

R K Trivedi
Executive Director



Ref. NSAI/2021/026

Date: 26-07-2021

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

Sir,

Sub: SLP filed by PPV&FR Authority before the Hon'ble Supreme Court against the Order dated 02-12-2016 of the Hon'ble High Court of Delhi declaring Section 24(5) of the PPV&FR Act, 2001 as void – Regarding

Ref: (1) Copy of the Order dated 02-12-2016 of the Hon'ble High Court of Delhi in W.P. (C) 250/2009 and W.P. (C) 7102/2011, C.M.APPL.16515/2011 & 18367/2012.

(2) NSAI letter NSAI/2018/074 dated 01-10-2018 addressed to the Chairperson, PPV&FR Authority and copied to the Secretary, Department of Agriculture, Cooperation & Ministry of Agriculture & Farmers Welfare.

The Division Bench of the Hon'ble High Court of Delhi, headed by Hon'ble Mr. Justice S. Ravindra Bhat, had passed a landmark judgment in W.P. (C) 250/2009 and W.P. (C) 7102/2011, filed by certain seed companies. The Hon'ble Division Bench had declared section 24(5) of the PPV&FR Act, 2001 as void by a well-reasoned order. (Copy of the order is enclosed herewith for kind reference. The operative part of the order is worth reproducing hereunder:

“Given the importance of the Act, there is enormous danger in empowering authorities with unguided and uncanalised power through provisions that can implicate livelihoods and limit or impair access to tens of thousands- potentially hundreds of thousands of farmers and users of plant varieties. The existence of a large section of farmers unschooled in provisions of the Act and unaware of their rights renders unethical bio-prospecting practices and spurious claims to development of new or other registrable varieties, entitled to registration, a real possibility. Section 24 (5) of the Protection of Plant Varieties & Farmers' Rights Act as cast at present may undoubtedly be an adequate remedy to prevent abusive practices (assuming that what is abusive can be defined over a period of time); yet the danger of abuse of the provision itself and the attendant (likely) long term injury to innocent breeders, farmers and those in the business of development of hybrids and plant varieties far outweighs its benefits, in view of the unguided nature of the power, which is destructive of the rule of law and contrary to Article 14 of the Constitution of India. Section 24(5) of the Protection of Plant Varieties and Farmers' Rights Act, 2001, is, therefore, declared void. The writ petitions are allowed in these terms terms; however, there shall be no order as to costs.” (Emphasis added)

The PPV&FR Authority, instead of taking appropriate action to address the concerns, expressed by the Hon'ble High Court, chose to challenge the order of the Hon'ble High Court of Delhi before the Hon'ble Supreme Court. By doing so, the PPV&FR Authority has lost valuable time in putting a good and appropriate mechanism in place to make section 24(5) operational in unambiguous manner.

NSAI had suggested in its letter dated 01-10-2018 to the Chairperson, PPV&FR Authority to lay down appropriate guidelines to be followed by the Registrar to trial the infringement equitable to ensure fair, proper and judicious implementation of section 24(5) by the Registrar and ensure equities to all parties. (Copy of NSAI letter dated 01-10-2018 is enclosed herewith)

Despite Hon'ble Delhi High Court order and NSAI's representation to the Chairperson, PPV&FR Authority as early as on 01-10-2018, there was no attempt to resolve the issue. On the contrary, the Registrar has further complicated implementation of section 24(5) by issuing Public Notice (7 of 2021) dated 07-04-2021 under Section 20(1) of the PPV&FR Act read with Rule 8 of PPV&FR Rules, 2003 laying down as hereunder:

"The date of issuance of the PVP number will be the date of filing of application for all purposes of novelty, distinctiveness, provisional protection and closing of time limit for registration of extant varieties etc."

It is not clear, what else the word "etc." covers or includes in the Public Notice (7 of 2021) dated 07-04 -2021.

In this connection, it is stated that the Registrar does not have power to specify "date of filing of application" at her discretion, by issuing Public Notice (7 of 2021) by deviating from the date of filing, mandated in the provisions of the PPV&FR Act. The Registrar has complicated the issues relating to "novelty, distinctiveness and provisional protection" by issuing the impugned Public Notice. The Registrar does not have powers, under section 20(1) of the Act and rule 8 of the PPV&FR Rules to interfere with the provisions like Sections 14, 15(3) and 24(5) laid down under the Act. Section 20(1) of the Act is reproduced hereunder:

"20. Acceptance of application or amendment thereof.—(1) On receipt of application under section 14, the Registrar may, after making such an enquiry 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 clear from bare reading of section 20(1) that the Registrar has a limited role of acceptance of an application, received under section 14. Section 20(1) itself also emphasizes ***"On receipt of an application under section 14"***, thereby, the date of receipt of the application shall be the date of filing of application.

Rule 8 of the PPV&FR Rules, 2003, under which the Public Notice (7 of 2021) is stated to have been issued, has no relevance in the matter of section of 24(5).

Therefore, Public Notice 7 of 2021 is not legally tenable and will not stand valid in any court of law, if challenged. Therefore, the Central Government may direct, in exercise of powers under section 93 of the Act, to withdraw the Public Notice (7 of 2021), instead of forcing the stake-holders to approach the court of law. (Copy of Public Notice (7 of 2021) is enclosed herewith for ready reference)

Thanking you,

Yours truly,



R K Trivedi

Encl: As stated above.

Copy submitted to :

- 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