

**R K Trivedi**  
Executive Director



Ref: NSAI/2021/027

Date: 26-07-2021

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.

Dear Sir,

**Sub: Registration of Denomination under the Trade Marks Act, 1999 by the Applicant – Reg**

**Ref: Sub-section (4) of section 17 of the PPV&FR Act, 2001**

\* \* \* \* \*

This is with regard to registration of Denomination, assigned to a variety, by the Applicant under the provisions of the Trade Marks Act, 1999.

In this regard, we refer to section 17 of the Protection of Plant Varieties and Farmers' Rights Act, 2001 (hereinafter referred to as PPV&FR Act). We bring to your kind notice that, while sub-section (1) and (3) of section 17 of the PPV&FR Act have specifically referred to the "Applicant", sub-section (4) makes no such specific reference to the "Applicant". Therefore, it can be concluded, without any iota of doubt, that sub-section (4) of section 17 is applicable only to a third party and not to the "Applicant". If it was intended to be applicable to the "Applicant", sub-section (4) of 17 of the PPV&FR Act would have specifically mentioned the word "Applicant" like it had been mentioned in sub-sections (1) and (3) of section 17. It is further stated that sub-section (4) of section 17 of the PPV&FR Act has to be read with sections 68 to 70 of the PPV&FR Act so to understand the said sub-section in right and proper perspective.

Without sub-section (4) of section 17, there would have been conflict between sections 68-70 of the PPV&FR Act and provisions of the Trades Marks Act, 1999, as any person would have been entitled to apply a Denomination, assigned to a variety under the PPV&FR Act, to any other variety of his own by registering it under the Trade Marks Act. Therefore, in order to avoid such conflict between the two enactments, sub-section (4) of section 17 has been incorporated in the PPV&FR Act. However, no such conflict would arise, if an Applicant registers the Denomination, under the Trade Marks Act also. It would rather provide protection to the Denomination under both the enactments, further, protection under the Trade Marks Act is more effective, broad-based and is for an indefinite period, as mentioned in subsequent paras.

It may be mentioned here that the protection of registered Denomination is limited to a maximum period of (15) years under the provisions of the PPV&FR Act, whereas its registration under the Trade Marks Act provides for renewal every (10) years (i.e. there is

no limitation in respect of protection period under the Trade Marks Act). Apart from a longer period of protection under the Trade Marks Act, there is one more advantage in registration of Denomination of variety as trademark under Clause 31 "Seeds" of the Trade Marks Act, as no person can adopt and use the registered trademark for "Seeds", falling under Clause 31 of the Trade Marks Act, for any crop. Thereby, the breeder has more advantage in seeking registration of the Denomination of a variety even under the Trade Marks Act also. It was not the legislative intent to deprive the Applicant the right to seek registration of a denomination, assigned to a variety, under the Trade Marks Act and hence the word "Applicant" is not mentioned in sub-section (4) of section 17 of the PPV&FR Act, whereas "Applicant" is mentioned in sub-section (1) and (3) of section 17.

In the light of the above, it is stated that regulation 8(1)(e) and regulation 8(2) of the Protection of Plant Varieties and Farmers' Rights Regulations, 2006 are *ultra vires* to sub-section (4) of section 17 and section 95 of the PPV&FR Act, as the said sub-section (4) of section 17 does not refer to "Applicant" at all and also does not provide for making the said regulations 8(1)(e) and 8(2).

In view of the above fact, we request to kindly consider the above and kindly initiate action to amend the PPV&FR Regulations, 2006 by deleting regulations 8(1)(e) and 8(2) of the said Regulations, so that the breeders and the applicants can register the Denominations under the provisions of the Trade Marks Act, 1999 also and enjoy the larger benefits, available under the Trade Marks Act.

Thanking you,

Yours truly,



R K Trivedi

**Copy submitted to :**

- 1) 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.
- 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