

**BEFORE THE PROTECTION OF PLANT VARIETIES AND
FARMERS' RIGHTS AUTHORITY
AT NEW DELHI**

**IN THE MATTER OF: - Benefit Sharing filed by Daftari Agro
Biotech Pvt. Ltd against Jai Bt registered variety of Ankur Seeds
Pvt. Ltd.**

IN THE MATTER OF: -

DAFTARI AGRO BIOTECH PVT. LTD

.... CLAIMANT

-Versus-

ANKUR SEEDS PVT. LTD

..... REGISTERED BREEDER

**For the Claimant - Mr. Goutam Bhol and Mr. J.H. Kothari,
Advocates**

**For the Registered Breeder - Mr. Dushyant Rastogi, Mr. Bikash
Ghorai for R.K.Dewan & Co.**

ORDER

By this order I shall dispose of the claim for benefit sharing filed by Claimant under Section 26 of PPV&FR Act, 2001 in respect of the registered variety with denomination Jai Bt (cotton hybrid) of the Registered Breeder.

FACTS OF THE CASE: -

The Claimant filed a claim for benefit sharing under Section 26 of PPV&FR Act, 2001 against the registered variety Jai Bt belonging to



Registered Breeder. The Registered Breeder filed an application for registration of their cotton hybrid variety under the new category with denomination Jai Bt. The DUS testing was conducted for the said Jai Bt at two centres one at UAS Dharwad and other at CICR Coimbatore on 22.10.2009 and 27.11.2009 respectively and qualified the DUS testing and registered as Registration No.19 of 2013 and consequently, the registration certificate was issued. Against this registration issued in favour of Jai Bt the Claimant has preferred the claim for benefit sharing.

CASE OF THE CLAIMANT: -

The Claimant argued that Shri. Ravindra Daftari, a progressive farmer started marketing the seeds produced under the name and style "Daftari Seed Farms." He was joined by his younger brother Jainendra Fulchand Daftari in the said production of vegetable and cotton seeds. In support of it, the Claimant has submitted a copy of challan dated 27.7.1989 and 28.7.1989 issued by District Seed Certification officer of Maharashtra and letter issued by Director of Agriculture, Pune dated 26.3.1990. During the same year, Daftari brothers also started the work of collection, selection, conservation and breeding of various crops including cotton. During 1985-86 in an agricultural field owned by his uncle Sh. Akhil which is adjoining to his own field. Sh. Ravindra Daftari noticed and identified one cotton plant which was not bearing any fruits (Bolls) in spite of the fact that the plant was profusely flowering. Surprised by this he discussed this with the scientists of Central Institute of Cotton Research, (CICR), Nagpur and came to know that it can be a Genetic Male Sterility (GMS) system and



scientist explained to him how to discover, develop and maintain GMS line and advantages of GMS lines in Hybrid Seed Production. As per guidance received from the scientists of CICR, Sh. Daftari selected similar fertile plant in the same row and crossed the flowers of sterile plant with the fertile plant flowers to set the fruits (bolls) on the sterile plant and the cotton seed out of the said bolls were collected and planted for further selection and purification in successive generations and the first sterile plant No.30 of cotton was identified in the agricultural field of Sh. Akhil whose seeds were fuzzy (Buri). Therefore, its name was recorded as AKB 30. The segregating generation of AKB 30 was further purified and sister culture out of it was developed on the basis of various characters. Some of the plant lines were AK103-2-5 YF (yellow flower) and was AK103-2-5 WF (white flower) which were successfully purified to maintain approximately 50% sterility in the population by 1992. Out of segregating populations of AKB 30 and AK 103 and their sister cultures more number of GMS lines continued for further selection for Distinctiveness, Uniformity and Stability (DUS) on the basis of their various characters. In year 1991, Shri. Sitaram Navhal joined Daftari Seed Farms to assist Jainendra Daftari in his agricultural research work in respect of cotton, chilies and brinjal. Daftari seed farms used to maintain the yearly field books for maintaining record in respect of its research work of various varieties and their development. Further, related field books in respect of development of genetic male sterile lines from the year 1990 onwards till this year were made available by the Claimant wherein the field books for the years 1986, 1987, 1988 and 1989 were not traceable. In support of this, the copies of the relevant pages from field books showing evolution and



development of AK 30 and AK 108 and their various sister cultures with varied characters have been filed. Daftari seed farm was engaged in the development of cotton hybrids. In support of this the copies of field books of hybridization program carried out by the Daftari Seed farm from 1993 onward have been filed. The GMS line AK 103-2-5-YF is the female parent of the first set of commercial cotton hybrids released and named as Daftari 29, Daftari 18, Daftari 333 which were developed by Daftari Seed Farm. The Daftari brothers promoted and incorporated a company in 1994 named as Daftari Agro Private limited under the Companies Act, 1956. In support of it, the certificate of incorporation of the said Daftari Agro Private Limited has been filed. The research hybrids developed by Daftari Seed farms were used by Daftari Agro Private limited for production and marketing of various hybrid seeds including cotton seeds such as Daftari 9, Daftari 29, Daftari 18 and Daftari 333 which were developed by using AK 103-2-5 YF GMS as female. In support of it, the relevant document showing the year of licensing for the marketing of the same issued by District Agriculture Development Officer, (DADO), Wardha has been filed. The application submitted by Daftari Agro Private limited for marketing license and documents showing characteristics of AK-103-2-5-YF which were filed with licensing authorities from time to time have also been filed. The above-mentioned cotton hybrids were also tested in Male Sterility (MS) based hybrid trials conducted in National and Zonal trials of All India Co-ordinated Cotton Improvement Project carried out by the CICR from the year 1996-97 and the report of the same were published and relevant pages from the said reports have also been filed.



To expand the research activities and to do it in a better way, the Daftari Agro Bio Tech was incorporated on 11.2.1999 under companies Act and Sh. Daftari was the promoter Director of Daftari Agro Bio Tech. Certificate of incorporation has also been filed. The entire plant varieties developed by Daftari Seed Farms along with its field note books were transferred to Daftari Agro Bio Tech Private limited by executing an agreement. The Department of Scientific and Industrial Research, Ministry of Science and Technology of India on 30.12.2002 had accorded the recognition to Claimant Company as in- house R&D unit. In the year 2004, Department of Scientific Research Technology, Ministry of Science and Technology of India, New Delhi has approved Claimant company as commercial R&D Company. On 1.1.2003, MOU executed between Claimant company and Daftari Agro Private Limited thereby Claimant had granted rights for commercial production and marketing of the research products developed by the Claimant company and Daftari Agro Private limited thereby agreed to pay the royalty over commercialization of research products as agreed between them and the same was renewed in the year 2006. The said MoU was submitted to Department of Scientific and Industrial Research, Ministry of Science and Technology of Govt. of India and the copy of the same has been filed. Under the supervision of Shri J.F. Daftari, Managing Director of Claimant company, field observations were recorded by the field staff/ breeder of the Claimant company. The female parent AK 103-2-5-YF as utilized with various male parents in the cotton hybrid development programs and in the research field register of the Claimant company. During the period 1998-99 it is



claimed that some crosses were made by Daftari Seed Farms by using AK103-2-5 YF as initial GMS source by crossing with its own male fertile germplasm lines 1) X TCB 209, ii) WN 1-2-3-2 iii) WR 2 iv) R7 v) SB 54-22-1-1 vi) X K2 and vii) D 147-1 for developing improved GMS lines as GMS system is expected to be a cost effective option for hybrid seed production in cotton. The same work was continued and completed by the applicant company during 2000-2004. Copy of the relevant pages have also been filed. Copy of cotton picking slips prepared at the time of collection of seed cotton germplasm mentioning the various characteristics of AK 103-2-5 YF has also been filed. GMS AK 103-2-5 YF was claimed to have been named Kishori in the Hybrid Seed production program by the Claimant, without any documentary evidence for the same. The cotton GMS line AK 103-2-5 YF developed by Daftari Brothers during 1985-1992 were utilized as female parent in development of cotton hybrids Daftari 29, Daftari 18, Daftari 333 from 1992 onwards. Daftari Agro Private limited had submitted characteristics of said hybrids and their respective parents to licensing authorities. Recently the Claimant company came to know that the same female AK 103-2-5 YF (GMS) is being utilized as a female for development, production and registration of cotton hybrid JAI Bt bearing registration 19 of 2013 and has been registered on 31.1.2013 without any authority and prior permission of the Claimant Company. The Claimant has claimed for benefit sharing over the total production since the beginning of development and marketing of Jai Bt Hybrid.

The Claimant has filed 6 affidavits by Sh. Ravindra Fulchand Daftari, Sitaram Chapalal Navhal, Jainendra Fulchand



Daftri, Anil Balkrishna Shingote, Gajanan Yadavrao Ardak and Prakash Lodhba Harimkar (AW1 to AW6 respectively). AW1 in his affidavit has filed 53 exhibits mainly relating to communications from seeds certification agencies from Maharashtra and Gujarat, Field Notebook, Ledger Accounts, Memorandum of Article of Association where there is no evidence on record about the hybrids so produced of being the progeny of the crosses involving the same GMS parent as that in Jai Bt Hybrid. AW2 in his affidavit has filed 23 exhibits mainly related to Fields Books, Picking Slips and Maps showing agricultural field owned by the Daftari family. AW3 in his affidavit has filed 15 exhibits relating to application for registration of C-96, Jai Bt, Letter received through RTI from CSIR etc. AW4 and AW 5 along with their affidavit have filed their Diploma Certificate in agriculture. AW6 in his affidavit has filed statement of record of rights and extract registers of crop issued by the Patwari under Maharashtra Land Revenue, Records of Rights and Registers (Preparation and Maintenance Rules, 1971)

CASE OF THE REGISTERED BREEDER:

In 1976, the Registered Breeder Company was started by three visionary agriculturists Mr. M.G. Shembhekar, Mr. R.M. Kashikar and Late Mr. L.P. Aurangabadkar who through extensive R&D and stringent quality control of its products made the company where it stands today. The Registered Breeder has claimed to have carried out extensive breeding research in over 300 acres of research farms. The Registered Breeder has carried out testing of new products in over 30 satellite and multi-location centers all



over India. The Registered Breeder uses advanced plant genomics tools which has led to extensive knowledge of its own germplasm base and enhanced breeding precision. With about 40 years of advanced material development and breeding, the Registered Breeder offers over 200 quality seed products in 16 crops. The Registered breeder has worked extensively in the field of cotton research and has several claims of having developed and tested new varieties/ hybrids. These hybrids are claimed as being based on GMS system as well as on conventional hybridization system. One of the earliest GMS based hybrid ANKUR 15 is claimed to be released in 1983. Copy of male sterility in cotton CICR Technical Bulletin No.24 Sumal Bala Singh *et al* is marked as Ex RW1/3 which shows main features of Ankur-15 hybrid using male sterile line. The Registered breeder has released cotton hybrids like Ankur 651, Ankur 09 and hybrids like Ankur Jai and Ankur 3028 have been identified through AICCIP. The Registered Breeder also released GMS based hybrid as Swadeshi 1 and Swadeshi 5. Released notification of certificates of Ankur 651, Ankur 09, Swadeshi 1 are marked as Ex RW1/4. Cotton hybrid seed production is done either by conventional hand emasculation and pollination method or by a non-conventional method (male sterility based). The development of hybrids using male sterility eliminates the process of emasculation since the anthers are sterile in female parents without pollen. So far 16 different genes in tetraploid cotton (disputed hybrid progenitor female parent with GMS is a tetraploid) and 2 in *G. arboreum* have been identified for genetic male sterility. In India, several hybrids have been developed in cotton using GMS system. As on record, the Registered Breeder has been working in GMS cotton research



many years before the Claimant identified the GMS plant in their field in 1985-86 and the Registered Breeder is the 1st private sector company in the country to release a GMS based cotton hybrid (Ankur 15) in the year 1983 itself. The GMS trait used in the development of C 96 was sourced from the Registered Breeder's proprietary GMS line CA/MH-133 which was subsequently registered with NBPGR in the year 1998-99 vide INGR No.98010. Copy of the letter from NBPGR and Plant Germplasm Registration Notification of CA/MH-133 issued by ICAR New Delhi has been filed. The line CA/MH-133 is one of the lines having commercially important traits and having stable 1:1 sterility : fertility ratio (stable GMS Line). In 1996 the Registered Breeder was awarded the Best in house R &D Award among the private sector companies by the Govt. of India. This achievement and evidence of physical possession of the GMS system with the Registered Breeder eliminates any requirement to source GMS from unintended sources after 10 years of its in-house active research in GMS cotton. The Registered breeder produced a new hybrid involving GMS C-96 as the female parent and C-MAC-23 as the male parent. (The Registered Breeder had claimed in the Affidavit that this was produced conventionally but admitted the error during hearing to state C 96 was not emasculated but used as a GMS based female parent). The hybrid was named as "Jai Bt". The Registered Breeder for the purpose of registration submitted an application on 3.4.2008 and on 9.10.2009 the Registered Breeder received a letter from this Authority for attending 1st DUS trial for monitoring of Jai Bt at University of Agricultural Sciences Dharwad & CICR Coimbatore Station on 22.10.2009 and 27.11.2009 respectively. The said new hybrid was granted registration for 15 years till



30.01.2028 and this Authority issued a registration certificate to that effect.

Both C-96 (Female parent) and C-MAC-23 male parent of Jai Bt are proprietary materials of the Registered Breeder. The female parent C-96 was applied for registration under new variety category and registration certificate of the same was granted on 04.09.2012 for 15 years that is till 03.09.2027. The transgenic male parent C-MAC-23 was registered in 2008 vide Registration No. REG/2008/243. On comparing the DUS character of AK103-2-5 YF and C-96 many significant differences are evident particularly in descriptor character numbers 3,11,14,15,18,19,23 as described in the DUS test guidelines approved by the Authority. These differences are from the morphological characters submitted by to Maharashtra Government in the year 2013 (page no. 59 of application for claim of benefit sharing).

Subsequently, the Claimant in the role of a Revocation Applicant again submitted DUS character in the year 2015 (Ex. AW3/14 at page no. 214 of affidavit if evidence of AW3). The DUS character submitted by the Revocation Applicant in 2015 are inconsistent with the DUS characteristics submitted by them in 2011 as the Claimant Party which also exposes tampering-like intervention preventing clarity in legible reading of the document submitted, in support to prove similarity between AK 103-2-5 YF and C 96, submitted in 2013. The Claimant has not shown any cause to extend the period of 6 months from the date of publication which expired on 3rd December, 2013. There was no justification for extending the date to facilitate benefit claims. The Claimant



has not put on evidence any unambiguous or directly justifiable documentation to be considered as a legitimate claim of benefits that may get accrued by the use of their genetic resource. The Claimant has not provided any information that can substantiate to any claims of contribution made towards the genetic development of plant variety registered with PPV&FR Authority (registration number 19 of 2013 dated 31.1.2013) in respect of cotton hybrid variety with denomination Jai Bt and its registered female parent C-96 (registration No.123 of 2012 dated 4.9.2012). The Claimant has not provided details about the capacity in which the Claimant has made its claims for benefit sharing. The Claimant has not provided any information as to contribution in selecting, conserving or providing source genetic material for creation, propagation or hybridization and development of plant variety C-96 registered under PPV&FR Act. The Claimant has not provided any evidence pertaining to registration of alleged female parent referred to as AK-103-2-5 YF with PPV&FR in the name of Daftari Agro Biotech either as a new or extant variety. The DUS test data of AK 103-2-5 YF is not available with the PPV&FR Authority. Hence, the claim must be rejected.

ISSUES: -

When the matter was scheduled for final hearing on 6th September, 2018, the Claimant filed two applications one for appointment of commissioner for field visit and submission of report and other for production of documents from the custody of Registered Breeder. These two applications has been filed after evidence has been filed by both the parties that is after completion



of pleadings and evidence and that too when the matter was posted for final hearing and this is nothing but an attempt to drag the issue out of proportion to delay the final hearing. Already by order dated 13th June, 2018 it was made clear to the parties that the matter was posted for final hearing and parties to adhere to the time-limit strictly. Hence, these applications cannot be entertained. The pursis filed by the Claimant regarding recording of fact that the registered breeder is not disputing the documents produced by the Claimant and this is also not necessary in the stage of final hearing.

The pleadings and evidence are complete and the parties were heard in detailed on 05.09.2018 and 06.09.2018.

Based on the pleadings of the parties the following issues are framed for consideration.

- a. Whether the Claimant has filed the benefit sharing application within the statutory time limit.
- b. Whether as alleged by Claimant it is possible to have a single profusely flowering female fertile but male sterile plant (due to GMS) that does not set any bolls.
- c. Whether Jai Bt has been developed through conventional hybridization.
- d. Whether Claimant for benefit sharing must be an interested person



- e. Whether AK-103-2-5 YF is the genetic material of the Claimant.
- f. Whether AK-103-2-5 YF is identically similar to C-96.
- g. Whether AK-103-2-5 YF is used as a female parent in the development of Jai Bt.
- h. Whether the annual fee, renewal fee and annual fee return form which is required for the maintenance of registration has been duly paid in respect of Jai Bt.
- i. Whether Claimant is entitled for Benefit Sharing against Registered Breeder in respect of Jai Bt.

Issue No.1: - Whether the claimant has filed the benefit sharing application within the statutory time limit.

The Registered Breeder has submitted that Claimant has not shown any cause to extend the period of 6 months from the date of publication which expired on 3rd December, 2013 and further that there was no justification for extending the time to facilitate benefit claims. I perused the records and the fact in this regard is that application claiming benefit sharing has been filed within the time limit. The time limit for filing benefit sharing application is prescribed in Rule 41(1) of PPV&FR Rules, 2003 which provides that the benefit sharing application has to be filed within six months from the date of publication of particulars of certificate of registration in Plant Variety Journal under Section 26(1) of PPV&FR Act, 2001 and in special circumstances the Authority may



extend the time limit beyond the period of six months. In the instant case, the particulars of certificate of registration of registered variety which is the subject matter of this benefit sharing application was advertised in the Plant Variety Journal of India Vol. No.07 No.06 dated 6th June, 2013. However, the hard copy of the said journal was dispatched to the subscribers on 2nd July, 2013 and accordingly the six months' time prescribed under Rule 41(1) of PPV&FR Rules, 2003 ended on 2nd January, 2014. In the instant matter the PV-7 was filed on 19.12.2013. I have to conclude this issue in favour of the Claimant that the PV-7 that is the application for claim for benefit sharing has been filed within the time prescribed under Rule 41(1) of PPV&FR Rules, 2003 and my conclusion is fortified by the judgement of this Registry in Nuziveedu Seeds Pvt. Ltd., -Vs- Maharashtra Hybrid Seeds Co., Ltd., 2010 (44) PTC 328 (Reg) following the law laid down in Pavunny Ouseph -Vs- Registrar of Trade Marks AIR 1952 Travancore-Cochin 77, Siyaram Kumar Engineering Works Private Ltd., -Vs- The Assistant Registrar of Trade Marks, 1996 (2) DLT 179 and Nalli Sambasivam Case 2007 (34) PTC 553 (MAD) wherein with reference to the words "within three months from the date of the advertisement" occurring in Section 21(2) of the PPV&FR Act, 2001 in relation to an opposition proceeding it was held that "date of advertisement" means not date printed on the journal but the date of issue of journal to the subscribers. The same squarely applies to the words "within a period of six months from the date of such publication" occurring in Rule 41 (1) of PPV&FR Rules, 2003 which fixes the time limit for filing claims of benefit sharing that is six months from the date of publication of registration certificate in Plant Variety Journal. Following the law laid down in



Nuziveedu Seeds Pvt. Ltd., -Vs- Maharashtra Hybrid Seeds Co., Ltd., 2010 (44) PTC 328 (Reg) the "date of publication" occurring in Rule 41(1) of PPV&FR Rules, 2003 means only the date of issue of journal to the subscribers and not the date printed on the Journal. In the instant case, the date of publication of registration certificate in Plant Variety Journal inviting claims for benefit sharing (under Section 26 read with Rule 40 of PPV&FR Rules, 2003) is 6th June, 2013 and the date of issue of Journal (in which the invitation of claims for benefit sharing was published with reference to the registered variety which is the subject matter of the application) to the subscribers is 2nd July, 2013. Accordingly, the time limit for filing application for benefit sharing in the instant matter ends on 2nd January, 2014 whereas the Claimant has filed the application for benefit sharing on 19th December, 2013 which is well within the six months of issue of journal to the subscribers and hence there is no delay and the application for benefit sharing has been filed within the time limit mentioned under Rule 41(1) of PPV&FR Rules, 2003 and accordingly, this issue is answered in favour of the Claimant.

Issue No.2: - Whether as alleged by Claimant it is possible to have a single profusely flowering female fertile but male sterile plant (due to GMS) that does not set any bolls.

Technically with so many male fertile plants in close physical proximity of even touching each other that this one plant with so many flowers did not set any bolls because as such there is 10-20% cross it is not possible pollination naturally even in complete flowers where both male and female organs are fertile. In a



purported GMS plant, the cross pollination is naturally higher and it should have set good number of bolls but expectedly lower than normal plants since the farmer would be due only to cross pollination. But chances of such a GMS plant not setting any bolls at all are extremely rare to cross pollination. But chances of such a GMS plant not setting any bolls at all are extremely rare to cross pollination. But chances of such a GMS plant not setting any bolls at all are extremely rare. Thus this statement on discovery of the GMS due to no boll set at all is not acceptable as being stated by the Claimant. This sets up a cause for technical inconsistency in the claim.

Issue No.3: - Whether Jai Bt has been developed through conventional hybridization.

This issue requires consideration as the Registered breeder in their Affidavit of Rebuttal Evidence filed through RW1 has deposed in para 12 that Jai Bt has been produced from conventional hybridization which has been pointed out by the Claimant also. The counsel for Registered Breeder later stated that it was inadvertent editorial error on their part made to state the fact that the Jai Bt hybrid was produced through genetically transformed parent directly but by involving naturally existing male sterility system in female parent and this is clear that from the DUS test report of C-96 (Female Parent of Jai Bt), The issue revolves around use of GMS system for hybrid seed production. The Registered Breeder has used parent C-96 as a source of male sterility for hybrid seed production, thereby, the claim made in their Affidavit (Para 12) that the hybrid Jai BT was produced



through “conventional hybridization can be taken as inadvertent error. Accordingly, this issue is answered in favour of the registered breeder that Jai Bt has not been developed through typical conventional hybridization involving two fertile parents.

Issue No.4 Whether Claimant for benefit sharing must be an interested person

The Claimant for Benefit Sharing need not be an interested person as required in the case of revocation application filed under section 34. In support of the same, Section 26 is extracted hereunder:-

“26. Determination of benefit sharing by Authority.- (1) On receipt of copy of the certificate of registration under sub-section (8) of section 23 or sub-section (2) of section 24, the Authority shall publish such contents of the certificate and invite claims of benefit sharing to the variety registered under such certificate in the manner as may be prescribed.

(2) On invitation of the claims under sub-section (1), any person or group of persons or firm or governmental or nongovernmental organization shall submit its claim of benefit sharing too such variety in the prescribed form within such period, and accompanies with such fees, as may be prescribed :

Provided that such claim shall only be submitted by any –

- (i) person or group of persons, if such person or every person constituting such group is a citizen of India; or*
- (ii) firm or governmental or non-governmental organization, if such firm or organization is formed or established in India.*

(3) On receiving a claim under sub-section (2), the Authority shall send a copy of such claim to the breeder of the variety registered under such certificate and the breeder may, on receipt of such copy, submit his opposition to such claim within such period and in such manner as may be prescribed.

(4) The Authority shall, after giving an opportunity of being heard to the parties, dispose of the claim received under sub-section (2).

(5) While disposing of the claim under sub-section (4), the Authority shall explicitly indicate in its order the amount of the benefit sharing, if



any, for which the claimant shall be entitled and shall take into consideration the following matters, namely :-

- (a) the extent and nature of the use of genetic material of the claimant in the development of the variety relating to which the benefit sharing has been claimed.
 - (b) the commercial utility and demand in the market of the variety relating to which the benefit sharing has been claimed.
- (6) The amount of benefit sharing to a variety determined under this section shall be deposited by the breeder of such variety in the manner referred to in clause (a) of sub-section 45 in the National Gene Fund.
- (7) the amount of benefit sharing determined under this section shall, on a reference made by the Authority in the prescribed manner, be recoverable as an arrear of land revenue by the District Magistrate within whose local limits of jurisdiction the breeder liable for such benefit sharing resides."

From the above it is clear that the Claimant need not be an interested person and accordingly I have to reject the argument of counsel for Registered Breeder to the contrary in this regard.

Issue No.5: - Whether AK-103-2-5 YF is the genetic material of the Claimant

In this regard, it has to be pointed out that it is an admitted fact that AK-103-2-5 YF has never been applied for registration nor registered under PPV&FR Act, 2001. Registration alone confers statutory right under PPV&FR Act, 2001. In other words, Plant Breeders' Rights is a statutory right. Accordingly, Claimant should have registered AK-103-2-5 YF if he claims genetic material of AK-103-2-5 YF belongs to him. Section 28 makes it clear that only registration confers the right and the same is extracted hereunder:

"28. Registration to confer right:- (1) Subject to the other provisions of this Act, a certificate of registration for a variety issued under this Act shall confer an exclusive right on the breeder or his successor, his agent or licensee, to produce, sell, market, distribute, import or export the variety :



Provided that in the case of an extant variety, unless a breeder or his successor established his right, the Central Government, and in cases where such extant variety is notified for a State or for any area thereof under section 5 of the Seed Act, 1966, the State Government, shall be deemed to be the owner of such right.

Unlike other laws of intellectual property, the protection under PPV&FR Act, 2001 is in the form of registration of a biological plant product that is genetically alive. While conferring the right on the variety for securing commercial control and ownership. Consequently, since the Claimant has not registered AK-103-2-5 YF, it cannot be considered to be a protected variety whose rights belong to the Claimant legally. However, the same Act provides for such a position, but only in the case of farmers, farming communities and tribes on their traditionally conserved plant genetic resources, which need not be under protection but yet they have ownership over the same. It is statutorily recognized that if anybody uses such a genetic resource without their permission they are entitled for compensation and benefit sharing. Being a genetically male sterile fixed lineage, C 96 or AK 103-2-5-YF could not have been traditionally maintained as such. Hence, this provision is not relevant in the GMS variety. It is also an admitted fact that the Claimant has not obtained any IP protection on any technology in respect of the variety AK-103-2-5 YF. Hence, the claim of the Claimant that AK-103-2-5 YF belongs to him is not legally maintainable and is only a claim.

Further it is an admitted fact by the Claimant that AK-103-2-5 YF has been used in the development of various hybrids such as Daftari 9, Daftari 29, Daftari 18 and Daftari 333. The license to sell the hybrid seeds has been issued by Agricultural Development



Officer during 5th June, 1996. Hence, it is clear that AK-103-2-5 YF has been used in the development of hybrids since 1996 which clearly shows that AK-103-2-5 YF has been exploited for development of hybrids for more than two decades. Rule 22 (2A) of PPV&FR Rules, 2003 prohibits the registration of a variety (other than a farmers variety) if on the date of filing of application the variety has been sold or exploited for more than 15 years in case of field crops and more than 18 years in case of trees and vines. Rule 22 2(A) of PPV&FR Rules, 2003 is extracted hereunder:-

“(2A) The Authority shall register extant varieties (other than farmers variety), if at the date of filing of the application for registration, such variety has not been sold or otherwise disposed of for the purposes of exploitation of such variety for a period of eighteen years in case of trees and vines and fifteen years in other cases.”

The words “or otherwise disposed of for the purposes of exploitation of such variety” includes the exploitation of parental lines for development of hybrids as well. This is because the same words occur in Section 15(3)(a) of PPV&FR Act, 2001 as well. While dealing with the said words the Hon’ble Delhi High Court by judgement dated 09.01.2015 in WP No. 4330/2012 (Mahyco and Ors., -Vs- UOI and Ors.,) held that indisputably the sale of hybrid seeds would amount to exploitation of parental varieties for commercial purposes within the meaning of Section 15(3)(a) of PPV&FR Act, 2001. By way of analogy, the interpretation of the Hon’ble Delhi High Court of the phrase “or otherwise disposed of for the purposes of exploitation of such variety” in Section 15(3)(a) applies to Rule 22(2A) of PPV&FR Rules, 2003. Hence, the variety AK-103-2-5 YF cannot even be registered by virtue of Rule 22(2A) as it has been used in the development of hybrids which have been commercialized since 1996 and accordingly AK-103-2-5 YF is in



public domain and there can be no question of misappropriation or benefit sharing factor from out of it.

Accordingly this issue is answered in favour of the Registered Breeder that the Claimant has no claims on rights of business or commercial activities from the variety AK-103-2-5 YF in India and the same is in public domain.

Issue No.6: - Whether AK-103-2-5 YF is C-96

It is an admitted fact that AK-103-2-5 YF has neither been applied for nor is registered under PPV&FR Act, 2001. Hence this Authority has no DUS test data on variety of AK-103-2-5 YF and accordingly the data generated by the applicant without corroboration by statutory authorities cannot be relied upon. The DUS testing has to be conducted only by the Registrar of the Authority as laid down in the Guidelines specific for DUS testing of the crop species published by Authority and any other characterization evaluation test done has no legal validation. On comparing the DUS characters of AK-103-2-5 YF and C-96 many significant difference are evident particularly in character number 3,11,14,15,18,19,23 as per the DUS test guidelines approved by the Authority. These differences are from the morphological character submitted to Maharashtra Government in the year 2013 (page no. 59 of application for claim of benefit sharing). The Claimant again submitted DUS character in the year 2015 (Ex. AW3/14 at page no. 214 of affidavit if evidence of AW3). The DUS characters submitted by the Claimant in 2015 are inconsistent with the DUS characteristics submitted by them in 2011. Further it has already



been decided that AK -103-2-5 YF is in public domain and further due to inconsistency in data I have to hold that the Claimant has failed to prove that AK 103-2-5 YF is C-96.

Issue No.7: - Whether AK-103-2-5 YF is the same one used as the female parent (C-96) of the hybrid Jai Bt.

It is an accepted fact that both these parents and their hybrid product Jai Bt are registered under the PPV&FR Act, 2001. Both C-96 (female parent) and C-MAC-23 (male parent) are the proprietary materials belonging to the Registered Breeder, protected under PPVFRA. The female parent C-96 was registered as a new variety on 04.09.2012 for 15 years that is till 03.09.2027. The transgenic male parent C-MAC-23 was registered in 2008 vide Registration No. REG/2008/243 and the hybrid Jai Bt was registered vide registration No. 19 of 2013 for a period of 15 years till 31.01.2028. Accordingly, there is no ambiguity regarding C-96 as the female parent and C-MAC-23 as the male parent of hybrid Jai Bt and consequently, I conclude this issue in favour of the Registered Breeder that material in public domain AK 103-2-5 YF claimed by the Claimant as the same as C-96 does not have any maintainability to the claim in the law.



Issue No.8: - whether the annual fee, annual fee return form and renewal fee which is required for the maintenance of registration has been duly paid/ filed in respect of Jai Bt ?

Jai Bt was registered on 31.01.2013 and annual fees have been paid upto 31.01.2016 and renewal fees is yet to be received. Under

Section 35(2) of PPV&FR Act, 2001 if the breeder, agent or licensee fails to deposit the annual fee up to two consecutive years, the Authority shall issue notice to such breeder, agent or licensee and on service of such notice if he fails to comply with the direction in the notice, the Authority shall declare all the protection admissible under the registration certificate issued to such breeder or agent or licensee forfeited. In the instant case I called for the records and examined and found that the annual fee has been paid only upto 31.01.2016 and thereafter not paid and by two years that is on 31.01.2018 it should have been forfeited and the arrears of annual fee should have been recovered as land revenue under Section 35(3) of PPV&FR Act, 2001. But the registered variety Jai Bt is not being subjected to forfeiture merely due to the fault of this Registry that is forfeiture notice has not been issued as mandated under Section 35(2). This is a very serious matter and several varieties which have not paid annual fee but are still in the National Register of Plant Varieties. The said Register is sanctum sanctorum and entries of defaulters should have been weeded out and purity of the Register cannot be maintained if the names of the defaulters are on the Register. I hereby place on record this practice of the Registry is not tenable and requires immediate correction.

The amount due as annual fee is credited to Gene Fund under Section 45 (2)(a) of PPV&FR Act, 2001 which is in turn applied for grant of award/reward and recognition to farmers and is also used for conservation of plant genetic resources and accordingly recovery of annual fee which is meant for the welfare of farmers who are involved in conservation of plant genetic resources cannot be defaulted.



Apart from annual fee, the registered breeder ought to have paid renewal fee for extended period of registration under Section 24(6) read with Rule 39 of PPV&FR Act, 2001. The renewal fee is to be paid for the extended period of registration that is (six years - initial period of registration for field crops and nine years - extended period of registration for field crops and nine years - initial period of registration for trees and vines and nine years - extended period of registration for trees and vines). Renewal fee must be paid provisionally under Rule 39(1)(b) of PPV&FR Rules, 2003 between four and half years to fifth year of initial period of registration in case of field crops and seven and half years to eighth year of initial period of registration in case of field crops. In the instant case the provisional renewal fee should have been paid by 31.01.2018 that is end of fifth year of initial period of registration and even this fee has not been paid nor has the final notice been issued for obtaining the renewal fee. Actually, the final renewal fee will be based on the average annual fee of the fifth and sixth year of registration. My decision in this regard is based on the order dated 07.01.2019 of Hon'ble Delhi High Court in WP (C) No.788/2017 (Maharashtra Hybrid Seed Company Private Limited -Vs- UOI & Anr.). In case of renewal fee, a final notice should be issued co-terminus with the expiry of seventh year of registration.



Hence, I direct the Registry to issue final notice to the registered breeder to pay the annual fee, annual fee return form and renewal fee to be paid/submitted within a month from the date of receipt of the notice failing which the registered variety

shall be forfeited and steps be taken to recover annual fee under Section 35(3). Let this be done forthwith and compliance be reported by the Registry within fifteen days from the date of receipt of this order. In other cases also I hereby direct the registry to make a list of all defaulters of annual fee, annual fee return form and renewal fee and grant a onetime chance with a last date to all defaulted registered breeders to deposit annual fee/ provisional renewal fee/ final renewal fee and for filing of annual fee return form. Let steps be initiated by publishing a public notice in this regard in the Plant Variety Journal of India under intimation to the registered breeder.

Having decided that AK-103-2-5 YF is not the genetic material of the Claimant and the same is in public domain. I conclude that the Claimant is not entitled for benefit sharing from the hybrid Jai Bt belonging to the Registered Breeder.

Based on the aforesaid reasonings, I hereby reject the claim for benefit sharing filed by the Claimant in respect of registered variety Jai Bt registered in favour of Registered Breeder. However, there shall be no order as to costs.

Given under my hand and seal on this the 1st day of May,
2019.

K. Vinod Prabh

(K.V. PRABHU)
CHAIRPERSON

