

**BEFORE THE PROTECTION OF PLANT VARIETIES
AND FARMERS' RIGHTS AUTHORITY
AT NEW DELHI**

**IN THE MATTER OF: - Revocation filed by Daftari Agro Biotech
Pvt. Ltd against C-96 registered variety of Ankur Seeds Pvt. Ltd.**

IN THE MATTER OF: -

DAFTARI AGRO BIOTECH PVT. LTD

.... REVOCATION APPLICANT

-Versus-

ANKUR SEEDS PVT. LTD

.... REGISTERED BREEDER

**For the Revocation Applicant - Mr. Goutam Bhol and Mr. J.H.
Kothari, Advocates**

**For the Registered Breeder - Mr. Dushyant Rastogi, Mr. Bikash
Ghorai for R.K.Dewan & Co.**

ORDER

By this order I shall dispose of the Revocation application filed by Revocation Application under Section 34 of PPV&FR Act, 2001 in respect of the registered variety with denomination C-96 (cotton female parent) of the Registered Breeder.

FACTS OF THE CASE: -

The Registered Breeder filed an application for registration of their cotton parent under the new category with denomination C-96. The said variety was registered on 04.09.2012 for 15 years



that is till 03.09.2027. The Revocation Applicants have filed to revoke the registration issued in favour of C-96 to the Registered Breeder on the ground that their AK 103-2-5 YF has been taken and denominated and registered as C-96 by the Registered Breeder.

CASE OF THE REVOCATION APPLICANT:-

The grant of certificate of registration has been based on incorrect information furnished by the Registered Breeder in respect of their registered cotton female parent variety C-96. The breeding process as shown in the schematic diagram filed along with the application for registration of variety C-96 (GMS) is not a bonafide and genuine one and the same is false and baseless. False declarations and statements have been made by Registered Breeder in respect of the so called variety C-96 (GMS) more particularly in respect of their rights, breeding and development, parents, place of the development (place at which such variety was developed), time and period required in the development, involvement of the breeders in the development and parents which have been mentioned as used in the development of the said variety. The registration of C-96 has been obtained by fraudulent claims. The Revocation Applicant No.2 and his brothers own Daftari Seed Farms, Seloo are the real breeder and developer of the said so called variety C-96 with Genetic Male Sterility (GMS) bearing registration No.123 of 2013 and applicants had given a name to the said cotton variety as AK-103-2-5-YF which has been fraudulently denominated as C-96 (GMS) by the Registered Breeder. The certificate of registration has been granted to a



person who is not eligible for protection under the Act. The Revocation Applicant No.2 is the person who has bred and developed the propagating material from a variety namely AK 103-2-5 YF (GMS). After considerable breeding process carried out by them, the Revocation Applicant No.2 developed the variety with his brothers by selection and in-breeding to obtain the varieties, one of them being AKB 30 and thereafter on further selection process two more varieties were developed which were denominated as AK 103-2-5 YF (GMS) and AK 103-2-5 WF (GMS). The concept and breeding technique adopted for developing the variety from 1986 onwards has been filed as Annexure A to the revocation application. The relevant extract of breeding records since 1990 onwards relating to the GMS traits of AKB 30, AK 103-2-5 YF (GMS) and AK 103-2-5 WF (GMS) have been filed as Annexure B to the revocation application. Since 1992, the original breeder of the variety that is the Revocation Applicant No.2 and his brothers have been using the variety AK 103-2-5 YF (GMS) as a Female parent for the development of cotton hybrids Daftari-9, Daftari-18, Daftari-29 and Daftari-333. It can be seen that the major characteristics in the photographs filed can be noted in the breeding records and also in the picking slip. The morphological characters of AK 103-2-5 YF (GMS) along with coloured photographs and a picking slip have been submitted as Annexure C. AK 103-2-5 YF (GMS) seed production programme was undertaken with some local farmers in the year 1993. The field test of the product was carried out by the Revocation Applicant No.2 with his brothers and the same were recorded in a register and the photocopy of the same has been filed as Annexure-D. One of the



Revocation Applicant No.2's company namely M/s. Daftari Agro Pvt. Ltd., was established and incorporated in 1994 for the purpose of commercial exploitation of research products developed by the Revocation Applicant No.2 and his brothers. The AK 103-2-5 YF (GMS) has been claimed by the Revocation Applicant as being denominated as KISHORI in production programme by M/s. Daftari Agro Pvt. Ltd. The above cotton hybrids are included in the license granted by District Agriculture Officer, Wardha and copy of the said license have been annexed as Annexure E to the revocation application. The above hybrids were tested in the All India Co-ordinated Cotton Improvement Project, part of ICAR in the year 1996-97 and successive years also in the category of Male Sterile (MS) cotton parent and the copy of the same has been filed as Annexure - F to the Revocation Application. The seeds of these hybrids were sent on several occasions for testing to the Govt. Laboratory by Daftari Agro Pvt. Ltd., and the copy of the application and report are filed as Annexure - G. Germination reports also have been filed to prove its existence before 1998. All documents pertaining to marketing of the seeds of the cotton hybrids developed by the Revocation Applicant No.2 with his brothers and marketed by Daftari Agro Pvt. Ltd have been filed as Annexure H to the Revocation Application. The Daftari Agro Pvt. Ltd., had submitted the parentage of the above hybrids such as Daftari-9, Daftari - 18, Daftari-29, Daftari333 to District Agriculture officer Wardha and again parentage of Daftari 18 was submitted to the Director of Agriculture, Pune for renewal. Copies of the relevant record has been filed as Annexure-I to the Revocation Application. Thereafter, the female parent namely AK 103-2-5 YF



(GMS) of the above hybrid was in existence much prior to the so called developed variety C-96 as claimed by the Registered Breeder. It is submitted that for the purpose of expanding the research activities and to do the same in better organized way a company "Daftari Agro Bio Tech Pvt. Ltd.," the present Revocation Applicant No.1, was incorporated under the Companies Act 1956 on 11th day of February, 1999 and the certificate of incorporation of Revocation Applicant No.1 have been annexed as Annexure J to the Revocation application. Entire Germplasm of different crops including parents of cotton variety which were evolved, developed and preserved during the last two decades by Daftari brothers in the name and under the banner of Daftari Seed Farm along with all its absolute rights including breeders right, all the yearly books and other relevant documents were handed over and transferred to Revocation Applicant No.1 and a copy of the MOU between the Revocation Applicant No.1 and the Revocation Applicant No.2 as the karta of Fulchand M Daftari HUC have been filed as Annexure K to the Revocation Applicant. The grant of certificate of registration by this Authority has been charged as not in the public interest the certificate of registration is granted to the person who had never bred or developed this variety. The Registered Breeder had thus deprived and violated the right and interest of the Revocation Applicants who are claimed as the real owners and therefore process the rights over the said variety C-96 (GMS) being its developer and breeder.



In view of it and sufficient documents produced in the revocation application the Revocation Applicants claim that they

are the real owners and breeders of the registered variety. The Revocation Applicants appeal to establish the fact that the Revocation Applicants are the real owners and breeders of the registered variety, and offer to bear the cost of conducting a grow out test and DNA finger printing of C-96 (GMS) and its parents, hybrids developed using C-96 (GMS) that is JAI Bt of Registered Breeder alongwith AK 103-2-5 YF (GMS) and AK 103-2-5 (WF) GMS parents of the applicants if this Authority deemed it necessary and accordingly the revocation application be allowed revoking the registered variety C-96 registered vide registration No.123 of 2012 in favour of the Registered Breeder. The Registered Breeder of C-96 is not a person who was eligible to make the application as per provision of Section 16 of the PPV&FR Act, 2001 since he is not the original breeder or developer of the C-96. It is specifically submitted that Dr. G.V. Umalkar and Dr. V.S. Dagaonkar are neither the breeders of registered variety C-96 nor have any right to assign the right of C-96 in favour of Registered Breeder as claimed in the application for registration and hence the assignment of breeders rights by Dr. G.V. Umalkar and Dr. V.S. Dagaonkar in favour of the Registered Breeder as claimed by the Registered Breeder in his application for registration of C-96 cannot confer any right in favour of Registered Breeder. It is further submitted that the Revocation Applicant No.2 and one of this younger brothers Shri. Jainendra Daftari are the real breeders of AK 103-2-5 YF (so called C-96) and Fulchand Manickchand Daftari (HUF) owner of Daftari Seed Farms Seloo acting through its Karta namely Ravindra Fulchand Daftari (Revocation Applicant No.2) has already transferred its entire germplasm including



cotton variety AK 103-2-5 YF GMS along with its all rights in favour of the Revocation Applicant No.1 and hence as per Section 16 of the Act it is the Revocation Applicant No.1 (Daftari Agro Biotech pvt. Ltd) who can make an application for registration of AK 103-2-5 YF GMS (so called C-96). It was also submitted that the Registered Breeder did not comply with the requirement of Section 18 of the Act as the breeding process shown in the schematic diagram which has been filed along with the application for registration of C-96 GMS is not a bonafide and genuine one and the same is false and baseless. The breeding records which are the prerequisite to prove the claim over the variety by the Registered Breeder has not been submitted giving the details of the breeding record of development of C-96 at the time of registration of C-96 and the Registered Breeder has deliberately avoided to submit the same in the instant matter along with Form PV-16. On the contrary, the Revocation Applicant has submitted relevant pages from the breeding records from 1990 to 1998 showing development of AK 103-2-5 YF in seed production program and its use as female parent in development of various hybrids. As submitted by the Registered Breeder, a female CA/MH-133 and male (AKH-84635 X Pan F-3 S2) were used for the development of C-96 where as it is specifically submitted that these parents were not used for development of C-96.

It was also submitted that the stand of Registered Breeder that the parental lines AKH-84635 and Pan F-3 S2 were sourced are not correct. It can be brought to record that no such sourcing of parental lines AKH-84635 and Pan F-3 S2 ever happened from a



recognized Govt. establishment. University/ breeders of these parental lines. It is also submitted that the cotton variety AKH-84635 was developed by Panjabrao Krushi Vidhyapith (PKV) Akola and as per the record of the PKV Akola it has not supplied the said variety to the Registered Breeder. The letter bearing outward No.788 dated 31.01.2015 is filed along with reply to Notice of opposition filed by Registered Breeder as Annexure L and the specific stand of the applicants is that Pan F-3 S2 is an exotic material obtained from France by CICR Nagpur and the Registered Breeder had never obtained Pan F-3 S2 from CICR, Nagpur as alleged in its application for registration of JAI Bt cotton variety (Registration No.19/2013). As per the record of the CICR, Nagpur it has not supplied the exotic material Pan F-3 S2 to Registered Breeder or anybody else and the said letter is annexed as Annexure-M. Further as per point at Sr. No.11 of Form I/ application for registration of C-96, it was necessary for the Registered Breeder to give the details of exotic material if it was used in the derivation of the candidate variety C-96. Whereas on the query related to intentional suppression of this fact from the Authority and against clause at Serial No.11, the Registered Breeder had mentioned that the said clause/ condition was not applicable.

Further the Revocation Applicant states that the facts indicated that the claim by the Registered Breeder that AKH-84635 and variety Pan F3 S2 were used for development of C-96 and statement that a three way cross was used for the purpose is false and baseless.



In-spite of the fact that the PPV&FR Authority vide its letter dated 23/30 September, 2008 bearing letter No. PPV&FRA/Registrar/18-13/2008/8412 had called upon the Registered Breeder to submit/ provide the authorization letter of the parental lines namely AKH-84365 and Pan F-3 S2 which was claimed to be outsourced, it is alleged that the Registered Breeder deliberately avoided to submit these details to the Authority as the Registered Breeder had never officially obtained/ acquired these varieties from PKV Akola and CICR Nagpur.

Furthermore the mention of the specific short fall in the Registrar's letter dated 23/30 September, 2008 under Section 20 of PPV&FR Act, 2001 was completely avoided and the fact misrepresented before the Authority in the guise of amendment. It was alleged that false declaration and statements were made by the Registered Breeder while obtaining the registration of the so called variety C-96.

It was further submitted that the Registered Breeder did not comply with the specific requirement of Section 18(1)(e) of the Act as it deliberately avoided the submission of the complete passport data on the parental lines of which the variety C-96. It is also argued that Section 18(1)(h) of the PPV&FR Act, 2001 provides that every applicant for registration of a variety must furnish a declaration that genetic material or parental material acquired for breeding, evolving or developing the variety was lawfully acquired. It is claimed that the Registered Breeder did not submit



the declaration as required under Section 18(1)(h) of the Act which is mandatory. It is specifically submitted that the said parental material has not been obtained/ acquired by the Registered Breeder of C-96. It is further alleged that the Registered Breeder stated that no person other than the person mentioned in the application for registration has been involved in the breeding or discovery or development of the variety C-96, which declaration made by Registered Breeder is allegedly totally false at it is a material/variety/AK 103-2-5 YF GMS developed by Revocation Applicant No.2 and his brother Jainendra Daftari in the year 1992-93 which has been stolen and misappropriated by the Registered Breeder and denominated as C-96. Accordingly, the furnishing of false declaration itself furnishes a ground for revocation and no other details are necessary. In the instant case, C-96 which is registered in favour of Registered Breeder alleged by Revocation Applicant is a bio-pirated material of the Revocation Applicant. The Registered Breeder's variety C-96 and Revocation Applicant's AK 103-2-5 YF GMS are being claimed as one and the same and Revocation Applicants have filed the table showing comparative DUS characters of variety C-96 as given by Registered Breeder in their application for registration and DUS characters of AK 103-2-5 YF GMS some of them are also recorded in the yearly field books and in cotton picking slips of Revocation Applicants, on record as Annexure N. According, to the Revocation Applicant, from the comparison of DUS characters of C-96 and AK 103-2-5 YF all DUS characters of both varieties were same and the differences were minor caused by difference of opinion/ interpretation. To avoid any confusion the actual coloured photographs of respective



character of AK 103 -2-5 YF have been given in the said table. The *inter se* DUS test between the Registered Breeder's variety C-96 and the Revocation Applicant's Variety AK -103-2-5-YF (GMS) is proposed to prove that both the varieties were one and the same having strong phenotypic and genetic similarity. Further it is claimed by the Revocation Applicant that the DNA test by using molecular markers technology such as (Simple Sequence Repeat) SSR markers or (Single Nucleotide Polymorphism) SNP markers between the Registered Breeder's variety C-96 and parental lines alleged to be used by Registered Breeder namely CA/MH-133 (Female), AKH-84635 X Pan F-3 S2 (Male) to derive C-96 and Revocation Applicant's variety AK 103-2-5 YF are genetically same and alleged parent lines of C-96 would reveal as not the real parents of C-96. The Revocation Applicant has offered to bear the expenses for the *inter se* DUS test and DNA test. The evidence of prior development and marketing furnished by the Revocation Applicant is claimed as a proof that the variety was developed earlier by the Revocation Applicant much before the so called development of C-96 (GMS). The Revocation Applicant No.2 and his brother namely Jainendra Daftari who are the members of Fulchand Manikchand Daftari HUF owner of Daftari Seed Farms, Seloo are claimed as the real breeders and developers of the variety AK 103-2-5 YF (GMS) which has been misappropriated and registered by Registered Breeder as C-96. The variety AK 10-3-2-5 YF (GMS) is claimed to have been developed by Applicant No.2 and his brothers by selection and in-breeding to obtain varieties one of them being AKB 30 and thereafter on further selection process various GMS lines/ varieties were developed out of which



one line was denominated as AK 103-2-5 YF (GMS) having yellow flower and one line was denominated as AK 103-2-5 WF (GMS) having white flower. The concept and breeding techniques adopted for developing the variety from 1986 onwards has been filed on record with the revocation application. Further the relevant extracts of breeding records since 1990 onwards relating to the above GMS traits are also on record of the instant matter. Thus it is contended that the Dr. G.V. Umalkar and Dr. V.S. Dagaonkar were neither the breeders of C-96 nor had any right to assign C-96 to analyse as claimed in application for registration. Therefore, registered variety C-96 could not be registered as a novel or new variety. Since 1992, the original breeder of the variety that is Shri Ravindra Daftari and his brother Jainendra Daftari were using the variety AK-103-2-5 YF. Therefore, the common female parent namely AK 103-2-5 YF (GMS) of above hybrids was in existence prior to the so-called development of variety C-96 as claimed by Registered Breeder. In fact, this registered variety of C-96 was nothing but AK 103-2-5 YF only which was in existence prior to 1994 and the same can be verified from a comparative verification of inter se DUS characteristics of both the varieties. It is claimed that the Registered Breeder had deprived the genuine rights of the applicant No.1, progressive and innovative farmer like Revocation Applicant No.2 and other members of Fulchand Manickchand Daftari that is owners of Daftari Seed Farms as the Revocation Applicant No.2 and his brother Jainendra Daftari has developed the so called variety C-96 GMS (AK 103-2-5 YF GMS).



Shri Ravindra Fulchand Daftari sworn the affidavit as Revocation Applicant Witness No.1. It was deposed in the said affidavit that the single sterile plant was found in the agriculture field of Akhil Daftari was named as AKB 30 AK denotes Akhil, B denotes Buri Seed (Fuzzy Seed). From it selection was done and the selected plants were divided in three groups and one of which was AK 103. A chart showing further development of GMS line from AK 103 group was prepared showing various stages of development from 1986 to 1989 were marked and annexed as Exhibit AW 1/10. Further the development and utilization of AK 103-2-5 has been traced from 1989 to 2006 including the development of hybrid Daftari 18 in which GMS AK 103-2-5 YF was used as female parent which is also claimed to be known as Kishori. Several documents have been filed along with the Affidavit relating to release reports issued by District Seed Certification Officer, Nagpur, Seed Testing Report, Field Test registers, delivery book, letters, agreement between Daftari Seed Farms Seloo and Revocation Applicant, Statement of account showing payment of royalty by Daftari Agro Pvt. Ltd., to Revocation Applicant from financial year 2003-2015, Ginning Register for the year 2006, Field inspection book, Seed Production Program Book, Receipts and memorandum and articles of Association of Daftari Agro Pvt. Ltd.,

Sh. Sitaram Champalalo Navhal, has deposed evidence by way of affidavit on behalf of Revocation Applicant as Revocation Applicant Witness No.2. The Said Revocation Applicant Witness No.2 is working as Senior Cotton Breeder in Revocation Applicant



No.1. Originally, he had joined Daftari Seed Farms, Seloo as Field Assistant and he used to work in research of cotton, Okra and chilli crops. He was involved in the sowing of various cotton lines since 1992 and has recorded in his own handwriting as per the direction of Sh. R.F. Daftari & his brother J.F. Daftari. In 1992-93, right from the sowing of various GMS single plant progenies upto the development of AK-103-2-5 has been traced. In the year 1995-96 twenty seven new test hybrids on GMS female AK 103-2-5 YF were developed which was recorded by him and copies of the relevant pages from field registers have been annexed and marked as Exhibit AW2/6. During the development of hybrids by using GMS AK 103-2-5 YF simultaneously development of Essentially Derived Varieties (EDVs) of GMS AK 103-2-5 YF/WF were developed. That one of the EDV of GMS AK 103-2-5 YF is claimed to be GMS AK 103-2-5 x WNR 2 which was developed by crossing WNR2 with GMS AK 103-2-5 YF and is claimed as being maintained by the Revocation Applicant till date. The work for the development of Superior hybrids using AK 103-2-5 YF as a female parent was continued further in the newly formed Revocation Applicant till 1998-99. After the incorporation of the Revocation Applicant in 1999 all the research activities and employees were transferred to Revocation Applicant No.1 and also the records were handed over. The DUS characters of AK 103-2-5 YF have been recorded in the field books. The morphological characters of Cotton Hybrid Daftari 18, 27 and 29 and their parentage were submitted on 01.06.1996 to the Joint Director Agriculture, Nagpur by Revocation Applicant No.1 in reply to their show cause notice dated 20.05.96. The contents of the said document have been filed



on record as Ext. AW 1/32 which is on page 137 of evidence of AW 1. That during November, 2013 as per instructions of Shri. J.F. Daftari, Director of Revocation Applicant No.1, the deponent along with Shri. Harimkar visited the seed plots of Cotton Seed Production Program of Registered Breeder and he had personally verified the standing cotton plants of GMS female parent in the agriculture field of farmers who had undertaken the seed production program of Registered Breeder and found that the Registered Breeder was using GMS AK 103-2-5 YF as its female parent in its seed production program of cotton Hybrid accordingly the said facts were reported to the Director Shri. J.F. Daftari.

The Managing Director of the Revocation Applicant No.1 filed the evidence by way of Affidavit as Revocation Applicant Witness No.3. He is one of the members of HUF engaged in the development of AK-103-2-5 YF/WF and other research activities of Daftari Seeds Farm, Seloo. It is stated that the records of selection and development work of research kept with them were destroyed in the storm and heavy rains in 1989. Accordingly, the stated field books showing the development of the GMS lines from the year 1986 to 1989 were not made available. Further a chart showing development of GMS line from AK 103 group has been prepared showing various stages of its development from the year 1986 to 1989. The said chart is already filed by AW1 as Exhibit AW 1/10. It was further submitted that AK 103-2-5 YF could not be noted in a particular single field book but at different books maintained in different years in scattered manner and submitted to Government



authorities at different points of time as per necessity of the situation prevailing then. Their research variety AK 103-2-5 YF was derived from a single male sterile plant AK 103. The said affidavit also traces the development of AK 103-2-5 YF through various years from 1986 to 1999 and the formation of Revocation Applicant No.1, payment of royalty by Daftari Agro Pvt. Ltd., to Revocation Applicant No.1 from the financial year 2003-2015 and transfer of germplasm to Revocation Applicant No.1. During first week of November, 2013, one of Revocation Applicant's regular seed growers namely Prakash Lodba Harimkar of Village Rohda, Taluk Umarched, District Yawatmal informed that the GMS female line Yasmin/Kishori (AK 103-2-5 YF) has been used in the seed production of Hybrid cotton of the Registered Breeder. The employee of Revocation Applicant Shri. Sitaram Champalal Navhal (Revocation Applicant witness) who is the senior cotton breeder of the Revocation Applicant is claimed to have verified and confirmed the use of AK 103-2-5 YF in seed production program of the Registered Breeder. Thereafter, they started enquiring about the registered variety through internet and came to know that the Registered Breeder has registered JAI Bt with this Authority and hence the Revocation Applicant has initiated appropriate proceedings.

With these pleadings and evidences the Revocation Applicant prayed for the revocation of Registered Breeder's variety C-96.



CASE OF THE REGISTERED BREEDER:

All the allegations made by Revocation Applicant No.1 are false and are purportedly made with mischievous intentions. It is denied that the grant of certificate of registration has been made on incorrect information furnished. It is denied that the breeding process as shown in the schematic diagram filed along with the application for registration of variety C-96 GMS is not bonafide or is false and baseless and it is stated that the breeding process was genuine. The Registered Breeder has denied that false declarations were made and also that there is no truth in the claims of Revocation Applicant No.1 or Ravindra Daftari or Daftari Seed Farms as being the breeders and developers of said variety bearing registration no.123 or that they have any rights in the process of registration. These are pointed out as baseless allegations by opponent without any proof of evidence. It is mentioned that the Revocation Applicants did not oppose the registration of Variety C-96 during the process of granting registration. The claims by Revocation Applicants were legally not tenable without any support of evidence available for security and authentication. The evidence is only theoretical, assumption of conjecture and a petition has already been made by Revocation Applicants for benefit sharing in the matter of JAI Bt. Cotton variety and the female parent has been disputed by the Revocation Applicant as theirs and has not yet been resolved and hence the present matter cannot be entertained by the PPV&FR Authority while the earlier case is pending. It is requested that both on technical and procedural grounds the petition be rejected. In 1976, the Registered



Breeder organization was established by three visionary agriculturists Mr. M.G. Shembhekar, Mr. R.M. Kashikar and Mr. L.P. Aurangabadkar who invested in extensive R&D and stringent quality control of its products which has made the company where it stands today. The Registered Breeder has claimed to have always focused on developing quality hybrids and seed varieties and earned trust and built healthy relationships with millions of farmers across the country and trend is continued with extensive Plant Breeding research in over 300 acres of research farms. The Respondent has claimed to process a large number of poly houses and net houses for inbreeding projects. They have claimed that testing of the new products is carried out in over 30 locations all across India. The Affidavit provides details on the sprawling 60,000 square feet Breeding Support Centre located near Nagpur housing the state of art Molecular Biology, Plant tissue culture, Entomology, Pathology, Plant Physiology and Biochemistry laboratory with experts. The Registered Breeder has claimed to have built a team of close to 200 creative, efficient and dynamic plant breeders and technicians. The Registered Breeder uses advanced plant genomics tools which has led to extensive knowledge of its own germplasm base and enhanced breeding precision. DNA Marker assisted selection and breeding forms the base of the plant breeding projects. SNP markers are extensively used for characterizing and developing new genetic material as well as hybrids for various traits like grain and fruit quality, yield, disease resistance and other agronomically important traits in various crops. To fasten the breeding process and to broaden its germplasm base, doubled haploidy technique is routinely used for



crops. Wide hybridization through embryo rescue is adopted which leads to transfer of resistance traits of wild species into cultivated genotypes against a number of biotic and abiotic stresses. It is claimed that from out of 40 years of experience, the Registered Breeder is able to offer over 200 quality seed products in 16 crops.

The Registered Breeder has worked extensively in the field of cotton research and has developed and tested new varieties/hybrids since long. The Registered Breeder has developed, released and notified a number of hybrids in cotton. Many of these hybrids are based on the GMS sterility system. It is mentioned that one of the earliest GMS based hybrid ANKUR 15 was released in 1983. The CICR Technical Bulletin No.24 authored by Sumal Balā Singh has GMS system marked as Ex RW1/3 which shows main features of Ankur-15 hybrid using male sterile line. The Registered Breeder has released cotton hybrids in the past like Ankur 651, Ankur 09 and hybrids like Ankur Jai and Ankur 3028 have been submitted as identified through AICCIP. The Registered Breeder also released GMS based hybrids in *G. arboretum* as Swadeshi 1 and Swadeshi 5. Release notification certificates by Central Government of Ankur 651, Ankur 09, Swadeshi 1 are marked as Ex RW1/4. Cotton hybrid seed production is done either by conventional hand emasculation in the female parent followed by pollination with male parent or by a non-conventional method (male sterility based). Where emasculation in female parent is not required as anthers (male organ) remain sterile. According to the CICR technical bulletin



No.24 (ex. RW 1/3) male sterility refers to a condition in which non-functional sterile pollen grains are produced in the flowers. Male sterility is being used in the development of hybrids in both tetraploid and diploid cottons. It helps in reducing the cost of hybrid seed production by eliminating the process of emasculation. So far 16 different genes in tetraploid cottons (13 in *G. hirsutum* and 3 in *G. barbadense*) and 2 in *G. arboreum* have been identified as responsible to create genetic male sterility. Male sterility is conditioned by dominant alleles at five loci namely MS₄, MS₇, MS₁₀, MS₁₁ and MS₁₂ by recessive allele at other loci namely ms₁, ms₂, ms₁₃, ms₁₄ (Dong A), ms₁₅ (Lang A) and ms₁₆ (81 A).

In the case of recessive male sterility each plant has to carry same recessive allele on both chromosomes of a pair in normal cell, sometimes two genes with two alleles each are required alike ms₅ms₆ and ms₈ms₉ where male sterility is conditioned by duplicate action by two recessive genes. Thus, the expression of male sterility varies greatly in extent and stability among the loci. Male sterility loci have been mapped. Both the dominant MS 11 and the recessive ms₈ have been mapped to chromosome 12. The recessive sterility factor ms₃ and ms₉ have been mapped to linkage group III of chromosome 16 and linkage group IX of chromosome 26 and HAU, Hissar. At Akola, the male sterility was obtained from *anomalum X arboreum* crosses while at Hisar it was identified as a spontaneous mutant in *arboreum* variety DS 5. *G. hirsutum* line Gregg (MS 399) from USA is the basic source of GMS possessing ms₅ms₆ gene for male sterility which has been filed as Table 1 at Page No.5 of Ex. RW1/3. Male sterility has important practical



application in the development of hybrids. All three types of male sterility are used in crop improvement programme. In India several hybrids have been developed in cotton using GMS system. Few private seed company hybrids also represent this category at Table-4 at Page No.10 of Ex. RW1/3 shows some public and private bred MS based hybrids. Characters of GMS based cotton hybrid Ankur 15 in comparison to Radhey 1, GDH 22 and Ah 71 were published at page 457 of catalogue of cotton Genetic Resources in India 1989 which is marked as Ex. RW1/5. The Registered Breeder has been working in GMS cotton research long before claimant and the Registered Breeder is the 1st private sector company in the country to release a GMS based cotton hybrid (Ankur 15) in the year 1983 itself. The GMS trait used in the development of C 96 is claimed to be sourced from the Registered Breeder's proprietary GMS line CA/MH-133 which was registered with NBPGR in the year 1998-99 vide INGR No.98010. The said notification was published in the Indian Journal of Plant Genetic Resources and other publications as per the guidelines of ICAR. Copy of the letter from NBPGR and Plant Germplasm Registration Notification of CA/MH-133 issued by ICAR New Delhi has been filed as Ex. RW 1/7. The line CA/MH-133 is one of the lines having commercially important traits and having stable 1:1 sterility : fertility ratio {stable GMS Line}. It is therefore, understandable that the Registered Breeder may have in his possession many GMS lines as expected in a plant breeding activity from 1983-84 itself. The Registered Breeder could not have achieved this without having employed qualified staff in cotton breeding since the beginning. The legacy of the Registered



Breeder's research has been proved from time to time as it has released and notified hybrids in cotton. The Registered Breeder has published and presented many cotton related research papers in various journals and in National as well as International Conferences. In 1996 the registered breeder was awarded the Best in house R &D Company Award among private sector by the Govt. of India. The copy of letter No.TU/IV-3(1)/96-97 dated 31.10.1996 from the Ministry of Science & Technology, DSIR informing about the Award for 'Best in-house R&D' has been marked as Ex.RW1/8. The Registered Breeder had no compulsive requirement to source GMS from other resources backed by over 10 years of its in-house active research in GMS cotton. It is further submitted that the Registered Breeder's CA/MH-133 is used in the development pedigree of C-96 and has contributed immensely in GMS trait and other morphological and economic traits.

The Registered breeder produced a new hybrid from conventional hybridization of C-96 female parent and a C-MAC-23 male parent. The hybrid was named as "Jai Bt". The Registered Breeder for the purpose of registration submitted an application on 3.4.2008 and on 9.10.2009 the Registered Breeder received a letter from this Authority for attending 1st DUS trial for monitoring of Jai Bt at UAS Dharwad & CICR Coimbatore on 22.10.2009 and 27.11.2009 respectively. On 9.10.,2009 the Registered Breeder received a letter from the PPV&FR Authority for attending 2nd year DUS monitoring of hybrid Jai Bt at University of Agricultural Sciences, Dharwad on 28.10.2010. Copy of the email dated 22nd October, 2010 of PPV&FRA sent to the Registered Breeder has been



marked as Ex. RW1/9. The said new hybrid was granted registration for 15 years till 30.01.2028 and this Authority issued a registration certificate to that effect. Copy of the said registration certificate No.REG./2008/307 dated 31.01.2013 for "Jai Bt" is marked as Ex. RW 1/10. It is further submitted that both C-96 (female parent of Jai Bt) and C-MAC-23 (male parent of Jai Bt) were documented by proprietary materials of the Registered Breeder. The female parent C-96 was applied for registration under 'New Variety' category and was granted the same on 04.09.2012 for 15 years that is till 03.09.2027. The transgenic male parent C-MAC-23 was registered in 2008 vide Registration No. REG/2008/243. Copy of the registration Certificate No.REG/2008/243 dated 24.05.2016 is marked as Ex. RW1/11. The expertise of Registered Breeder in the field of cotton research is visible in the form of many varieties and hybrids developed. Copy of details of applications filed by Registered Breeder and their status have been marked as Ex. RW1/12.

The Registered Breeder also contended that the Revocation Applicant has not yet put forward any source of the sterile cotton plant. It is an admitted fact that the Revocation Applicant Daftari HUF was a client of the Registered Breeder and placed on record invoices of purchases made by the Revocation Applicant from the Registered Breeder. It was also contended that the pedigree information and the final derivatives from any pedigree are most important for maintaining the records to avoid any duplication of research. Particularly in the present proceedings, the Revocation Applicant has filed all the non-essential details running into



hundreds of pages but has miserably failed to furnish the most important and crucial detail that is the source/pedigree of AK—103-2-5 YF. As contended by the Revocation Applicant himself, it is not possible to distinguish or to make a judgement about a plant's system about male sterility to conclude if it is GMS or CGMS by merely looking at it. For this reason, knowing the source is critical. The Revocation Applicant is fully aware of the source of AK-103-2-5 YF and has possibly willfully withheld this information from being recorded in these proceedings. It was further argued that the morphological characters submitted by a private company for inclusion of research hybrid in seed license is not verified by any of the government agency and thus these characters are only an undertaking by the Private company and no reliance can be based upon it. It was also submitted that C-96 was in utilization in the Registered Breeder's hybrid breeding program since 2003 and its detailed characters in the form of DUS were submitted to Govt. Authorities while getting the seed license for "Ankur Jai" (non-Bt hybrid) and a copy of the letter No.PC/5/12/2010 dated 13.4.2010 about the proceedings of varietal identification committee meeting of AICCIP in relating to non Bt Jai (ARCH8188) and a copy of letter No.QCC/Seed/1422/53/P2/1354/QC-7/8 dated 17.05.2007 is furnished as RW 1/13. Further Shri. Ravindra Fulchand Daftari has specifically admitted that the impugned variety AK 103-2-5 YF was not pure in the year 1994 and hence could not have been utilized for seed production. The Revocation Applicant has not placed on record even a single document authenticated by any competent government authority / certifying agency in support of



its claim on benefit sharing from the hybrid Jai Bt or revocation of Respondent's C-96. On comparing the DUS characters of AK103-2-5 YF and C-96 many significant differences are evident particularly in DUS character numbers 3,9,11,14,15,18,19,23,28,30 and 34 as per the DUS test guidelines approved by the Authority. The Registered Breeder is the rightful breeder and developer of C-96 and the breeders are employees of the Registered Breeder who have assigned the rights of C-96 and Jai Bt variety in accordance with the law. The Registered Breeder had duly submitted the proof of right for the applications of registration of C-96 and Jai Bt. It was further submitted that in the year 1990-91, the Registered Breeder had participated in one AICCIP-ICAR Trials at Ankur Research Farm, Wardha. A Copy of the trial document of 5 pages and 10 pages have been marked as Exhibit RW1/14. In these trials, total number of entries were 15 including WH-216 variety from Registered Breeder and AKH-84635 variety from the University Dr. PDKV, Akola, as test entries. The code name of this trial was Pr.Br. 04(B). The Registered Breeder's cotton research scientists had judged the performance of AKH-84635 which was found to be good and the genotype had the potential to be utilized in further research program. In accordance with Section 30 of PPV&FR Act, 2001, the Registered Breeder has utilized AKH-84635 in 1991-92 only once as an initial source for the purposes of creating another variety that is C-96. Further AKH-84635 has been used only for conducting experiment or research purpose and there is no evidence on record to prove that it has been utilized for commercial selling or as parent of cotton hybrid seed production program, therefore any authorization from Dr. PDKV, Akola was



not necessary and hence Registered Breeder did not enter into any formal agreement with him and in this regard a copy of the article titled as "How do the stakeholders perceive plant variety protection in Indian Sector?" by *P. Venkatesh et al*, Current Science, Vol.110, No.12, 25th June, 2016 have been marked as Ex. RW1/15.

In the application made for registration of C-96 by the Registered Breeder to the PPV&FR Authority made it clear that Pan F3-S2 was sourced from CICR, Nagpur. CICR Nagpur shared with the Registered Breeder a number of Germplasm lines including Pan F3-S2 for research purpose from time to time and a copy of letter No.F. No.DCI/98/GERM/SUPPLY/PVT dated 11th December, 1998 from CICR has been marked as Ex. RW1/16. The Registered Breeder obtained Pan F3-S2 from CICR in good faith based on pre-existing relations between the Registered Breeder and the Authority as was the case with many other breeders during that time. The Registered Breeder has claimed that he was not aware at the time of receiving the sample or during its experimental usage till the time the Revocation Applicant raised an objection about the exotic nature of Pan F3-S2 as one of the parent of C-96. The undertakings in the application for registration of Registered Breeder were made without any intent to defraud the Authorities and can be construed as to the best of the knowledge of the Registered Breeder. The omission on the part of the Registered Breeder if any looks to be without any intention to deceive the Authorities or the public at large. The Registered Breeder has never used Pan F3-S2 line as a commercial variety nor it is used as a parent of commercial hybrid. The Registered



Breeder has used this material only in the variety development program such as of variety C-96 which is valid as per law and is well within its researcher's rights provision under this Act. The Registered Breeder during the prosecution of C-96 complied with all the requirements in accordance with the PPV&FR Act, 2001 and the PPV&FR Rules, 2003. In the letter dated 23/30.09.2008 of PPV&FRA, the Registrar had called upon the Registered Breeder to provide the authorization of parental lines which requirement should not have arisen as C-96 was not a "hybrid" but a new variety. The Registered Breeder removed this discrepancy by furnishing corrected Form-I subsequently and specifically noting that the "candidate variety is not a hybrid and is a parental material exclusively bred by the Registered Breeder." The Registered Breeder submitted the development of C-96 as the parent material of "Jai Bt" regarding which the Registrar had also sought information in said communication. In fact, it is apparent from the documents of the Revocation Applicant itself that C-96 has many essential DUS characters different from the AK-103-2-5 YF. It is submitted that the DNA fingerprinting between C-96 and impugned AK 103-2-5 YF will now be inconclusive as the Revocation Applicant has never submitted its sample to the PPV&FRA or any competent authority as a reference material. The Revocation Applicant has failed to show commonalities between its impugned variety AK 103-2-5 YF and the Registered Breeder's variety C-96 which is evident from the documents furnished by the Revocation Applicant himself. It was further submitted that yet to avoid any litigation that the Registered Breeder may consider in relation to the infringement of the registered variety C-96, the



Revocation Applicant had initiated these frivolous proceedings. The Revocation Applicant has not made out even a prima facie case for its claim of revocation of C-96 either on merits or even in exercise of the discretionary powers vested in the Registrar of Protection of Plant Varieties and Farmers Rights Authority.

ISSUES:-

The pleadings and evidence are complete and the parties were heard in detail on 05.09.2018 and 06.09.2018.

Based on the pleadings of the parties the following issues are framed for consideration.

- a. Whether the Revocation Applicant is an 'interested person' within the meaning of Section 34 of PPV&FR Act, 2001 to initiate Revocation Proceedings against the Registered Breeders?
- b. Whether the grounds raised in the Revocation Application falls within any one or more of the grounds raised in Section 34 of PPV&FR Act, 2001?
- c. Whether AK-103-2-5 YF is the genetic material of the Revocation Applicant.
- d. Whether AK-103-2-5 YF is identically similar to C-96.
- e. Whether registration of C-96 is being maintained ?



- f. Whether registration of C-96 in favour of Registered Breeder is liable to be revoked?

Issue No:1 - Whether the Revocation Applicant is an 'interested person' within the meaning of Section 34 of PPV&FR Act, 2001 to initiate Revocation Proceedings against the Registered Breeders?

Section 34 of the PPV&FR Act, 2001 dealing with revocation clearly provides that it can be filed only by an interested person. The relevant extract of Section 34 is reproduced hereunder: -

“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”

In the instant case, the Revocation Applicant has filed a benefit sharing proceedings in respect of the Registered Breeder's registered hybrid 'Jai Bt' developed out of C-96 (which is the subject matter of the instant revocation proceedings) and it is the contention of the Revocation Applicant that their AK-103-2-5 YF is nothing but C-96 of the Registered Breeder in respect of which registration certificate has been issued by the Authority. Hence, a prima facie case has been made out which can be determined by adjudicating the dispute and hence I conclude that Revocation Applicant is interested person within the meaning of Section 34 of PPV&FR Act, 2001 in the instant revocation proceeding and the Issue No.1 is answered in favour of the Revocation Applicant.



Issue No.2: - Whether the grounds raised in the Revocation Application falls within any one or more of the grounds raised in Section 34 of PPV&FR Act, 2001?

The bone of the contention of the Revocation Applicant is that their AK 103-2-5 YF has been registered as C-96 by the Registered Breeder and hence if this contention is true then the instant Revocation Application can fall within one or more of the grounds in Section 34 of PPV&FR Act, 2001 more particularly Section 34(a), (b) and (c) of the PPV&FR Act, 2001 which is extracted hereunder: -

“(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;”

Hence the grounds raised in the instant revocation application falls under Section 34 (a) to (c) of the PPV&FR Act, 2001 and the Issue No.2 is answered in favour of the Revocation Applicant.



Issue No.3: - Whether AK-103-2-5 YF is the genetic material of the Revocation Applicant ?

In this regard, it has to be pointed out that it is an admitted fact that AK-103-2-5 YF has never been applied for registration nor registered under PPV&FR Act, 2001. Registration alone confers statutory right under PPV&FR Act, 2001. In other words, Plant Breeders' Rights is a statutory right. Accordingly, Revocation Applicant should have registered AK-103-2-5 YF if he claims genetic material of AK-103-2-5 YF belongs to him. Section 28 makes it clear that only registration confers the right and the same is extracted hereunder:

"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 established 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 Seed Act, 1966, the State Government, shall be deemed to be the owner of such right.

Unlike other laws of intellectual property, the protection under PPV&FR Act, 2001 is in the form of registration of a biological plant product that is genetically alive. While conferring the right on the variety for securing commercial control and ownership. Consequently, since the Revocation Applicant has not registered AK-103-2-5 YF, it cannot be considered to be a protected variety whose rights belong to the Revocation Applicant legally. However, the same Act provides for such a position, but only in the case of farmers, farming communities and tribes on their



traditionally conserved plant genetic resources, which need not be under protection but yet they have ownership over the same. It is statutorily recognized that if anybody uses such a genetic resource without their permission they are entitled for compensation and benefit sharing. Being a genetically male sterile fixed lineage, C-96 or AK 103-2-5-YF could not have been traditionally maintained as such. Hence, this provision is not relevant in the GMS variety. It is also an admitted fact that the Revocation Applicant has not obtained any IP protection on any technology in respect of the variety AK-103-2-5 YF. Hence, the claim of the Revocation Applicant that AK-103-2-5 YF belongs to him is not legally maintainable and is only a claim.

Further it is an admitted fact by the Revocation Applicant that AK-103-2-5 YF has been used in the development of various hybrids such as Daftari 9, Daftari 29, Daftari 18 and Daftari 333. The license to sell the hybrid seeds has been issued by Agricultural Development Officer during 5th June, 1996. Hence, it is clear that AK-103-2-5 YF has been used in the development of hybrids since 1996 which clearly shows that AK-103-2-5 YF has been exploited for development of hybrids for more than two decades. Rule 22 (2A) of PPV&FR Rules, 2003 prohibits the registration of a variety (other than a farmers variety) if on the date of filing of application the variety has been sold or exploited for more than 15 years in case of field crops and more than 18 years in case of trees and vines. Rule 22 2(A) of PPV&FR Rules, 2003 is extracted hereunder:-

“(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."

The words "or otherwise disposed of for the purposes of exploitation of such variety" includes the exploitation of parental lines for development of hybrids as well. This is because the same words occur in Section 15(3)(a) of PPV&FR Act, 2001 as well. While dealing with the said words the Hon'ble Delhi High Court by judgement dated 09.01.2015 in WP No. 4330/2012 (Mahyco and Ors., -Vs- UOI and Ors.,) held that indisputably the sale of hybrid seeds would amount to exploitation of parental varieties for commercial purposes within the meaning of Section 15(3)(a) of PPV&FR Act, 2001. By way of analogy, the interpretation of the Hon'ble Delhi High Court of the phrase "or otherwise disposed of for the purposes of exploitation of such variety" in Section 15(3)(a) applies to Rule 22(2A) of PPV&FR Rules, 2003. Hence, the variety AK-103-2-5 YF cannot even be registered by virtue of Rule 22(2A) as it has been used in the development of hybrids which have been commercialized since 1996 and accordingly AK-103-2-5 YF is in public domain and there can be no question of misappropriation or benefit sharing factor from out of it.



Accordingly, this issue is answered in favour of the Registered Breeder that the Revocation Applicant has no claims on the rights of business or commercial activities from the variety AK-103-2-5 YF in India and the same is in public domain.

Issue No.4: - Whether AK-103-2-5 YF is C-96?

It is an admitted fact that AK-103-2-5 YF has neither been applied for nor is registered under PPV&FR Act, 2001. Hence this Authority has no DUS test data on the variety AK-103-2-5 YF and accordingly the data generated by the applicant without corroboration by statutory authorities cannot be relied upon. The DUS testing has to be conducted only by the Registrar of the Authority as laid down in the Guidelines specific for DUS testing of the crop species published by Authority and any other characterization evaluation test done has no legal validation. Further it has already been decided that AK -103-2-5 YF is in public domain and hence I have to hold that the Revocation Applicant has failed to prove that AK 103-2-5 YF is C-96.

Issue No.8: - whether the annual fee, annual fee return form and renewal fee which is required for the maintenance of registration has been duly paid/ filed in respect of C-96 ?

C-96 was registered on 04.09.2012. The annual fee in respect of C-96 has been paid upto 03.09.2017 and renewal fee of Rs.7,20,000/- has been paid. The Hon'ble Delhi High Court by order dated 07.01.2019 of in WP (C) No.788/2017, Mahyco -Vs- UOI, has struck down Sl. No.9 of Second Schedule of PPV&FR Rules, 2003 fixing renewal fees as Rs.7,20,000/- and hence I direct the registry requiring the Registered Breeder to submit annual fee return forms till this date, if not filed earlier, and based on it renewal fee be computed in accordance with Rule 39. If the same is excess or less



than Rs.7,20,000/- the same may be refunded or balance be collected as the case may be. The final renewal fee under Rule 39 has to be paid by seventh year of registration and currently the C-96 is in the seventh year of period of registration. Hence, the Registry may finalize the payment of renewal fee in accordance with Rule 39.

Based on the aforesaid reasoning, I hereby reject the revocation application filed by the Revocation Applicant to revoke the registration certificate of C-96 registered in favour of Registered Breeder and consequently the validity of registration of C-96 is upheld.

There shall be no order as to costs.

Given under my hand and seal on this the 1st day of May, 2019.



K. Vinod Prabhu

(K.V. PRABHU)
CHAIRPERSON