

R K Trivedi
Executive Director



Ref: NSAI/2021/014

Date : 15-04-2021

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:- Sub-rules (2) and (3) of rule 30 the Protection of Plant Varieties and Farmers' Rights Rules, 2003 & Public Notice (21 of 2019) – Reg.

We submit that the Central Government, in exercise of the powers vested in it under section 96 of the Protection of Plant Varieties and Farmers' Rights Act, 2001 (hereinafter referred to as "Act"), has notified the Protection of Plant Varieties and Farmers' Rights Rules, 2003 (hereinafter referred to as "2003 Rules") and has also amended the said Rules from time to time.

We submit that sub-rule (2) and clause (a) and clause (d) of sub-rule (3) of rule 30 of 2003 Rules are contrary to provisions of section 21(1) of the Act. Sub-rule (2) is required to be deleted as it is *ultra vires* to section 21(1) of the Act and clause (a) of sub-rule (3) requires modification to be in tune with section 21(1) of the Act. Further clause (d) of sub-rule (3) of rule 30 has to be deleted, as it is contrary to section 21(1) and section 18(d) of the Act read with regulation 10 of PPV&FR Regulations, 2006.

In this connection, it is pertinent to reproduce hereunder sub-section (1) of section 21 of the Act for ease of reference:

"Where an application for registration of a variety has been accepted absolutely or subject to conditions or limitations under sub-section (1) of section 20, the Registrar shall, as soon as after its acceptance, cause such application together with the conditions or limitations, if any, subject to which it has been accepted and the specifications of the variety for registration of which such application is made including its photographs or drawings, to be advertised in the prescribed manner calling objections from the persons interested in the matter."

Rule 30 of 2003 Rules has to be, strictly, in accordance with section 21(1).

Sub-rule (1) of rule 30 of 2003 Rules:

It is submitted that **sub-rule (1) of rule 30 of 2003 Rules** meets the requirements of section 21(1) of the Act and it also specifies Form O1 in the Third Schedule for the purpose of advertisement of the variety. Form O1 of the Third Schedule is also in tune with the requirements of section 21(1). **Therefore, publication of the advertisement in Form O1 amounts to compliance with section 21(1) of the Act in true letter and spirit.**

Sub-rule (2) of rule 30 of 2003 Rules:

On the contrary, sub-rule (2) of rule 30 is beyond the scope of section 21(1) and conflicts with sub-rule (1) of rule 30. This conflict between sub-rules (1) and (2) appears to have been missed, while incorporating sub-rule (2) by amendment in 2015. It is also to be noted that section 21(1) comes into effect only after completion of DUS testing under section 19 read with rule 29 and acceptance of the application under section 20. In view of the above, incorporation sub-rule (2) of rule 30, laying down to publish in the Journal the name and location of the DUS test centre where such variety will undergo the DUS testing, for the purpose of inspection by any person, is beyond comprehension, as there would not be any DUS testing after acceptance of the application. It is particular to note that section 21(1) does not envisage inspection of DUS testing of a variety by any person for the purpose of filing of opposition. **Therefore, sub-rule (2) of rule 30, issued under section 21(1), has not only no relevance but also contrary to the intent and purpose of section 21(1) and intrudes into the provisions of section 19 and rule 29.** As sub-rule (2) of rule 30 is *ultra vires* to section 21(1) of the Act, the Public Notice (21 of 2019) dated 16.10.2019, issued by the Registrar General is also not legally valid.

Even the decision of the Authority on the **Agenda Item No. 9 “Inspection of a candidate variety in the DUS centre and fee”** of the 32nd meeting, held on 25.09.2019, is contrary to provisions of section 21(1) of the Act. (Minutes of 32nd meeting had not been adopted so far in the subsequent meeting, as no subsequent meeting was held till date). Stipulation of Rs. 5000/- (Rupees Five Thousand only) per trial/per day by the Authority to inspect the trial material under DUS testing is also not supported by any provisions of the Act. There is no provision under the Act, which allows inspection of DUS testing of the candidate variety or any other variety by other breeders. The placement of Agenda No. 9 before the Authority for its approval/decision was a flaw, as rule 30(2) is *ultra vires* to section 21(1) and also contrary to provisions of section 19, read with rule 29 and section 20 of the Act. Public Notice (21 of 2019), issued based on such decision of the Authority, will not have legal validity in the eyes of law.

Clause (a) and (d) of sub-rule (3) of rule 30 of 2003 Rules:

It is stated that even clause (a) and clause (d) of sub-rule (3) of rule 30 are also contrary to provisions of section 21(1).

Provisions of section 21(1) do not require to advertise **“source of parental line or initial variety used to developed the variety in respect of which an application for registration has been made;”** Therefore, clause (a) of sub-rule (3) of rule 30 is required to be modified, so as to be in tune with section 21(1) of the Act. It is proposed that modification of clause (a) of sub-rule (3) of rule 30 may kindly be considered by amendment as follows:

(a) name and passport data of the variety in respect of which an application for registration has been made;

Regarding clause (d) of sub-rule (3) of rule 30 is also contrary to provisions section of 21(1) and section 18(d) of the Act. Provisions of section 21(1) of the Act do not provide for publication of the information, mentioned in clause (d), in the advertisement of the application. Further, clause (d) of sub-rule (3) of rule 30 has no relevance, in as much as the information **“important agronomic and commercial attributes of the variety”** is not required to be mentioned in the application, specified under regulation 10 of the 2006 Regulations. It is to be noted that a candidate variety shall be registerable, if it conforms to criteria laid down under section 15 of the Act. As the Registry does not have this information, mentioned in clause (d), and as section

21(1) does not require it to be published in the advertisement, clause (d) of sub-rule (3) of rule 30 is *ultra vires* to the provisions of section 21(1) of the Act, hence liable to be deleted.

We request to kindly consider the above factual and legal aspects and delete sub-rule (2) of rule 30 of 2003 Rules, as it is *ultra vires* to section 21(1) of the Act. We also request to amend clause (a) of sub-rule (3) of rule 30 of 2003, so as to bring it in tune with the provisions of section 21(1) and delete clause (d) of sub-rule (3) rule 30 of 2003 Rules, in view of the reasons, mentioned above. We also request to kindly direct the Chairperson, PPV&FR Authority, under section 93 of the Act, to withdraw the Public Notice (21 of 2019) dated 16.10.2019, which had been issued based sub-rule (2) of rule 30 of 2003 Rules, which is *ultra vires*, and also on the basis of the flawed decision of the Authority, taken in its 32nd meeting, which is yet to be adopted in the subsequent meet, as and when it is held.

Thanking you,

Yours truly,



R/K Trivedi

Copy submitted to :

- 1) 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
- 2) 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.