



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

In the matter of: *Suo motu* order passed dispensing with the requirement of charges of Rs. 200/- towards application forms as notified in PVJ Vol-1 No. 1 dated February 20, 2007.

The issue that is *Suo motu* analysed and decided in the instant order is the legality of charges of Rs. 200/- for application forms for registration of plant varieties levied and collected by the Plant Varieties Registry in pursuance of a public notice published in the Plant Variety Journal Vol-1 No-1 dated February 20, 2007.

In the Plant Variety Journal (Vol-1 No-1) dated February 20, 2007 at page xii it has been notified that the charges for the application form for registration of plant varieties would be Rs. 200/-. The relevant portion of said public notice is extracted hereunder: -

"..The charges for the application forms are Rs.200/- (Rupees Two Hundred). The application form can also be downloaded from the website of the Authority (www.plantauthority.in). If application is downloaded a Demand draft of Rs.200/- (Rupees Two Hundred) should be drawn in favour of "Registrar of Protection of Plant Varieties and Farmers' Rights Authority" payable at Delhi."

There is no legal basis for fixing the charges for application form because there is no legal provision in PPV&FR Act, 2001 or in the PPV&FR Rules, 2003 to fix the charges for application form. Till registration, the law provides only for Registration fee under Section 18 (1) (g) of PPV&FR Act, 2001 and DUS testing fee under Section 23 (1) of PPV&FR Act, 2001. After registration annual fee under section 35 and renewal fee under section 24 (6) has to be paid till the expiry of period of protection that is 15 year in case of field crops and 18 years in case of trees and vines. The farmers are exempted from the payment of any fees in any proceeding under section 44 of PPV&FR Act, 2001.

Section 18 (1) (g) provides that every application shall be accompanied by such fees as may be prescribed. Consequently, the registration fee for all varieties has been prescribed in second schedule of PPV&FR Rules, 2003. Similarly, the DUS test fees under section 23 (1) and renewal fee under section 24 (6) have also been prescribed in the second schedule. The annual fee under section 35 (1) have been notified in official gazette S.O. 2182 (E) dated 26.08.2009. Accordingly there is no provision or enabling legislation to prescribe charges for application forms. The entire scheme of PPV&FR Act, 2001, PPV&FR Rules, 2003, PPV&FR Regulation, 2006 and 2009 does not whisper anything about charges for application forms and they are silent in this regard. I am



totally convinced that if there is no legal basis then no fee, charge could be levied or collected.

The application form for registration of plant varieties have been notified in PPV&FR Regulation 2006. The application form for registration of farmers varieties is prescribed in Sixth Schedule of PPV&FR Rules, 2003. As reiterated earlier farmers are exempted from payment of any fee in any proceeding under Section 44 of PPV&FR Act, 2001. The Form I which is applicable for new and extant varieties and Form II which is applicable for registration of EDV have been prescribed in PPV&FR Regulations, 2006 which has been notified in the Official Gazette. Again here also both the PPV&FR Regulations, 2006 and the Form I and II in PPV&FR Regulations are silent about charges for application forms. Accordingly it can safely be construed that there could be no charges for application forms.

When no charges or no provision enabling to fix charges for application form have been prescribed in the PPV&FR Act, 2001, PPVFR Rules, 2003 and PPV&FR Regulation, 2006 then the same cannot be fixed by an administrative order, that too in respect of a Form notified in the official gazette more particularly when the provisions and the Form in the Official Gazette is silent about charges for application forms. For a form notified in the official gazette the provision for levy of charges/fees should derive support from a legal provision. In the absence of any such provision administrative order fixing charge for application form has no legal basis.

The serial No. 12 in Form-I and II which prescribes about details of payment of application fee and DUS testing fee respectively means registration fees under section 18 (1) (g) and DUS testing fees under section 23 (1) of PPV&FR Act, 2001 and by any stretch of imagination it cannot be extended to charges for application forms which has no legal basis. Accordingly the collection of Rs. 200/- as application charges for application forms I & II notified in PPV&FR Regulation 2006 cannot be countenanced and is also not sustainable in the eyes of law.

I also derive authority from the decision of Hon'ble Delhi High Court in Sports and Leisure Apparel Ltd., -Vs- MCD and Anr., (Order dated 18.11.2014 in W.P. (C) No.4436/2010) that there must be express provision for any levy by a public authority. The operative portion of the order is extracted hereunder:-

"It is well settled that a taxing provision cannot be inferred by implication but must be expressed unambiguously. The Supreme Court in the case of Ahmedabad Urban Development Authority (supra) held as under:-

"7. After giving our anxious consideration to the contentions raised by Mr Goswami, it appears to us that in a fiscal matter it will not be proper to hold that even in the

absence of express provision, a delegated authority can impose tax or fee. In our view, such power of imposition of tax and/or fee by delegated authority must be very specific and there is no scope of implied authority for imposition of such tax or fee. It appears to us that the delegated authority must act strictly within the parameters of the authority delegated to it under the Act and it will not be proper to bring the theory of implied intent or the concept of incidental and ancillary power in the matter of exercise of fiscal power."

In this view also, the MCD cannot be inferred to have the power to levy the impugned charges." (emphasis supplied)

It is a settled principle that no tax, fee or charge can be levied without authority of law and consequently a tax, fee or charge can be levied save by authority of law.

Accordingly based on aforesaid considerations, I conclude that there is no express or any implicit provision for levy of charges for application forms and accordingly, I hereby withdraw the public notice published in PVJ Vol- 1 No.1 dated February 20, 2007. I hereby direct the Registry and its Branch Offices to dispense with the collection of Rs. 200/- as charges for application forms for registration of new, extant and EDV varieties forthwith.

Given under my hand and seal on this the 8th day of August, 2017.



(R.C. Agrawal)

Registrar-General