and 119/2009 respectively. On 26.08.2009, the Central Government issued a notification (Notification S.O. 2182) notifying the annual fee to be paid for registered varieties under the Act.

5. In compliance with the said fee structure, the petitioner paid the annual fee of ₹2,000/- for each of the two registered varieties for the period 21.12.2009 to 02.09.2015.

6. The registrations granted to the petitioner for the two crop varieties were for an initial period of six years. Therefore, on 17.12.2015, the petitioner applied for renewal of the registrations in the prescribed Form (PV-6). The petitioner also remitted a renewal fee of ₹18,000/- for each of the two registered varieties. The said amount was computed in accordance with Rule 39 of the said Rules.

7. On 30.12.2015, respondent no.2 (the Protection of Plant Varieties and Farmers' Rights Authority) sent a letter calling upon the petitioner to pay the renewal fee for the extended period of registration at a flat rate of ₹80,000/- per year for each variety for renewal of the registration. The petitioner contested the aforesaid demand and reiterated its position that renewal fee was required to be calculated as per Rule 39(3)(a) of the said Rules, and not in accordance with the Second Schedule of the said Rules. The petitioner was afforded an opportunity of being heard in this regard and its contention was rejected by the impugned Order.

### ***Reasons and Conclusion***

8. A plain reading of the impugned Order indicates that the Registrar has proceeded on the basis that there is a repugnancy between Section 35 of the Act and Rule 39 of the said Rules. This is premised on an erroneous understanding that the petitioner had

claimed that it was not be liable to pay annual fee as required under Section 35 of the Act, on account of payment of the renewal fee under Rule 39 of the said Rules. The aforesaid contention has been recorded in the impugned order in the following words:-

“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.”

9. The learned counsel appearing for the petitioner had clarified that it is not the petitioner’s contention that the petitioner is not liable to pay the annual fee for the extended period of registration. He submitted that there is no ambiguity with regard to payment of annual fee and the petitioner would be liable to pay the annual fee in accordance with Section 35 of the Act for each year of registration. The renewal fee – which is payable for renewal of the registration granted – is required to be paid in addition to the annual fee. The only controversy is with regard to the quantum of the renewal fee payable by the petitioner.

10. At this stage, it is relevant to refer to Section 35 of the Act. The same is set out below:-

**“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 fees 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 any breeder, agent or licensee fails to deposit the fees referred to in sub-section (1) imposed upon him under that sub-section 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 registration certificate issued to such breeder or agent or licensee forfeited.

(3) The arrears of fees imposed under sub-section (1) shall be deemed to be arrears of land revenue and shall be recoverable accordingly.”

11. A plain reading of Section 35(1) of the Act indicates that in order to retain a registration under the Act, it is necessary that an annual fee as fixed by the Authority (respondent no.2) be paid. As observed earlier, there is no controversy with regard to this provision and, concededly, the petitioner is required to pay the annual fee as notified by respondent no.2.

12. The dispute is, essentially, with regard to the quantum of renewal fee. Section 24(1) of the Act provides for the registration of a variety. Sub-Section (2) of Section 24, *inter alia*, provides that on the registration of the variety, the Registrar would issue to the applicant a certificate of registration in the prescribed form. Sub-section (6) of

Section 24 of the Act provides for the validity of the certificate of registration and for renewal thereof. Sub-section (6) of Section 24 of the Act is relevant and reads as under:-

“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 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 (54 of 1966); and
- (iii) in other cases, fifteen years from the date of registration of the variety.”

13. In the present case, wheat is a crop and, therefore, the initial period of registration as specified under Sub-section (6) of Section 24 of the Act is six years. The said registration can be extended up to a maximum period of 15 years from the date of registration on payment of renewal fee. It is also amply clear that the renewal fee is required to be fixed as per the Rules made in this behalf.

14. Section 96 of the Act empowers the Central Government to make Rules to carry out the provisions of the Act. Clause (xxv) of sub-section (2) of Section 96 of the Act expressly provides that such

Rules may provide for “*the fee for review and renewal under sub-section (6) of section 24*”.

15. In exercise of the powers under Section 96 of the Act, the Central Government has made the Rules. Rule 39 of the said Rules provides for renewal and revision of registration under Section 24 of the Act. Rule 39 of the said Rules is set out below:-

**“39. Renewal and revision of registration under section 24.-**(1)(a) On receipt of an application from the applicant, the Authority may review and renew the initial duration of registration as mentioned in sub-section (6) of section 24.

(b) Every application for review and renewal under sub-rule (1) shall be made in Form PV-6 of the First Schedule and filed during twelve to eighteen months prior to the expiry of the initial period of registration.

(c) Every application under sub-rule (1) shall be accompanied with the fee payable for the remaining years under the initial period of registration, at the rate fixed for the year preceding the year of application, along with arrears, if any.

(2) (a) The renewal of registration may be applied for either for the remaining period of total aggregate duration of validity of the registration or for any period within such remaining period.

(b) In case, the applicant prefers for a period less than the total aggregate duration, no application shall be entertained for the further renewal of registration.

(3) (a) The fee payable for such extended period of registration beyond nine years in the case of trees and vines and six years in the case of other crop varieties, as

the case may be, shall be based on average annual fee levied during the last two years of the said initial period of registration.

(b) The annual fee shall be uniform for the extended period of the registration and be payable in advance in single instalment.

(4) The Authority shall within such intervals as it thinks appropriate publish a list of varieties registered as well as renewed under the Act with the particulars of the period of registration, name and address of right holders periodically in its journal and in the Official Gazette.”

16. Clause (a) of Rule 39(1) of the said Rules expressly refers to sub-section (6) of Section 24 of the Act. The said clause provides that fee payable for the extended period of registration shall be based on the average annual fee levied during the last two years of the said initial period of registration. Admittedly, the annual fee levied in respect of the varieties in question, in the last two years of registration was ₹2,000/- each. Thus, the fee for renewal for such registration was rightly computed by the petitioner as ₹18,000/- (₹2,000/- per year for 9 years).

17. It was contended on behalf of the respondents that there was an inherent difficulty in implementing Rule 39(3)(a) of the said Rules as, in terms of Rule 39(1)(b), the application for renewal was required to be made during twelve to eighteen months prior to the expiry of the initial period of registration. It was submitted that since the annual fee is based on the turnover in respect of variety, it would be impossible to compute the same at the time when the application for renewal is made. The said contention is unpersuasive, as Rule 39(1)(c) of the

said Rules expressly provides that every application would be accompanied by fee at the rate fixed for the year preceding the year of application. Thus, the annual fee for the last two years as referred to under Rule 39(1)(a) of the said Rules would be required to be computed on the said basis.

18. It is also necessary to observe that application for renewal of registration of plant varieties is required to be made in Form PV-6 as specified under Rule 39(1)(b) of the said Rules. Thus, it is apparent that insofar as the renewal of registration is concerned, Rule 39 is an exhaustive provision.

19. At this stage, it is also relevant to refer to Rule 8 of the said Rules. The said Rule provides for payment of fees in general. Rule 8 of the said Rules, is set out below:-

“8. Fees.-(1) The amount of fees payable in respect of the registration of plant varieties and grant of any right under the Act or any application or notice of opposition or reply or counter reply required to be filed under the Act and other matters shall be as per the rates specified in the Second Schedule.

(2) (a) The fees payable may either be paid in cash or may be sent by money order or postal order or bank draft or cheque payable to the Authority or the Registrar, as the case may be, at their respective offices, drawn on a scheduled bank at the place where the office is situated.

*Explanation.*—For the purposes of these rules, "scheduled bank" means a bank included in the Second

Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).

(b) Any cheque or draft (not including the fees in cash) on which the value specified therein cannot be collected in cash within the time allowed for the payment of the fees, shall be accepted at the discretion of the Registrar.

(c) The stamps shall not be received in the payment of any fees payable under these rules.

(d) Where a fee is payable in respect of the filing of a document or application or representation, the date on which the entire fee is paid shall be the date of filing of the document or the representation.

(3) Where any test is required to be conducted under any of these rules, the applicant or the concerned person shall be required to pay the requisite fee specified in the Second Schedule.

(4) Any application or representation or document shall be liable to be rejected on account of non-payment of fees and no test shall be conducted unless and until the parties interested deposit the required amount of fees as specified in the Second Schedule.”

20. It is apparent from the plain reading of Rule 8(1) of the said Rules, that the rates specified in the Second Schedule to the said Rules are in respect of (i) registration of plant varieties; (ii) grant of any right under the Act; or (iii) any application or notice of opposition; or (iv) reply; or (v) counter reply required to be filed under the Act. Rule 8(1) of the said Rules does not specifically mention fee payable for renewal of registration. Sub-rule (2) of Rule 8 of the said Rules only mentions the methodology of making the payment. Sub-rule (3) of Rule 8 further specifies that where any test is required to be

conducted, the concerned person would be liable to pay the fee as specified in the Second Schedule to the said Rules.

21. Sub-rule (4) of Rule 8 of the said Rules specifies that no test would be conducted without payment of the specified fee and the applications/documents/representation would also be rejected, if the requisite fee is not paid.

22. It is relevant to observe that Rule 8 of the said Rules does not specifically refer to payment of any fee for renewal of registration. However, the Second Schedule does include an entry of renewal fee.

23. Thus, there is an irreconcilable repugnancy between the provisions of the Second Schedule and Rule 39 of the said Rules.

24. This Court is of the view that the Second Schedule would not override the provisions of Rule 39 of the said Rules for, essentially, two reasons. First, Rule 39 of the said Rules is a special rule relating to renewal of registration and by applying the maxim of *generalia specialibus non derogant*, that is, a special shall override the general, Rule 39 of the said Rules would override the Second Schedule. Second, that the Second Schedule is an adjunct to Rule 8 of the said Rules and provides the Schedule of fees as payable under Rule 8 of the said Rules. However, Rule 8 of the said Rules does not specifically mention payment of renewal fee. Therefore, although the Second Schedule to the said Rules provides for the renewal fee, there appears to be no provision under Rule 8 of the said Rules, which requires that fee to be paid.

25. In view of the above, the writ petition is allowed and the impugned order is set aside. The respondents are directed to accept the renewal fee as computed under Rule 39(1)(a) of the said Rules for renewing the registration of the plant varieties in question.

26. Other applications, if any, also stand disposed of.

27. The parties are left to bear their own costs.

**JANUARY 07, 2019**  
**RK**

**VIBHU BAKHRU, J**



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