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Executive Director



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Dr. R.R. Hanchinal
Chairperson,
Protection of Plant Varieties &
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Govt. of India, NASC Complex
DPS Marg, Opp – Todapur Village
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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:

