

**R K Trivedi**  
Executive Director



Ref. NSAI/2022/028

Date: 13-06-2022

To  
Dr. K.V. Prabhu,  
Chairperson,  
Protection of Plant Varieties and Farmers' Rights Authority,  
Govt. of India, Ministry of Agriculture & Farmers Welfare,  
Department of Agriculture, Co-operation & Farmers Welfare  
NASC Complex, DPS Marg, Opp. Todapur Village,  
New Delhi-110 012

Dear Sir,

- Sub: **Payment of Annual Fee and Renewal Fee for the Plant Varieties (Extant Notified Category) registered under the provisions of the PPV&FR Act, 2001 – Reg.**
- Ref: (1) Public Notice (13 of 2020) F.No.PPV&FRA/legal/02/2019 dated 09-11-2020 issued by the Registrar, PPV&FR Authority, New Delhi.  
(2) Letter No. NSAI/2020/073 dated 18-11-2020 of the National Seed Association of India, New Delhi.  
(3) Letter No. NSAI/2021/005 dated 05-03-2021 of the National Seed Association of India, New Delhi.

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We invite kind attention to the Public Notice (13 of 2020) dated 09-11-2020, issued by the Registrar, PPV&FR Authority and also to our representations, cited above.

The said Public Notice stipulates the due date of payment of Annual Fee and Renewal Fee for the Extant Notified Varieties from the date of their Notification under Section 5 of the Seeds Act, 1966 instead of from the date of their registration under Sub-section (1) and (2) of Section 24 of the PPV&FR Act.

National Seed Association of India (NSAI) has made representations, vide letters 2<sup>nd</sup> and 3<sup>rd</sup> cited, in the matter of the said Public Notice. In both these representations, NSAI has pointed out that Public Notice (13 of 2020) is contrary to the provisions of the PPV&FR Act. Yet despite these representations, the Registrar/Joint Registrar, PPV&FR Authority, on the basis of the above impugned Public Notice, is issuing Notices to seed companies asking them to make payment of Annual Fee and Renewal Fee for extant notified varieties from the date of notification under Section 5 of the Seeds Act.

In view of the above, NSAI once again submits, through this representation, that Public Notice (13 of 2020) was issued by the Registrar reading Section 24(6)(ii) **in isolation**. It is submitted that Section 24(6)(ii) should be read along with other relevant provisions of the PPV&FR Act for proper and correct interpretation of the provisions of the PPV&FR Act for determining the due dates of payment of Annual Fee and Renewal Fee for **extant notified varieties**. There is no specific mention in the Act that for extant notified varieties the Annual Fee and Renewal Fee shall be applicable from the date of their Notification under Clause 5 of the Seeds Act, 1966.

Apart from the above, we refer, hereunder, to various provisions of the PPV&FR Act and state that, as per these provisions the Due Dates of payment of Annual Fee and Renewal Fee for **extant notified varieties** also shall be from the date of their registration under the provisions of the PPV&FR Act:



As per Section 28 of the PPV&FR Act, a certificate of registration issued for a variety shall confer an exclusive right on the breeder. Therefore, when the right and protection accrue over the variety from the date of its certificate of registration, then the payment of Annual Fee and/or Renewal Fee from date of its Notification under Section 5 of the Seeds Act does not arise. There is *quid pro quo* in the matter of payment of Annual Fee and Renewal Fee under the provisions of the PPV&FR Act. If there is protection and right granted under the Act, there shall be payment of Annual Fee and Renewal Fee and without protection and right thereof, there shall be no liability to pay the said fees.

As per Sub-section (1) of Section 35 of the PPV&FR Act, Annual Fee is liable to be paid by every breeder of a variety, registered under this Act. Under Sub-section (2) of Section 35 of the PPV&FR Act, on failure to pay Annual Fee despite notice, the Authority shall declare all the protection, admissible under the registration certificate issued to the breeder forfeited. The operative words are “*protection, admissible under the registration certificate issued to the breeder*”, which clearly means that there would be no protection prior to registration certificate. It is clear from the above provision that protection is available to a variety from the date of certificate of registration and not earlier than the said date. **Therefore, Annual Fee has to be levied from the date of certificate of registration and not from any prior date in the light of Sub-sections (1) and (2) of Section 35 of the PPV&FR Act.**

Section 24(6)(ii) of the PPV&FR Act is a negative provision, which curtails the period of protection of the varieties, notified under Section 5 of the Seeds Act, and provides protection for a period lesser than 15 years. Merely on the basis of this section and, further, by ignoring other relevant provisions of the PPV&FR Act, levying Annual Fee for the extant notified variety from the date of its notification is against law and unfair and unjust, in as much as the said variety gets protection from the date of its certificate of registration and not from its Notification under the Seeds Act.

Public Notice (13 of 2020) dated 09-11-2020 had been issued considering the provisions of Section 24(6)(ii) of the PPV&FR Act in isolation. The provisions of Section 24(6)(ii) of the PPV&FR Act should be read with the provisions of Sections 28(1) and 35(1) of the PPV&FR Act. Payment of renewal fee arises under Section 24(6)(ii) to the extent of balance period of validity of certificate of registration and not for the period of 15 years from the date of Notification.

Similarly, if the validity period of the extant notified variety is limited to six years or less, there shall be no scope for renewal of certification of registration and in case, there is scope for renewal, it will be for remaining period of far less than 9 years. It is also pertinent to mention that Sections 23 and 24 do not provide for giving retrospective effect to the certificate of registration and the rights thereof. Therefore, no Annual Fee can be levied prior to the date of certificate of registration.

It is also to be mentioned that provisions of Sections 64, 68, 69, 70, 71 etc. pertaining to “*Infringement, Offences and Penalties*” are applicable only after grant of certification of registration not earlier and, so also, not from the date of notification of the variety under Section 5 of the Seeds Act. It is reiterated that the Public Notice (13 of 2020) dated 09-11-2020 has been issued by the Registrar on the basis of Section 24(6)(ii) without considering the other relevant provisions of the PPV&FR Act.

It is further to mention that the Public Notice (13 of 2020), issued by the Registrar, does not have retrospective effect. However, it is being applied to the Certificates of Registration, which had been issued prior to Public Notice (13 of 2020). It is pertinent to mention that the Certificates of Registration, which had been issued prior to Public Notice (13 of 2020), very clearly mention “**grant of exclusive right for initial period of six years and renewable for remaining years from the date of registration**”. In case of such Certificates of Registration also, wherein the payments had already been made towards Annual Fee and Renewal Fee and the validity of such certificates is

also over, Registrar/Joint Registrar is issuing Notices to our member seed companies calling them to pay Annual Fee and Renewal Fee, as computed by them from the date of notification under Section 5 of the Seeds Act, 1966. The notices also state that, on failure to pay Annual Fee as per the notice, *"the protection admissible under registration in respect of registered variety (s) may stand forfeited and arrears of Annual fee may be recovered as arrears of land revenue under Section 35(2)"*.

#### **Revised Format of Certificate of Registration Not Valid**

The Registrar, PPV&FR Authority is issuing Certificate of Registration (Form O-2) in revised format. It is submitted that the revised format has not been prescribed by Central Government, as required under Sub-section (8) of Section 23 of the PPV&FR Act, read with rule 36 of the PPV&FR Rules, 2003, and Sub-section (2) of Section 24 of the PPV&FR Act, read with rule 37 of the PPV&FR Rules. Further, apart from the above, contents of the revised format of Certificate of Registration (Form-O2) do not meet the requirements of the relevant provisions of the PPV&FR Act, referred in the pre-paras.

It is requested to consider the above legal submissions and instruct the Registrar General/Registrar/Joint Registrar to withdraw Public Notice (13 of 2020) and also the Notices, issued calling for payments of Annual Fee and Renewal Fee from the date of notification of the variety under Section 5 of the Seeds Act. It is also requested to refund the amount paid towards Annual Fee and Renewal Fee by the seed companies as per Public Notice (13 of 2020) and/or as per the letters, received by them from the Joint Registrar/Registrar.

Thanking you,

Yours truly,



**R K Trivedi**

#### **Copy to:**

- 1) Shri Manoj Ahuja, Secretary (Agriculture), Department of Agriculture, Cooperation & Farmers Welfare, Ministry of Agriculture & Farmers Welfare, Govt. of India, Krishi Bhawan, New Delhi-110001.
- 2) Shri Ashwani Kumar, Joint Secretary (Seeds), Department of Agriculture, Cooperation & Farmers Welfare, Ministry of Agriculture & Farmers Welfare, Govt. of India, Krishi Bhawan, New Delhi – 110001.





पौधा किस्म और कृषक अधिकार संरक्षण प्राधिकरण,  
(संसद के अधिनियम द्वारा निर्मित सांविधिक निकाय)

Protection of Plant Varieties & Farmers' Rights Authority  
(A Statutory Authority Created by an Act of Parliament)

कृषि एवं किसान कल्याण मंत्रालय, भारत सरकार  
Ministry of Agriculture & Farmers Welfare, Govt. of India  
एन ए एस सी कॉम्प्लेक्स, डी पी एस मार्ग, निकट टोडापुर गांव, नई दिल्ली-110012  
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F. No. PPV&FRA/legal/02/2019

Dated: 09.11.2020

**PUBLIC NOTICE**

(13 of 2020)

**Sub:- Annual Fee and Renewal fee to be paid from the date of notification under Section 5 of Seeds Act, 1966 in respect of Extant Notified Varieties under Section 5 of Seeds Act, 1966-Section 24(6) read with Section 35 of PPV&FR Act, 2001.**

On grant of certificate of registration in respect of Extant Varieties Notified under Section 5 of Seeds Act, 1966, the Annual Fees and Renewal Fees has to be paid by the registered breeder from the date of notification under section 5 of Seeds Act, 1966 as the date of registration in case of Extant Notified Varieties takes effect from date of notification under Section 5 of Seeds Act, 1966.

Nag - 9/11/2020  
(T.K. Nagarathna)  
Registrar