



2023:DHC:8595



\$~A-1 & O-12 to 15

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

+ W.P.(C) 4312/2014

NUZIVEEDU SEEDS PVT. LTD. Petitioner

Through: Mr. Chetan Lokur, Mr. K.V. Girish Chowdhry, Mr. D. Satya Sai Sumanth and Mr. Vaibhav Kaul, Advs.

versus

THE PROTECTION OF PLANT VARIETY AND FARMERS RIGHTS AUTHORITY AND ORS Respondents

Through: Mr. Gaurav Rohila, Mr. Raj Ganesh, Mr. Arun Kumar, Ms. Shaheen Parveen and Ms. Yojana Chaudhary, Advs. for R-1 and R-2

Mr. R. Parthasarthy, Ms. Vindhya S. Mani, Ms. Surbhi Nautiyal, Mr. Devesh Aswal and Mr. Bhuvan Malhotra, Advs. for R-3
Mr. Ripu Daman Bhardwaj CGSC with Mr. Abhinav Bhardwaj, GP for UOI

+ W.P.(C)-IPD 8/2022

NUZIVEEDU SEEDS LTD. SURVEY NO. 69, GUNDLA POCHAMAPALLY (VILLAGE AND PACHAYAT) MEDCHAL MANDAL, RANGA REDDY DISTRICT, SECUNDERABAD. Petitioner

Through: Mr. Chetan Lokur, Mr. K.V. Girish Chowdhry, Mr. D. Satya Sai Sumanth and Mr. Vaibhav Kaul, Advs.

versus

UNION OF INDIA THROUGH SECRETARY, MINISTRY OF AGRICULTURE, NEW DELHI Respondent

Through: Mr. Gaurav Rohila, Mr. Raj Ganesh, Mr. Arun Kumar, Ms. Shaheen Parveen and Ms. Yojana Chaudhary, Advs.



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for R-1

Mr. R. Parthasarthy, Ms. Vindhya S. Mani,
Ms. Surbhi Nautiyal, Mr. Devesh Aswal and
Mr. Bhuvan Malhotra, Advs. for R-3
Mr. Ripu Daman Bhardwaj CGSC with Mr.
Abhinav Bhardwaj, Adv. for UOI

+ W.P.(C)-IPD 10/2022

NSL SEEDS PVT LTD. NSL ICON 4TH FLOOR, NO. 8-2-
684/2/A ROAD NO. 12, BANJARA HILLS, HYERABAD.

..... Petitioner

Through: Mr. Chetan Lokur, Mr. K.V.
Girish Chowdhry, Mr. D. Satya Sai Sumanth
and Mr. Vaibhav Kaul, Advs.

versus

PROTECTION OF PLANT VARIETY AND FRAMERS
RIGHTS AUTHORITY THROUGH ITS REGISTRAR, NASC
COMPLEX, OPP. VILLAGE TODAPUR, DPS MARG, NEW
DELHI

..... Respondent

Through: Mr. Gaurav Rohila, Mr. Raj
Ganesh, Mr. Arun Kumar, Ms. Shaheen
Parveen and Ms. Yojana Chaudhary, Advs.
for R-1

Mr. R. Parthasarthy, Ms. Vindhya S. Mani,
Ms. Surbhi Nautiyal, Mr. Devesh Aswal and
Mr. Bhuvan Malhotra, Advs. for R-3
Mr. Ripu Daman Bhardwaj CGSC with Mr.
Abhinav Bhardwaj, Adv. for UOI

+ W.P.(C)-IPD 9/2022

NUZIVEEDU SEEDS PVT LTD.

..... Petitioner

Through: Mr. Chetan Lokur, Mr. K.V.
Girish Chowdhry, Mr. D. Satya Sai Sumanth
and Mr. Vaibhav Kaul, Advs.

versus



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THE PROTECTION OF PLANT VARIETY AND FARMERS
RIGHTS AUTHORITY AND ANR

..... Respondents

Through: Mr. Gaurav Rohila, Mr. Raj
Ganesh, Mr. Arun Kumar, Ms. Shaheen
Parveen and Ms. Yojana Chaudhary, Advs.
for R-1

Mr. R. Parthasarthy, Ms. Vindhya S. Mani,
Ms. Surbhi Nautiyal, Mr. Devesh Aswal and
Mr. Bhuvan Malhotra, Advs. for R-3

Mr. Ripu Daman Bhardwaj CGSC with Mr.
Abhinav Bhardwaj, Adv. for UOI

+ W.P.(C)-IPD 4/2023

NUZIVEEDU SEEDS PVT LTD.

..... Petitioner

Through: Mr. Chetan Lokur, Mr. K.V.
Girish Chowdhry, Mr. D. Satya Sai Sumanth
and Mr. Vaibhav Kaul, Advs.

versus

THE REGISTRAR, PROTECTION OF PLANT VARIETY
AND FARMERS RIGHTS AUTHORITY & ANR.

..... Respondents

Through: Mr. Gaurav Rohila, Mr. Raj
Ganesh, Mr. Arun Kumar, Ms. Shaheen
Parveen and Ms. Yojana Chaudhary, Advs.
for R-1

Mr. Ripu Daman Bhardwaj CGSC with Mr.
Abhinav Bhardwaj, Adv. for UOI

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T (O R A L)

%

30.11.2023

**W.P.(C) 4312/2014, W.P.(C)-IPD 8/2022, W.P.(C)-IPD 10/2022,
W.P.(C)-IPD 9/2022 & W.P.(C)-IPD 4/2023**



1. The issue involved in all these five writ petitions is substantially the same, though they have been instituted at different stages of the proceedings. They all relate to applications filed by various applicants seeking registration of new plant varieties stated to have been developed by them, under the Protection of Plant Varieties and Farmers' Rights Act, 2001 (hereinafter "the PPV Act").

2. The following provisions of the PPV Act merit reproduction, in the backdrop of the controversy which is before this Court:

"14. Application for registration. – Any person specified in Section 16 may make an application to the Registrar for registration of any variety –

- (a) of such genera and species as specified under sub-section (2) of Section 29; or
- (b) which is an extant variety; or
- (c) which is a farmers' variety.

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 other 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



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of 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.

18. Form of application. –



(1) Every application for registration under Section 14 shall –

- (a) be with respect to a variety;
- (b) state the denomination assigned to such variety by the applicant;
- (c) be accompanied by an affidavit sworn by the applicant that such variety does not contain any gene or gene sequence involving terminator technology;
- (d) be in such form as may be specified by regulations;
- (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 organisation 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;
- (g) be accompanied by such fees as may be prescribed;
- (h) contain a declaration that the genetic material or parental material acquired for breeding, evolving or developing the variety has been lawfully acquired; and
- (i) be accompanied by such other particulars as may be prescribed:

Provided that in case where the application is for the registration of farmers' variety, nothing contained in clauses (b) to (i) shall apply in respect



of the application and the application shall be in such form as may be prescribed.

(2) Every application referred to in sub-section (1) shall be filed in the office of the Registrar.

(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.

19. Test to be conducted.—

(1) Every applicant shall, along with the application for registration made under this Act, make available to the Registrar such quantity of seed of a variety for registration of which such application is made, for the purpose of conducting tests to evaluate whether seed of such variety along with parental material conform to the standards as may be specified by regulations:

Provided that the Registrar or any person or test centre to whom such seed has been sent for conducting test shall keep such seed during his or its possession in such manner and in such condition that its viability and quality shall remain unaltered.

(2) The applicant shall deposit such fees as may be prescribed for conducting tests referred to in sub-section (1).

(3) The tests, referred to in sub-section (1) shall be conducted in such manner and by such method as may be prescribed.

20. Acceptance of application or amendment thereof.—

(1) On receipt of an application under Section 14, the Registrar may, after making such inquiry 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 deems fit.

(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.

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.

(4) The Registrar shall serve a copy of the notice of opposition on the applicant for registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall send to the Registrar in the prescribed manner a counter-statement of the grounds on which he relies for his application, and if he



does not do so, he shall be deemed to have abandoned his application.

(5) If the applicant sends such counter-statement, the Registrar shall serve a copy thereof on the person giving notice of opposition.

(6) Any evidence upon which the opponent and the applicant may rely shall be submitted, in the manner prescribed and within the time prescribed, to the Registrar and the Registrar shall give an opportunity to them to be heard, if so desired.

(7) The Registrar shall, after hearing the parties, if so required, and considering the evidence, decide whether and subject to what conditions or limitations, if any, the registration is to be permitted and may take into account a ground of objection whether relied upon by the opponent or not.

(8) Where a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such notice neither resides nor carries on business in India, the Registrar may require him to give security for the cost of proceedings before him and in default of such security being duly given may treat the opposition or application, as the case may be, as abandoned.

(9) The Registrar may, on request, permit correction of any error in, or any amendment of, a notice of opposition or a counter-statement on such terms as he may think fit.

22. Registrar to consider grounds of opposition. – for The Registrar shall consider all the grounds on which the application has been opposed and after giving reasons for his decision, by order, uphold or reject the opposition.

24. Issue of certificate of registration. –

(1) When an application for registration of a variety (other than an essentially derived variety) has been accepted and either –

(a) the application has not been opposed and the time of notice of opposition has expired; or



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(b) the application has been opposed and the opposition has been rejected, the Registrar shall register the variety.”

3. Additionally, Rules 29 to 32 of the Protection of Plant Varieties and Farmers’ Rights Rules, 2003 (the PPV Rules), which have been framed in exercise of the powers conferred by Section 96 of the PPV Act are also relevant:

“29. Manner and method for conducting tests under section 19. –

(1)(a) The Authority shall charge separate fees for conducting DUS test and special test on each variety.

(b) The special tests shall be conducted only when DUS testing fails to establish the requirement of distinctiveness.

(c) The DUS testing shall be field and multi-location based for at least two crop seasons and special tests be laboratory based.

(d) The fee for DUS and special tests shall be such as provided in column (3) of the Second Schedule for the purpose.

(2) If the Registrar, after initial scrutiny of the application for registration, is satisfied that the application is in order, he shall notify the applicant to deposit the requisite fee, as specified in column (3) of the Second Schedule, within a period of two months for conducting the DUS test.

(3) On receipt of the fee, demanded under sub-rule (1), the Registrar shall consider the application for further processing.

(4) The DUS test shall be necessary for all new varieties except essentially derived variety.

(5) The manner of testing essentially derived varieties shall be decided by the Authority on a case-to-case basis.



(6) The DUS test shall be conducted on a minimum of two locations.

(7) The Authority may recognise and empanel institutions having adequate facilities for conducting DUS or special tests in the country for conducting such tests.

(8) The Authority shall notify the adopted methods of conducting the DUS and special tests.

(9) The Authority shall develop and publish in its journal guidelines for the DUS test for each crop.

(10) The samples of seeds or propagules in respect of which an application for registration has been made and parental lines under registration submitted for the DUS and special tests and deposited at the National Gene Bank shall present the maintainable standards of generic purity, and uniformity and germination, sanitary and phytosanitary standards.

30. Advertising of application for registration under section 21. –

(1) Every application for registration of a variety which has been accepted and the details thereof including specifications shall, upon such acceptance under sub-section (1) of section 20, be advertised by the Registrar in the manner specified in Form 01 of the Third Schedule.

(2) In every such advertisement under sub-rule (1), the Registrar shall mention that place or places where a specimen of the variety may be inspected.

(3) The contents of such advertisement shall include –

(a) name, passport data and source of parental line or initial variety used to develop the variety in respect of which an application for registration has been made;

(b) description of the variety bringing out its character profile as specified under the DUS test Schedule;

(c) essential characteristics conferring distinctiveness to the variety;



- (d) important agronomic and commercial attributes of the variety;
- (e) photographs or drawings, if any, of the variety submitted by the applicant; and
- (f) claim, if any, on the variety.

31. Notice of opposition under sub-section (2) of section 21.

(1) Any interested person, may within three months from the date of advertisement of an application for registration, may give a notice of opposition to the registration of a plant variety in Form PV -3 of the First Schedule.

(2) The fee payable for filing an opposition referred to in sub-rule (1) shall be as specified in column (3) of the Second Schedule:

Provided that no such fee shall be payable in respect of an opposition made by a farmer or group of farmers, or village community.

(3) A copy each of the notice of opposition received against a specific application shall be referred to the applicant by the Registrar within three months from the last date of filing of opposition.

(4) An applicant shall be entitled to submit point-wise counter statement to the opposition not later than two months from the date of service of the copy of the notice of opposition, failing which the Registrar shall decide the merits of the opposition and notify his decision by giving reasons therefor.

(5) Every counter-statement under sub-rule (4) shall be in Form PV-4 of the First Schedule.

(6) The copies of counter to opposition submitted by the applicant within the time specified in sub-rule (4), shall be conveyed to the person opposing the application, within a period of thirty days of its receipt, requiring the opposing person to submit the final opposition within a period of thirty days from the date of service of the counter from the



applicant.

(7) The Registrar, may at his discretion, allow any correction of error or amendments in the notice of opposition or counter statement if such alteration is requested by the persons concerned in writing.

(8)(a) The security referred to in sub-section (8) of section 21 shall be payable as an amount decided by the Authority.

(b) In case the opposition is found to be frivolous, the Registrar may direct payment of cost as determined by him to the applicant from out of the security amount received and the balance of the security amount shall be deposited in the Authority.

(c) In case the opposition succeeds, the security amount shall be refunded to the opposition party.

32. Compliance with time schedule. – The time schedule provided for advertisement, opposition, defence, hearing and amendment of specification under these rules shall not be extended and failure in compliance with these time schedules shall forfeit the opportunity granted.”

4. These writ petitions pertain to applications filed by various applicants for registration of plant varieties developed by them. Maharashtra Hybrid Seeds Company Pvt. Ltd. (“Mahyco” hereinafter) was the applicant in WP (C) 4312/2014, WP (C)-IPD 10/2022, WP (C)-IPD 9/2022 and WP (C)-IPD 4/2023 whereas M/s Sungro Seeds Research Ltd. (“Sungro” hereinafter) was the application in WP (C)-IPD 8/2022. I will, alternatively, be referring to Mahyco and Sungro as the “private respondents”, for convenience.

5. As is apparent from the statutory provisions reproduced *supra*, an application for registration of a plant variety, once filed, has to be



accepted and advertised. After advertisement, persons who desire to oppose the registration of the plant variety may file their oppositions to the application. Depending on the outcome of the opposition, the plant variety either proceeds to registration, or the application for registration is rejected.

6. WP (C) 4312/2014

6.1 At this juncture, itself, it would be beneficial to reproduce the prayer clause in WP (C) 4312/2014, thus:

“It is therefore prayed that this Hon'ble court may be pleased to issue a "Writ of Mandamus" or any other appropriate writ order or direction declaring the action of the respondents in not implementing the provisions of Protection of Plant Varieties and Farmers' Rights Act, 2001 & Protection of Plant Varieties and Farmers' Rights Rules, 2003 and in not causing a proper and detailed publication of advertisement as stipulated under the Act and in not carrying out "DUS" tests prior to inviting objections and in not bringing clarity with regard to essentially derived varieties at their registration prior to registration of new varieties as illegal, arbitrary, unconstitutional and violative of the provisions of the Protection of Plant Varieties and Farmers' Rights Act, 2001 & Protection of Plant Varieties and Farmers' Rights Rules, 2003 and consequently direct the respondents to strictly insist on the compliance of the various conditions as specified in the Act and the Rules with regard to the DUS testing and advertising of full details in the publication and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.

In the interim it is therefore prayed that this Hon'ble Court may be pleased to direct the respondents to enforce the provisions of Protection of Plant Varieties and Farmers' Rights Act, 2001 & Protection of Plant Varieties and Farmers' Rights Rules, 2003 and conduct DUS tests and furnish full particulars in the advertisements issued by the Authority by considering the petitioner's representation dated 1.6.2010, pending the disposal of the writ petition and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.



6.2 Mr. Parthasarthy, learned Counsel for the private respondents in all these cases points out that the prayer in WP (C) 4312/2014 is worded in general terms and is merely declaratory in nature and that the specific application which finds mention in the body of the writ petition, for registration of the MRC-7351 plant variety, is one of the applications in respect of which relief is sought in WP (C)-IPD 10/2022. As such, he submits that no separate orders would be required in WP (C) 4312/2014. Mr. Chetan Lokur, learned Counsel for the petitioner also concedes this position.

6.3 Inasmuch as relief, in respect of the grievance in WP (C) 4312/2014 has also been sought in WP (C)-IPD 10/2022, WP (C) 4312/2014 is disposed of without passing any separate orders thereon.

7. Plant varieties MRC 7326 BG II, MRC 6301 Bt, MRC 6025 Bt and MECH 12 Bt in WP (C) IPD 10/2022:

7.1 Let us clear the air further. Of the 9 plant varieties which form subject matter of the prayer in WP (C)-IPD 10/2022, Mr. Parthasarthy submits that plant varieties MRC 7326 BG II, MRC 6301 Bt, MRC 6025 Bt and MECH 12 Bt were already registered prior to the writ petition being filed.

7.2 Mr Lokur, on instructions, confirms this fact.

7.3 Inasmuch there is no prayer in this writ petition for setting aside



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the registration granted in respect of the said four plant varieties, this Court is not interfering with the said registrations.

7.4 The orders passed herein with respect to WP (C)-IPD 10/2022 would, therefore, be restricted to the five remaining varieties which are MRC 7351 BGII, MRC 6322 Bt, MRC 7383 BG II, MRC 6918 Bt and MRC 7301 BG II.

8. Stages at which the proceedings are pending:

8.1 Proceedings with respect to the applications filed by the concerned private respondents for registration of plant varieties, in these writ petitions, are at different stages.

8.2 Oppositions under Section 21(2) of the PPV Act were filed by the petitioner to the applications forming subject matter of all these four writ petitions, albeit belatedly.

8.3 The Registrar of the Protection of Plant Varieties and Farmers' Rights Authority (hereinafter "the Registrar") condoned the delay in filing the opposition in WP (C)-IPD 9/2022. The opposition is pending consideration on merits.

8.4 The opposition in WP (C)-IPD 10/2022 was filed within the statutory period of three months envisaged in Section 21(2) of the PPV Act, and is also pending consideration on merits.



8.5 The oppositions filed in WP (C)-IPD 4/2023 and WP (C)-IPD 8/2022 were rejected holding that no ground for condonation of delay was made out. However, Mr. Parthasarthy points out that, in WP (C)-IPD 4/2023, the application was re-advertised and a fresh opposition stands filed by the petitioner.

9. The Issue

9.1 Mr. Lokur submits that the principal grievance of the petitioner in these cases is that the applications of the private respondents ought not to have been advertised, before DUS (Distinctiveness, Uniformity and Stability) testing of the concerned plant varieties was undertaken in terms of Section 19 of the PPV Act.

9.2 Though oppositions in some of these matters are pending, Mr. Lokur submits that, as the Registrar has placed its stand on record, and as both the private respondents and the Registrar are espousing the view that, in respect of applications which were filed prior to 1 March 2012, the exercise of DUS testing need not necessarily have been conducted prior to advertising of the applications, this Court may clarify the legal position in that regard.

9.3 The request is not opposed either by Mr Parthasarathy or by Mr. Rohilla.

9.4 Besides, these matters were filed before various High Courts, and have been consolidated before this Court pursuant to orders of the



Supreme Court. The issue in controversy is limited and, as would be noted later, is not *res integra*, as a learned Coordinate Bench of this Court of Vibhu Bakhru, J., has examined it in depth in his judgement in *Pioneer Overseas Corporation v. Chairperson Protection of Plant Varieties Rights*¹ and concluded the controversy, in a manner which appears to me, with greatest respect, to be eminently acceptable. The decision of Bakhru, J., remains undisturbed to this day.

10. On 1 March 2012, the Protection of Plant Varieties and Farmers' Rights Authority (hereinafter "the Authority") issued the following Public Notice:

" Public Notice

Sub: DUS testing before acceptance under Section 20 of PPV & PR Act, 2001.

It is hereby brought to the notice of the applicants that *henceforth in accordance with section 19 of PPV & FR Act, 2001*, the applicants shall along with the application for registration, deposit seeds of the variety applied for registration in such quantities as specified in the DUS test guidelines of respective crop species for DUS testing. Thereafter, *in accordance with Rule 29 (2) of the PPV & FR Rules, 2003*, if the application is found to be in order on initial scrutiny then the applicant will be notified to deposit the DUS test fee. On payment of said fee, the DUS test will be conducted.

Before acceptance of an application for registration, inquiry will be conducted under section 20(1) of PPV & FR Act, 2001 by examining the DUS test report along with application and other documents. Thereafter, if the application is found to be in order, it will be accepted under Section 20(1) and advertised under section 21(1) of PPV & FR Act, 2001.

(Manoj Srivastava)

¹ 262 (2019) DLT 411



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Registrar”

(Emphasis supplied)

11. It is also not in dispute that after 1 March 2012, in accordance with the afore-extracted Public Notice, the Authority was subjecting the plant varieties, in respect of which applications were filed, to mandatory DUS testing before accepting or advertising the application and calling for objections or oppositions thereto.

12. The question is whether, in respect of applications such as those forming subject matter of consideration in these writ petitions, which were filed prior to 1 March 2012, DUS testing was mandatory before advertising the applications. If, in fact, it was, Mr. Lokur would submit, invoking the *Taylor v. Taylor*² principle³ that where the statute requires a particular act to be done in a particular manner, that act has to be done in that manner alone or not done at all, all alternative modes of doing the acts being necessarily forbidden, that the act of the Authority in proceeding to advertise the petitioner’s applications without prior DUS testing stands vitiated *ab initio*. He, therefore, prays that the said applications may be remanded for *de novo* consideration after subjecting the concerned plant varieties to DUS testing as envisaged by Section 19 of the PPV Act.

13. The decision in *Pioneer Overseas Corporation*:

² (1875) 1 Ch D 426

³ Subsequently reiterated by the Privy Council in *Nazir Ahmed v. King Emperor*, AIR 1936 PC 253 and by the Supreme Court in a plethora of decisions, of which *Singhara Singh v. State of UP*, AIR 1964 SC 358 is the most often cited



13.1 *Pioneer Overseas Corporation* concludes the controversy.

13.2 The facts in *Pioneer Overseas Corporation* mirror those in the present. In that case, too, the applications for registration of plant varieties under the PPV Act were filed prior to 2012. No DUS testing was conducted before the applications were advertised. This was challenged by the petitioner before this Court as being contrary to the statutory provisions noted hereinbefore.

13.3 After a thorough study of the relevant statutory provisions, Bakhru, J. expressed his view in the matter thus:

“43. It is apparent from the Scheme of Chapter III of the Act that on receipt of an application under Section 18 of the Act, the Registrar is required to make an enquiry as it thinks fit in respect of the particulars contained in such application and, thereafter, either accept the application absolutely or subject to certain conditions or limits as he deems fit. In terms of Section 19(1) of the Act, every applicant is required to make available to the Registrar such quantity of seeds of the variety for the purposes of conducting tests to evaluate whether the seeds of such variety conform to the standards, as may be specified by Regulations. *It, plainly, follows that on receipt of an application, the Registrar is required to conduct the test as referred to under Section 19 of the Act.*

44. One of the principal controversy raised in the present petition is whether Section 19 of the Act refers to a DUS test or a limited test for evaluating whether the seeds and the parental material conform to the standards as specified. It is Pioneer's case that the test to be conducted in terms of Section 19 of the Act is a DUS test and an application for registration cannot be accepted unless such test has been conducted.

45. A plain reading of Section 19(1) of the Act indicates that every applicant is required to make available such quantity of seeds for the purposes of conducting tests “to evaluate whether the seeds of such variety along with parental material conform to the standards as may be specified by regulations”. The Authority has notified the 2006 Regulations (the Protection of Plant Varieties and



Farmers' Rights Regulations, 2006) in exercise of powers conferred under the Act. Regulation 11 of the 2006 Regulations is relevant and is set out below: —

“11. Standards for evaluating seeds or variety during tests. – The test to be conducted for evaluation of a variety to be referred under the Act shall conform to the criteria of distinctness, uniformity and stability test guidelines published by the Authority in the Journal of Protection of Plant Varieties and Farmers' Rights Authority and shall be revised and updated from time to time with the prior information to the Central Government. The Standards for evaluating seeds during tests under sub-section (1) of section 19 shall be such as notified under Seeds Act, 1966 or further amendments to that effect.”

46. It is clear from the above that the test to be conducted for evaluation of the variety is required to conform to the test guidelines as published by the Authority for evaluating whether the variety conforms the criteria of distinctiveness, uniformity and stability (DUS). Regulation 11 further specifies that the standards for evaluating the seeds during tests shall be such as notified under the Seeds Act, 1966.

47. In view of the above, the contention that the tests referred to under Section 19(1) of the Act only pertains to evaluating whether the seeds conformed to the standards as notified under the Seeds Act, 1966, is erroneous. The tests referred to under Section 19(1) of the Act also include tests for determining whether the variety conforms to the DUS criteria. In terms of Regulation 11 of the said 2006 Regulations, such tests are required to be conducted in conformity with the guidelines as published by the Authority.

48. At this stage, it is also relevant to refer to Protection of Plant Varieties and Farmers Rights (Criteria for Distinctiveness, Uniformity and Stability for Registration) Regulations, 2009 (hereafter “2009 Regulations”). Regulation 4 of the 2009 Regulations provides that the DUS criteria shall be determined by conducting field test for one season at two locations. The said Regulation 4 is set out below:—

“4. Criteria of Distinctiveness, Uniformity and Stability for registration of variety about which there is Common Knowledge. –

(1) The criteria for distinctiveness, uniformity and stability for registration of a variety about



which there is a common knowledge shall be determined by conducting a field test for one season at two locations for the purpose of confirming the distinctiveness, uniformity and stability following the descriptors and plot size as may be specified in the Journal.

(2) Any person who applies for registration under clause (b) of Section 14 of the Act shall submit half the quantity of seeds as divided into five equal numbers of packets for the purpose of field test and also for storing in the National Gene Bank and the seed supply procedures shall be such as may be specified in the Journal.”

49. Any doubt as to the test to be conducted under Section 19 of the Act is put to rest by a plain reading of Rule 29 of the 2003 Rules, which is set out below:—

“29. Manner and method for conducting tests under section 19. –

(1)(a) The Authority shall charge separate fees for conducting DUS test and special test on each variety.

(b) The special tests shall be conducted only when DUS testing fails to establish the requirement of distinctiveness.

(c) The DUS testing shall be field and multi-location based for at least two crop seasons and special tests be laboratory based.

(d) The fee for DUS and special tests shall be such as provided in column (3) of the Second Schedule for the purpose.

(2) If the Registrar, after initial scrutiny of the application for registration, is satisfied that the application is in order, he shall notify the applicant to deposit the requisite fee, as specified in column (3) of the Second Schedule, within a period of two months for conducting the DUS test.

(3) On receipt of the fee, demanded under



sub-rule (1), the Registrar shall consider the application for further processing.

(4) The DUS test shall be necessary for all new varieties except essentially derived variety.

(5) The manner of testing essentially derived varieties shall be decided by the Authority on a case-to-case basis.

(6) The DUS test shall be conducted on a minimum of two locations.

(7) The Authority may recognise and empanel institutions having adequate facilities for conducting DUS or special tests in the country for conducting such tests.

(8) The Authority shall notify the adopted methods of conducting the DUS and special tests.

(9) The Authority shall develop and publish in its journal guidelines for the DUS test for each crop.

(10) The samples of seeds or propagules in respect of which an application for registration has been made and parental lines under registration submitted for the DUS and special tests and deposited at the National Gene Bank shall present the maintainable standards of generic purity, and uniformity and germination, sanitary and phytosanitary standards.”

50. Sub-rule (2) of Rule 29 of the 2003 Rules makes it clear that after initial scrutiny, if the Registrar is satisfied that the application is in order, he shall call upon the applicant to deposit the requisite fee within a period of two months for conducting the DUS Test.

51. In view of the above, *there can be little doubt that on receipt of the application, if the same is found to be in order then the next stage is to conduct the tests under Section 19 of the Act, which is the test to ascertain whether the Authority conforms to the DUS criteria.*



52. *The next question to be examined is whether the DUS test have to be conducted prior to acceptance of the application as contemplated under Section 20 of the Act.*

53. It is Pioneer's case that an application can be accepted only once a DUS test has been conducted. This is disputed by Kaveri and it is contended on its behalf that the DUS test could be conducted at any time and the same is not necessary for acceptance of an application.

54. As observed above, the first stage after receipt of the application for registration under Section 14 of the Act is to examine whether the same is in order. If the application is complete and in order, the Registrar is required to notify the applicant to deposit the fees for conducting the DUS Test. In terms of Sub-rule (3) of Rule 29 of the 2003 Rules, the application can be considered for further processing by the Registrar only after the fee demanded for conducting the DUS Test is deposited. Thus, plainly, the application cannot be accepted unless the fee for the DUS Test is deposited.

55. In terms of Section 20 of the Act, the Registrar is required to accept the application filed after making such enquiry as it thinks fit with respect to the particulars contained in such application. It is open for the Registrar to accept the applications absolutely, or subject to such conditions as may deem fit. At this stage, the Registrar can also reject the application if he finds that it does not comply with the requirements of the Act or the Rules and Regulations made thereunder.

56. The language of Section 20 of the Act is wide. *Although, it does not expressly mandate that the Registrar is required to await the result of the DUS Test before accepting the application, however, it does require the Registrar to make an enquiry in respect of the particulars contained in the application in order to make an informed decision whether to accept the application or reject the same.* If on making an enquiry, the Registrar is of the view that the application does not comply with the requirements of the Act, Rules or Regulations made thereunder, he may either call upon the applicant to amend the application or reject the same. *It is not necessary for the Registrar to await the results of the DUS Test if he is otherwise satisfied that the application does not comply with the requirements of the Act. However, if he is otherwise finds no reason to reject the application out rightly, it would be necessary for him to await the DUS Test as the said test would confirm whether the variety conforms to the DUS criteria. Concededly, conformity with the DUS Criteria is essential for any*



variety to be registered. Therefore, it would not be possible for the Registrar to accept an application if he is not satisfied that the variety conforms to the DUS criteria.

57. *The contention that the Registrar can accept the application results awaiting the DUS Test, is erroneous.* The Scheme of the Act is unambiguous. Once the Registrar accepts an application, he is bound to register the variety unless an opposition is filed under Section 21(3) of the Act and the Registrar finds merit in such opposition. This is clear from the provisions of Section 24(1) of the Act, which expressly provides that the Registrar shall register the variety and issue a certificate of registration in cases where an application for registration of a variety (other than an essentially derived variety) has been accepted and either (a) the application has not been opposed and the time of notice of opposition has expired; or (b) the application has been opposed and opposition has been rejected.

58. It is clear from the above that the Registrar had no discretion to reject an application once he has accepted the same and no opposition has been filed by any person on advertisement of such application. *It follows from the above that the Registrar must be fully satisfied that the candidate variety conforms to the DUS criteria before accepting the application for registration of the variety.* He is, thereafter, required to advertise the said application and his examination is confined to the opposition that may be filed pursuant to such advertisement.

59. If Kaveri's contention is accepted that it is not necessary for the Registrar to await the results of the DUS Test before accepting an application, it would lead to an unacceptable situation in a case where no opposition is filed and the DUS test are negative. In such cases, by virtue of Section 24(1)(a) of the Act, the Registrar would be required to register the variety even though it is not registrable on account of failing the DUS Test. *The Scheme of Chapter III of the Act regarding registration of the varieties makes it clear that qualifying the DUS test is an essential criterion for acceptance of an application under Section 20 of the Act.*

60. The next question to be examined is whether Pioneer's opposition was required to be rejected only on the ground that Kaveri's variety KMH -50 had qualified the DUS Test. The answer to this question is clearly in the negative. *As discussed above, an application can be accepted only once the DUS test is satisfied.* The application is, thereafter, required to be advertised. Such advertisement is to be made in the manner as prescribed under Rule 30 of the 2003 Rules. The said Rule is set out below:—



“30. Advertising of application for registration under section 21. –

(1) Every application for registration of a variety which has been accepted and the details thereof including specifications shall, upon such acceptance under sub-section (1) of section 20, be advertised by the Registrar in the manner specified in Form 01 of the Third Schedule.

(2) In every such advertisement under sub-rule (1), the Registrar shall mention that place or places where a specimen of the variety may be inspected.

(3) The contents of such advertisement shall include –

(a) name, passport data and source of parental line or initial variety used to develop the variety in respect of which an application for registration has been made;

(b) description of the variety bringing out its character profile as specified under the DUS test Schedule;

(c) essential characteristics conferring distinctiveness to the variety;

(d) important agronomic and commercial attributes of the variety;

(e) photographs or drawings, if any, of the variety submitted by the applicant; and

(f) claim, if any, on the variety.”

61. The details of the variety including photographs and drawings are required to be advertised in order to enable a person interested in the matter to object to the registration in a meaningful manner. As is apparent from Rule 30(3)(b) of the 2003 Rules, the advertisement is also required to describe the variety to bring out its character profile as specified under the DUS Test Schedule.

62. The opposition to registration can be made only on limited grounds as are specified in Section 21(3) of the Act. A person can



object to registration on the ground that (a) he is entitled to breeders right against the applicant; and/or (b) that the variety is not registrable under this Act; and/or (c) that the grant of certificate of registration may not be in public interest; and/or (d) that the variety may have adverse effect on the environment. Thus, an objector may accept that the candidate variety conforms to the DUS criteria and yet object to its registration on the ground that he has a breeders rights against the applicant and/or that grant of registration would not be in public interest and/or would have an adverse effect on the environment.

84. This Court is also of the view that the said decision is erroneous for several reasons. First of all, the Registrar should not have proceeded on the basis that the DUS Test was final and binding on Pioneer. As observed earlier, the entire procedure adopted by the Registrar/Authority was contrary to the scheme of the Act. *The Registrar could not have accepted Kaveri's application for registration of KMH-50 without the said variety qualifying the DUS Test. The question of accepting the application and inviting objections would only arise after KMH-50 had qualified the DUS Test.* As stated hereinbefore, the DUS Test report is not final and binding on the opponent and it was open for Pioneer to raise any objections regarding the restorability of the said variety in terms of Section 21(3)(b) of the Act. This would, obviously, include objections to the DUS Test. Kaveri would be well within its right to contend that the DUS Test was not conclusive to establish that KMH 50 was not distinct from 30V92. However, since the application was advertised prior to the DUS Test report being made available, such objections could not be included in the opposition.

85. *The Registrar's view that the objections regarding DUS test ought to be made by making a representation on inspection of the variety while the DUS test is being conducted, is erroneous. As discussed earlier, the question of raising objections arises only after the application has been accepted, which is post the variety being found to conform to the DUS criteria.* In terms of Rule 30(2) of the 2003 Rules, such advertisement would also include information as to the place where the candidate variety can be inspected. It is at that stage that an opponent has the opportunity to inspect the variety and, if necessary, point out errors in the DUS Test report by filing an opposition.”

(Emphasis supplied)



14. So pellucid, indeed, is the enunciation of the legal position in the above passages, that any attempt at paraphrasing would do injustice.

15. The position in law, as expostulated in the afore-extracted passages from *Pioneer Overseas Corporation* is clear and unambiguous. Bakhru, J. has held, without any equivocation whatsoever, that the exercise of DUS testing has mandatorily to be carried out prior to advertising of an application under Section 19 of the PPV Act for registration of a new plant variety.

16. Mr. Parthasarathy, sought to draw attention to what he perceived to be an error in Bakhru, J's reasoning in *Pioneer Overseas Corporation*, in observing thus (in para 59 of the decision):

“If Kaveri's contention is accepted that it is not necessary for the Registrar to await the results of the DUS Test before accepting an application, it would lead to an unacceptable situation in a case where no opposition is filed and the DUS test are negative. In such cases, by virtue of Section 24(1)(a) of the Act, the Registrar would be required to register the variety even though it is not registrable on account of failing the DUS Test.”

Mr. Parthasarathy submits that this observation suffers from an error of perception, as, if the DUS test is negative, there is no question of the plant variety proceeding to registration at all, or of any prejudice resulting to the opponent who seeks to oppose the application. The submission does not appear, to me, to be correct. Section 24(1)(a) of the PPV Act requires every plant variety which has been advertised, and which has either not been opposed within time, or the opposition filed in respect of which has been rejected, *to be registered*. Bakhru,



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J., therefore, is clearly correct in his view that, if DUS testing were not required to mandatorily precede advertisement of the application, then there could be no question of any objection to registration *on the basis of the DUS test results*, and, therefore, irrespective of the test results, the plant variety would necessarily have to be registered. The DUS test results, therefore, even if adverse, would not inhibit registration. Mr. Parthasarathy does not, therefore, appear to be correct in his submission that, if the result of the DUS test, conducted after advertisement of the application, were found to be negative, the application for rejection could be rejected. Section 24(1)(a) does not permit it.

17. In fact, Section 24(1)(a) is itself a clear indicator of the legislative intent that DUS testing must *precede* advertisement of the application. The mandate to register the plant variety after advertisement, where no sustainable opposition to registration has been raised, obviously presumes that the plant variety has already successfully weathered DUS testing prior to advertisement. To hold that DUS testing need not precede advertisement of the plant variety and that, even after advertisement, DUS testing could be conducted and registration refused if the test result is adverse, would, therefore, entirely rewrite the statutory scheme.

18. Moreover, the public interest that informs the view expressed in *Pioneer Overseas Corporation* is also *ex facie* apparent.

19. The very title of the PPV Act is “The Protection of Plant



Varieties and Farmers' Rights Act".

20. Farmers' rights, therefore, are a pre-eminent consideration that has to guide the approach of the court while administering the provisions of the PPV Act. The preamble to the PPV Act is also enlightening in this regard, and may be reproduced:

“An Act to provide for the establishment of an effective system for protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants.

WHEREAS it is considered necessary to recognise and protect the rights of the farmers in respect of their contribution made at any time in conserving, improving and making available plant genetic resources for the development of new plant varieties;

AND WHEREAS for accelerated agricultural development in the country, it is necessary to protect plant breeders' rights to stimulate investment for research and development, both in the public and private sector, for the development of new plant varieties;

AND WHEREAS such protection will facilitate the growth of the seed industry in the country which will ensure the availability of high quality seeds and planting material to the farmers;

AND WHEREAS, to give effect to the aforesaid objectives, it is necessary to undertake measures for the protection of the rights of farmers and plant breeders;

AND WHEREAS 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.”

21. The PPV Act, therefore, aims at striking a balance between the rights of farmers and accelerated agricultural development in the



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country which requires protection of plant breeders' rights. While harmonising and balancing these rights it is necessary that farmers are given full opportunity to oppose any monopoly which may be created by registering of plant varieties under the PPV Act as new plant varieties. For this purpose, persons who seek to oppose the application seeking registration of new plant varieties under the PPV Act have to be made aware of all details of the application and details of the purportedly newly developed plant varieties in respect of which registration is sought. It is obviously for this reason that Section 18 of the PPV Act contains an exhaustive and comprehensive list of the details which are required to be submitted with every application. While examining the nature of the information which is required to be submitted in accordance with Section 18 of the PPV Act, the Court has to be guided by the preambular provisions of the Act, and the necessity of protecting farmers' rights.

22. The view expressed in *Pioneer Overseas Corporation* is therefore, in tune with the prevailing philosophy of the PPV Act and therefore, in my respectful opinion, commends itself entirely to acceptance.

23. I, therefore, respectfully concur with the view expressed by the Coordinate Bench in *Pioneer Overseas Corporation*.

24. The sequitur has inexorably to follow. In all these cases, the applications of the private respondents proceeded to advertisement without prior DUS testing. That being so, the advertisements are liable



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to be quashed and set aside.

25. In that view of the matter, it is not necessary for me to enter into any of the other prayers contained in these writ petitions. Nor is it necessary for me to consider the aspect of delay in filing of the opposition against the applications of the private respondents, as one of the views expounded in *Pioneer Overseas Corporation* is that the very occasion for filing an opposition would arise only if the advertisement of the application, in the first instance, is preceded by DUS testing.

26. Accordingly, the advertisements issued by the Authority in respect of the applications forming subject matter of all these writ petitions, except the plant varieties MRC 7326 BG II, MRC 6301 Bt, MRC 6025 Bt and MECH 12 Bt which already stand registered, are quashed and set aside.

27. The corresponding applications filed by the concerned private respondents (Mahyco and Sungro) for registration, which form subject matter of the aforesaid writ petitions, are remanded for a fresh consideration to the Authority which will, in the first instance, conduct DUS testing and thereafter follow the procedure as outlined by Bakhru, J. in *Pioneer Overseas Corporation*.

28. Where the DUS test already stands carried out, no fresh DUS testing would have to be undertaken. However, the results of the DUS test would be provided to the petitioners in these writ petitions so that



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they could file their oppositions or comments in respect thereof.

29. Mr. Parthasarthy submits that, owing to pendency of these writ petitions, considerable time has been lost in prosecution of the applications for registration, filed by Mahyco and Sungro.

30. The merits of the application as well as the oppositions of these petitions would be holistically concerned by the Registrar, who is directed to take a decision in the matter as expeditiously as possible and, at any rate, within 6 months from today.

31. The petitioners would be at liberty to raise all contentions available in law. The petitioners as well as the private respondents would also be granted an opportunity of hearing by the authority before any view is taken in the matter.

32. A necessary parting comment:

32.1 Before concluding, I deem it necessary to place on record an example of commendable fairness by Counsel, which was displayed during these proceedings, and which deserves emulation, especially by youngsters at the Bar. One of the issues which arose during hearing was whether delay, in filing the oppositions by the petitioners in these cases, was condonable. Rule 32 of the PPV Rules provides that “the time schedule provided for advertisement, opposition, defence, hearing and amendment of specification” under the PPV Rules “shall not be extended”. A Division Bench of this Court, in *Maharashtra*



*Hybrid Seeds Co Ltd v. U.O.I.*⁴, held that the word “shall” in Rule 32 was required to be read as “may” and that, therefore, the delay in filing opposition under Rule 31(1) was condonable. Mr. Lokur, however, equally fairly conceded that the operation of the judgment of the Division Bench has been stayed by the Supreme Court. I, at that juncture, expressed the view that stay of operation of the judgment of the Division Bench did not erase its precedential value, in the light of the judgment of the Supreme Court in *Shree Chamundi Mopeds Ltd v. Church of South India Trust Association*⁵ and the judgment of a Division Bench of the High Court of Calcutta in *Pijush Kanti Chowdhury v. State of West Bengal*⁶. Mr. Parthasarathy, when his turn to reply came, did not pause an instant before submitting that my view, that the stay of operation of the decision in *Maharashtra Hybrid Seeds Co Ltd* would not erode it of its precedential value was perfectly correct, and that he would not, therefore, seek to argue against the decision in *Maharashtra Hybrid Seeds Co Ltd*, even though its operation was stayed by the Supreme Court.

32.2 The issue is not whether, in fact, my view that the precedential value of the decision in *Maharashtra Hybrid Seeds Co Ltd* did not stand diluted because of the stay of operation of the judgment by the Supreme Court, is or is not correct. In the view that I have taken in these matters, the occasion to pronounce on the point does not arise. What deserves to be highlighted, however, is Mr. Parthasarathy’s candour and forthrightness in conceding the point, without a

⁴ (2013) 54 PTC 528 (DB)

⁵ AIR 1992 SC 1439

⁶ (2007) 2 Cal LT 577: 2007 SCC OnLine Cal 267 (DB)



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moment's hesitation. It reflects a high standard of fairness on counsel's part, and this Court unhesitatingly records its appreciation in that regard. Such candour and fairness in argument is something which all who aspire to excellence at the Bar would do well to emulate.

Conclusion

33. All these writ petitions stand allowed to the aforesaid extent with no orders as to costs.

C.HARI SHANKAR, J

NOVEMBER 30, 2023

ar/dsn

Click here to check corrigendum, if any