

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

IN THE MATTER OF: PV-5 filed by Applicant for seeking extension of time for filing counter statement in Notice of Opposition filed by Nuziveedu Seeds Ltd., against registration of Application No. N65/GH48/ 08/ 274 for varietal denomination C 5196 filed by Maharashtra Hybrid Seeds Co., Pvt. Ltd.,

For the Opponent: Sh. Nishant Rai, Consultant (Legal), Nuziveedu Seeds Ltd., (Opponent).

For the Applicant: Sh. Anil Dutt and Sh. Sudarshan Singh Shekhawat, Advocates for M/s. Lakshmikumaran & Sridharan.

ORDER

(HEARING CONDUCTED THROUGH VIDEO CONFERENCING)

Heard the Parties.

ISSUE:-

The Applicant has filed a Form PV-5 seeking two months' time extension for filing of Counter Statement and Evidence. The Opponent has filed their written submissions/ arguments opposing the extension of time.

CASE OF THE APPLICANT:

The case of the Applicant is that the variety which is the subject matter of the Opposition was first published in the Plant Variety journal PVJ Vol. 2 No.9 on 01.09.2008. Thereafter the Opponent filed a PV-5 for condonation of delay on 12.02.2009. The said PV-5 was dismissed by this Registry vide Order dated 09.03.2010. The Opponent had appealed the said order of the Ld. Registrar before the Hon'ble Andhra Pradesh High Court which eventually was transferred to Hon'ble Intellectual Property Appellate Board (IPAB) and numbered as TA/1/2020/PVPAT/DEL and is next listed before IPAB on 12.10.2020.



In a separate writ filed before the Hon'ble AP High Court by the Opponent challenging the first advertisement of the variety which is the subject matter of opposition that is C-5196 was also eventually transferred to IPAB and re-numbered as TA/2/2020/PVPAT/DEL and in the said Transferred Appeal the Applicant had moved a Miscellaneous Petition to set-aside the re-advertisement of the candidate variety in PVJ dated 01.01.2020 and also to consequently quash the present opposition proceeding. The Applicant had also prayed for an interim stay before IPAB and both the said Transferred Appeals along with the MP was listed for hearing on 20.8.2020 before the IPAB and notice was issued in the said MP to the Opponent and IPAB ordered that the instant opposition proceeding is subject to the outcome of the MP pending before IPAB. Opponent had filed appeal against the order of Ld. Registrar, dated 09.03.2010 before the Hon'ble Andhra Pradesh High Court which is transferred to Hon'ble Intellectual Property Appellate Board (IPAB), Delhi. The said appeal number TA/1/2020/PVPAT/DEL is pending adjudication before Hon'ble Intellectual Property Appellate Board (IPAB) and next date of hearing is 12.10.2020.

The opponent has filed a separate appeal (TA/2/2020/PVPAT/DEL), for challenging the first advertisement of the candidate variety. The Applicant has also filed a Miscellaneous Petition (M.P.) before IPAB and requesting to set aside the re-advertisement of the candidate variety in PVJ dated 01.01.2020 and also prayed for an interim stay of the present Opposition Proceedings.

Both the above-mentioned appeals along with the M.P. were listed for hearing before the IPAB on 20.08.2020. The IPAB has taken on record the Miscellaneous Petition (M.P.) and has issued notice to



Opponent and the next date of hearing in both the Transferred Appeal is 12.10.2020. The Applicant has also mentioned that the IPAB has ordered that the outcome of the instant Opposition proceedings will be subject to the outcome of M.P. and the pending appeals. Due to the ongoing COVID-19 situation, the Applicant has not obtained the copy of the said order. Therefore, the Applicant has enclosed a copy of the cause list of IPAB for 20.08.2020.

Due to ongoing COVID 19 situation, the counsel for the Applicant is able to have only limited access to the case files from the office. The Applicant has not been able to access limited company records to prepare reply to the opposition. Due to the availability of restricted staff members and technical persons in its R&D team because of the pandemic, the Applicant will require more time to prepare a proper reply to the opposition without prejudice to its rights and contentions. Further, Applicant is citing order of the Hon'ble Supreme Court of India dated 23 March, 2020 in SUO MOTU WRIT PETITION (CIVIL No. 3/2020) that owing to the situation arising out of the challenge faced by the country on account of pandemic caused by the COVID-19 virus, the limitation period of various actions/filings including those before the Authorities and the Tribunals have been extended with effect from 15 March, 2020. Thus by virtue of the said order of the Hon'ble Supreme Court the limitation to file reply to the opposition has already deemed to be extended. The present extension of time is sought in the interest of justice for bona fide reasons.

CASE OF THE OPPONENT:-

The Opponent opposed the grant of extension of time for filing of Counter-Statement by the Applicant. The contention of the Opponent is that PV-5 has been filed with malafide intent to avoid the present



opposition and get away with the registration. The advertisement of the variety which is the subject matter of opposition was made in the PVJ dated 1st January, 2020 which was uploaded in the website of the Authority on the same day unlike the previous system of receipt of hardcopy and that the Applicant had sufficient time of three months (before lock down in late March due to Covid-19) to raise its objection, if any, to the Registrar on the advertisement or any other objections raised now after the filing of opposition. In the absence of the Opposition the Applicant would have defended the advertisement dated 01.01.2020 and consequently would not have filed MP before Hon'ble IPAB. The Applicant still had time till 18th June, 2020 to communicate that the advertisement dated 01.01.2020 is not correct, if they felt so and could have come clean on their statements. The Hon'ble IPAB did not grant the stay on the Miscellaneous Petition filed by the Applicant challenging the advertisement dated 01.01.2020. The other main contention of the Opponent is that they had deliberately misquoted the order dated 23.03.2020 of Hon'ble Supreme Court which has later been modified by the Hon'ble Supreme Court by order dated 06.05.2020 owing to which the Applicant cannot avail benefit beyond 15 days from the date which unlock began. The certificate of registration was uploaded on the Authority's website which was later withdrawn. The Applicant had 6 months time to approach the Hon'ble Registrar, PPV&FR Authority in the matter of publication of C 5196 in the PVJ dated 01.01.2020 but they deliberately did not take away with the Registrar expecting they can get away with the certificate of registration. The advertisement is in order and Applicant has to file Counter Statement and if the same is not submitted within time limit then the application is deemed to be abandoned. The Applicant has been filing applications of the hybrids



for registration with code numbers for the parent lines deceitfully to avoid opposition against the hybrid and filing the applications of the parent lines for registration with separate denominations for parent lines without reference to the hybrid. This has led to the conclusion. In one such case the Opponent became victim due to filing of applications with such false information which resulted in delayed filing of opposition in C-5196 matter in case of earlier advertisement, published in PV Journal dated 01.09.2009 and to compound the grievance of the opponent, the delay condonation was not allowed by Hon'ble Registrar. The MP has been filed before Hon'ble IPAB on baseless grounds and Applicant intends to avoid opposition by hook or crook and get away with registration and accordingly PV-5 ought to be rejected.

REASONING:-

Based on the PV-5 of the Applicant and Written Statement of the Opponent and having heard the arguments of the parties, I am of the firm view that Applicant has shown sufficient cause in their PV-5 seeking two months' time extension for filing of Counter Statement. I do not concur with the arguments of the Opponent that the Hon'ble Supreme Court by order dated 06.05.2020 has modified the order dated 23.03.2020 and accordingly, Applicant cannot avail benefit beyond 15 days from the date from which unlock began. The matter is squarely covered by the judgement dated 23.03.2020 and 06.05.2020 of Hon'ble Supreme Court of India in SUO MOTU WRIT PETITION (CIVIL) No.3/2020. By order dated 23.3.2020 the Hon'ble Supreme Court extended with effect from 15th March, 2020 the limitation period of filing before various Authorities and Tribunals due to challenges faced by the country on account of COVID-19 pandemic. Subsequently, taking into account this order and effect of COVID-19 and resultant difficulties to



lawyers and litigants, the Hon'ble Supreme Court by order dated 06.05.2020 held that in case the limitation has expired after 15.03.2020 then the period from 15.03.2020 till date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown. It is not as the Opponent argues 15 days from which the unlock began. Having held that Applicant has shown sufficient cause and the said order of time extension of Hon'ble Supreme Court applies to this matter, the other arguments of the Applicant relating to challenging of the advertisement dated 01.01.2020 which the applicant could have done earlier itself, applicant has filed application with codes etc., holds no merit. Hence, PV-5 filed by Applicant seeking two months' time extension for filing of Counter Statement ought to be allowed. The Applicant has filed PV-5 praying for two months time extension for filing of counter statement and evidence and PV-5 will be allowed only in respect of filing of counter statement only as the issue of filing of evidence by the Applicant under Rule 33 (2) of PPV&FR Rules, 2003 arises only after filing of evidence of the Opponent.

CONCLUSION

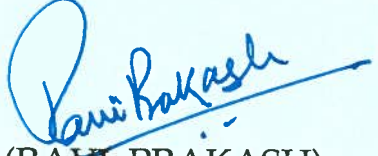
Accordingly, the PV-5 filed by the Applicants seeking time extension of two months for filing of the Counter Statement is allowed. The Applicants received the copy of notice of opposition on 2nd July, 2020 and accordingly, under Section 21(4) of PPV&FR Act, 2001 the counter statement has to be filed within two months from the receipt of copy of notice of opposition by the Applicant. Accordingly, the Applicant should have filed their counter-statement by 2nd September, 2020 under Section 21(4) of PPV&FR Act, 2001. Time for filing counter-statement by the Applicant is hereby extended under Rule 32 of



PPV&FR Rules, 2003 from 2nd September, 2020 (Wednesday) to 2nd November, 2020 (Monday).

The instant opposition proceeding is subject to the outcome of TA Nos. 1 and 2 of 2020 under the consideration of Hon'ble IPAB

Given under my hand and seal on this the 9th day of September, 2020.


(RAVI PRAKASH)
REGISTRAR

