



A Milepost Decision under the Protection of Plant Varieties and Farmers' Rights Act 2001

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Pioneer Overseas Corporation vs. Chairperson, Protection of Plant Varieties and Farmers Rights and Ors and Pioneer Overseas Corporation vs. Union Of India and Ors. Order dated 1 July 2019. Justice Vibhu Bakhru of Delhi High Court on July 1, 2019 has passed a milepost decision in a writ petition filed under the Protection of Plant Varieties and Farmers' Rights Act, 2001. The decision at the first level has corrected the flaws in the procedures being adopted for granting a plant variety and for deciding opposition proceedings. But on the second level, for the first time in India have validated DNA testing for contesting ones right on a plant variety, including dispute proceedings. **Background:**

1. The main controversy involved in the present petitions relates to the acceptance of Kaveri's application for registration of a variety of maize, referred to as KMH50 under the Protection of Plant Varieties and Farmers' Rights Act, 2001 (hereafter the Act) by summarily concluding opposition proceedings merely based on a DUS test report findings. Thus, the procedure being followed by the Authority for registration of a plant variety and for deciding opposition proceedings were also argued at length in the present writs.
2. Pioneer claims that KMH50 is identical/similar to its variety of maize referred to as 30V92 thus Kaveri has indulged in misappropriation of germplasm of Pioneer's variety 30V92.
3. Pioneer had not only filed an opposition against the application for registration of Kaveri's impugned variety KMH50 and have led evidence demonstrating 99.45% - 99.80% similarity between the two varieties, but has also filed an application under Section 24(5) of the Act for conducting special test (DNA Test) by the authority also for determining the genetic similarity of KMH50 and 30V92 in support of its claim of germplasm theft. Pioneer prayed for an appropriate directions be issued to protect the interest of Pioneer and for rejection of Kaveri's application for registration claiming that germplasm of KMH50 which was identical to 30V92 and the two varieties are one and the same. Pioneer also alleged that Kaveri abused the provision of the Act by making false declaration in its application form and had deliberately provided incorrect information. Kaveri misappropriated the germplasm of 30V92 and had deceived the public by showing different values for group characteristic.
4. Against the opposition proceedings Kaveri by expressed intention did not file their counter statement nor contested the technical evidence or established lawful development and ownership of KMH-50.
5. The said application for conducting special test was rejected vide order dated 27.08.2013 and it was held by the Registrar that the two varieties of maize (KMH50 and 30V92) were found to conform to the criteria of distinctiveness, uniformity and stability (DUS) pursuant to the tests conducted in this regard (hereafter 'DUS test'), the said test was successful thus no special test was required.



6. The said order was challenged in the present writ petition as also the letter dated 24.06.2013 sent by the Registrar to the Government of India stating that both the varieties – Pioneer's 30V92 and Kaveri's KMH50 – are distinct and are eligible for registration under the Act.
7. Pioneer also impugns an order dated 09.09.2014, whereby its opposition to Kaveri's application (application no. E2ZM40916 – KMH50) for registration of KMH50 was summarily closed in view of a successful DUS test and Kaveri's variety KMH50 was directed to be registered.

Vide order dated 1 July 2019 of Hon'ble Justice Vibhu Bakhru, the petitions were disposed of in the following terms and conditions:

1. The impugned orders dated 09.09.2014 and 27.08.2018 are set aside.
2. The impugned letter dated 24.06.2013, to the extent that it confirms that Kaveri's KMH-50 is eligible for registration under the Act, is set aside.
3. Sub-rule (2) of Rule 29 of the 2003 Rules makes it clear that after initial scrutiny, if the Registrar is satisfied that the application is in order, he shall call upon the applicant to deposit the requisite fee within a period of two months for conducting the DUS Test.

In view of the above, there can be little doubt that on receipt of the application, if the same is found to be in order then the next stage is to conduct the tests under Section 19 of the Act, which is the test to ascertain whether the variety conforms to the DUS criteria.

4. Concededly, conformity with the DUS Criteria is essential for any variety to be registered. Therefore, it would not be possible for the Registrar to accept an application if he is not satisfied that the variety conforms to the DUS criteria. The contention that the Registrar can accept the application awaiting the DUS Test, was held to be erroneous. Only after acceptance of an application, it could be advertised inviting any opposition. Thus DUS test report is not binding on the objector and can be contested on the available grounds.
5. The court also examined whether Pioneer's opposition was required to be rejected only on the ground that Kaveri's variety KMH-50 had qualified the DUS Test and held that the answer to this question was clearly in the negative.
6. The court also ruled on the deeming provision that there is no ambiguity in the language of Sub-Section 21 (4) of the Act that if an applicant fails to file a counter statement on the grounds on which he relies on for his application, he would by legal fiction deemed to have abandoned his application. And, in such cases, it would not be necessary for the Registrar to consider the opposition on merits. Thus, by virtue of Section 21(4) of the Act, Kaveri's application was deemed to have been abandoned.
7. The court interpreted rule 29 establishing that the special test could be requested by a person aggrieved, be it an applicant for registering its plant variety in case where DUS test fails or even by an opponent challenging/contesting registration of a candidate variety. The court ruled that the reliance on rule 29(1) by the registrar for rejecting the application for conducting special test was misplaced.



8. Pioneer's application for conducting the special test in the nature of DNA profiling of the variety 30V92 and KMH-50 was restored to the file of the Registrar for considering it afresh, if necessary.
9. The Court held that prima facie, even by evaluating the DUS test results it indicates that the characteristics, in respect of which the two varieties were found to have qualified the DUS test, are more or less identical when compared inter se. However, Court was not inclined to examine the said controversy any further as the same had not been considered in any of the impugned orders. However, it was held obvious that if the question whether the variety 30V92 and KMH-50 were different and distinct from each other was required to be determined, a meaningful examination of their essential characteristics would be relevant.

Team Anand and Anand: Pravin Anand, Archana Shanker, Dr. Neeti Wilson and Priyanka Dubey.

