

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

Oppn. No.1 of 2022

IN THE MATTER OF: Application for DUS/ Special Test and cross examination of witness filed by Opponent in Opposition filed by PAN Seeds against registration of BANGABANDHU-1 filed by Mali Agri Tech Pvt. Ltd., for registration of rice variety.

IN THE MATTER OF: -

M/S. PAN Seeds Pvt. Ltd.,

..... Opponent

-Versus-

M/S. Mali Agri Tech Pvt. Ltd.,

..... Applicant

For the Opponent: Mr. Abhishek Saket, Advocate for M/s. Infini Juridique.

For Applicant: Dr. Anushri Gupta, Attorney for M/s. Anushri Gupta & Associates

ORDER

By this order I shall dispose of the application dated 21st February, 2023 filed by the Opponent in the instant matter praying for Conducting DUS test in the field as well as DNA testing on two varieties to establish the identity of two varieties and also allow the opponent to cross-examine the witness of the non-opponent.

For the sake of convenience parties are referred to in the nomenclature as in the opposition proceedings.



BRIEF FACTS OF THE CASE: -

On May 01, 2013 the Applicant has filed an application for registration of new rice variety for the registration having denomination BANGABANDHU-1 of Crop- RICE (Oryza Sativa L.). The application was advertised in Plant Variety Journal of India, Vol.15, No.12, December 01, 2021, published on January 06, 2022. The Opponent filed the instant opposition.

While the opposition was proceeding, both the parties filed their pleadings and evidence and the matter was posted for final hearing on 21st February, 2023. During the final hearing the applicant filed the instant application to conduct DUS test in the field as well as DNA testing on applicant's and opponent's varieties namely BANGABANDHU-1 and PAN-804 to establish the identity of two varieties and also allow the opponent to cross-examine the witness of the non-opponent.

The Applicant filed their reply and the Opponent filed their rejoinder and both the parties filed their written submissions.

Parties were heard on 30th April, 2024 and the judgement was reserved.

CASE OF THE APPLICANT:

That the present opposition has been filed on the ground that the variety BANGABANDHU-1 of the Applicant is identical to registered variety PAN-804 of the Opponent. Reliance in this regard has been placed on the DNA test conducted by third party as well as the publication made by PPVFR Authority on the basis of claims of applicant. PAN-804 has not been tested by the Authority with along with Applicant's variety BANGABANDHU-1. Merely conducting a DUS test for acceptance of application has no meaning in the present opposition proceeding and it cannot be stated that the two varieties have been tested in opposition.

In an opposition proceeding two varieties must be compared for its DUS characters as well as DNA testing to establish the identity of the



two varieties. The Opponent's variety has not been tested at any time with BANGABANDHU-1 and therefore vide this application the Applicant is seeking for a special test to be conducted under Section 19. The Applicant has stated that they are fully aware of breeding and development process. The Opponent needs to examine the witness of the Applicant. The Registrar has fixed the matter for hearing without allowing the Opponent to either cross examine the witness or conducting the test in an opposition proceedings and it amounts to denial of natural justice.

The applicant has assumed that there is no provision for either conducting the DUS test in an opposition proceeding or even for cross examination. The contentions of the Applicant are purely based on misplaced legal submission and bereft of the fact that the Hon'ble Delhi High Court has already held in Judgment dated 01.07.2019 in W.P(C) 6470/2013 & W.P. (C) No. 6208/2014. The Opponent is citing the said case to highlight the point that the DUS test report is not binding on the objector and he is at liberty to contest the DUS test on any grounds as available. The Opponent also argues citing the judgement that the Opponent has locus to seek special test. The submission of the Opponent is that the Applicant's variety is nothing but PAN-804 and each of the characters published are identical and for the purpose of evaluation of the two contentious varieties, it is required that the two varieties must be tested together. The cross examination of the applicant's witness is required as the said witness has made several statements which touch upon the law and also on breeding. The said witness has also denied the contents and submissions of Opponent and the same are required to be proved as the witness has made statements which are highly irresponsible and also facts not known to him. The contention of the Applicant that there is no provision for examination of witness is wrong. The Applicant has intentionally ignored the provisions of Section 11 of the PPVFR Act, 2001 which grants power of civil court to the Registrar for the purpose of receiving evidence, administering oaths, enforcing attendance of witness, compelling the discovery and production of documents and issue commission for the examination of witness. The witness of the Applicant



(namely Mr. Rajarshi Kundu) must be summoned for cross examination for the purpose of veracity of his statements. The Hon'ble Supreme Court has held in several judgements that denial of cross-examination amounts to denial of principle of Natural Justice. It has been held that if the right to cross-examination was denied, then the decisions rendered by the courts below suffer from an inherent infirmity and illegality. The Hon'ble Supreme Court has also observed that it is now a settled principle of law that whenever an adjudication of a man's right is to be made he is to be given an opportunity of being heard. This is a cardinal principle of Natural Justice which in every case has to be followed unless, of course, this is statutorily or otherwise specifically excluded, either expressly or by necessary implication. More than six decades ago Lewis J. in R -Vs- Architects' Registration Tribunal ex parte Jaggar, 1945 (2) All ER 131 clearly held that merely bringing to the notice of a party that an evidence exists is not sufficient. In another case where the Court denied cross examination, the Hon'ble Supreme Court observed that an effective opportunity of being heard includes a right to cross examine a witness or complainant the moment his version of the statement is disputed by the charged person. Further in K.L. Tripathi Vs State Bank of India the Hon'ble Supreme Court considered this right to cross examination to form a part of fair play in action. One major purpose of cross-examination is to discredit the testimony of a statement made earlier, written or verbal and to elicit the truth. Accordingly, the application be allowed.

CASE OF RESPONDENT:

The Registrar vide letter No.PPVFRA/Legal/01/2022/3321-22 dated 8th February, 2023 had sufficiently in advance informed the hearing date that is 21st February, 2023 to the Opponent and the Applicant. The Opponent had sufficient opportunities and time to file such application, if so desirous during the course of the pleadings date but choose to file it on the final hearing date 21st February, 2023 despite without being there any legal basis to do the same. It speaks his malafide intentions and adopting tactics to delaying the process of registration of Applicant's variety and



causing harassment to the Applicant. This is not the only occasion but also in previous occasion, the Opponent did not follow the time schedule as prescribed under Rule 31 and the Hon'ble Registrar had levied costs on the Opponent due to non-compliance of time schedule.

Therefore, the instant Application by the Opponent was filed despite having no legal basis to do so on the final hearing date under well thought design to harass the Applicant and to delay the registration process of the Applicant's variety.

The Opponent has filed instant application for conducting special test and DUS test of varieties PAN 804 and BANGABANDHU-1 and for the cross-examination of the witness but the application is not relied on the provisions under the scheme of the Act. Under the Scheme of the Act, the Opponent has no statutory right for cross examination and to request for the tests. The Opponent had preferred the application vexatiously. A combined reading of Section 21(6) of the Act along with 21(7) and Rule 33 provides that there is no provision for cross-examination.

An analysis of the conditions prescribed in the Act shows that evidence, on the anvil of which adjudication, whether the conditions of registration having been satisfied or not depends on documents and appreciation by the Registrar therefore the decision of the Registrar whether conditions prescribed in the Act and Rules for registration of the variety are satisfied or not would not depend on oral testimony and appreciation/ evaluation thereof. For this reason the Legislature has taken away right of cross examination and provided for evidence to be submitted for a limited nature of enquiry which Hon'ble Registrar is required to conduct. It plainly follows that under the Scheme of the Act and Rules the Opponent and the Respondent, if relied upon evidence are required to submit to the Registrar. Thereafter Hon'ble Registrar after hearing the parties under Section 21(7) shall consider the evidence and other documentary material on records and decide grant/ refusal of registration. Therefore, the Opponent's prayer to the Registrar to cross-examine a witness is arbitrary, extra judicial, vexatious and frivolous. The Opponent has no statutory right for cross-examination.



In the Present case, neither the Applicant nor the Opponent has presented to the Registrar, a list of witness. The Opponent has arbitrarily prayed in instant application to cross examine and has also not stated cogent, sufficient cause and bonafide reasons and its purpose in his prayer to cross examination. In accordance to the scheme of the Act, the Applicant has relied upon facts and documents which are submitted on affidavit as evidence. The Applicant has not relied on expert opinions. The Opponent has relied on judgement dated 01.07.2019 of the Hon'ble Delhi High Court in W.P. (C) No.6470/2013 & W.P.(C) No.6208/14 for requesting to conduct special test. In this respect the Applicant states following peculiar facts including material facts of the cited Case Law;

- (i) The applicant's application was advertised by the Protection of Plant Varieties and Farmers' Rights Authority (the Authority) prior to the DUS test and objections could not be included in the opposition;
- (ii) The applicant did not file any counter –statement to the notice of opposition.
- (iii) By virtue of Section 21(4) of the Act, the applicant's application was deemed to have been abandoned.
- (iv) The opponent alleged that almost 100% similarity between the candidate variety and the opponent's variety is based on evidence by a test carried out which revealed that the germplasm of KMH50 was similar to the germplasm of 30V92 to the extent of 99.45% to 99.8% filed by the opponent. The said allegation of opponent remained uncontroverted.

In contrast to the aforesaid facts of sighted case law, the Applicant has filed the point wise counter statement to the Opposition and it has been duly advertised in Plant Variety Journal of India after conduct of DUS test.

The following tabular statements compare the distinct essential characters, agronomic and commercial attributes based on the admitted advertisements and DUS test reports of BANGABANDHU-1 and PAN-804 by the Opponent.



TABLE 1: Distinguishing characters of BANGABANDHU- 1 and PAN 804

Rice		IIRR Hyderabad	
DUS Sl. No	DUS Characteristics	Bangabandu-1 State (Note)	PAN 804 State (Note)
8	Leaf Pubescence of Blade Surface	7	5
16	Leaf : length of blade	3	5
38	Lemma and Palea: colour	4	2
45	Panicle: attitude of branches	3	7
48	Leaf: senescence	3	5
60	Varieties with endosperm of amylose absent only Polished grain: expression of white core	3	1

Source: Comparison done from Plant Variety Journal of India, Vol.15, No.12, December 01, 2021, published on January 06, 2022. Certified copy of DUS Report of PAN 804 received from PPV&FRA.

TABLE 2: Difference in Agronomic and Commercial attributes of BANGABANDHU- 1 and PAN 804

Sl. No.	Agronomic and commercial attributes	Bangabandu-1	PAN 804
1	Days to flowering	115	110



2	1000 grain weight(g)	21.5	21.9
3	Grain yield	27.6 q/acre	9 tonn/ha
4	Tolerant to	Tolerant to sheath blight	-
5	L/B Ratio	2.29	2.90

Source: Plant Variety Journal of India, Vol.15, No.12, December 01, 2021, published on January 06, 2022; and PPV Journal, Volume No. 11, No. 12, of December 19th, 2017.

In spite of stark difference between in facts and circumstances of present case over the sight case law, the Opponent has filed instant application arbitrarily and has fraudulently relied on alleged DNA test which was presented by an extraneous third party in his revocation petition against Opponent's variety PAN-804.

The Applicant has relied on following admissions of the Opponent in the revocation proceedings;

- (i) on page no. 34, lines 17-18 stated that " That the contents of the corresponding para is denied on the ground that alleged DNA test report does not show that it was prepared by the alleged Dr. N Saha. The said report is undated" ,and
- (ii) on page 35, lines 14-21 stated that "...Though the alleged DNA test of the Revocation Applicant confirms the position of Registered Breeder that BB-11 is an infringing variety, however it may also be added here for the sake of legal argument that DNA testing is neither notified nor the basis on which registration is granted. There are several markers and each marker will give different result". It proves that in said revocation proceedings the Opponent has not admitted the alleged DNA test and also negated the alleged DNA test and also admitted DNA testing is neither notified nor the basis on which



registration is granted and also admitted there are several markers and each marker will give different result.

That the Applicant specifically denies Opponents assertion based on paragraph numbers 76, 77 and 78 of the cited Case Law dated 01.07.2019. The Applicant submits that the Opponents reliance on the paragraph numbers 76, 77 and 78 of the cited Case Law are not only misplaced in instant case but the Opponent has ostentatiously not cited relevant paragraph no. 79 of Case Law wherein the Hon'ble Delhi High Court held on page 47 at;

(79) "this court is also of the view that it is not necessary that in every case a DNA test to be conducted by the Registrar. It is open for a party asserting IPR rights to establish that genetic structure of the candidate variety is identical to the variety developed by it. Thus, Pioneer was not precluded from establishing the genotype of KMH50 on the basis of the test conducted by it".

Based on this the burden is on the Opponent to first establish that genetic structure of the BANGABANDHU-1 is identical to the variety PAN-804 however he has failed to discharge this burden. Accordingly the instant application must be dismissed with costs.

The Applicant cites the cases of Swastick Pipes Ltd., -Vs- TT Industries & Ors., (2000 PTC 66) and Financial Times Ltd., -Vs- Times Publishing House Ltd., (234 (2016) DLT 305) to prove that Registrar has no power to allow cross-examination of witness.

ANALYSIS: -

At the outset the Counsel for Applicant has raised that the written submission filed by the Opponent could not be taken on record as the same has been filed belatedly. The Counsel for Opponent instead of answering to this point raised a counter question that the written submission of the Applicant has not been digitally signed and hence cannot be taken on record. This issue has to be set right first. This Registry by order dated 12th March, 2024 in the instant matter ordered that the parties have to file their written submissions two days before the date of final hearing that is on 12th April, 2024 and liberty was given to serve written submission by e-mail. The argument of the applicant is that



the final hearing was fixed on 12th April, 2024 at 03:00 PM and accordingly, the Opponent should have filed written submission on 10th April, 2024 by 03:00 PM but instead the Opponent filed the written submission on the same day that is 10th April, 2024 at 11:02 PM.

In case of e-filing only the day counts and not the time. Further, written submission though a part of the Registry record is not a pleading or evidence to attach such sacrosanct to it. It is only to confine the parties to issues raised during the arguments. It is a point of reference. Further as re-iterated it need not be digitally signed as it is not any form or document prescribed under the PPVFR Rules, 2003. It is only for the purpose to rely on arguments. Hence, the applicability of Rule 6(9)(b) of PPVFR Rules, 2003 on written submissions is not necessary and it need not be digitally signed also. Accordingly, I reject the contentions of both the parties in this regard and the written submissions of both the parties are taken on record.

The next issue I have to adjudicate is whether the application of the opponent for conduct of DUS/Special test between BANGABANDHU-1 and PAN-804 and for cross-examination of witness, could be entertained. This Registry vide Letter No. PPVFRA/Legal/01/2022/3321-22 dated 8th February, 2023 posted this matter for final hearing on 21st February, 2023 and on the said day the Opponent has filed the instant application which is the subject matter of adjudication. On the said day the opportunity to file evidence for both the parties has been closed. Under Rule 33(1) the evidence upon which the Opponent may rely shall have to be submitted in duplicate to the Registrar with a copy to the applicant within one month from the receipt of the counter-statement of the Applicant. In the instant case, the Opponent received the counter-statement filed by the Applicant on 13th August, 2022 and the Evidence was filed by the Opponent on 13th September, 2022 on time. In this regard I here extract the order dated 7th December, 2022 passed by Registry in this matter:

“Having held that the Evidence sent through e-mail on 12th September, 2022 could not be taken on record, next issue that has to be examined is date of filing of Final Opposition by the



Opponent. As the Registry had stated vide their letter No. PPVFRA/Legal/01/2022/2247 dated 21st September, 2022 to the Counsel for Opponent that the Evidence has been received on 15th September, 2022 whereas the Counsel for Opponent had submitted the tracking record of the postal department (Annexure-3 to their written submission) wherein it clearly proves that the Registry has received the same on 13th September, 2022. It is not in dispute that the Opponent has dispatched the Evidence on 12th September, 2022 vide Speed Post Article Number ED233083224IN and as per the tracking record the same has been received by this Registry on 13th September, 2022. In all cases, the Registry is relying on postal tracking records to determine the date of receipt and hence there cannot be an exception to this in the instant case also. Accordingly, I place reliance on the postal tracking records for determining the filing date of Evidence and in the instant matter I take 13th September, 2022 as the date of filing of Evidence.

Having held that the last date for filing of Evidence is on 13th September, 2022 and also having held that the Opponent has filed the Evidence on 13th September, 2022. Now I have to come to the conclusion that the Opponent has filed the Evidence on 13th September, 2022 within the time limit of one month from the date of receipt of counter statement (13th August, 2022). Accordingly, I have to hold that there is no delay in filing of the Evidence.

As there is no delay in filing of the Evidence there is no need to adjudicate the sufficient cause shown in PV-5 application for taking the Evidence on record.”

From the above it is clear that the Opponent has filed the evidence on 13th September, 2022 and in the said evidence the Opponent never requested for DUS / Special test between BANGABANDHU-1 and PAN-804 and also to cross-examine the witness. The Opponent never even provided the list of witness and nothing prevented the Opponent from filing the request made in the instant application before the expiry of time to file the evidence itself. Even in the evidence, nothing regarding DUS test/ special test between BANGABANDHU-1 and PAN-804 and cross examination of witness has been mentioned. Thereafter, as per Rule 33(2) the applicant also filed their evidence on 27th January, 2023. Rule 33(2) provides that any evidence upon which the applicant may rely shall be submitted in duplicate to the Registrar with a copy to the opponent within thirty days of the date of receipt of the Opponent's evidence. In the instant matter, the Opponent received the Applicant's evidence on 28th December, 2022 and filed the same by 27th January, 2023 within the time



mentioned in Rule 33(2) and accordingly the matter was posted for final hearing on 21st February, 2023. On the said day the instant application was filed. It is imminently clear that the said application was filed after closure of evidence of both the parties.

It is no doubt that the instant application seeking DUS/Special test between applicant's variety and Opponent's variety and application to cross-examine Applicant's witness is in substance an application for filing further evidence as already the opponent has exhausted his right to file evidence.

Rule 33(3) of the PPVFR Rules, 2003 provides that no further evidence shall be submitted by either party except by leave or directions of the Registrar. The instant application can be treated as an application under Rule 33(3) to file further evidence of DUS/Special test report and cross examination of witness. But the instant application cannot be entertained at this stage as the request for filing further evidence is affected by delay as the Opponent should have filed their evidence by on or before 13th September, 2022.

In this regard Rule 32 clearly provides that time schedule provided for filing of evidence shall not ordinarily be extended except by special order of the Registrar on Form-PV-5 along with fees. Rule 32 is extracted hereunder: -

“32. Compliance with time schedule- The time schedule provided under these rules for notice of opposition, final opposition, evidence, intervention, written statement and reply shall not ordinarily be extended except by special order of the Authority or Registrar given on an application filed by the person seeking extension of time and on payment of the fee specified in the Second Schedule and such an application for extension shall be in Form PV-5 of the First Schedule”

Accordingly, for non-filing of the application under Rule 32 and consequent absence of a special order under Rule 32, the instant application cannot be entertained. To put it simply, a belated application to file further evidence cannot be entertained without condoning or extending the time-limit for filing the evidence.



It is hereby made clear that no opinion is expressed on the merits of the opposition or on the instant application. Since, the instant application is dismissed on preliminary point of technicality and not on merits. The other issues raised by the Counsels namely applicability of the judgement dated 01.07.2019 of Hon'ble Delhi High Court in W.P. (C) No.6470/2013 & 6208/2014 - Pioneer -Vs- Kaveri in the instant matter, whether Registrar has power to allow cross-examination of witness etc. are all left open.

CONCLUSION:

Based on the aforesaid reasoning, the instant application dated 21st February, 2023 filed by the Opponent for conduct of DUS/SPECIAL TEST between BANGABANDHU-1 and PAN-804 and for cross-examination of witness, cannot be considered due to non-filing of an application under Rule 32 and consequent absence of special order under Rule 32 extending the time limit for filing further evidence. Accordingly, the instant application is dismissed.

There shall be no order as to costs.

Post this matter for final hearing on 15th July, 2024 at 03:00 PM.

Given under my hand and seal on this 3rd day of June, 2024.




(D.K. AGARWAL)
REGISTRAR-GENERAL