



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Reserved on: 25.04.2023*

*Date of decision: 05.07.2023*

+ **C.A.(COMM.IPD-PV) 2/2022 & IAs 7898/2022 & 7900/2022**  
**PEPSICO INDIA HOLDINGS PVT. LTD. .... Appellant**

Through: Mr. Dayan Krishnan, Sr. Adv.  
with Mr. Dheeraj Nair, Mr.  
Kumar Kislay, Ms. Anjali  
Anchayil, Ms. Shruti Dass,  
Ms. Aishna Jain, Mr. Sanjeevi  
Shesadri & Mr. Vikarsh  
Gupta, Advs.

versus

**KAVITHA KURUGANTI .... Respondent**

Through: Mr. Colin Gonsalves, Sr. Adv.  
with Ms. Hetvi Patel &  
Mr. Rohit Saini, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**JUDGMENT**

1. The present appeal has been preferred by the appellant under Section 56 of the Protection of Plant Varieties and Farmers' Rights Act, 2001 (hereinafter referred to as the "Act") challenging the order dated 3<sup>rd</sup> December, 2021 (in short, 'Impugned Order') passed by the Protection of Plant Varieties and Farmers Rights Authority (hereinafter referred to as the "Authority"), revoking the appellant's registration with respect to plant variety- FL 2027 potato variety, on the grounds provided under Section 34(a), (b), (c) and (h) of the Act. The appellant further challenges the Authority's letter dated



11.02.2022, rejecting the appellant's application for renewal of its registration.

### **BACKGROUND FACTS**

2. The appellant, a company incorporated under the Companies Act, 1956, is a subsidiary of PepsiCo Inc. The appellant-company is engaged in the business of manufacturing, distribution, and sale of various products including non-alcoholic beverages sold under the brand names/trade marks 'Pepsi', 'Mirinda', '7UP', etc., packaged drinking water sold under the brand name/trademark 'AQUAFINA', caffeinated beverages, fruit juices, and salted snacks and foods such as potato chips sold under the brand name/trade mark 'LAY'S' and 'Uncle Chipps'.

3. The appellant claims that FL 2027 is a chipping potato variety with low external defects, high dry matter/high solids content and stable sugars, all of which make it highly suitable for the manufacture of chips. Because of these qualities, however, it requires more time and energy in the cooking process, making it unsuitable for use as a table potato or for everyday cooking in households. The appellant uses it for the manufacture of potato chips under the Lay's brand.

4. It is the case of the appellant that the potato variety FL 2027 (commercial name - FC-5) was developed in USA by Dr. Robert W. Hoopes, a plant breeder and a former employee of Frito-Lay Agricultural Research, a division of PepsiCo Inc., which is the parent company of the appellant. It is asserted that the appellant and its predecessors-in-interest have carried out extensive studies, trials,



research and development, and have spent huge amounts of money towards the development of the registered variety.

5. The appellant asserts that Dr. Robert W. Hoopes assigned his rights in FL 2027 to Recot Inc., a group Company of PepsiCo Inc. and a Delaware Corporation, by a Deed of Assignment dated 26.09.2003. Recot Inc. subsequently changed its name to Frito-Lay North America, Inc. (hereinafter referred to as FLNA) on 20.01.2004. The appellant asserts that FLNA and the appellant are both group companies of PepsiCo Inc., and by virtue of their corporate relationship and the fact that the appellant is incorporated in India and carries on its business in India, FLNA permitted the appellant to develop and use FL 2027 and seek registration for FL 2027 under the Act.

6. The appellant applied for registration of FL 2027 variety under the Act on 18.02.2011. The Registrar, vide letter dated 02.06.2011, raised certain queries on the application. The appellant clarified the same vide its letter dated 09.06.2011. The appellant thereafter filed a revised application on 16.02.2012, giving details of the application made for seeking registration of FL 2027 in the United States of America (USA) patent office on 10.06.2003, however, the appellant due to a *bona fide* mistake ticked the box in the form depicting FL 2027 as a 'New Variety', with the date of commercialisation as 17.12.2009 in India.

7. The Registrar, vide letter dated 14.06.2012, informed the appellant that the application is being considered under the 'Extant Category' and that the excess amount deposited by the appellant as



registration fee shall be duly adjusted in the Distinctiveness, Uniformity, Stability (DUS) testing fee.

8. The Registrar granted registration to FL 2027 on 01.02.2016, treating it as an 'extant variety'.

9. The appellant states that no opposition was received to the application, under Section 21(2) of the Act, within the prescribed time from the date of advertisement of the Application.

10. The respondent, however, filed an application under Section 34 of the Act before the Authority on 14.06.2019, seeking revocation of the registration granted in favour of the appellant. The same has been allowed by the impugned order, revoking the registration of FL 2027 under Section 34(a), (b), (c), and (h) of the Act. Due to such revocation, the application of the appellant seeking renewal of the registration has also been rejected vide letter dated 11.02.2022.

11. The appellant has filed the present appeal under Section 56 of the Act challenging the impugned order and the letter.

### **SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE APPELLANT**

12. The learned senior counsel for the appellant submits that the registration granted to the appellant has been revoked by the Authority on the basis of the following grounds:

- i. The grant of the Certificate of Registration was based on incorrect and ambiguous information furnished by the appellant regarding the date of the first sale of FL 2027, and regarding the category of the variety being 'new' instead of 'extant';



- ii. The Certificate of Registration has been granted to a person who is not eligible for protection under the Act as the appellant furnished incorrect and inadequate information regarding the complete chain of assignment of rights in FL 2027 to the appellant. The assignment deed between Dr. Hoopes and Recot Inc. submitted by the appellant is unstamped and not attested by witnesses, proof of change of name of Recot Inc. to FLNA was not submitted, and the Assignment Deed between FLNA and the appellant has not been submitted; and
- iii. Grant of the Certificate of Registration is not in the public interest.

13. The learned senior counsel for the appellant submits that the Authority exceeded its jurisdiction vested under Section 34 of the Act, by re-evaluating the facts pertaining to the appellant's application for registration of the FL 2027 potato variety. Placing reliance on the judgement of this Court in *Intellectual Property Attorneys Association v. Union of India*, 2014 SCC OnLine Del 1912, he submits that the Registrar's powers under Section 20 of the Act in dealing with an application for registration are quasi-judicial and/or adjudicatory and not administrative powers. As the registration is based on Registrar's best judgment, the Authority cannot substitute the same. In support he places reliance on *M/s Vineet Enterprises, Secunderabad v. State of Andhra Pradesh*, 1995 SCC OnLine AP 354; and *State (NCT of Delhi) v. Union of India*, (2018) 8 SCC 501.

14. The learned senior counsel for the appellant submits that the revocation of the appellant's registration on the ground that the



appellant applied under the category of ‘New Variety’ is arbitrary, unreasonable, harsh, and disproportionate. He submits that the Authority failed to appreciate that mere technical infirmities in the application cannot be held against the appellant, when there was no suppression of material or primary facts which would have affected the grant of registration before the Registrar.

15. The learned senior counsel for the appellant submits that the Authority has erred in finding that the appellant furnished incorrect information regarding the category in which the registration was sought. He submits that the appellant had filed a revised application changing the applied variety to ‘extant variety’ instead of ‘new variety’, however, due to an inadvertent *bona fide* mistake, ticked the box next to ‘new variety’ in the application form. There has been no impact on the registration due to the said inadvertent error in the application category and, in fact, the Registrar granted registration treating FL 2027 it as an ‘extant variety’. He submits that this issue was not even pressed by the respondent in her rejoinder before the Authority.

16. The learned senior counsel for the appellant submits that a similar *bona fide* mistake was committed by the appellant in the application form, giving the date of commercialisation of the variety as 17.12.2009 in India, instead of the other parts of the world. He submits that there was an ambiguity in the prescribed application form, leading to the above mistake by the appellant. He submits that the Authority considered the first date of sale of the variety as 28.10.2002 (date of first sale in Chile), though this was not even the



case set up by the respondent before the Authority. No opportunity was given to the appellant to explain its stand on this issue. He submits that even if the first date of sale is taken as October 28, 2002, the appellant would still be eligible to grant of registration as per Rule 22(2A) of the Protection of Plant Varieties and Farmers' Rights Rules, 2003 (hereinafter referred to as the Rules), since the same allows for a period of fifteen years to seek registration from the date of first sale. He submits that therefore, this *bona fide* mistake could not have acted as a ground for revoking the registration granted in favour of the appellant.

17. He submits that the Authority has also claimed that the date provided in the application for first sale, that is 17.12.2009, is also incorrect as the proof submitted in support was an invoice dated 18.12.2009. He submits that such *bona fide* mistake cannot be a ground to revoke the registration granted to the appellant. He submits that the difference is of just of one day, and such mistake is inadvertent, having no impact on the registration.

18. He submits that the Impugned Order has wrongly declared the Assignment Deed between Dr. Robert W. Hoopes and Recot Inc. as invalid, being unstamped and unwitnessed. He submits that the Assignment Deed was executed in USA, and, therefore, it is subject to the laws of USA, where there is no requirement of stamping or registration. Even otherwise, non-stamping of the Assignment Deed would only result in its impounding and levying of penalty on the appellant, but it would not invalidate the registration granted. He submits that the assignment has been duly acted upon in USA, and



FLNA has been reflected as an assignee of the breeder of the variety by the patent office in USA.

19. He submits that though the appellant had not submitted the Assignment Deed before the Registrar, the appellant had duly submitted the Assignment Deed, the name change certificate of Recot Inc. to FLNA, and the letter dated 12.09.2019 issued by FLNA confirming that FLNA had given the right to the appellant to file the application seeking registration of FL 2027, to the Authority during the revocation proceedings. Therefore, even assuming that there was some deficiency before the Registrar, the same was removed before the Authority, and the same could not have acted as a ground for revoking registration. He submits that, in fact, in terms of Section 20(5) of the Act, had these deficiencies been pointed out by the Registrar, the appellant would have had an opportunity to remove the same at that stage itself and before the grant of registration. The Registrar, having not raised these deficiencies in the application, the same cannot act as a ground for revoking the registration granted in favour of the appellant.

20. He submits that the transfer of rights between the two group companies is a matter of their indoor management, and the right to challenge the same vests with the parties involved; a third party has no locus to contest the transfer of rights between FLNA and the appellant. He submits that it is the substance of the letter/authorisation to apply that matters and not the form. In support he relies upon *Khushalbai Mahijibhai Patel v. A Firm of Mohmadhussain Rahimbux*, 1980 Supp. SCC 1.





21. He submits that unlike the Trade Marks Act, 1999, in the Act there is no requirement of assignment to be in writing. In fact, Section 16(1)(c) and Section 18(3) of the Act do not require an assignment of all rights, but simply of a right to file the application. Also, Rule 27(2) of the Rules recognises “*any documentary proof*” of assignment. It does not require the existence of an assignment deed. Such proof was met when the appellant filed the FLNA letter.

22. He submits that the finding of the Authority that Change of Name certificate from Recot Inc. to FLNA is not valid/admissible as it does not bear signature of any witnesses, is also erroneous. He submits that the Change of Name Certificate was issued by the State of Delaware, and was never put to question by the Authority or the respondent during the revocation proceedings. However, the Authority has still ruled on the same, without providing an opportunity to the appellant to produce evidence clarifying the legal position in regard thereto, thereby acting against the principles of natural justice.

23. The learned senior counsel for the appellant submits that Form PV-2 was inadvertently not signed by Dr. Robert W. Hoopes as the breeder, although the annexures to Form PV-2 contain his signatures. The same was accepted by the Registrar and no objection regarding the same was raised. Since the Registrar took the application on record and granted registration, the registration granted cannot be revoked under Section 34 of the Act.

24. The learned senior counsel for the appellant submits that the Authority erred in invoking Section 34(h) of the Act to revoke the registration granted in favour of the appellant. He submits that no



issue of Public Interest arose in the facts of the present case in as much as:

- (i) Filing of the suit(s) against farmers cannot be said to be against public interest;
- (ii) The appellant had a valid registration Certificate as on the date of filing the Suit, which was duly granted;
- (iii) There was no revocation application as on the date of filing of the suits;
- (iv) The suits were filed by the appellant against the named defendants who claimed to be farmers;
- (v) Eventually the suits were withdrawn, without any damages being payable by the defendants in the suits;
- (vi) A *post-facto* revocation in 2021 cannot deem the appellant's acts with reference to the enforcement of its rights in 2019 as against public interest;
- (vii) The farmers who had been sued by the appellant were not entitled to protection under Section 39(1)(iv) of the Act as the said provision is applicable to only small and marginal farmers and only to farmers who were cultivating and selling the plant variety prior to the coming into force of the Act, that is, 2001. Both these conditions were not met by the defendants in the Suit filed by the appellant.

25. The learned senior counsel for the appellant submits that, in fact, the Revocation Application filed by the respondent was not maintainable as the respondent is not a 'person interested'. He submits that the Authority failed to appreciate the distinction between Section



21(2) of the Act, which uses the term ‘any person’, vis-a-vis Section 34 of the Act, which uses the term ‘any person interested’. The learned senior counsel for the appellant submits that although ‘any person’ is permitted to oppose the grant of registration, only a ‘person interested’ can oppose the registration which has already been granted. In support he places reliance on *Adi Pherozshah Gandhi v. H.M. Seervai*, 1970 (2) SCC 484.

26. The learned senior counsel for the appellant submits that the respondent is wrongly attempting to portray the present appeal as being about farmer’s rights. He submits that the only question in the appeal is of the correctness or otherwise of the Impugned Order passed by the Authority.

27. He submits that the respondent, in answer to the appeal, has raised new grounds and submissions, which cannot be allowed to be raised. In support, he places reliance on *Saurav Jain & Anr. v. A.B.P. Design & Anr.*, 2021 SCC OnLine SC 552; and *Ramanbhai Ashabhai Patel v. Dabhi Ajitkumar Fulsinji & Ors.*, (1965) 1 SCR 712.

### **SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE RESPONDENT**

28. The learned senior counsel for the respondent submits that the impugned order suffers from no infirmity. He submits that even in the revised application, the appellant had ticked the box against ‘new variety’ instead of and in place of ‘extant variety’. He submits that this was a deliberate attempt on part of the appellant to provide incorrect information. He submits that the Registrar could not have treated the



application filed by the appellant as one for ‘extant variety’. In doing so, the Registrar exceeded his jurisdiction. He submits that in the revocation proceedings, the appellant falsely claimed that the application form had been later corrected in hand. This was found by the Authority to be a false assertion.

29. He submits that ‘extant variety’ has different implications in terms of Section 8(2)(a) of the Act read with Rule 22(2A) of the Rules. He submits that the first date of sale of FL 2027 being 2002 in Chile, it became ineligible for registration after 2017. He further submits that in terms of Section 28 of the Act, the right in this variety would vest in the Central Government and the appellant would also not be eligible for seeking renewal of the registration, as the subject variety is now in public domain.

30. He submits that, therefore, Section 34(a) has been rightly invoked by the Authority to revoke the registration granted in favour of the appellant.

31. The learned senior counsel for the respondent submits that Section 18 of the Act, which deals with the “Form of application”, makes it mandatory that every application for registration under Section 14 shall be “in such form as may be specified by the regulations”. Sub-section 3 of Section 18 mandates that where such application is made by virtue of a succession or an assignment of the right to apply for registration, there shall be furnished at the time of making the application, or within such period after making the application as may be prescribed, a proof of the right to make the application. He submits that the form is prescribed in Rule 27 of the



Rules read with Form PV-2. He submits that in the present case, the application of the appellant did not provide any documentary proof of the right in the appellant to make the application. In fact, there was no valid assignment of such right in its favour. Furthermore, Form PV-2 was not even signed by the Breeder; Assignment Deed was not stamped, which is a requirement even in the laws of USA (*§2531 Plant Variety Protection, Part J: Ownership and Assignment*). The said provision also requires a ‘certificate of acknowledgment’ under the hand and official seal of the person authorised to administer oath within the United States of America. The letter from FLNA to the appellant did not meet the requirement of assignment; it was merely a clarification. He submits that Section 34(b) was, therefore, rightly invoked by the Authority to revoke the registration granted in favour of the Appellant.

32. The learned senior counsel for the respondent submits that integrity of an IPR regime has to be maintained diligently and cannot be compromised by negligent and arrogant approach, as done by the appellant. The registration, having been wrongly given, was rightly revoked as it should not have been given in the first place.

33. The learned senior counsel for the respondent submits that the Act has been enacted primarily to safeguard the farmers’ rights, and that intellectual property rights conferred by the Act should not interfere with the customary or *apriori* Rights of the farmers over centuries. He submits that the rights of the breeders are subject to the rights of the farmers. He submits that amendments were made in the Original Bill tabled in the Parliament in 1999, with the inclusion of a



separate chapter on farmer's rights. The amendment was based on recommendations of a Joint Parliamentary Committee. While Section 39(1)(iv) was included, Section 34 which was part of the Original Bill was deleted. He submits that in terms of Section 8(2)(e) of the Act, it is the duty of the Authority to protect the rights of the farmers. Referring to the report "Seed Giant vs US Farmers" dated 2013, he submits that India cannot allow the corporates to run over the interest of the farmers.

34. He submits that in terms of Section 39(1)(iv) of the Act, the farmer can save, use, sow, re-sow, exchange, share or sell his farm produce, including seed of a variety protected under the Act, provided only that the farmer is not entitled to sell branded seed of a variety protected under the Act. He submits that the appellant intended to the use registration granted in its favour to prevent the farmers from sowing, using, re-sowing, exchanging, sharing and selling their farm produce. He submits that the appellant abused the registration by filing suits against some potato farmers in Gujarat, claiming exorbitant and arbitrary sums of money as damages. Such acts were intended to cause intimidation, harassment and severe anxiety amongst the farmers. The registration was, therefore, rightly revoked under Section 34(h) of the Act.

### **Analysis and Findings**

35. I have considered the submissions made by the learned senior counsels for the parties.

36. The Act, in its preamble provides that it has been enacted to establish an effective system for protection of plant varieties, the



rights of the farmers and the plant breeders, and to encourage the development of new varieties of plants. It further records that India, having ratified the Agreement on Trade Related Aspects of Intellectual Property Rights should *inter alia* make provision for giving effect to sub paragraph (b) of paragraph 3 of Article 27 in Part II of the said Agreement relating to protection of plant varieties. The Act is intended to give effect to the above provision of the TRIPS Agreement.

37. As observed in *Emergent Genetics India Pvt. Ltd. v. Shailendra Shivam & Ors.*, 2011 SCC OnLine Del 3188, the Act is the legislative expression of the nature of intellectual property which can be secured in respect of plant varieties. In *Sungro Seeds Ltd v. Dr. S.K. Tripathi & Ors.*, 2020 SCC OnLine Del 591, it was observed that the rights conferred by the Act on the breeder of a plant variety are a facet of intellectual property and fall in the same domain as trade marks, copyright, patents and design. The rights conferred by the Act are statutory rights, created for the first time vide and under the Act and which did not exist under common law.

38. In *Maharashtra Hybrid Seeds Co. Ltd. v. Union of India and Ors.*, AIR 2012 Delhi 87, it has been held that protection towards a plant variety is granted to an applicant with the obligation of making a complete disclosure of the development claimed in the plant variety. This obligation could ensure that at the end of the period of statutory protection, the plant variety so protected could be produced by any person. This is similar to the requirements of the Patents Act, 1970



which also grants a monopoly in exchange of a complete disclosure.

The relevant extract of the said judgement is as under:

*“11. Having heard learned counsel for the parties, I am of the view that there is no merit in this petition. The same is liable to be dismissed. In my view, there is a fundamental flaw in the submission of the petitioner that while making an application under the Act to seek registration of a plant variety, the applicant furnishes to the Registrar any confidential information, i.e. any information which the Registrar can hold in confidence. The whole concept of the law of patents, as also of the Act, is that the registration applicant, who claims to have developed a new invention or a new plant variety, may get the same registered so as to claim statutory protection for the period provided under the law. Under the Act, this protection is granted for the period prescribed by section 24(6) read with section 28 of the Act. However, this right/protection is coupled with the obligation that the applicant should make a complete disclosure of his claimed invention/development of plant variety in all its detail, so that at the end of the period of statutory protection the invention/developed plant variety may be produced by any person. In this regard, reference may be made to section 18, which prescribes the form of application for registration of a plant variety. The information required to be furnished by the applicant includes, inter alia,:*

*(e) contain a complete passport data of the parental lines from which the variety has been derived along with the geographical location in India from where the genetic material has been taken and all such information relating to the contribution, if any, of any farmer, village community, institution or organization in breeding, evolving or developing the variety;*





*(f) be accompanied by a statement containing a brief description of the variety bringing out its characteristics of novelty, distinctiveness, uniformity and stability as required for registration.”*

39. Section 28 of the Act states that the registration for a variety issued under the 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. This right is, however, subject to the other provisions of the Act. Section 28(1) of the Act is reproduced herein below:

*“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 establishes 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 Seeds Act, 1966 (54 of 1966), the State Government, shall be deemed to be the owner of such right.”*

40. Section 39 of the Act, on the other hand, states and provides for the farmer’s rights. It is reproduced as under:

*“39. Farmers’ rights.—(1) Notwithstanding anything contained in this Act,—*

*(i) a farmer who has bred or developed a new variety shall be entitled for registration and*



*other protection in like manner as a breeder of a variety under this Act;*

*(ii) the farmers' variety shall be entitled for registration if the application contains declarations as specified in clause (h) of sub-section (1) of section 18;*

*(iii) a farmer who is engaged in the conservation of genetic resources of land races and wild relatives of economic plants and their improvement through selection and preservation shall be entitled in the prescribed manner for recognition and reward from the Gene Fund:*

*Provided that material so selected and preserved has been used as donors of genes in varieties registrable under this Act;*

*(iv) a farmer shall be deemed to be entitled to save, use, sow resow, exchange, share or sell his farm produce including seed of a variety protected under this Act in the same manner as he was entitled before the coming into force of this Act:*

*Provided that the farmer shall not be entitled to sell branded seed of a variety protected under this Act.*

*Explanation.—For the purpose of clause (iv), “branded seed” means any seed put in a package or any other container and labelled in a manner indicating that such seed is of a variety protected under this Act.*

*(2) Where any propagating material of a variety registered under this Act has been sold to a farmer or a group of farmers or any organisation of farmers, the breeder of such variety shall disclose to the farmer or the group of farmers or the organisation of farmers, as the case may be, the expected performance under given conditions, and if such propagating material fails to provide such performance under such given*



*conditions, the farmer or the group of farmers or the organisation of farmers, the case may be, may claim compensation in the prescribed manner before the Authority and the Authority, after giving notice to the breeder of the variety and after providing him an opportunity to file opposition in the prescribed manner and after hearing the parties, may direct the breeder of the variety to pay such compensation as it deems fit, to the farmer or the group of farmers or the organisation of farmers, as the case may be.”*

41. The Act, therefore, recognises both the breeder’s rights as well as the farmer’s rights and seeks to provide a balance between the two. Other provisions like for the Compulsory Licence, as provided in Chapter VII of the Act, are also relevant for shedding light on the true object of the Act, being to bring a balance between the rights of the plant breeders, so as to encourage development of new varieties of plants, and the rights of the farmers’, as India is an agrarian economy. I, however, for the purpose of the present appeal need not go too deep into the same.

42. As is evident from the submissions of the learned senior counsels for the parties, the issue to be determined by this Court in the present appeal is as to whether the Authority has erred in revoking the registration granted to the appellant by invoking grounds mentioned in Section 34(a), (b), (c) and (h) of the Act. The said provisions are reproduced hereinunder:

**“34. Revocation of protection on certain grounds.—***Subject to the provisions contained in this Act, the protection granted to a breeder in respect of a variety may, on the application in the prescribed manner of any person*



*interested, be revoked by the Authority on any of the following grounds, namely:—*

*(a) that the grant of the certificate of registration has been based on incorrect information furnished by the applicant;*

*(b) that the certificate of registration has been granted to a person who is not eligible for protection under this Act;*

*(c) that the breeder did not provide the Registrar with such information, documents or material as required for registration under this Act;*

xxxx

*(h) that the grant of the certificate of registration is not in the public interest:*

*Provided that no such protection shall be revoked unless the breeder is given a reasonable opportunity to file objection and of being heard in the matter.”*

**Section 34(a) of the Act:**

43. Section 34(a) of the Act provides that the protection granted to a breeder in respect of a variety may be revoked by the Authority on the ground that the grant of the certificate of registration has been based on incorrect information furnished by the applicant. For invoking the said provision, the Authority in its impugned order has stated that the appellant had, in its application, wrongly applied for registration under the category of “new variety” instead of “extant variety”, and secondly, had given an incorrect date of first commercialisation of the variety.

44. It is not in dispute that the appellant, in its application seeking registration, had ticked the box against ‘new variety’ instead of



against ‘extant variety’. The Registrar, without insisting upon the appellant to amend its application, proceeded to consider the application as one filed for seeking registration of FL 2027 as an ‘extant variety’, and granted registration. The Authority, however, in the impugned order has found fault with this.

45. As noted hereinabove, the learned senior counsel for the appellant submits that there was a clerical error in the application, for which the registration granted could not have been revoked. On the other hand, the learned senior counsel for the respondent maintains that as different rules apply to the ‘extant variety’ as compared to the ‘new variety’, the insistence of the Authority on a proper application, and in absence thereof, ordering revocation of the registration is fully justified.

46. To answer the above submissions, a few provisions of the Act need to be noticed.

47. Section 2(j) of the Act defines the term ‘extant variety’ as under:

*“2. Definitions.—In this Act, unless the context otherwise requires,—*

*xxxx*

*(j) “extant variety” means a variety available in India which is —*

*(i) notified under section 5 of the Seeds Act, 1966 (54 of 1966); or*

*(ii) farmers’ variety; or*

*(iii) a variety about which there is common knowledge; or*



(iv) any other variety which is in public domain;”

48. There is no dispute that the FL 2027 is an ‘extant variety’.
49. Section 14 of the Act states that any person specified in Section 16 of the Act may make an application to the Registrar for registration of *inter alia* an ‘extant variety’.
50. Section 15(2) of the Act states that an ‘extant variety’ shall be registered under this Act within a specified period if it conforms to such criteria of distinctiveness, uniformity and stability (DUS) as specified in the regulation.
51. Section 15(3)(b), (c), and (d) state what is meant by variety being ‘distinct’, ‘uniform’, and ‘stable’ respectively.
52. Section 15(1) of the Act states that a ‘new variety’ shall be registered under the Act if it conforms to criteria of novelty, distinctiveness, uniformity and stability. Therefore, for a ‘new variety’ the applicant, apart from DUS, has to also satisfy the test of novelty as well.
53. Section 15(3)(a) of the Act states the test to be met of ‘novelty’ for registration of the ‘new variety’.
54. Section 15(4) of the Act prescribes what variety may not be registered as ‘new variety’.
55. Section 15 of the Act is reproduced hereinunder:

*“15. Registrable varieties.—(1) A new variety shall be registered under this Act if it conforms to the criteria of novelty, distinctiveness, uniformity and stability.*



(2) Notwithstanding anything contained in sub-section (1), an extant variety shall be registered under this Act within a specified period if it conforms to such criteria of distinctiveness, uniformity and stability as shall be specified under the regulations.

(3) For the purposes of sub-sections (1) and (2), as the case may be, a new variety shall be deemed to be—

(a) novel, if, at the date of filing of the application for registration for protection, the propagating or harvested material of such variety has not been sold or otherwise disposed of by or with the consent of its breeder or his successor for the purposes of exploitation of such variety—

(i) in India, earlier than one year; or

(ii) outside India, in the case of trees or vines earlier than six years, or in any other case, earlier than four years, before the date of filing such application:

Provided that a trial of a new variety which has not been sold or otherwise disposed of shall not affect the right to protection:

Provided further that the fact that on the date of filing the application for registration, the propagating or harvested material of such variety has become a matter of common knowledge other than through the aforesaid manner shall not affect the criteria of novelty for such variety;

(b) distinct, if it is clearly distinguishable by at least one essential characteristic from any another variety whose existence is a matter of common knowledge in any country at the time of filing of the application.

*Explanation.*—For the removal of doubts, it is hereby declared that the filing of an application for the granting of a breeder's



*right to a new variety or for entering such variety in the official register of varieties in any convention country shall be deemed to render that variety a matter of common knowledge from the date of the application in case the application leads to the granting of the breeder's right or to the entry of such variety in such official register, as the case may be;*

*(c) uniform, if subject to the variation that may be expected from the particular features of its propagation it is sufficiently uniform in its essential characteristics;*

*(d) stable, if its essential characteristics remain unchanged after repeated propagation or, in the case a particular cycle of propagation, at the end of each such cycle.*

*(4) A new variety shall not be registered under this Act if the denomination given to such variety—*

*(i) is not capable of identifying such variety; or*

*(ii) consists solely of figures; or*

*(iii) is liable to mislead or to cause confusion concerning the characteristics, value identity of such variety or the identity of breeder of such variety; or*

*(iv) is not different from every denomination which designates a variety of the same botanical species or of a closely related species registered under this Act; or*

*(v) is likely to deceive the public or cause confusion in the public regarding the identity of such variety; or*

*(vi) is likely to hurt the religious sentiments respectively of any class or section of the citizens of India; or*





(vii) is prohibited for use as a name or emblem for any of the purposes mentioned in section 3 of the Emblems and Names (Prevention of Improper Use) Act, 1950 (12 of 1950); or

(viii) is comprised of solely or partly of geographical name:

*Provided that the registrar may register a variety, the denomination of which comprises solely or partly of a geographical name, if he considers that the use of such denomination in respect of such variety is an honest use under the circumstances of the case.”*

56. A reading of the above provision would show that for a ‘new variety’, an additional condition of it being ‘novel’ has to be met. This distinction was highlighted by this Court in ***Pioneer Overseas Corporation v. Chairperson, Protection of Plant Varieties and Farmers Rights and Ors.***, 262(2019) DLT 411. It also has to meet additional requirements as provided in Section 15(4) of the Act. However, as provided under Section 24(6) of the Act, the period of registration is the same for the ‘new variety’ and the ‘extant variety’. Section 24(6) of the Act is reproduced herein below:

**“24. Issue of certificate of registration**

xxx

*(6) The certificate of registration issued under this section or sub-section (8) of section 23 shall be valid for nine years in the case of trees and vines and six years in the case of other crops and may be reviewed and renewed for remaining period on payment of such fees as may be fixed by the rules made in this behalf subject to the condition that the total period of validity shall not exceed,—*



*(i) in the case of trees and vines, eighteen years from the date of registration of the variety;*

*(ii) in the case of extant variety, fifteen years from the date of the notification of that variety by the Central Government under section 5 of the Seeds Act, 1966 (54 of 1966); and*

*(iii) in other cases, fifteen years from the date of registration of the variety.”*

57. The appellant, therefore, had nothing to gain by misrepresenting FL 2027 as a ‘new variety’, as against what it truly was, an ‘extant variety’.

58. The learned senior counsel for the respondent, however, places reliance on Rule 22(2A) of the Protection of Plants Varieties’ and Farmers’ Rights (Amendment) Rules, 2015, which reads as under:

*“(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.”*

59. The learned senior counsel for the respondent contends that the appellant gained by furnishing such incorrect information as, for an ‘extant variety’, the Authority shall register the same only if, at the date of filing of the application for registration, such variety has not been sold for a period of 15 years.



60. I am unable to accept the contention of the learned senior counsel for the respondent. The Authority, in the impugned order had found the date of first sale of FL 2027 by the appellant as 2002 in Chile. Even taking this date as the first date of sale, the appellant would not have fallen foul of the above Rule as on the date of the application.

61. To consider the effect of the error made by the appellant in ticking the box next to the 'new variety' for purposes of Section 34(a) of the Act, reference also needs to be made to the correspondence exchanged between the appellant and the Registrar in relation to the appellant's application.

62. The appellant had filed its initial application seeking registration, on 18.02.2011. The Registrar vide letter dated 09.06.2011, *inter alia* called upon the appellant to give an explanation on the following:

*“(10) The candidate variety is new or extant, as per section 15(3)(a) of the Act 2001. Please clarify.”*

63. The appellant, in its letter dated 08.02.2012, stated that its application is to be considered under the category of “extant” instead of “new”. The letter is reproduced hereinbelow:

*"Date: February 8, 2012  
To,  
Dr. Manoj Srivastva,  
The Registrar, Protection of Plant Varieties  
and Farmer's Right Authority  
Ministry of Agriculture, Govt. of India NASC  
Complex, DPS Marg, Opp. Todapur Village  
New Delhi - 110012.  
Subject: Potato Varieties for protection  
Dear Sir,*



*This is in reference to the 3-applications for 3 Potato varieties filed in PPV & FRA Authority by PepsiCo India Holdings Pvt. Ltd. on February 18th, 2011. Detail of the applications is as follows:*

*Candidate variety FL 1867 receipt no. 4283*

*Candidate variety FL 1879 receipt no. 4284*

*Candidate variety FL 2027 receipt no. 4285*

*From the PPV & FRA authority we have received letters referencing REG/2011/151;REG/2011/152;REG/2011/153 dated 9th June 2011 suggesting some corrections and asking for some additional information.*

*To fulfil the information requested, we had to get this from USA that took some time. Another major correction was to apply under the category of EXTANT instead of NEW.*

*To apply under new variety category, we have deposited pay link check of Rs.10,000 for each variety, while under extant category applicable fee is Rs. 5,000 per application.*

*Request you to kindly consider the change of category and suggest the way forward to adjust/refund the additional amount deposited in on above account.*

*With sincere thanks*

*SD/-*

*(Dr. Rahul Chaturvedi)*

*Vice President Agro (R&D)"*

*(Emphasis supplied)*

64. The appellant also filed a revised application wherein details of its registration in USA were given, however, in column 5, it again ticked against the 'new variety' under the column 'type of variety'.

65. On 14.06.2012, the Registrar again wrote to the appellant stating that its application is being considered under the 'extant category'. The relevant extracts from the letter are as under:



*"Kindly refer to your proposals for registration of Potato, denomination FL 2027 filed on 18.02.2011 as new variety and later as an extant variety. In this connection, it is stated that the candidate variety is being considered for registration under extant category. The registration fee of extant variety (VCK) is Rs. 5000/- for applicants under commercial category. You have already submitted registration fee of Rs.10000/- under new category. The remaining amount of Rs. 5000/- will be adjusted in DUS test fee. DUS test fee for varieties under extant (VCK) category is Rs. 24,000/-. You are therefore requested to submit remainder DUS test fee of Rs. 19,000/- for further necessary action."*

*(Emphasis supplied)*

66. It was only thereafter, that the registration was granted in favour of the appellant.

67. Section 20 of the Act states that on receipt of an application, the Registrar may, after making such enquiry as he thinks fit with respect to the particulars contained in such application, accept the application absolutely or subject to such conditions or limitations as he may deem fit. It further provides that in case the Registrar is satisfied that the application does not comply with the requirements of the Act or any Rules or Regulations made thereunder, he may require the applicant to amend the application to his satisfaction.

68. In the present case, the Registrar raised certain queries against the first application filed by the appellant. The appellant, in answer, amended its application and filed a revised application. The revised application filed, admittedly, had an error. The Registrar, instead of



calling upon the appellant to amend the application, proceeded to consider the application as if such amendment had been made.

69. In view of the above facts, the appellant could not have been held guilty of having obtained the registration by providing incorrect information with respect FL 2027 being a ‘new variety’. The said mistake could not have provided a ground to the Authority to revoke the registration granted to the appellant by invoking Section 34(a) of the Act. This was a clerical error, which was noticed by the Registrar and the registration was granted in the correct category.

70. The second ground taken by the Authority to order revocation of the registration of the appellant under Section 34(a) of the Act, is the incorrect date of commercialisation of the variety given by the appellant in its application.

71. In the application, the appellant had stated as under:

*“9. Has the candidate variety has commercialized or otherwise exploited?”*



yes



no

*If yes, please indicate the following:*

*Date of the first sale of the variety : 17/12/2009*

*Country (ies) where Protection is made: India*

*Denomination used FL 2027*

*Trademark used, if any: FC-5*

*Variation in important trait with Respect to first filing (attach sheet).”*

72. The learned senior counsel for the appellant has submitted that the above error occurred because the form was not clear on whether the date of the first sale in India has to be mentioned or the first sale in any other part of the world has to mentioned. He submits that the



Authority had found the first sale of the variety to be in the year 2002 in Chile. The appellant, even taking the first sale as 2002, would have been entitled to grant of registration. He submits that, therefore, this *bona fide* mistake of the appellant could not have been treated as an incorrect information furnished by the appellant.

73. On the other hand, as noted hereinabove, the learned senior counsel for the respondent states that an incorrect date for the first sale was intentionally given by the appellant as the appellant would have otherwise not been entitled to seek registration; fifteen years having passed from the date of the first sale.

74. On the plea of there being an ambiguity in the form, I find no merit in the submission of the learned senior counsel for the appellant. The form is clear inasmuch as under the heading “Has the candidate variety been commercialised or otherwise exploited”, immediately after asking the applicant of the “date of first sale of the variety”, it seeks from the applicant the “country(ies) where protection is made”. There was, therefore, no occasion for the appellant to misconstrue the said provision in the form as seeking the date of the first sale made only in India. This information is also important as Rule 22(2A), relied upon by the learned senior counsel for the respondent, provides that the registration to ‘extant variety’ shall not be granted if on the date of the application, fifteen years have passed from the date of the first sale. The date of the first exploitation/sale was, therefore, important and material information for the application. It is not relevant if such date, otherwise, would not materially affect the eventual grant of the registration. For the purposes of Section 34 (a)



of the Act, what is important is that the Certificate of Registration has been obtained on an incorrect information furnished by the applicant. The onus of providing correct information in the application is on the applicant and the applicant cannot shift this onus on the Authority or, having given incorrect information, plead that no difference would have resulted in the consideration of the application had correct information been provided by the applicant. As noted herein above, the Act confers statutory rights on the applicant which were otherwise not available to the applicant but for the Act. The applicant must therefore, be put to strict and vigilant compliance with the requirements of the Act, the Rules, and the Regulations, failing which it opens itself up to revocation of the registration granted.

**Section 34(b) and (c) of the Act:**

75. I also find that no ground for interference with the impugned order has been made out by the appellant, as even otherwise, the application of the appellant was deficient for its failure to provide necessary documents required under Section 16 read with Section 18(3) of the Act, and Rule 27 read with Form PV-2 of Rules, at the time of seeking registration.

76. Section 16 of the Act states that an application for registration may be made *inter alia* by any person being the assignee of the breeder of the variety in respect of the right to make such application or by any person authorised in the prescribed manner by a person specified under Clauses (a) to (d) of Section 16 of the Act to make application on his behalf. Section 16 of the Act is reproduced hereinbelow:





***“16. Persons who may make application.—***

*(1) An application for registration under section 14 shall be made by—*

*(a) any person claiming to be the breeder of the variety; or*

*(b) any successor of the breeder of the variety; or*

*(c) any person being the assignee of the breeder of the variety in respect of the right to make such application; or*

*(d) any farmer or group of farmers or community of farmers claiming to be the breeder of the variety; or*

*(e) any person authorised in the prescribed manner by a person specified under clauses (a) to (d) to make application on his behalf; or*

*(f) any university or publicly funded agricultural institution claiming to be the breeder of the variety.*

*(2) An application under sub-section (1) may be made by any of the persons referred to therein individually or jointly with any other person.”*

**77.** Sub-section 3 of Section 18 of the Act provides that where such application is made by virtue of an assignment of the right to apply for registration, there shall be furnished at the time of making the application, or within such period after making the application as may be prescribed, a proof of the right to make the application. Sub-section 3 of Section 18 is reproduced hereinbelow:

***“18. Form of application -.—(1) Every application for registration under section 14 shall—***



xxxx

*(3) Where such application is made by virtue of a succession or an assignment of the right to apply for registration, there shall be furnished at the time of making the application, or within such period after making the application as may be prescribed, a proof of the right to make the application.”*

78. Rule 27 of the Rules prescribes that where the application for registration is made by the assignee, he shall, at the time of making such application or within six months of making such an application, furnish documentary proof in the manner specified in Form PV-2 given in the First Schedule. Form PV-2 which is prescribed in Rule 27 of the Rules requires the breeder to sign the same in the presence of two witnesses. Rule 27 and Form PV 2 are reproduced hereinbelow:

*“27. Proof of the right of making application under sub-section (3) of section 18.—*

*(1) Where an application for registration is made by the successor or assignee of the breeder under sub-section (3) of section 18, he shall furnish documentary proof, at the time of making such application or within six months of making such an application, as to the right to make such an application for registration.*

*(2) The documentary proof, in case of an assignment, shall be furnished in the manner specified in Form PV-2, given in the First Schedule and in case of succession, or a succession certificate or any other document in support of succession proving the applicant to be the successor shall be furnished.*



**FORM - PV 2**  
**[See rule 27(2)]**  
**THE PROTECTION OF PLANT VARIETIES AND FARMERS'**  
**RIGHTS ACT, 2001**  
**PROOF OF RIGHT TO MAKE APPLICATION**

I/We<sup>1</sup>

.....  
 referred to in this application as claiming to be the breeder or plant variety right holder hereby declare that the applicant(s) who has/have signed this application is/are my/our assignee(s) or successor(s).

I/we hereby enclose herewith the following documents as required under rule 27(2):-

1. ....
2. ....
3. ....

I/we hereby declare that the information given above is true and correct to the best of my/our knowledge and belief.

Dated-----this.....day of .....200 Signature<sup>2</sup>

Signatures of two witnesses along with their names and address :

1. ....
2. ....

I/We also hereby declare that the information given above are true to the best of my/our knowledge and belief.

Dated-----this.....day of .....200

Note :- Strike out whichever is inapplicable.

To  
 The Registrar  
 The Plant Varieties Registry At ....  
 Signature .....

<sup>1</sup>Insert (in full) name, address and nationality.

<sup>2</sup> To be signed by the Breeder or true Plant Variety Right holder(s)

**79.** In the present case, the appellant had filed Form PV-2 in blank and without the signatures of the breeder or FLNA, the alleged assignee of the breeder. The form is reproduced hereinbelow:



80. Section 34(c) of the Act states that the registration may be revoked by the Authority *inter alia* on the ground that the breeder did not provide the Registrar with such documents as required for registration under the Act. The said provision was clearly attracted and has been rightly invoked by the Authority.

81. In the course of the revocation proceedings, the appellant produced and relied upon the following letter issued by FLNA:



Date September 12, 2019

To,  
The Protection of Plant Variety and Farmers Rights Authority,  
NASC Complex, DPS Marg,  
Opp. Todapur Village,  
New Delhi-110012

Subject: Clarification in relation to the Certificate of Registration No. 59 of 2016 and FORM 1 submitted by PepsiCo India Holdings Private Limited dated February 16, 2012

Sir,

We, Frito-Lay North America Inc. ('Frito-Lay') (formerly known as Recot Inc.), are writing to you to state the following -

1. PepsiCo India Holdings Private Limited ('PIH') and Frito-Lay North America, Inc. ('FLNA') are affiliates of PepsiCo, Inc.
2. FLNA and its affiliates throughout the world work together to protect FLNA's proprietary potato varieties with patents, Plant Breeders' Rights and, in the case of India, registration under the Protection of Plant Varieties and Farmers Rights Act, 2001 ('the PV Act').
3. FLNA allowed PIH to file the application for registration of FL-2027 under the PV Act, for the potato variety known as FL-2027 under the PV Act in India, vide application dated February 16, 2012 for which registration was granted vide Certificate of Registration No. 59 of 2016 dated February 1, 2016.

Please take note of the above-stated clarification(s) for your record and reference.

Sincerely,

Paul W. Schrier, Ph.D.  
Assistant Secretary  
Frito-Lay North America, Inc.



82. The above letter is not in compliance with Form PV-2 and is post the grant of the registration. Therefore, the same has rightly not relied upon by the Authority. It cannot act to absolve the appellant of a lacuna in its application.

83. The impugned order records that the Assignment Deed produced by the appellant from the breeder, Dr. Robert W. Hoopes, to Recot Inc. cannot have been relied upon being unstamped and the proof of change of name not been filed. In fact, the Authority, in the impugned order, has held that, "The Assignment Deed is inadmissible in evidence as there are too many omissions to even consider the document as any valid document of evidence in principle."

84. On the issue of stamping, while I find merit in the submission of the learned senior counsel for the appellant that even if the Assignment Deed is declared to be insufficiently stamped, the same should have been impounded by the Authority and the Authority should have followed the procedure prescribed in Section 35 of the Indian Stamp Act, 1899, instead of summarily rejecting the same on this ground, admittedly, the Assignment Deed was not before the Registrar at the time of grant of registration. He had no opportunity to seek any clarification on the same from the appellant. The appellant had, therefore, failed to prove that it was eligible for protection under the Act by providing "such information and documents or material as required for registration under this Act."

85. The appellant has, in fact, in these proceedings, sought to rely upon the registration of the assignment by the patent authority in USA in favour of FLNA. It is evident that at each stage of these



proceedings, the appellant is trying to improve upon its application and to remove the deficiencies.

86. Be that as it may, the fact remains that the application filed by the appellant was deficient and the Authority, under Section 34(b) and (c) of the Act, was justified in revoking the registration granted.

87. The learned senior counsel for the appellant has contended that had the above deficiencies been pointed out by the Registrar in terms of Section 20(2) of the Act, the appellant could have rectified the same by filing an amended application and, therefore, the appellant has been denied an opportunity to make the application in conformity with the Act and the Rule, and the appellant has been prejudiced by the revocation of the registration granted.

88. I find no merit in the above submission. Section 20(2) of the Act is reproduced herein below:

***“20. Acceptance of application or amendment thereof.-***

xxxxx

*(2) Where the Registrar is satisfied that the application does not comply with the requirements of this Act or any rules or regulations made thereunder, he may, either-*

*(a) require the applicant to amend the application to his satisfaction; or*

*(b) reject the application:  
Provided that no application shall be rejected unless the applicant has been given a reasonable opportunity of presenting his case.”*

89. A reading of the above provision would show that where the Registrar finds that the application seeking registration does not comply with the requirements of the Act or any Rules or Regulations



made thereunder, he may either require the applicant to amend the application to his satisfaction, or reject the same. However, no application shall be rejected unless the applicant has been given a reasonable opportunity of presenting his case. As it is evident from the above narration of facts, the Registrar, on the initial application filed by the appellant, had raised queries and granted opportunity to the appellant to rectify the mistakes/deficiencies. The appellant filed an amended application, however, again with the deficiencies as have been found by the Authority. The Registrar, however, proceeded to grant registration in favour of the appellant. The fact, remains that in spite of opportunity granted, the application filed by the appellant was not in conformity with the Act, the Rules, and the Regulations. The appellant is now suffering for its own mistakes and for its casual manner of making application seeking the registration. The appellant cannot pass this blame on the Registrar or claim equity for its own folly. The grant of registration is an act of importance and has wide ramifications as it confers valuable rights on the applicant. The application seeking such registration cannot be made in a casual manner without adherence to the form or the procedure, as was being sought to be done by the appellant. When the Act and the Rules provide for the manner of doing a particular thing, it must be done in that manner or the applicant must be ready to face the consequences thereof. In the present case, the Registrar in the first instance had complied with the Proviso to Section 20(2) of the Act by providing the appellant with an opportunity to rectify the deficiencies in its application. The appellant did not fully take benefit of this opportunity



and, therefore, cannot now be heard to complain of the consequences of its own failure.

90. At this stage, I would also like to caution the Registrar that it has been vested with an important and solemn function under the Act. As registration vest in the applicant valuable rights, the Registrar is duty bound to ensure that the applicant fully qualifies for the grant of such rights. The Registrar is not to act at its whims and fancies as it has not been vested with any unbridled discretion under the Act. The present case, however, is an example of the Registrar not insisting on the compliance of the Act, the Rules and the Regulations from the applicant.

**Section 34(h) of the Act:**

91. Coming to the ground of Section 34(h) of the Act, in my opinion, the same was clearly not made out. Mere filing of the litigations by the appellant against the farmers, even presuming the same to be completely frivolous, cannot be construed as satisfying the test of grant of registration itself not being in public interest. The Authority has, therefore, erred in revoking the registration granted in favour of the appellant.

**Locus of the respondent to file application under Section 34 of the Act:**

92. The submission of the learned senior counsel for the appellant challenging the *locus* of the respondent to file the revocation application before the Authority, also has no merit. Section 21 of the Act states that where an application for registration has been accepted by the Registrar, the Registrar shall cause such application to be advertised, calling for objections from “the persons interested”. Sub-





section 2 of Section 21 states that “Any person” may file such objections/opposition to the registration. Sub-section 3 of Section 21 provides that the opposition may be made *inter alia* on the ground that the grant of certificate of registration may not be in public interest.

93. Sub-section (1), (2) and (3) of Section 21 are reproduced hereinbelow.

**“21. Advertisement of application.—(1)**

*Where an application for registration of a variety has been accepted absolutely or subject to conditions or limitations under sub-section (1) of section 20, the Registrar shall, as soon as after its acceptance, cause such application together with the conditions or limitations, if any, subject to which it has been accepted and the specifications of the variety for registration of which such application is made including its photographs or drawings, to be advertised in the prescribed manner calling objections from the persons interested in the matter.*

*(2) Any person may, within three months from the date of the advertisement of an application for registration on payment of the prescribed fees, give notice in writing in the prescribed manner, to the Registrar of his opposition to the registration.*

*(3) Opposition to the registration under sub-section (2) may be made on any of the following grounds, namely:—*

*(a) that the person opposing the application is entitled to the breeder’s right as against the applicant; or*

*(b) that the variety is not registrable under this Act; or*

*(c) that the grant of certificate of registration may not be in public interest; or*



*(d) that the variety may have adverse effect on the environment.”*

94. The term “any person” and “any person interested” have been used interchangeably in the Act and also in the Rules, that is Rule 52, which is reproduced herein below:

*“52. Application for revocation of protection granted to a breeder under section 34.- Any person may make an application to the Authority in Form PV-15 of the First Schedule, for revocation of protection granted to a breeder in respect of a variety on any of the grounds laid down under clauses (a) to (h) of section 34.”*

*(Emphasis supplied)*

95. Though, Section 34 again states that an application seeking revocation may be filed by “any person interested”, one of the grounds for revocation is that the grant of certificate of registration is not in public interest. “Any person interested”, therefore, has to be interpreted in the context of the above provision, and would also include within its ambit and scope a “public-spirited person” who files for revocation of the registration in public interest.

96. I, therefore, find no merit in the challenge of the appellant to the *locus* of the respondent.

97. In view of the above, I find no merit in the present appeal. The same is dismissed. All pending application(s) shall stand disposed of. There shall be no order as to costs.

**NAVIN CHAWLA, J.**

**JULY 05, 2023/Ais/SS/AM**