

R K Trivedi
Executive Director



Ref: NSAI/2021/013

Date: 15-04-2021

To,
Dr. K.V. Prabhu,
Chairperson,
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.

Sir,

Sub: DUS testing – Inspections by DUS Monitoring Team – Regarding

We submit hereunder certain issues, relating to inspections of DUS testing of varieties, applied for registration under the Protection of Plant Varieties and Farmers' Rights Act, 2001 (hereinafter referred to as "Act") by DUS Monitoring Team, for your kind information and for issuing necessary instructions to the Registrar(s) in the matter:

(1) Inspections by DUS Monitoring Team

- (a) Under rule 29(1)(c) of the Protection of Plant Varieties and Farmers' Rights Rules, 2003 (hereinafter referred to as "2003 Rules"), read with section 19 of the Act, DUS Tests are conducted on payment of fee by the applicants for DUS testing as per rule 29(1)(d) and 29(2) of 2003 Rules.
- (b) In this connection, it is stated that, till about 2-3 years back, applicants had been getting intimation of the date of inspection of the DUS Monitoring Team from the Registrar, so that applicants' representative may also participate and assist the DUS Test Monitoring Team with inputs about their own varieties. This has been a fair and transparent procedure, that had been adopted by the Protection of Plant Varieties and Farmers' Rights Authority (hereinafter referred to as "Authority").
- (c) Due to dispensing with the above well-laid practice by the Registrar(s), applicants are deprived of their right to be present at the time of inspection of their varieties by DUS Monitoring Team and this is resulting in lack of transparency in conducting of DUS tests. It is stated that there cannot be any valid reason for dispensing with the above practice.
- (d) As mentioned in para (a) above, DUS testing is conducted under rule 29, read with section 19 of the Act on payment of DUS testing fee. Hence, the applicant is entitled for intimation of date of inspection of DUS testing of his variety by DUS Monitoring Team and his participation in the same. And this meets the principles of natural justice, as there is no reason to deprive the right to the applicants to participate in DUS Monitoring Inspections of their own varieties.
- (e) On the contrary, the Registrar has issued Public Notice (21 of 2019) dated 16.10.2019 under rule 30(2) of 2003 Rules. It is stated that rule 30(2) is *ultra vires* to section 21(1) of the Act and also contrary to the provisions of sections 19 and 20 and sub-rule (1) of rule 30 itself. A separate representation is being submitted with regard to rule 30(2) of 2003 Rules and Public Notice (21 of 2019).

We request to kindly consider the above and restore the earlier practice of intimating the applicants about the date, time and inspection of the DUS Monitoring Team with details of DUS centre, which would be just and proper, so that the applicants can participate in the said inspections. We reiterate that it would bring transparency in the DUS testing mechanism and reporting.

- (2) We also bring another important issue to your kind notice. Earlier, the Registrar used to intimate to the applicant the variation, if any, in the characters, observed by the DUS Test Monitoring Team for his explanation. If the explanation was satisfactory, the character, claimed by the applicant used to be accepted otherwise, the Registrar used to direct the applicant to amend the character in accordance with clause (a) of sub-section (2) of section 20 of the Act. However, this practice has also been dispensed with and the Registrar is now himself carrying out the amendment in the characters, without the knowledge of the applicant. This is arbitrary and contrary to the provisions of clause (a) of sub-section (2) of section 20 of the Act.

We, therefore, request to kindly restore the practice of referring variation in the character, if any, to the applicant for his explanation/inputs. If the Registrar is not satisfied with the inputs of the applicant, he may direct the applicant under clause (a) of sub-section (2) section 20 of the Act for amendment.

- (3) As mentioned in para (1) above, the DUS tests are conducted under rule 29(1)(c) of the 2003 Rules, on payment of fee by the applicant for DUS under rule 29(1)(d) and 29(2) of the 2003 Rules. The DUS fee specified under S.No. 1 of the Second Schedule is a maximum of Rs. 2.00 lakhs per entry depending on the nature and type of test. As the DUS tests are conducted on payment of fee by the applicant, by virtue of such payment, the applicant is entitled to receive copy of DUS tests reports of each of the DUS centres for his variety and also finalized DUS report for reference and record.

We request to kindly consider the above issues and instruct the Registrar(s):

- (a) to intimate DUS testing information to the concerned applicants and allow them to participate in the inspections of the DUS monitoring team strictly in respect of their varieties;
- (b) to communicate variation of characters, if any, to the applicants for their response and amendment, if required, under section 20(2)(a) of the Act; and
- (c) to provide copy of DUS tests reports of the variety in respect of each of the DUS centres along with copy of the consolidated finalized DUS report to the applicants.

Thanking you,

Yours truly,



R K Trivedi

Copy submitted to:

- 1) Shri Sanjay Agarwal, Secretary (Agriculture), Ministry of Agriculture & Farmers Welfare, (DAC&FW), Krishi Bhavan, Dr. Rajendra Prasad Road, New Delhi – 110001.
- 2) Shri Ashwani Kumar, Joint Secretary (Seeds), Ministry of Agriculture & Farmers Welfare, (DAC&FW), Krishi Bhavan, Dr Rajendra Prasad Road, New Delhi – 110001