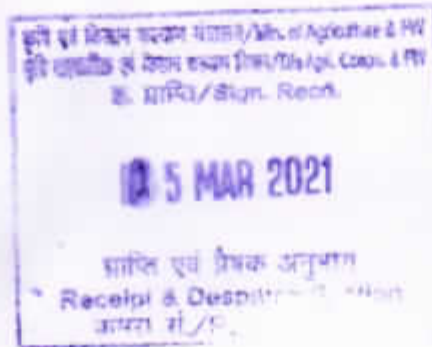


**R K Trivedi**  
Executive Director



Ref. NSAI/2021/005

Date: 05-03-2021

To,  
Shri Sanjay Agarwal,  
Secretary (Agriculture),  
Ministry of Agriculture & Farmers Welfare,  
(Department of Agriculture, Cooperation & Farmers Welfare),  
Krishi Bhavan, Dr Rajendra Prasad Road,  
New Delhi – 110001

Sir,

**Sub: Public Notices, Issued by Registrar General/Registrar, PPV&FR Authority- Reg.**

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We wish to bring to your kind notice that the Registrar General/Registrar has, from 2019 onwards, issued certain Public Notices, which are contrary to the provisions of the Protection of Plant Varieties and Farmers' Rights' Act, 2001 (Act), Rules and Regulations and such powers are not vested in them under the Act and Rules and Regulations.

The National Seed Association of India (NSAI) had made representations to the Chairperson, PPV&FR Authority, against such Public Notices, pointing out that the Registrar General/Registrar is not competent to issue the said Notices and that the said Notices are contrary to the provisions of Act/Rules/Regulations. But PPV&FA did not give any cognizance to the representations, made by the seed industry's apex association, NSAI. As, we left with no other alternative and, further, in order to avoid unwarranted litigations, we approach the Central Government to invoke provisions of section 93 of the Act and get expert legal opinion on all the contentious Public Notices and, based on such legal opinion, issue appropriate directions to the Authority. The cost of legal opinion may be borne by the Authority in the interest of its stakeholders.

We mention, hereunder, Public Notices, which are blatantly contrary to the provisions of the Act and Rules:

**1) Notice on Plant Breeders' Rights (No. PPV & FRA/Legal/16/2018) Dated 23.01.2019**

The above Notice was issued by the Registrar General, PPV& FR Authority, directing the Secretary, Ministry of Agriculture and Farmers Welfare, Secretary, Department of Agricultural Research and Education, Vice-Chancellors of State Agricultural Universities, Agricultural Production Commissioners of various states, Principal Secretaries of all State Governments and such high ranking other officials, to revise their existing procedures, laid down under the Seeds Act, 1966 and the Essential Commodities Act, 1955 in the case of registered varieties and etc.

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It is stated that the Notice is contrary to the provisions of Act and Rules. There is no provision, under the PPV&FR Act, which provides for price fixation. However, there is provision of section 26 of the PPV&FR Act, which provides for claiming for benefit sharing by any person or group of persons etc. and the powers, under rule 43 of 2003 Rules, to determine the amount of benefit sharing by the Authority. But these provisions were not invoked by the Authority in the matter of Bt2 trait and, on the contrary, the Registrar had imposed requirement of NOC from the technology provider for registration of Bt cotton hybrids, contrary to the provisions of the Act and 2003 Rules. Furthermore, the requirement of NOC, which had been dispensed with by the Authority in the 27<sup>th</sup> meeting was again reopened in the 29<sup>th</sup> meeting. It is pertinent to mention that the Authority and the Chairperson are defending the said decision before the Hon'ble High Court of Telangana in WP No. 15930 of 2018 (Copy of the Counter Affidavit is enclosed herewith **Annexure-1**).

It is also pertinent to mention that the Central Government had issued directions, under section 93 of the Act **with the approval of the Hon'ble Minister for Agriculture & Farmers Welfare**, to withdraw the "**Notice on Plant Breeders' Rights**" but, so far, the same has not been withdrawn.

## 2) **Public Notice (1 of 2019) dated 17.05.2019**

This Public Notice is also issued by the Registrar General. The Public Notice, as per the subject mentioned therein, seeks to lay down "*The guidelines/procedure for DUS testing of a hybrid variety compulsorily with its parent lines in the case of propagated notified species.*" However, the guidelines/procedure for DUS testing of a hybrid variety etc. can be laid down by the Authority only under sub-rules (8) and (9) of rule 29 of 2003 Rules, read with section 19(3) of the Act. Therefore, the Registrar General, by laying down the guidelines/procedures for DUS testing, has encroached upon the powers of the Authority.

NSAI has pointed out in its letter NSAI/2019/032 dated 19-07-2019 that the Registrar General does not have powers to issue the above guidelines/procedure for DUS testing. It has also been pointed out that there are discrepancies in the Public Notice 1 of 2019 *vis a vis* the provisions of the Act/Rules/Regulations. The worst part of the Public Notice is that it **had also been made applicable to the pending plant varieties, which had already completed DUS testing and were just about to be registered.** And like a bolt from the blue, comes the Public Notice 1 of 2019 and registration of all pending varieties, which had completed all processes for registration and were about to be registered, has been pushed back and are now inordinately delayed. NSAI has submitted yet another representation NSAI/2019/059 dated 30.11.2019 with regard to certain decisions, recorded in the Minutes of Interface Meeting, held on 26.08.2019 at PJTSAU, Hyderabad, Telangana. In view of the importance of the matter to the seed industry, NSAI has made one more representation NSAI/2020/065 dated 14.10.2020 to the Chairperson.

For the sake of brevity, NSAI is not reiterating herein its contentions raised in its letters on various issues of the said Public Notice and Minutes of Interface Meeting, however encloses herewith its letters dated 19-07-2019, 30.11.2019 and 14.10.2020 as **Annexure-2**.



It is pertinent to state that the Chairperson, PPV & FR Authority did not consider the NSAI representations and, on the grounds that there is no stay, the Registrar is going ahead with implementation of Public Notice No.1 of 2019, when decision on the legality of the Public Notice is pending before the Hon'ble High Court of Delhi.

It is further to mention that the substitution of Subject of the Public Notice and insertion of Preamble therein, by way of amendment vide Public Notice dated 01.11.2019 i.e. after five and half months, are mere window dressing measures and do not alter the fact that the Public Notice 1 of 2019 still remains contrary to the provisions of Act and the Rules and, hence, require independent legal scrutiny.

The matter is before the Hon'ble High Court of Delhi in WP No. 11738 of 2019, filed by Federation of Seed Industry of India (FSII). The intervention of the Central Government is immediately required in the matter under section 93 of the Act, otherwise the stakeholders would suffer irreparable damage. The Central Government, in the interest of breeders and farmers, may direct the Authority/Chairperson to keep implementation of the impugned Public Notice (1 of 2019) dated 17.05.2019 and its amendment dated 01.11.2019 **on hold** and obtain independent legal opinion. Based on the legal opinion, the Central Government may direct the Authority/Chairperson to instruct the Registrar General/Registrar to withdraw the impugned Public Notice forthwith. Thereby, the WP would become infructuous. It is, further, submitted that, if the Central Government does not interfere and as the Registrar is implementing the impugned Public Notice (1 of 2019), the WP, filed by FSII, would be rendered infructuous and the stakeholders' rights and interest would suffer huge damage.

### 3) Public Notice (2 of 2019) dated 17.05.2019

The Public Notice (2 of 2019) dated 17.05.2019 is not in harmony with various sections of the Act like 14, 19, 20(1), 21(1), 24(1) and 24(5) of the PPV&FR Act, as explained hereunder:

- Date of filing would be the date on which an application is made to the Registrar for registration of the variety under section 14 of the Act.
- Under section 20(1) of the Act, the date of acceptance of the application, would be the date on which *the Registrar may, after making such inquiry as he thinks fit with respect to the particulars contained in such application, accept the application absolutely or subject to such conditions or limitations as he deems fit.*
- It is submitted that the applications, filed for registration, are specified under regulation 10 of PPV&FR Regulations, 2006. Therefore, Registrar's inquiry shall have to be restricted to the contents of application, as specified, and read with relevant sections from 15 to 19 of the Act.
- From the above, it is clear that the particulars contained in the application include the DUS Characters also, which could be determined by conducting tests under section 19 of the Act. **Therefore, acceptance of the application, under section 20(1) of the Act, arises only after conducting tests under section 19.**
- Section 21(1) is important, as it mandates that, **as soon as the application is accepted under section 20(1) of the Act, it shall be advertised.**



- Under section 24(1), the Registrar shall register the variety, if the application has not been opposed or the opposition has been rejected.
- From the above, it is clear that date of acceptance of the application shall be as laid down under section 20(1). Therefore, the Public Notice (2 of 2019) is not in consistent with the above-mentioned provisions. The Registrar General cannot define or fix the date of filing and date of acceptance, contrary to the provisions.
- Apart from the above, the Public Notice (2 of 2019) conflicts with section 24(5) of the Act also, which provides for protection of *the interests of a breeder against any abusive act committed by any third party during the period between filing of application for registration and decision taken by the Authority on such application.*
- As per section 14 of the Act, an application may be made to the Registrar for registration of a variety. Therefore, the date of filing shall be as under section 14 and date of acceptance shall be as laid down under section 20(1). This is the position of law. The Registrar General cannot fix the date of filing and date of acceptance arbitrarily at his own discretion contrary to the provisions of the Act.
- Rule 8 of the 2003 Rules has no relevance in the matter of Public Notice (2 of 2019) and is referred only with the intention of misleading the stakeholders. Application for registration of a variety is filed under section 14, read with section 18 of the Act and provisions of section 18(1)(g) of the Act, read with rule 26 of 2003 Rules, is relevant in respect of the fee and not the rule 8, which is mentioned in the Public Notice (2 of 2019).

In view of the above, there is need to obtain expert legal opinion on the Public Notice (2 of 2019).

In this connection, it would not be out of place to mention that our member seed companies had challenged section 24(5) of the Act in Writ Petition No. W.P.(C)250/2009 & W.P.(C) 7102/2011, C.M. APPL.16215/2011 & 18367/2012 and the Hon'ble High Court of Delhi had set aside section 24(5). The Authority, instead of appreciating the spirit of the above Writ Petitions and the Order of the Hon'ble High Court and instead of coming up with an appropriate provision and amendment in place of existing section 24(5), had routinely chosen, without application of mind, to file an appeal before the Hon'ble Supreme Court against the Delhi High Court Order and obtained Stay. Thereby, the provision of section 24(5) of the Act remains in the statute with its ambiguity. The Registrar General, instead of addressing the issue in legal way by appropriate amendment in the Act, has complicated the issue by coming up with his own interpretation of the date of filing of the application and date of its acceptance, contrary to provisions of the Act and Rules.

#### 4) Public Notice (10 of 2019) dated 06.06.2019

Public Notice (10 of 2019), issued by the Registrar under section 20 of the Act, is contrary to the provisions of sub-sections (1) and (3) of section 15 of the Act. In this connection, NSAI had made representation NSAI/2019/033 dated 19.07.2019 to the Chairperson against the validity of the above Public Notice. This issue had also been discussed in the Interface Meeting between PPV&FRA and the Seed Industry held on 26.08.2019 at PJTSAU, Hyderabad. Based on the



Minutes of the Interface Meeting, NSAI submitted one more representation NSAI/2019/060 dated 02.12.2019 to the Chairperson.

The contentions, raised by NSAI in the above two representations, are not being reiterated herein for the sake of brevity. Copies of the said representations are annexed herewith as **Annexure-3 (colly)**.

5) **Public Notice (12 of 2019) dated 13.06.2019**

The above Public Notice is contrary to the provisions of Act and NSAI made two representations to the Chairperson in the matter vide letter NSAI/2019/035 dated 19.07.2019 and NSAI/2019/061 dated 02.12.2019. The contents of these two representations are deemed to have been reiterated herein for the sake of brevity. Copies of these representations are annexed herewith as **Annexure-4 (colly)**.

6) **Public Notice (15 of 2019) dated 16.10.2019**

The above Public Notice is issued by the Registrar General with the subject ***"Imposition of penalty for disobedience to order issued by Registrar under Rule 22(6) of PPV & FR Rules, 2003"***

We regret to say that the Registrar General has, by the above subject, projected a non-issue, as if the PPV&FR Act and 2003 Rules are draconian law and not the beneficial enactment and rules, as enshrined under the pre-ambule of the Act.

The Registrar has quoted sub-rule (6) of rule 22 in isolation. It should be read with sub-rule (5) to appreciate its context. Sub-rules (5) and (6) of rule 22 of the PPV&FR Rules, 2003 are reproduced hereunder for kind reference:

***"(5) The Authority shall be entitled to call for and procure the details of any crop variety under use in the country for the purpose of bringing the same into its database.***

***(6) Any public or private institution, community or individual involved in the production and use of seed of such varieties shall be required to provide full information on its characteristics or and a true sample of seed of such variety.***

In this connection, we state as follows:

- (i) It is to be appreciated that the information under sub-rule (6) is required for the purpose of bringing the same into Authority's data base.
- (ii) There is no mention of registered varieties in the above sub-rules. Rightly so, as the information, required under sub-rule 6, is available with the Registry itself.
- (iii) In as much as the DUS test reports of the registered varieties are available with the Registry, the same may be brought into Authority's data base, as required under sub-rule 5.

- (iv) Further, it is to point out that DUS test reports are not being shared by the Registrar with the concerned registered breeders. The DUS test reports, without sharing the same with the concerned registered breeders, are being published as part of advertisement in the PV Journal, under section 21(1) of the Act. And whereas the registered breeder is being asked to obtain the DUS test report of his own variety under section 84 of the Act on payment of Rs.500/- (Rupees five hundred only) per page, which works out to huge amount.

With regard to invoking of Section 11 of the Act by the Registrar for imposing penalties, it is reiterated that sub-rule (6) is not applicable in the context of registered variety and, further, Section 11 is not relevant in the matter of non-compliance with sub-rule (6) of rule 22 of the PPV&FR Rules, 2003 by any public or private institution, community or individual.

Therefore, Public Notice is required to be referred for obtaining independent legal opinion.

**7) Public Notice (1 of 2020) dated 01.01.2020**

- The Public Notice, issued by the Registrar, defines Agent(s) and Licensee(s) as if they have separate roles under section 28 of the Act, which is not correct. A bare study of section 28 shows that there is no difference between the two i.e. Agent and Licensee. Either of two is entitled to produce, sell, market, distribute, import or export the variety, strictly in accordance with the rights conferred by the Registered Breeder in Form 1A "Form for Authorisation".
- The contention in the Public Notice that the "*Registered Breeder appoints an agent or agents with permission to license to other companies to multiply the seed directly or produce through authorised seed production farmers and sell*" is incorrect and contrary to sub-section (8) of section 28 of the Act.
- Sub-section (8) of section 28 lays down as follows:

***"Nothing in this section shall confer on a registered agent or registered licensee of a variety any right to transfer such right further thereof."*** (Emphasis added)

**9) Public Notice (13 of 2020) dated 09.11.2020**

The above Public Notice is issued by the Registrar in the matter of payment of Annual Fee and Renewal Fee of Notified Extant Varieties, from the date of their notification under section 5 of the Seeds Act, 1966, instead of from the date of registration under the PPV&FR Act.

The above Public Notice is contrary to the provisions of PPV&FR Act and is beyond the powers of the Registrar.

NSAI, made a representation to the Chairperson on the above, vide letter NSAI/2020/073 dated 18.11.2020. The contents of the said letter are deemed to be reiterated herein. (Copy is enclosed as Annexure -5)



**10) Public Notice (1 of 2021) dated 27.01.2021**

The subject matter of this Public Notice is "**Guidelines to use the Logo of PPV&FR Authority.**" The guidelines are issued, under section 17 of the Act and regulation 8(2)(a) of the PPV&FR Regulations, 2006 asking the Registered Breeder/Agent/Licensee/Authorised Breeder (The term "Authorised Breeder" is not defined/covered under the Act) to be followed on the packet/container or label on the package carrying the seed /seed material of the registered variety for selling. The provisions of section 17 and regulation 8(2)(a) have absolutely no relevance in the matter.

The notice lays down for its immediate implementation from the date of its issue and is made mandatory from 1<sup>st</sup> September 2021.

Section 17 of the PPV&FR Act and regulation 8(2)(a) of the PPV&FR Regulations, 2006 are reproduced hereunder for ready reference:

**"17. Compulsory variety denomination.—**(1) Every application shall assign a single and distinct denomination to a variety with respect to which he is seeking registration under this Act in accordance with regulations.

(2) The Authority shall, having regard to the provisions of any international convention or treaty to which India has become a party, make regulations governing the assignment of denomination to a variety.

(3) Where the denomination assigned to the variety does not satisfy the requirements, the Registrar may require the applicant to propose another denomination within such time as may be specified by such regulations.

(4) Notwithstanding anything contained in the Trade Marks Act, 1999 (47 of 1999), a denomination assigned to a variety shall not be registered as a trade mark under that Act."

**Regulation 8(2)(a) of the PPV&FR Regulations, 2006:**

**"8. The manner in which a single and distinct denomination shall be assigned by the Applicant.—**(1).....

(2) Notwithstanding anything to the contrary contained in these regulations—

(a) when a variety is advertised, offered for sale or marketed, it shall be permitted to associate a trademark, trade name or similar indication with a registered variety denomination after informing the Registrar in writing."

The above provisions, which were referred by Registrar as basis for issuing the Public Notice (1 Of 2021), were reproduced hereinabove to highlight that there is no such instructions in the above provisions and to show that the Registrar has blatantly misinterpreted the provisions. It is stated the Registered Breeders are complying with the PPV&FR (Use of Denomination of Registered Variety) Rules, 2012. The Registered Breeders are also complying with regulation "8. **The manner**

***in which a single and distinct denomination shall be assigned by the Applicant"*** of the PPV&FR Regulations, 2006.

It is also pertinent to state that there are several IPR laws and none of them requires use of their Logo by the respective person/company, whose rights are protected under such IPR Law.

Whether the above Public Notices were issued by the Registrar General/Registrars after duly consulting the Legal Advisor(s) on the aspect of their legal validity.

Therefore, we request for intervention of the Central Government under section 93 of the PPV&FR Act and to kindly direct the Authority to refer all the above-mentioned Public Notices, along with NSAI representations, to an independent competent legal counsel for expert opinion and to keep the above Public Notices in abeyance, till the receipt of legal opinion. We state that no prejudice would be caused, if the above-mentioned Public Notices are kept in abeyance. On the contrary, the seed industry would suffer hugely and irreparably, if the Public Notices are not stayed.

Thanking you,

Yours truly,



**R.K. Trivedi**

Copy to:

- 1) Dr. K.V. Prabhu, Chairperson, the Protection of Plant Varieties & Farmers' Rights Authority, Ministry of Agriculture & Farmers Welfare, (Department of Agriculture, Cooperation & Farmers Welfare), NASC Complex, DPS Marg, Opposite Todapur, New Delhi - 110012.
- 2) Shri.Ashwani Kumar, Joint Secretary (Seeds), Ministry of Agriculture & Farmers Welfare, (Department of Agriculture, Cooperation & Farmers Welfare), Krishi Bhavan, Dr Rajendra Prasad Road, New Delhi - 110001