In hybridization, the pollens of male fertile parent are dusted upon the stigma of the female parent for developing hybrid seeds. Thus in case of A line, B line and R line their seeds would constitute the harvested material. There is no dispute about this.

Of such variety–Applicant's contention that in case of A line the term 'of such variety' occurring in section 15(3)(a) means harvested material of A line and not of hybrid seeds,-This contention of applicant is not according to law:-

The issue that arises for consideration is whether the hybrid seeds obtained from the parental lines is a propagating or harvested material of the parental line or not.

The word 'variety' has been defined in section 2(za) of PPV&FR Act, 2001 which provides as follows:-

"***Variety means a plant grouping except micro-organism within a single botanical taxon of the lowest known rank, which can be-***

(i) ***Defined by the expression of the characteristics resulting from a given genotype of that plant grouping.***

(ii) ***Distinguished from any other plant grouping by expression of atleast one of the said characteristics and***

(iii) ***Considered as a unit with regard to its suitability for being propagated which remains unchanged after such propagation.***

And includes propagating material of such variety, extant variety, transgenic variety, farmers' variety and essentially derived variety."

There is no doubt that the parental lines (A, B and R parental lines) and hybrid are varieties within the meaning of section 2(za) of PPV&FR Act, 2001 and are eligible for registration provided they satisfy the other conditions laid down under the law. There is no dispute about this.

However, I do not agree with the contention of the applicant that the hybrid seeds harvested from female parent is not the harvested material of the said parent as the said hybrid seed cannot reproduce the female parent. The definition of the variety cannot be used to limit the meaning of harvested material. The harvested material need not always satisfy the definition of variety. The word "harvested material" is wide in nature as it includes fruits, vegetables, and seeds (including of hybrid in case of parental lines). By referring to the part of definition of variety which provides that a variety must remain unchanged after propagation, the meaning of harvested material cannot be restricted to seeds of parental line which reproduces the parental line itself more particularly when there no is express or implied legal provision to the effect. The words "harvested material" cannot be interpreted to be in conflict with definition of variety. There is no legal provision to the effect that harvested material must be limited to seeds that reproduce the parental line itself. The definition of the 'Variety' which provides that it must be considered as a unit with regard to its suitability for being propagated which

remains unchanged after such propagation refers to the stability character of a variety. Under section 15(3)(d) of PPV&FR Act, 2001 a variety is deemed to be stable if its essential characteristics remain unchanged after repeated propagation or in the case of a particular cycle of propagation at the end of each such cycle. This stability character is essential for registration of any variety under the Act. This cannot be extended to the harvested material under the Act.

Even in case of maintainer line and restorer line, their harvested material (namely the seeds of it) are used for reproducing them and thereafter the pollen of maintainer line is used for reproducing A line and pollen of restorer line is dusted on A line for producing the hybrid. Accordingly the definition of harvested material cannot be limited to seeds of parental line (A, B and R lines) it covers the hybrid seeds also.

Has not been sold:-

The words has not been sold occurring in section 15(3)(a) must be read with section 15(3)(a)(i) and 15(3)(a)(ii). Accordingly prior to the date of filing of application the variety should not have been sold in india for a period of more than one year and should not have been sold outside india for six years in case of trees and vines and four years in other cases. There is also no dispute about this.

Or otherwise – Applicants' contention that parental lines are novel even though they have been exploited for hybrid

production because they have not been sold,-This contention is also not according to law:-

I find no merit in the contention of the applicant that parental lines are novel if they are not sold but exploited for the development of hybrid even for a period of more than one year. The words 'or' has been held prima facie and in the absence of some restraining context to be read as disjunctive and not as "id est"(Re Diplock [1941] Ch.253 at 260-1). In the instant case the word 'or' occurring in section 15(3)(a) is disjunctive and constitutes a separate class apart namely not only sale of variety for more than a year in India would affect novelty but also disposal of it for the purposes of exploitation by developing hybrid and commercializing the said hybrid for more than a year would also affect novelty and accordingly the same cannot be considered as new variety. I find support of my view from the decision of Chotanagpur Banking Association Ltd., -Vs- Government of India, {AIR 1957 PAT 666, 669, 670, 671} wherein it was held that the word "or" in "or otherwise" is a disjunctive that marks an alternative which generally corresponds to the word "either". An interpretation of the general words "or otherwise" limiting them to the matters and things of the some kind as the previous words would make the general words "or otherwise" following the preceding specific words, redundant. It was further held that these words "or otherwise" are not words of limitation, but of extension so as to cover all possible ways in which the title may vest in the land in the unauthorized occupation of the person concerned. In Lila Vati Bai –Vs- State of Bombay AIR 1957

SC 521 it was held that the legislature when it uses the words "or otherwise" apparently intended to cover other cases which may not come within the meaning of the preceding clauses. Again in Nirma Industries Ltd., -Vs- Director-General of Investigation (1997) 4 Comp. L.J. 165 p. 171 (SC) it was held that the words 'or otherwise' are of wider import and signify not only actual loss or injury suffered by consumers but also include probable or likelihood of consumers suffering loss or injury in any form.

The cited decisions make it clear that the words "or otherwise" occurring in section 15(3)(a)of PPV&FR Act, 2001 not only covers sale but also disposal of parental lines (A, B and R line) for the purposes of exploitation for the development of hybrid.

Disposed of – Difference in UPOV and Indian Law

The words 'disposed of' has not been defined in the Act. Accordingly, it must be taken in its plain meaning. Article 6 of UPOV convention 1991 states as follows:-"*The variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of* ***to others*** *by or with the consent of the breeder for the purposes of exploitation of the variety* (Emphasis supplied)"

The Indian law on novelty of plant varieties enshrined in section 15(3)(a) of the PPV&FR Act, 2001 is verbatim of Article 6 of the UPOV convention 1991 except for the words "to others". The Indian Legislature in its wisdom has omitted the words "to others" while enacting the Indian Law. The omission of the words 'to others' makes

it clear that the disposal of the variety need not be to others it may even be for the purpose of production of hybrid by exploiting the parental line.

A comparison of UPOV 1991 and the Indian law would make it clear that the Indian legislature has omitted the words 'to others' (occurring prior to 'disposal') while enacting the Indian Law. This fortifies my view that disposal of parental lines under Indian law need not necessarily be to others for sale it may even be for exploitation for development of hybrids.

By or with the consent of its breeder or his successor.

This means that the exploitation and sale of parental lines must be with the consent of the breeder and not otherwise. There is no issue about this.

'For the purposes of exploitation'.-Applicant's contention 'exploitation' means exploitation of the candidate variety for the production of candidate variety itself and not for production of any other variety is also not as per law.

I find no merit in the contention of the applicant that the term 'exploitation' occurring in section 15(3)(a) must mean only exploitation of the candidate variety for the production of the variety itself and not for production of any other variety. Such an interpretation is not supported by any legal provision. When there is no legal basis, the term 'exploitation' cannot be interpreted narrowly. The term 'exploitation' has not been defined in the Act and it must be interpreted in its plain dictionary meaning. The term 'exploitation' has been mentioned in Compact Oxford English Dictionary (Third Edition) as 'exploit' – make good

use of a resource'. The parental lines are genetic resources which are exploited for development of hybrids. The term 'exploitation' would cover not only commercialization of hybrid but also using of parental lines for development of hybrid. Accordingly, if hybrid is commercialized for more than a year it is nothing but exploitation of parental line for more than a year and accordingly the said parental lines would not be novel.

Provisos to section 15(3)(a)

The first proviso to section 15(3)(a) provides that trial of new variety which has not been commercialized or otherwise disposed of shall not affect the right to protection. The exploitation of parental lines for commercialisation of hybrid is definitely not a trial and accordingly novelty of parental lines would be affected if hybrid is commercialized for more than a year.

The second proviso to section 15(3)(a) provides that if the propagating or harvested material of a variety has become a matter of common knowledge other than through the manner specified in section 15(3)(a) then it shall not affect the criteria of novelty. The parental lines (from which hybrids have been developed and commercialized for more than a year) cannot come under this proviso also for the reason that they are not novel in accordance with section 15(3)(a) of PPV&FR Act, 2001.

Further it is nobody's case that the instant matter falls under these provisos.

Applicant interpreting Indian law citing EU and US laws - Not proper

The Applicant cites EU and US laws and International Seed Federations view for interpreting Indian Law. I do not agree with this. The ISF (international Seed Federation) view that hybrid material does not represent the harvested material of parental lines cannot be used to interpret the Indian law. In ESPN Star Sports -Vs- Global Broadcast News, {2008 (38) PTC 477 Del} the Hon'ble August Bench of Delhi High Court held that it is not bound by WIPO or any other such agreements and we must interpret the law in accordance with the legislative intent available from the constitution of India or the statute enacted by Indian parliament.

The arguments of the applicant are repelled by the said decision of the Hon'ble Delhi High Court that Indian law must be interpreted not with reference to any international treaties and agreements. This would be more so in the instant case for India is not a member of UPOV convention, 1991.

Section 15(3)(a) is unambiguous and no restrictive meaning could be applied to it.

In my view the language of section 15(3)(a) of PPV&FR Act, 2001 is clear and unambiguous. Accordingly, no restrictive meaning could be given to it by referring to international conventions and international federation's

views. The Hon'ble Supreme Court in J.P. Bansal –Vs- State of Rajasthan (2003) 5 SCC 134 held that

"Where however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions".

Other submissions of applicant

The counsel for applicant also submitted that none of the parental lines under consideration is a notified variety and farmers variety and they are not in public domain also but the contention is that it cannot fall under the category of extant variety about which there is common knowledge. I do not agree with the contention of the applicant that parental lines are not a matter of common knowledge for the reason that if hybrid is a matter of common knowledge then its parents should also be a matter of common knowledge though they are not commercialized as the parental lines are repeatedly exploited for the development of hybrids which are commercialized for several years depending upon the market needs.

The other contention of the applicant is that the public notice published in the Plant Varieties Journal of India September, 2009 issue that applicant would be at disadvantage because the parental lines which are there for more than 13 years would not be eligible for registration just because the Act came into force late and such notice is ultra

vires. In my view this issue is out of context with regard to the matter under consideration namely whether parental line (whose hybrids have been commercialized for more than a year) would fall under the category of new variety or extant variety.

The next contention of the applicants that the hybrid seeds notified under seed Act for which registration period is calculated from the date of notification and parental line of such extant variety will not get any protection if they are treated as extant. In my view this submission is too far-fetched because they can be considered for registration under the category of extant variety about which there is common knowledge provided they satisfy the other conditions laid down under the law.

My view is that if hybrid falls under the category of extant variety about which there is common knowledge then its parental lines would also fall under the extant variety category.

Conclusion:

Based on the aforesaid reasonings, I hereby conclude that legally and logically if the hybrid falls under the category of extant variety about which there is common knowledge then its parental lines cannot be treated as new variety and the said parental lines can be considered for registration under the category of extant variety provided they satisfy the other conditions laid down under the law. If the earliest hybrid developed out of the parental lines fall under the new variety category then its parental lines can also be considered for registration as new variety provided if

such parental lines are filed within a period of one year from the date of commercialization of earliest hybrid.

These applications which are the subject matter of hearing are at various stages of examination. Accordingly, in light of the reasoning and conclusion given above the Registry is directed to consider and proceed further with these applications in accordance with law.

There shall be no order as to costs.

Given under my hand and seal on this the 24th day of May, 2012.

(MANOJ SRIVASTAVA)
REGISTRAR

भारत सरकार
पौधा किस्म रजिस्ट्री
Plant Varieties Registry
Government of India