

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

ORDER

The issue that has been considered *suo motu* in this order is regarding the time limit for registration of extant varieties whether from the date of notification of genera and species under section 29(2) of PPV&FR Act, 2001 or from the date of notification of Criteria of Distinctiveness, Uniformity and Stability for extant varieties in the Official Gazette by the Authority in the form of regulations under section 15(2) read with section 95(2)(c) of PPV&FR Act, 2001. This issues more particularly with respect to twelve crop species notified vide S.O. 1884 (E) dated 01.11.2006 and four species of cotton and two species of Jute notified vide S.O.2229(E) dated 31.12.2007. In both these cases the Criteria of Distinctiveness, Uniformity and Stability for registration of extant varieties about which there is common knowledge and farmers' variety which forms part of extant variety was notified subsequently in the Official Gazette on 29.6.2009 which came into force on 30.6.2009.

This issue is taken *suo motu* for the reason that in the previous instances the Registry has returned several applications for registration of extant varieties about which there is common knowledge on the ground that the time limit for filing application for registration of extant varieties of twelve crop species notified vide S.O.1884 (E) dated 1.11.2006 and six crop species notified vide S.O.2229(E) dated 31.12.2007 have expired after a period of three years from 1.11.2006 and 31.12.2007 (the dates of notification of twelve and six crop species respectively).



The central government under section 29 (2) notified (vide S.O. 1884 (E) dated 01.11.2006) twelve crop species for registration and vide S.O.2229(E) dated 31.12.2007 notified six crop species for registration under section 29(2) of PPV & FR Act, 2001. The said notifications apply only for new varieties as is clear from section 29 (2). Section 29 (2) is as follows "The Central Government shall, by notification in the Official Gazette, specify the genera or species for the purposes of registration of varieties other than **extant varieties and farmers' varieties under this Act**".

This clearly proves that notification under section 29(2) of PPV&FR Act, 2001 is applicable only for new varieties.

The registration of extant varieties is dealt in Section 15(2) of the Act which is as follows:-

"an extant variety shall be registered under this Act within a specified period if it conforms to such criteria of distinctiveness, uniformity and stability as shall be specified under the regulations".

Section 15 provides two things for registration of extant varieties namely one is period within which it must be registered and other is that it must conform to the criteria for Distinctiveness, Uniformity and Stability in as shall be specified by the Authority in the Regulations.

The provisions regarding the period within which the extant varieties must be registered is examined first. The period within which extant variety has to be registered has been prescribed in



Rule 24 of PPV&FR Rules, 2003. The said Rule 24 has been framed by the Central Government under section 15. Rule 24 provides that extant variety other than farmers' variety shall be registered within a period of three years from the date of notification of varieties under section 29(2) of the Act and farmers' varieties shall be registered within a period of five years from the date of notification of varieties under section 29(2) of the Act.

Rule 24 of PPV&FR Rules, 2003 has been framed under section 15(2) which is as follows:-

“Rule 24. Registration of extant plant varieties under sub – section (2) of Section 15.-

(1)The Registrar shall register every farmers' variety which is an extant variety within five years from the date of its notification under the Act, with respect to the genera and species eligible for registration subject to conformity to the criteria of distinctiveness, uniformity and stability as laid down under the regulations.

(2)The Registrar shall register other extant variety within three years from the date of its notification under the Act with respect to the genera and species eligible for registration subject to conformity to the criteria of distinctiveness, uniformity and stability as laid down under the regulations:

Provided that the Registrar may, for reasons to be recorded in writing, register a farmers' variety and other extant variety after the expiry of the said period of five years or three years as the case may be.”

A combined reading of Section 29 (2) and Rule 24 makes it clear that a notification under



section 29 (2) is applicable only for new variety and not for farmers' and extant varieties. In spite of it, Rule 24 provides that extant variety and farmers' variety must be registered within three years and five years respectively from the date of notification under the Act which means a notification under Section 29 (2). Section 29 (2) attracts new varieties and repels extant variety and farmers' varieties but Rule 24 computes the time limit for registration of extant varieties from the date of notification under 29 (2).

The date of specification of criteria of distinctiveness, uniformity and stability in the Regulations has also to be examined. The criteria of distinctiveness, uniformity and stability for extant variety about which there is common knowledge and farmers' variety was notified by the Authority in the Official Gazette namely the Protection of Plant Varieties and Farmers' Rights (Criteria for Distinctiveness, Uniformity and Stability for Registration) Regulations, 2009 (vide G.S.R. 452 (E), dated 29th June, 2009, published in the Gazette of India, Extra., Pt. II, Sec. 3 (i), dated 30th June, 2009 and came into force on 30th June, 2009).

In the case on hand the notification of crops species for registration under section 29(2) was made on 1.11.2006 and 31.12.2007 respectively whereas the criteria for Distinctiveness, Uniformity and Stability for extant variety about which there is common knowledge and farmers varieties came into force on 30.6.2009. I am of the view that in the instant case the period of registration of extant varieties and farmers varieties has to be computed from three years and five years respectively not



from the date of notification under section 29(2) of the Act but from the date of notification of criteria for Distinctiveness, Uniformity and Stability in the Regulations.

The criteria of distinctiveness, uniformity and stability are a touch stone and bench mark to determine the DUS character. The metes and bounds of plant breeders right (which is an intellectual property right) is determined only through criteria of distinctiveness, uniformity and stability. In other words the parameters of an intellectual property right under PPV&FR Act, 2001 is determined by criteria of distinctiveness, uniformity and stability. It would not be prudent and logical for a person to apply for registration of an extant variety without knowing the criteria of distinctiveness, uniformity and stability. Further computing the time limit under Rule 24 for registration of extant variety without reference to criteria of distinctiveness, uniformity and stability would be violative of Section 15 and Rule 24. The use of the words "subject to" in Rule 24 makes it clear that notification of criteria for Distinctiveness, Uniformity and stability in the Regulations and notification for registration of genera and species under section 29(2) both must be in existence at a particular point of time for computing the period of time limit of three years and five years from the date of notification under section 29(2) of the Act. If on the date of notification under section 29(2) the criteria of Distinctiveness, Uniformity and stability were not notified in the Official Gazette then in that case the period prescribed in Rule 24 must be computed from date of notification of Criteria of Distinctiveness, Uniformity and stability in the



Regulations though it is subsequent. In South India (P) Ltd., -Vs- Secretary, Board of Revenue, Trivandrum, AIR 1964 SC 207, 215 it has been held by Hon'ble Supreme Court that the expression 'subject to' conveys the idea of provision yielding place to another provision or other provision to which it is made subject. The registration of extant variety under Section 15 and Rule 24 is made subject to conformity to Criteria of Distinctiveness, Uniformity and stability specified in the Regulations. Accordingly, in this case the period prescribed for registration of extant varieties must be computed from date of notification of Criteria of Distinctiveness, Uniformity and stability in the Regulations.

Accordingly I hereby direct the registry that the period of registration of extant varieties about which there is common knowledge and farmers' varieties of twelve crops species notified on 01.11.2006 and six crop species notified on 31.12.2007 have to be computed from 30.06.2009 (Date of notification of Criteria of Distinctiveness, Uniformity and stability in the Regulations). Consequently, the time limit for filing applications for registration of extant varieties (Common knowledge variety and farmers' variety) in case of twelve crop species notified on 1.11.2006 and six crop species notified on 31.12.2007 is extended for a period of three years from 30.6.2009 and the time limit for filing applications for registration of farmers' varieties in case of twelve crop species notified on 1.11.2006 and six crop species notified on 31.12.2007 is extended for a period of five years from 30.6.2009. It is also clarified that other conditions laid down under the law must be satisfied before registering the extant



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varieties (common knowledge and farmers' varieties).

Given under my hand and seal on this the 11th day of February, 2011.



Manoj Srivastava
(MANOJ SRIVASTAVA)
REGISTRAR

