

**Dr. Kalyan B. Goswami**  
Executive Director



Ref: NSAI/2014/PPV&FR/001

Date: 29-10-2014

**Dr. R.R. Hanchinal**  
Chairperson,  
Protection of Plant Varieties &  
Farmers Rights' Authority  
Govt. of India, NASC Complex  
DPS Marg, Opp – Todapur Village  
NEW DELHI – 110 012.

Sir,

**Sub: PPV & FR Act and its implementation – Certain issues - Reg**

We highly appreciate the efforts taken by the PPV & FR Authority and the staff thereof to improve and hasten up the process of registration of plant varieties over the past few years. Still there are certain issues which need to be addressed by the Authority and the same are brought to your kind information.

1) **Advertisement under section 21 of PPV & FR Act:**

- i) The DUS characters, given by the Applicant, are published in the PV Journal and oppositions are invited on the basis of these characters, which is against Sections 19 and 20 of the Act. Advertisement of the accepted application shall be made under Section 21 only after conducting DUS test under Section 19 and acceptance under Section 20. This is not only a legal requirement but a more logical procedure/process. Whereas, under the present procedure, the entire process of opposition is gone through on the basis of DUS characters, given in the application. That means the application is being accepted without enquiry and also without conducting the DUS test for confirmation of the characters, claimed by the Applicant. In such a case, the entire opposition process becomes a farce and mockery, especially when the application is subsequently rejected on the basis of the DUS tests conducted by the Registry.
- ii) The applications published in the plant variety journal (PV Journal) are not in accordance with the provisions laid down under the PPV & FR Act and the Rules thereof. As per Rule 30(3)(a) an advertisement for opposition in PV Journal should contain information about the name, passport data and source of parental line. But this information is not being given in the advertisements. In case of a hybrid, as is well-known, its parents are also important and an opposition on the basis of proprietary rights over the parents can not be filed by the affected breeder for lack of knowledge, if his parent is illegally used, and hence such advertisement does not serve the desired purpose.

In this connection, it is pertinent to reproduce hereunder section 30 of the PPV & FR Act:

**Researcher's Rights:** - *Nothing contained in this Act shall prevent—*

- (a) *The use of any variety registered under this Act by any person using such variety for conducting experiment or research; or*
- (b) *the use of a variety by any person as an initial source of variety for the purpose of creating other varieties;*

*Provided that the authorization of the breeder of a registered variety is required where the repeated use of such variety as a parental line is necessary for commercial production of such other newly developed variety.*

As the above proviso makes authorization of the breeder of the registered variety mandatory for repeated use of registered variety as parental line, publication of name, passport data and source of parental line is necessary in the advertisement more particularly in case of a hybrid, so that opposition can be filed on the basis of parent lines, used unauthorizedly. Non-publication of this information makes the advertisement defective and the breeder is handicapped to file a proper opposition. Furthermore, as already submitted above, it amounts to non-compliance of Rule 30(3)(a) by the Registrar, PPV & FR Authority and the advertisement suffers from serious flaw.

## 2) Non-disclosure of true denominations of the parent lines in the application of the hybrid

Some applicants perhaps for lack of knowledge or otherwise are giving code numbers/name for the parent lines instead of their denominations in the applications of the hybrids. This is against regulation 8 of the PPV & FR Regulations 2006 and also against the orders of High court of Delhi in WP No.8431/2011 that there must be complete and true disclosure. Without proper scrutiny, the Registry is also publishing the such fake names of the parent lines, which were given in the application, in the advertisement. The breeders are under serious constraints and in disadvantageous position to file proper opposition because of surreptitious way of filing applications and suppression of vital information. The Registry should compel the applicants to furnish the correct denominations of the parent lines in the applications and such defective applications containing false names of the parent lines should not be accepted and processed further.

Apart from the above, some of the applicants are refusing to provide the list of the hybrids which were exploited by using the candidate variety (parent line) and the Registry is simply accepting such replies instead of compelling the applicants to disclose the information. It is pertinent to mention that such replies are against the order of Hon'ble High Court of Delhi in WP No.8431/2011. The Hon'ble High Court has observed as follows:



*“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.”*

The information relating to hybrids developed from the candidate variety is very vital information to take a decision by the Registry whether the said candidate variety is New or Extant. But the applicants have been evading this information, because of which the Registry can not categorize the candidate variety as New or Extant. We request such applicants should be asked to come clean and declare the information sought for by the Registry.

**3) Non-publication of complete DUS characters of the candidate variety in the advertisement under section 21 of the PPV & FR Act:**

At present the Authority is publishing only 4-5 DUS characters and that too what have been claimed by the Applicant.

It is impossible to file opposition on the basis of published few characters. Hence, publication of complete DUS characters in the advertisement under section 21 of the Act is essential for the breeders to file effective opposition.

**4) Public Notice on Variety of Common Knowledge (VCK):**

As per the official notice published in the Plant Variety Journal prescribing certain criteria for VCK. Para (d) reads as follows:

*A candidate variety should have been sold or otherwise disposed of in India one year prior to the date of filing of application and it should not have been sold or otherwise disposed of 15 years prior to the date of application and in case of trees and vines it should not have been sold or otherwise disposed of 18 years prior to the date of filing of application.*

The above notice is issued under section 20(1) of the PPV & FR Act. It is submitted that the said official notice is beyond the scope and powers of the Registrar, PPV & FR Authority and section 20(1) does not provide such powers to the Registrar in as much as the VCK fulfills the criteria of section 15(2) read with section 29 and Rule 24(2) of the PPV & FR Rules.

This is not only beyond the authority of the Registrar but also creating an anomalous situation.

**5) Information of closure of applications put on the website:**

The status of applications on the PPV website shows that certain applications have been as “closed” without assigning any reason thereof.

The applicants were not intimated individually of the closure of the applications or reason for the closure. The closure of application without assigning any reason and without offering an opportunity of being heard to the applicant is unjust, unfair and arbitrary.

This is a serious matter and we request the Chairperson to give necessary directions to the Registrar to revalidate the applications and to process them for registration.

**6) Plant Varieties Protection Appellate Tribunal:**

Section 54 of the PPV & FR Act provides for establishment of Plant Varieties Protection Appellate Tribunal to hear the appeals filed under section 56 of the Act.

The Act was notified in 2005 and 2006 and process of receipt of application commenced in 2007 but so far the Plant Varieties Protection Appellate Tribunal has not been established.

This is causing great hardship to the aggrieved parties as they have no alternative but to approach the High Courts at high cost and involving time factor against the orders of the Registrar.

Hence, we request the Chairperson to establish the Plant Varieties Protection Appellate Tribunal at the earliest, so that the aggrieved parties are not forced to approach the High Courts for even routine matters.

**7) Payment of Annual Fee:**

Presently, the Registrar is giving the due date of payment of annual fee based on the date of grant of Certificate of Registration. Due to this procedure, if a seed company has several varieties, it will have different dates of registration in a year, making it difficult to keep track of due dates of payment of annual fee for each of the varieties through out the year.

Furthermore, if due date falls in April, it will be difficult for the company to workout annual fee on the basis of sold quantity during the financial year, as annual audited account will not be available in April to work out annual fee on the basis of quantity sold.

In view of the above two factors, a single date of payment of annual fee for all the registered varieties can be specified, say 30<sup>th</sup> June of the financial year irrespective of date of grant of registration. Section 35 does not restrain from taking such decision by the Authority.

The categories of seed Certified Seed, Foundation Seed, Breeder Seed and Truthfully labelled seed given in column No.1 of the Annual Fee Return Form are relevant for the purpose of Seeds Act, but not for the PPV & FR Act.

The categories relevant for the purpose of PPV & FR Act are New Variety, Extant Notified Variety, Farmers Variety, Variety of Common Knowledge and Essentially Derived Variety.



These are the appropriate categories to be incorporated in the Annual Fee Return Form instead of the categories, which are relevant to Seeds Act.

Furthermore, Annual Fee, comprises of a lumpsum amount of Rs.2,000/- plus 0.1/0.2 percent (on sales value of the seeds) plus 0.5/1 percent of royalty . But the Annual Fee Return Form does not provide a column for incorporating the lumpsum amount of Rs.2000/-.

In view of the above, it is requested to modify the Annual Fee Return Form with reference to category of seed and to incorporate column for lumpsum amount Rs.2000/-.

**8) Lack of Identification:**

Under the Trademarks Act, a registered mark is denoted with ® and the mark which is applied for registration is denoted with TM, whenever and wherever such mark is put to use. This prevents other parties from committing infringements. There is no such provision or guidelines under the PPV & FR Act or Rules for the Registree of a plant variety to notify the public about the registration of the said plant variety like in Trademarks Act. In the absence of such notification, there is scope for somebody to commit infringement unknowingly.

**9) Document open to public inspection:**

Section 84 read with rule 76 provides for any person to obtain a certified copy of any entry in the register or any other document in any proceedings under this Act pending before such Authority or Registrar or may inspect such entry or document, PV-33 is prescribed under the Rules to make a request to the Registrar for providing certified copies of the documents. But there is inordinate delay in providing the required documents when requested for under PV-33.

We request that the Authority may prescribe a timeline to the Registry for providing the documents applied for in PV-33, so that the applicant gets the documents within reasonable time.

**10) DUS test results:**

There is inordinate delay in communication of DUS Test results by the respective DUS Test Centres, because of which registration process is getting delayed.

We understand that results of DUS Tests conducted in 2013 are yet to be received by the Registry from the DUS Test Centres.

We request the Chairperson to issue guidelines to the DUS Test Centres to communicate the results promptly without delay.

**11) Notice for payment of annual fee:**

Under section 35(2) of the Act, if any breeder fails to pay the specified annual fee for two consecutive years, the Authority shall issue notice to the breeder to comply with the direction in the notice.

However, the Registrar is issuing notice under 35(2) reminding the date on which the payment of annual fee falls due, even when there is no default or failure in annual fee payment.

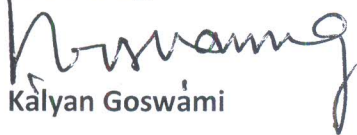
First of all a simple reminder could have been issued instead of notice under 35(2), when there is no default in payment of annual fee for two consecutive years.

Secondly under section 35(2), the Authority shall issue notice and not the Registrar.

We request that suitable directions may be given to the Registry against issuing of notice under section 35(2) routinely when there is no default of payment for two consecutive years.

Thanking you,

Yours truly,



Kalyan Goswami