BEFORE THE PLANT VARIETIES REGISTRY

AT NEW DELHI

IN THE MATTER OF: - In reference to order dated 13.02.2015 in W.P. No. 26824, 26825, 26826 and 26855 of 2009 of Hon'ble A.P. High Court in Nuziveedu Seeds –Vs- Registrar, PPV&FRA.

IN THE MATTER OF: Nuziveedu Seeds Pvt. Ltd., with respect to registration of NC-71, NC-99, NC-102 and NC-108 cotton parental line varieties – Category to be applied .

For the Applicant : ***Sh.. Abhisekh Saket, Advocate M/s. Infini Juridique***

ORDER

By this order I shall dispose of the legal issue involved in this matter that is whether parental lines of extant varieties notified under section 5 of Seeds Act, 1966 should be considered either under the category of extant varieties notified under section 5 of Seeds Act, 1966 or other eligible categories for registration under PPV&FR Act, 2001.

ARGUMENTS OF THE APPLICANT:-

The applicant cited the Department of Agriculture & Co-operation OM dated 4.6.2013 which clarified that no separate notification is required for these parental lines if the hybrid is notified as per provision of Seeds Act, 1966 and Seed Rules, 1968 and the parental lines of hybrids are deemed to be notified along with hybrids for multiplication of Foundation Seed for producing the certified hybrid seeds and argued that the said OM is

applicable to PPV&FR Act, 2001 also and accordingly the parental lines of extant hybrids notified under Section 5 of Seeds Act, 1966 shall also be considered under the category of extant hybrids notified under Section 5 of the Seeds Act, 1966 and will have to be placed before Extant Variety Recommendation Committee for its registration as parental lines are deemed to be notified under Seeds Act, 1966 if their hybrid are notified under Seeds Act, 1966.

It is pertinent to note that if as claimed by the applicants the parental lines are considered under the category extant varieties notified under section 5 of Seeds Act, 1966 then there would be a change in the registration fees, period of DUS testing and period of protection. The registration for Extant Notified Variety is less and further they are exempted from DUS testing and the period of protection for Extant Notified variety is 15 years from the date of notification under Seeds Act, 1966 (Section 24(6)(ii) of PPV&FR Act, 2001). If the parental lines of the notified variety are treated under category other than Extant Notified Variety then the registration fees are higher and they have to undergo DUS testing which is a statutory mandate and the period of protection would be 15 years from the date of grant of certificate of registration (Section 24(6)(i) and (iii) of PPV&FR Act, 2001).

The matter was heard and reserved for judgment on 24.07.2018

After hearing the applicant and meticulously examining the documents filed, and previous orders of the Registry passed in this regard, I hereby pass the following order.

REASONINGS:-

This Registry by order dated 30.09.2009 rejected the request of the applicant and held that the parental lines of extant varieties notified under section 5 of Seeds Act cannot be considered under the category of extant varieties notified under section 5 of Seeds Act, 1966 but can be considered under other eligible categories for registration under PPV&FR Act, 2001. The said order of the Registry was challenged by the petitioners in W.P. No. 26825/2009 and other related W.Ps. In the meanwhile, the Ministry of Agriculture vide O.M. No. 3-26/2013-SD.IV dated 04.06.2013 has clarified under Seeds Act and Rules that parental lines of hybrids are deemed to be notified along with the hybrid for multiplication as foundation seeds for producing the certified hybrid seeds and no separate notification is required for the parental lines if the hybrid is notified under Seeds Act, 1966. Then subsequently the applicant approached the Hon'ble A.P. High Court which by its order dated 05.09.2013 in W.P. No. 26025/2013 has held that this Registry must reconsider the representation dated 13.06.2013 and 12.07.2013 of the Applicant and take a decision thereon without reference to the pendency of writ petition No. 26825/2009 and other three related writ petitions. Accordingly, while granting opportunity of hearing to the applicants to dispose of their representation, it was also taken note of the fact by the Registry that there were other applicants who have applied their parental lines of extant hybrids notified under section 5 of Seeds Act, 1966 under the different category of extant varieties about which there is common knowledge with this Registry for registration. Accordingly, this Registry heard the applicants and passed the order dated 28.10.2013 holding that the parental lines of extant varieties notified under Section 5 of Seeds Act, 1966 cannot be considered under the category of extant varieties notified under

section 5 of Seeds Act, 1966 (Section 2(j)(i) of PPV&FR Act, 2001) but can be considered under other eligible categories for registration under PPV&FR Act, 2001 provided they satisfy the other conditions laid down under the law. This order passed by the Registry was again challenged by the applicant in WP No. 32462/2013 before Hon'ble AP High Court and the same is under the consideration of the Hon'ble AP High Court. However, no interim order was passed in the above matter. The Hon'ble AP High Court vide order dated 13.02.2015 in WP Nos. 26824, 26825, 26826 and 26855 of 2015 passed the following order, the operative portion of which is extracted hereunder:-

"The petitioner is directed to produce the copy of this order along with the copy of the Office Memorandum dated 04-06-2013 of the 2nd Respondent before the 1st Respondent and on such production, the 1st Respondent is directed to pass orders on the basis of the clarification issued by the 2nd Respondent."

Accordingly in compliance of the said order, the matter was heard. This issue was actually already covered by the decision dated 28.10.2013 of this Registry which was passed after hearing the applicant and in the instant matter and as well all other applicants before the Registry. The reasoning and operative portion of the order is extracted hereunder: -

"Based on the aforesaid reasoning, I have no hesitation to hold that the parental lines of extant varieties notified under Section 5 of Seeds Act, 1966 cannot be considered under the category of extant varieties notified under section 5 of Seeds Act, 1966 (Section 2(j)(i) of PPV&FR Act, 2001) but can be considered under other eligible categories

for registration under PPV&FR Act, 2001 provided they satisfy the other conditions laid down under the law. "

The previous orders of the Registry proceeded on the reasoning that since the hybrid was expressly notified under Section 5 of the Seeds Act whereas its parental lines were not expressly notified, hence in such cases the parental lines of extant varieties notified under Section 5 of Seeds Act, 1966 cannot be considered under the category of extant varieties notified under Section 5 of Seeds Act, 1966. Further it was also reasoned that clarificatory OM issued under Seeds Act cannot be automatically applied to PPV&FR Act, 2001. Having meticulously re-examined the issue, I do not agree with the reasoning of the registry in this regard. The characters of parental lines of extant notified hybrids are documented in the applications for notifications and also in the meetings of subcommittee on Crop Standard and notification and release of varieties for agricultural crops for notification under Seeds Act, 1966. When the parental lines of hybrids notified under Section 5 of Seeds Act, 1966 are deemed to be notified under Seeds Act, 1966 and by adopting the same interpretation in PPV&FR Act, 2001 no harm or prejudice is going to be caused to anyone. In the previous orders on this issue the Registry has omitted to consider a very important point issue which warrants and necessitates a change from the view taken earlier. I agree with the contention of the counsel for applicant that both the parental line and the hybrid must be considered as a unit for the purposes of propagation and stability as the propagating material for hybrid is parental lines. The earlier view taken by the Registry that parental lines of hybrids notified under Section 5 of Seeds Act, 1966 cannot be considered under the category of extant notified variety but under other categories would lead to ever-greening of Intellectual Property Rights in Plant Varieties. The period of protection of extant varieties

notified under Section 5 of Seeds Act, 1966 is 15 years from the date of notification under Section 5 of Seeds Act, 1966 under Section 24(6)(ii) of PPV&FR Act, 2001. An apt illustration would be assuming a variety is notified under section 5 of Seeds Act, 1966 during 2005 and it would go into public domain on 2020 and in 2017 if the breeder applies for A parental line of the said hybrid and gets registration and thereafter just before the expiry of period of protection of A parent applies for registration of B parent line and thereby prevents the hybrid from going into public domain for another 30 to 45 years beyond the expiry of period of protection of hybrid. This issue of ever-greening of plant varieties has been dealt by Hon'ble Delhi High Court in a matter relating to the issue of novelty of parental lines whose hybrids fall under the category of extant varieties. The Hon'ble Delhi High Court in by its order dated 09.01.2015 in WP No.4330/2012 in Maharashtra Hybrid Seeds Co., -Vs- UOI held as follows:-

"The protection as envisaged under the Act is to provide certain exclusive rights for a specified period of time. By virtue of Section 24(6) of the Act, the registration certificate issued in respect of a plant variety could be extended for a period up to 18 years from the date of registration in case of trees and vines and 15 years from the date of registration in other cases. In the case of extant varieties the validity of the registration certificate can be extended upto 15 years from the notification of that variety under Section 5 of the Seeds Act, 1966. In other words, the Parliament in its Legislative wisdom considered that providing exclusivity as specified under Section 24(6) of the Act was sufficient protection to the plant breeders. If the provisions of Section 15(3) of the Act are read in a manner as suggested by the petitioners, the effect would be to extend that period of protection many times over. In the first instance, a breeder would get protection in respect of the hybrid

variety and assuming that there are two parent lines, the breeder could just before the expiry of the Registration Certificate in respect of a hybrid variety, register one of the parent variety and thus, extend its period of exclusivity for a further period of 15/18 years because protection of even one parent line would practically ensure exclusive rights in relation to the hybrid variety. In the same manner, before expiry of the registration period of that parent line, the breeder could register the other parent line as a new variety. In this manner a breeder could extend the protection for a period up to maximum 45/54 years instead of 15/18 years as contemplated under the Act. Clearly, this is not the legislative intent of the Parliament."

Though the issue involved in the judgement is related to category of parental lines that is whether they will fall under the category of new or extant when its hybrid falls under the extant variety category. The principle involved in the above cited case against ever-greening squarely applies to the instant case also. 'Evergreening' is an abuse of patent law whereby a patent is tried to be retained even after its expiry. The same can occur in law relating to plant varieties also as it is also a branch of Intellectual Property Law similar to that of Patents Law. Any attempt towards ever-greening of Intellectual Property must be judicially restrained. When with regard to period of protection, both parental lines and hybrid are to be considered as a unit then for the purposes of registration of varieties also both parental lines and hybrid must be considered under the same category as period of protection is different for extant varieties notified under Section 5 of Seeds Act, 1966 and for other new varieties and extant varieties about which there is common knowledge. Public domain is the rule and intellectual property is an exception and if hybrid goes into public domain then its parents cannot be granted fresh period of protection and if done contrarily then hybrid which

has gone into public domain will still enjoy indirect protection as its parents are protected. In the instant case on hand also the period of protection for hybrids (of the parental lines which are the subject matter of the judgment) have already expired and accordingly, there is no scope for extending the period of protection of hybrid by considering the parental lines under different category and granting them fresh period of protection.

Accordingly, based on the aforesaid reasonings, I hereby conclude that, the parental lines of extant hybrids notified under Section 5 of Seeds Act, 1966 should be considered under the category of extant varieties notified under section 5 of Seeds Act, 1966 (Section 2(j)(i) of PPV&FR Act, 2001) only. Both the parent lines (if not notified under Seeds Act, 1966 earlier to the resultant extant hybrid notified under Seeds Act, 1966) and its extant hybrid notified under Section 5 of Seeds Act, 1966 will have uniform period of protection under Section 24(6)(ii) of PPV&FR Act, 2001 that is 15 years from the date of notification under Seeds Act, 1966. The parental lines of new varieties notified under Section 5 of Seeds Act, 1966 should be considered under the category of new varieties notified under Section 5 of Seeds Act, 1966 provided they are filed within a period of one year from the date of commercialization of earliest/ first hybrid.

Given under my hand and seal on this the day of 5th day of December, 2018.

भारत सरकार पौधा किस्म रजिस्ट्री Plant Varieties Registry India

(S. A. DESAI)
REGISTRAR

To: Sh.. Abhisekh Saket, Advocate M/s. Infini Juridique