

R K Trivedi
Executive Director



Ref: NSAI/2021/028

Date: 09-08-2021

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: Redressal of issues aroused from sub-section (5) of Section 24 of the PPV&FR Act – Reg.

Ref: (1) Judgment dated 02-12-2016 of the Hon'ble High Court of Delhi in W.P. (C) Nos. 250/2009 and 7102/2011;

(2) SLP bearing no. 19195 of 2017 pending before the Hon'ble Supreme Court;

(3) 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; and

(4) NSAI letter NSAI/2021/026 dated 26-07-2021 addressed to the Secretary, Department of Agriculture, Cooperation & Ministry of Agriculture & Farmers Welfare.

As you are aware, the Hon'ble High Court of Delhi in its Judgment dated 02-12-2016 had expressed concerns over open ended powers delegated to the Registrar (without any boundaries/guidance) under sub-section (5) of Section 24 of the Protection of Plant Varieties and Farmers' Rights Act, 2001 (PPV&FR Act), when certain decisions of the Registrar together with sub-section (5) of Section 24 were challenged before it by certain seed companies and declared the said sub-section (5) of Section 24 void.

Even though the Hon'ble Supreme Court had temporarily stayed the operation of the said judgment vide order dated 31-07-2017 in the SLP, 2nd cited, there has been lot of ambiguity among the applicants due to release of few public communications/notices by the Registrar General/Registrar in the absence of rules for implementation of sub-section (5) of section 24 of PPV&FR Act.

Two representations have already been made by National Seed Association of India (NSAI) in this regard. NSAI feels that this matter is being, unnecessarily, dragged on, when the matter could have been easily resolved by Ministry of Agriculture and Cooperation by making rules under **clause (lxviii) of sub-section (2) of Section 96 of the PPV&FR Act.**

Sub-section (1) and (2)(lxviii) of Section 96 of the PPV&FR Act is reproduced hereunder for ready reference:

“96. Power of Central Government to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particulars, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(lxviii) any other matter which is to be, or may be, prescribed or in respect of which this Act makes no provision or makes insufficient provision and provision is, in the opinion of the Central Government, necessary for the proper implementation of this Act.” (Emphasis added)

We state that, if the Central Government considers to make the rules in exercise of the powers conferred by Clause (ixviii) of sub-section (2) of Section 96 of the PPV&FR Act, the Registrar would have clarity to initiate the proceedings, under Section 24(5). And these rules would address the concerns of the Hon'ble High Court and as well as the concerns of the stakeholders. If the PPV&FR Authority places these Rules before the Hon'ble Supreme Court, the Apex Court may take note of the said Rules and dispose of the SLP earliest.

We may, further, mention that almost every provision of the PPPV&FR Act has rules for its implementation, except Section 24(5). Therefore, the Central Government may exercise the powers under Section 96(2)(ixviii) of the PPV&FR Act and make Rules for proper, fair and judicious implementation of Section 24(5). For instance, there are rules made under Section 21 of the PPV&FR Act for conducting opposition proceedings. There are rules for Section 26 for "Determination of benefit sharing by Authority". Similarly, there are rules for Section 34 "Revocation of protection on certain grounds" by the Authority.

As there are no rules for implementation of Section 24(5), there is not clarity as to when the Registrar has to initiate the proceedings against the abusive act of a third party. This ambiguity arises from the fact that there are at least two stages, where an application for registration, filed under Section 14, can be rejected. The application may be rejected under Section 20(2). The application is liable to be rejected, if the Registrar, under Section 22, upholds the opposition, filed under Section 21(2). Therefore, there is need to lay down rules as to what action the Registrar has to take, initially, on receipt of application under Section 24(5) and at what stage proceedings should commence. In the absence of specific rules for Section 24(5), the Registrar is initiating proceedings on receipt of an application, filed under Section 24(5). But there is scope that, while these proceedings under Section 24(5) are on, the application, filed under section 14, may be rejected under any of the provisions, mentioned above. And thereby the entire process under Section 24(5) would be rendered as wasteful exercise, time and money. Therefore, the proceedings, under section 24(5), should commence on conferring an exclusive right on the breeder under section 28.

We request that, considering the above factors, the Central Government may make rules, under Section 96(2)(ixviii) for implementation of Section 24(5). These rules will also bring clarity to the stakeholders with regard to the proceedings, under Section 24(5). We express our serious concern that irreparable damage can happen to the party, against whom application under Section 24(5) is filed, in the absence of rules. Hence, the urgent need for making the rules under Section 96(2)(ixviii) of the PPV&FR Act.

Thanking you,

Yours truly,



R K Trivedi

Copy 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