

**BEFORE THE PLANT VARIETIES REGISTRY  
AT NEW DELHI**

A No.1 of 2021

IN THE MATTER OF: - Petition against Nuziveedu Seeds Ltd., under Section 24(5) of PPV&FR Act, 2001 filed by UPL Ltd., in respect of application filed by them for registration of Okra Variety RAADHIKA (REG/2018/164 H) along with AV 508- Female Parent (REG/2018/164 P1) and AV 509 Male Parent (REG/2018/164 P2).

IN THE MATTER OF: -

UPL Ltd., .....APPLICANT

-Versus-

Nuziveedu Seeds Ltd., .....RESPONDENT

For the Applicant: - Sh. Adarsh Ramanujan and Sh. Lzafeer Ahmad B F, Advocates.

For the Respondent: - Sh. Abhishek Saket, Advocate for M/S. Infini Juridique

**ORDER**

(Matter heard through video conferencing)

By this order I shall dispose of the petition filed by the Applicant under Section 24(5) of PPV&FR Act, 2001.

Heard the parties on 29<sup>th</sup> April, 2022.



Parties have filed their pleadings and evidence and all of them have been taken on record. Parties have also filed their written submissions.

The main crux of the issue involved in this matter is that the Applicant has applied for compound registration of their Okra varieties RAADHIKA (REG/2018/164 H) along with AV 508-Female Parent (REG/20187/164 P1) and AV 509 Male Parent (REG/2018/164 P2). The Applicant in their 24(5) application has stated that Respondent by commercializing varieties Bindu and NBH-45 is abusing the commercial interest of the applicant's varieties RAADHIKA hybrid and AV 509 male parent and AV 508 female parent.

Before adverting to the main issues involved in this matter. I am first inclined to adjudicate on the issue whether the Section 24(5) application is maintainable before registration of the variety. Section 24(5) is extracted hereunder:-

*"24(5) The Registrar shall have power to issue such directions to protect the interests of a breeder against any abusive act committed by any third party during the period between filing of application for registration and decision taken by the Authority on such application."*

Thus, Section 24(5) makes it clear that Registrar has power to issue directions to protect the interests of a breeder against any abusive act committed by third party from the date of filing of application to date of registration. So what is protected is only the 'interest' of the breeder and not 'right' of the breeder. The 'interest' of the breeder from the date of filing of application to registration crystallizes into 'right' only on registration. An interest as such is an imperfect or inchoate right which cannot be classified as a right. Further unlike



Trade Marks and Copyright, only registration under PPVFR Act 2001 confers and clothes the plant breeder with rights which can be enforced through civil and criminal proceedings. Hence, it is also clear that pre-registration a breeder has no right over his variety which can be protected under Section 24(5) of the Act from the date of filing of application to registration only after the registration of the variety. Hence on registration of the variety, in case a registered breeder's variety has been abused from the date of filing of application to date of registration and subsequently also. Then in such case the registered breeder has two options namely with regard to period between date of filing of application to date of grant of registration (date of notification in case of Extant Notified Varieties) the applicant upon registration of the variety can file an application under Section 24(5) of PPV&FR Act, 2001 to Registrar for issuing directions in respect of abuse of his variety and from the date of registration onwards the registered breeder can file a suit for infringement under Section 64 of PPVFR Act, 2001.

If a direction is passed against a third party under Section 24(5) of PPVFR Act, 2001 during the pendency of an application no right accrues to the applicant breeder till registration then subsequently after the passing of the direction and before registration the application is rejected by opposition or otherwise or abandoned or closed then the third party would be severely prejudiced. Hence, Section 24(5) could be enforced by applicant breeder only on registration of the variety with respect to period between date of filing of application and date of grant of certificate of registration.





I have no hesitation to hold that a petition under Section 24(5) can be maintainable only upon registration of a variety and of course it may be with reference to the period from date of filing of application to the date of grant of certificate of registration but the application under Section 24(5) can be filed as well as enforced only upon the registration of the variety. This is because of the reason that legally an interest of a breeder cannot be enforced only a right can be enforced. Once the breeder obtains the right then he can enforce also the interest which has crystallised into the right under the Act.

Based on my aforesaid reasoning, I am of the firm view that an application under Section 24(5) can be filed only upon the registration of the variety which is the subject matter of this application and accordingly the Applicant has the liberty to file the same upon registration of the varieties which are the subject matter of this application. Accordingly, at this stage the instant application under Section 24(5) cannot be entertained. Hence, the application is disposed of as the same has been filed pre-maturely before registration.

Parties are to bear their own costs.

Given under my hand and seal on this 25<sup>th</sup> day of July, 2022.



*Nag*  
(T.K. NAGARATHNA)  
REGISTRAR