

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

IN THE MATTER OF: - Revocation filed by Bioseeds Research India Limited (Revocation Applicant) against Nuziveedu Seeds Limited (Registered Breeder) of Cotton variety with denomination NCS-207 MALLIKA (NCHH-207).

IN THE MATTER OF: -

BIOSEEDS RESEARCH INDIA LIMITED

.... REVOCATION APPLICANT

-Versus-

NUZIVEEDU SEEDS LIMITED

..... REGISTERED BREEDER

For the Revocation Applicant: - Sh. Anil Dutt and Sh. Sudarshan Singh Shekhawat, Ms. Sutapa Jana Advocates for M/s. Lakshmikumaran & Sridharan

For the Registered Breeder: - Sh. Abhishek Saket, Advocate for M/s. Infini Juridique

ORDER

By this order I shall dispose of the revocation application filed by the Revocation Applicant for revoking the registered variety NCS-207 MALLIKA (NCHH-207) registered in favour of the Registered Breeder.

The variety which is the subject matter of revocation namely NCS-207 MALLIKA (NCHH-207) was registered by the Registered Breeder with registration No.26 of 2011 on 24th June, 2011 under the category of Extant varieties Notified under Section 5 of Seeds Act, 1966.

Heard the parties on 16th May, 2019.

Pleadings and Evidence are complete.

FACTS IN NUTSHELL:- On 15th July, 2008 the Registered Breeder has filed an application for the registration of a cotton variety bearing denomination NCS-207 MALLIKA (NCHH-207) under the category of extant varieties notified under Section 5 of Seeds Act, 1966. The said variety was notified under Section 5 of Seeds Act, 1966 vide S.O. No.283(E) dated 12th March, 2003. Since, it was an extant variety notified under Section 5 of the Seeds Act, 1966 the conduct of DUS testing was not necessary under Regulation 6 of PPV&FR Regulations, 2006. The certificate of registration was granted to the Registered Breeder on 24th June, 2011 with certificate of registration number 26/2011 for the period of protection upto 11th March, 2018. The Registered Breeder filed OS No.761/2012 on file of 2nd Additional Senior Civil Judge Court, City Civil Courts, Hyderabad against the Revocation Applicant alleging that the Revocation Applicant's varieties BIO 110-2 (Bajrang) and BIO 322-2 (Gabbar BG II) are nothing but transgenic versions of Registered Breeder's plant varieties bearing denominations NCS-145 Bunny (NCHH-145) and NCS-207 Mallika (NCHH-207) registered as extant varieties vide registration certificates dated 21st October, 2011 and 24th June, 2011. In the said suit, the Registered Breeder found that the characteristics of the registered plant variety mentioned in the DUS test report filed by the registered breeder along with the Plaint before the Hon'ble Court and the characteristics of the registered variety mentioned in the application for registration before this Authority were completely different. The following table clearly shows the same: -

Essential Character	Before Authority	Before Court
Plant: Growth Habit	7	5
Fiber: Fineness	3	7

With regard to fiber, the Registered Breeder filed PV-21 to amend the note value for fiber fineness in respect of their registered variety NCS 207 Mallika (NCHH-207) from '3' to '7'. The said PV-21 was allowed by order dated 30th August, 2016 in PV-21 filed by the Registered Breeder after hearing both the Registered Breeder and the Revocation Applicant as the intervener. The operative portion of the order is extracted hereunder:-

“Now I have to consider the last and most crucial issue whether amendment is to be allowed and consequently entry in the register in the mutated. The entries in National Register of Plant Varieties are made by virtue of entries in the application after due processing and if entries in the register could be corrected under section 37 then there is no reason for not allowing the amendment in the application after registration as the entries in the application are entered in the National Register of Plant Varieties. Further the release proposal submitted by the registered breeder to the Central Sub Committee on Crops Standards, notification and release of varieties constituted under Seeds Act for notification of varieties under Seeds Act, 1966 shows that the fiber fineness of the registered variety is of 4.1 micronaire value. The DUS test guideline published by the PPV&FR Authority for registration of tetraploid cotton shows that at page no. 25 serial no. 35 for fiber fineness character with respect to 4.1 micronaire value the note value is 5 and the character description for fibre fineness is medium whereas the applicant in his PV-21 has sought to amend the existing note value from 3 to 7 that is with the character description for fibre fineness as fine. Whereas contrary to the claim of the registered breeder in PV-21, in the proposal submitted by the registered breeder to the Central Sub Committee on Crops Standards, notification and release of varieties constituted under Seeds Act for notification of varieties under Seeds Act, 1966 shows that the fiber fineness of the registered variety is of 4.1 micronaire value and the character description for fibre fineness with 4.1 micronaire value is medium. The said facts clearly show that the claim of the registered breeder ought to have been 'medium' for fiber fineness and the numeric value should have been 5 instead of 3. This is also corroborated by the fact that the registered breeder in the proposal for notification under Seeds Act has claimed fiber fineness as medium with 4.1 even prior to the filing of the application for registration of the variety before this Registry. Further fibre fineness is not essential character as per DUS test guidelines (under section 15 (2)(b) of PPV&FR Act, 2001, a variety is eligible for registration if it is distinct for one essential character). All these clearly shows that the entry in National Register of Plant Varieties in respect of registered variety has to be amended.

Accordingly the PV-21 filed by the Registered breeder is allowed subject to the conditions that the applicant is directed to file

amended sheet to the effect that in respect of character fiber fineness the character is medium and the note value is 5 within 10 days from the date of receipt of this order and consequently the entry in the register at Sl. No.30 (results of DUS testing) will be mutated and corresponding entry will also be made in Sl. No. 37 (any change in any entry)."

There was a typographical mistake with regard to plant growth habit in the Suit filed by the Registered Breeder against the Revocation Applicant which was corrected and the fresh statement was filed along with rejoinder to the written statement in the Hon'ble District Court correcting the characteristic relating to Plant Growth Habit of the variety as "SPREADING".

Now the contention of the Revocation Applicant is that the Registered Breeder has submitted inconsistent information before the Authority and the Court and has furnished incorrect information to obtain the registration of NCS-207 MALLIKA (NCHH-207). The case of the Registered Breeder is that the Revocation Applicant has been infringing their registered variety NCS-207 MALLIKA (NCHH-207) and they have not furnished any incorrect information and accordingly the registration of the variety to be retained and the Revocation Application be dismissed.

CASE OF THE REVOCATION APPLICANT:-The Revocation Applicant states that they were into the hybrid seed business and were taken over by DCM Shriram Consolidated Limited a leading business conglomerate with a group turnover of Rs.5000/- crores in the year 2002. The Applicant's business today has a turnover of Rs.391 crores FY 2012. The Applicant's brand "Bioseed" product portfolio includes field crops like corn, bajra, jowar, paddy, Bt cotton and vegetables. Currently, hybrid corn and BT cotton seeds account for most of the company's sales from this business. The Revocation

Applicant had licensed the right to produce and market its plant varieties bearing denominations "Bio-322-2 (Gabbar)" and "Bio-110-2 (Bajrang)". The Revocation Applicant's varieties are the products of painstaking and longstanding research carried out by the Revocation Applicant. It is also submitted that the Revocation Applicant had filed an application dated 16th August, 2010 for registration of the plant variety bearing the denomination "Bio-322-2 (Gabbar)" with the Registrar. It is further pertinent to note that even though the Revocation Applicant through its licensee continued to produce the plant variety bearing denomination BIO-110-2 (Bajrang) till 2011 and had sold the said variety till 2012, the Revocation Applicant has decided not to produce the said variety thereafter and not to market and sell the variety from Kharif 2013 season and beyond On account of its commercial viability. In the meanwhile, the Registered Breeder filed an Original Suit bearing No.761/2012 on the file of 2nd Additional Senior Civil Judge Court, City Civil Courts, Hyderabad, Andhra Pradesh against the Licensee alleging that the Revocation Applicant's varieties were nothing but transgenic versions of Registered Breeder's plant varieties bearing denominations NCS-145 Bunny (NCHH-145) and NCS-207 Mallika (NCHH-207), respectively, whereas the latter were registered as Extant Notified varieties under Section 5 of Seeds Act, 1966 in 2011. The Registered Breeder had further claimed that production and marketing of Revocation Applicant's varieties were activities of infringement of Registered Breeder's rights with regard to its Registered Varieties. It is alleged that the fact was known to the Revocation Applicant on 7th December, 2012. The grounds of infringement as alleged by the Registered Breeder was on the basis of the grant of registration to its variety which according to the submission by the Revocation

Applicant was obtained by providing incorrect information to the Registrar and in total contravention of the Rules and Regulations framed under the PPV&FR Act, 2001. The main ground for seeking the revocation itself is that the registration was obtained by the Registered Breeder allegedly by furnishing incorrect information to the Registry. The Registered Breeder had filed DUS test reports listing out the characters of its registered variety NCS-207 MALLIKA (NCHH-207) before the Hon'ble Court to substantiate its allegation that the registered plant variety is similar to that of the plant variety of the Revocation Applicant bearing denomination BIO-110-2 (Bajrang). It is pertinent to note the fact that the said DUS test report of the registered plant variety is also confirmed by Registered Breeder's own DNA test Report which is prepared through a scientific process and filed as Document 14 along with the plaint unquestionably provide sanctity to the characters referred to in the said DUS test Report. The characteristics of the registered plant variety mentioned in the DUS test Report filed by the Registered Breeder with the Plaint filed in the Hon'ble Court and the characteristics of the Registered Plant Variety in the application filed by the Registered Breeder with the Authority are different with regard to its essential characters. The same is highlighted as follows:-

Essential Character	Before Authority	Before Court
Plant: Growth Habit	7	5
Fiber: Fineness	3	7

The above inconsistency has been claimed by the Revocation Applicant as an evidence to the fact that the Registered Breeder has obtained the registration of the variety on the basis of providing incorrect information to the Authority. The term "Essential

Characteristics” has been defined in Section 2(h) of PVP Act to mean heritable traits of the plant variety which are determined by the expression of one or more genes of both heritable determinants that contribute to the principal features, performance or value of the plant variety. It is pertinent to note that the “Plant: Growth Habit”, a heritable character under genetic control. Compact growth means that the farmer can plant more plants per acre resulting in greater yield per acre. Hence, compactly growing cotton seeds are preferred over the plants which have spreading growth. Further “Fiber: Fineness” is a commercially important trait and finer cotton is preferred over other types of cotton Fiber: Fineness as less coarse and smoother cotton would be easier to process. The agronomical and commercial importance of these characters makes the above mentioned characters essential. It is thus pertinent to note that the characters referred to herein above are the characters which determine the performance, features and the value of the plant and are considered to be the essential characters of a cotton plant. The characteristics referred are also mentioned in the DUS characters listed out by the Authority & Government of India in the Guidelines for conduct of test for Distinctiveness, Uniformity and Stability of Tetraploid cotton. It is alleged that, it was hence relevant to note that the discrepancies reflected between the DUS reports attached along with the Pleint and the applications filed with the Registrar were not minor and Registered Breeder had concocted the information provided to the PVP Authority so as to obtain the registration. The paragraph No.12 of the pleint where Registered Breeder on the basis of the DUS test Report and the DNA test report has claimed/alleged that the registered plant variety is similar to the Revocation Applicant’s variety. The Registration Certificate granted to

Registered Breeder stipulates that the registration was awarded to Registered Breeder on the basis of the various distinctive characters/features stated in the application. The Revocation Applicant has claimed that therefore the registration was liable to be revoked as the characters were incorrectly mentioned in the application by the Registered Breeder. It has further been submitted that it was unclear whether the Registered Breeder had made a misstatement before the Court under oath or had provided incorrect material to the PVP Authority. It is claimed that since the statement before the Court is under oath the Revocation Applicant alleges that the Registered Breeder has obtained the Registration basing its application on the incorrect information, the registration of the impugned variety was liable to be revoked under Section 34(a) of the PPV&FR Act, 2001 as it demonstrated an intent to conceal correct information by the Registered Breeder at the time of applying for registration. It is to be in total violation of the provisions, scheme and intent of the PPV&FR Act, 2001 and/ or the Rules and Regulations framed thereunder. It is argued that the Registration granted to the Registered Breeder is not in public interest. It is claimed that the Registered Breeder has obtained the registration based on incorrect information with an intention to impede the competition in a wrong way than to protect its own rights/ interests and hence the said registration is accordingly liable for revocation.

Based on the information made available, Shriram Bioseed Genetics (SBG), a licensee of the Revocation Applicant, got amalgamated with DCM Shriram Consolidated Limited ("DSCL"/"DCM") through the Scheme of Amalgamation sanctioned by the Hon'ble High Court of Delhi on 19th August, 2010 and is currently functioning as a division

of DSCL. It is further submitted that in accordance with the Scheme of Amalgamation sanctioned by the Hon'ble High Court of Delhi the license granted by the Revocation Applicant to SBG got transferred to DSCL and thereby DSCL became the Licensee of the Applicant. A copy of the order passed by the Hon'ble High Court of Delhi on 19th August, 2010 sanctioning the Scheme of Amalgamation of SBG with DSCL has been enclosed as Exhibit P-6. Subsequent to the filing of the Revocation Application against the Registered Breeder with the Authority the Applicant also got amalgamated with DSCL through the Scheme of Amalgamation sanctioned by the Hon'ble High Court of Delhi on 22nd March, 2013. Subsequent to the amalgamation of the Revocation Applicant with DSCL, the Revocation Applicant has been functioning as a division of DSCL. A copy of the order passed by the Hon'ble High Court of Delhi on 22nd March, 2013 sanctioning the Scheme of Amalgamation of the Applicant with DSCL is enclosed herewith as Exhibit P-7. Pursuant to the orders passed by the Hon'ble High Court of Delhi sanctioning the Scheme of Amalgamation, the license in relation to the varieties bearing denomination BIO-322-2 (Gabbar) and BIO-110-2 (Bajrang) stands transferred from the Revocation Applicant to DSCL and DSCL becomes the absolute owner of the said varieties. The Revocation Applicant is the developer of the Revocation Applicant's varieties and is directly aggrieved by the action of the Registered Breeder alleging that its rights in relation to the registered plant varieties of Cotton Hybrid seeds namely NCS-145 Bunny (NCHH-145) and NCS-Mallika (NCHH-207) have been infringed by SBG, the licensee of the Revocation Applicant. Therefore, the Revocation Applicant and the licensee of the Revocation Applicant are not two separate entities. Both the parties are now operating as mere divisions of DSCL. An

action submitted against one division would affect the other as if such action is initiated against itself as both are part of the same company.

From the above, it could be deduced that the action of Registered Breeder against the Licensee of the Revocation Applicant had hampered the interest of the Revocation Applicant. Since the rights and interest of the Revocation Applicant in relation to the Revocation Applicant's varieties are affected, the Revocation Applicant becomes an interested party as contemplated under PPV&FR Act, 2001. Therefore, the allegations made by the Registered Breeder that the Revocation Applicant is not an interested party is incorrect. Currently, SBG and the Revocation Applicant are functioning as divisions of DSCL and they are part and parcel of DSCL. The Registered Breeder had filed a suit against SBG alleging the infringement of its registered varieties as well as the Bt versions of its registered varieties and the said fact has been mentioned by the Revocation Applicant in his Revocation Application. Therefore, the attempt of the Registered Breeder to portray that the Revocation Applicant has suppressed facts and has approached the Authority and filed the Revocation Application. The Registered Breeder himself is accepting that GEAC approval for the commercialization of the Revocation Applicant's varieties has been obtained in the name of the Revocation Applicant. As participant in seed business, there is every reason to believe that the Registered Breeder is aware that the SBG got merged with DSCL. Accordingly, DSCL becomes the owner of the Revocation Applicant's Varieties. It is pertinent to note that the numbers against the characteristics in the applications and as well as in the documents filed before the Hon'ble City Civil

Court by the Registered Breeder are those referring to the essential characters of the plant varieties and these could be employed by the Authority to decide whether or not to register a plant variety. The characteristics of the registered varieties mentioned in the DUS reports filed by the Registered Breeder along with the plaint as documents No.11 and 12 with the Hon'ble Court and the characteristics of the registered varieties in the application filed by the Registered Breeder with the Registrar are different with regard to important characters such as Plant: Growth Habit (12), Fiber: Fineness (35). The said discrepancy was highlighted by SBG through its written Statement the Registered Breeder had not only accepted the existence of such discrepancy but had also resorted to escape from such an error by merely stating that it is an inadvertent typographical mistake and had also filed an amendment application with the Authority on 4.6.2013 in this regard. The provisions of the PVP Act enables the person which has the registration of a plant variety in its favour to request the Authority to rectify its mistakes in the registration certificate but does not contemplate a situation where mistakes in the application could be corrected even after the completion of registration process and issuance of the registration certificate. The registration certificate has been granted on the basis of the information furnished in the application. The registration proceedings of the registered varieties were completed and the registration certificate was granted on 24th June, 2011 to variety NCS 207 (Mallika, NCHH-207). The Registered Breeder had filed his application with the Authority for the registration of variety bearing denomination NCS 207 Mallika (NCHH-207) on 15th July, 2008 and the Authority upon satisfaction of the required criteria had granted certificate of registration to the Registered Breeder on 24th June, 2011.

The suit for alleged infringement against SBG had been filed by the Registered Breeder on 31st October, 2012 on the basis of DUS reports provided by its internal laboratory which is subsequent to the registration of its variety. If any errors or mistakes have cropped up in the DUS report the same should have been in the subsequent DUS report filed before the Hon'ble Court but not in the DUS report submitted to the Authority at the time of filing of the application for the registration of the variety as the same was relied upon and the registration certificate was granted by the Authority to the Registered Breeder. The Registered Breeder in the suit filed against SBG before the Hon'ble Court had stated in its rejoinder that a letter towards rectification of the alleged inadvertent mistake in its application for registration is filed before the Authority. However, the Registered Breeder is further incorrectly stating before this Authority such inadvertent mistake is corrected even without obtaining any order in this regard from the Authority. It is alleged that such a dual stand of the Registered Breeder would establish that the Registered Breeder may have made up a story of this inadvertent mistake in the application so as to sustain its suit for infringement against SBG and also the registration of the registered varieties which was obtained on the basis of incorrect information. The Registered Breeder has been alleged to have filed an application for registration of its registered variety with incorrect information, but with a declaration that the information was correct. The Revocation Applicant, however, is not questioning the procedure followed by the Registrar, but has claimed that the Registrar was misled and consequently, a wrong registration has been granted. It has been brought out that the manner in which a registration certificate was obtained by the Registered Breeder against public as well as private

interest was liable for revocation immediately if proven to the fact, irrespective of the absence of any opposition filed by the Registered Breeder against the registration of its variety BIO-322-2 (GABBAR BGII). However, it is pertinent to note that the said varieties of the Revocation Applicant were neither proven as a replica of NCS 207 MALLIKA Bt2 nor was an essentially derived variety of NCS 207 MALLIKA.

In addition, PV-1 is a proforma only, and not a document of power of attorney as claimed by the Registered Breeder. Moreover, assuming but not admitting that such stamp duty is required to be paid, it is relevant to note that it is a settled law that hyper technical procedural irregularities shall not be a ground for rejecting any application.

The evidence was deposed on behalf of the Revocation Applicant by way of affidavit by Dr. Ram Mohan Singh, Head Breeder (Cotton) of the Revocation Applicant as PV-1 who is the authorized representative of the Applicant. In the evidence also it was re-iterated that the Revocation Applicant namely Bioseed Research India Limited got amalgamated with DCM Shriram Consolidated Limited through the Scheme of Amalgamation sanctioned by the Hon'ble Delhi High Court on 22nd March, 2013. The DSCL after the merger was renamed as DCM Shriram Limited. The Registered Breeder filed an OS No.761/2-12 on file of 2nd Additional Senior civil judge court, City Civil Courts, Hyderabad against the Revocation Applicant alleging that the Revocation Applicant's varieties BIO 110-2 (Bajrang) and BIO 322-2 (Gabbar BG II) were nothing but transgenic versions of NSLs plant varieties bearing denominations NCS-145 Bunny (NCHH-145) and NCS-207

Mallika (NCHH-207) registered as extant varieties vide registration certificates 91 of 2011 and 26 of 2011 dated 21st October, 2011 and 24th June, 2011 respectively.. The Registered Breeder had filed DUS reports listing out the characters of the variety before the Hon'ble Court as Document No.12 to substantiate its allegation that their registered plant variety is similar to that of the Revocation applicant's variety Bio-322-2 (Gabbar). It is to note that the fact that the said DUS test report of the registered plant variety is also confirmed by the Respondent's own DNA test report which is prepared through a scientific process and filed as Document No.14 along with the plaint unquestionably provide sanctity to the characters referred to in the said DUS test report. It was alleged that bare inspection of the aforesaid documents filed with the Hon'ble Court could reveal that the characteristics of the Registered Variety mentioned in the DUS test report filed by the registered breeder along with the Plaint filed in the Hon'ble Court were completely different from the characteristics of the registered plant variety in the application filed by the Registered Breeder in the Authority. These inconsistencies/ discrepancies reflected between DUS test Reports attached with the Plaint and the application filed before the Authority were substantial as they pertain to essential characters of the crop. When the said discrepancy was pointed out, the Registered Breeder submitted that it was an inadvertent typographical mistake and informed that an amendment application was filed with the Authority for the same.

The Revocation Applicant has sought that the Revocation Application be allowed and the Registration Certificate No.26 of 2011 for crop cotton variety bearing denomination NCS-207 MALLIKA

(NCHH-207) issued in favour of the Registered Breeder be revoked and consequent entry thereof in the National Register of Plant Varieties if already entered be removed.

CASE OF THE REGISTERED BREEDER:- The Registered Breeder finds the Revocation Applicant has not been able show or prove in the entire pleading that he is an “interested party” and claims that his (Registered Breeder’s) interests have been infringed by the Revocation Applicant. It recounts the claim by the Revocation Applicant as the developer of the cotton hybrid bearing denomination “Bio-322-2 (Gabbar)” which has been licensed to Shriram Bioseed Genetics a division of DCM Shriram Consolidated Limited referred to as “DCMs/Licensees”. The Revocation Applicant is accused of creating a confusion in the pleadings. DCM Shriram Consolidated Limited is referred to as “DSCL” in para No.1.2 and as “DCMs” in para No.1.7. The name of the Revocation Applicant is not given on the seed container, through GEAC Approval is in the name of the Revocation Applicant. Such a suppression of information on the container in itself is a violation of Environmental (Protection) Act, 1986 read with Rules for Manufacture, Use/Import/Export and Storage of hazardous micro organisms/ genetically engineered organisms or cells 1989. It is also submitted that the Revocation Applicant was indulging in infringing activities and was in fact, hampering and violating the interests of the Registered Breeder. The grounds set out in the Revocation Application have also been alleged as frivolous.

The Revocation Applicant has been accused the Registered Breeder of having registered is that the variety NCS-207 MALLIKA

(NCHH-207) has been registered based on incorrect information. has been submitted that the Revocation Applicant has merely relied on numerical figures and has not even cared to look at the real characters assigned to the numerical figures with respect to the characteristics "Fibre: Fineness (Micronnaire value)" either before the Authority or before the Court. It is brought out that the numerical figures are never advertised but the absolute characters are advertised in the journal. As far as the character of Fibre Fineness is Fine in either ways. The character of the Plant Growth Habit is concerned, the Registered Breeder's claim has been that of "SPREADING" before the PPV&FR Authority. The Registered Breeder admits that there was a typographical error with regard to Plant Growth Habit which was subsequently corrected and fresh statement was filed along with Rejoinder to the written statement in the Hon'ble District Court claiming as spreading for both the varieties that is NCS 207 and BIO-322-2 Gabbar BGII. It is accused that the Revocation Applicant has failed to even enumerate in a single line how and in what manner there is any alleged violation who has not even stated why it could not file the opposition when the Application which is the subject matter of Revocation. The Revocation Applicant has also been charged with having failed to show as to in what manner the registration is in violation of public interest since. He has only shown private interest and not public interest. The Registered Breeder initiated action against the Revocation Applicant for the hybrid cotton variety BIO-322-2 Gabbar BG II which is nothing but NCS 207 Mallika Bt2 for which the application for registration has already been filed by the Revocation Applicant way back on 4th November, 2008 vide number REG/2008/486. BIO-322-2 was an exact replica of NCS-207 and that

BIO-322-2 GABBAR BGII is an EDV of NCS-207. In addition the Form PV-1 submitted by the Revocation Applicant was not proper since the same has not been stamped and the stamp duty attached with Form PV-1 is for the purpose of affidavit and not proper. It is beyond imagination as to how a Revocation Applicant could seek a relief of submission of inventory or for an action under Section 77 unless he was able to establish that his variety BIO-322-2 GABBAR is similar/ identical to Registered Breeder's variety NCS-207. By seeking such a relief, the Revocation Applicant has actually implied and admitted that the variety GABBAR is similar/ identical to NCS-207 MALLIKA and accordingly, the Suit for infringement by Registered Breeder was maintainable and injunction orders were liable to be passed against the Revocation Applicant.

The Registered Breeder states that it is a well known fact among the farmers that NCS-207 MALLIKA has been in commercial use under cultivation since 2003 and has been the most popular cotton variety which is notified under the Seeds Act as well as registered under the PPV&FR Act. The Registered Breeder is *numero uno* seed producing company in India engaged in research and development, production and marketing of quality seeds of various hybrids/ varieties of different crops with a standing of nearly 40 years in the market, serving the farming community with the best of the hybrids at affordable and competitive price. The Registered Breeder is a recipient of DSIR award instituted by Government of India, in the year 2002 due to the Company's excellent R & D efforts. Two of the cotton hybrids were notified by Govt. of India under the provisions of Seeds Act, 1966 on account of their superior quality and transgenic versions of these two hybrids could corner an unprecedented market

share and these non Bt hybrids were found to be even superior to many of the hybrids released and marketed around the same time by some of its competitors. These two hybrids Bunny (NCS 145) & Mallika (NCS 207) by virtue of their notification under the Seeds Act (1966) fall under the extant category and were registered for protection under the provisions of the PPV&FR Act, 2001. It is accused that over the years many of the hybrids of the Registered Breeder including Bunny and Mallika and their parents were being multiplied by different seed companies including Revocation Applicant. The Registered Breeder was compelled to initiate legal action against the alleged unethical, unfair and illegal practice to safeguard its business interest in the absence of specific law at that point of time.

Cotton species has been notified for filing of application for registration of cotton varieties since April 2, 2008 under PPV&FR Act for protection. Registered Breeder had filed applications with the PPV&FR Authority for granting protection of certain cotton hybrids including Bunny & Mallika and also their carrying Bt genes for protection against insect damage and their parent lines subsequently. The Revocation Applicant has been accused of illegally using the parent line of Mallika and developing/ marketing the resultant hybrids in the name and style of Gabbar (BIO-322-2) . It is stated that the hybrid Gabbar as well as the other hybrid Bajrang (Bio 110 2) have been developed by the Revocation Applicant by using the proprietary parent lines of the Registered Breeder and as stated above infringement action has been filed before the District Court in Hyderabad Andhra Pradesh against SBG, as the seed containers carry SBG's name as produced and marketed by them. It

is further accused that the name of the Registered Breeder of these hybrids who is the Revocation Applicant here is not being disclosed on the seed container to escape infringement act, it is also violation of Environment (Protection) act, 1986 and the Rules thereof. It is alleged that the Revocation Applicant and the SBG have been in the habit of copying the intellectual proprietary rights of Registered Breeder which was from the fact that several proceedings have been initiated against SBG including infringement and abusive act under Section 24(5) of the PPV&FR Act by the Registered Breeder.

The present proceeding is stated to be nothing but a counter blast to the infringement action brought out by Registered Breeder against Shriram Bio Seed Genetics. The Revocation Applicant who until recently was a company selling and marketing vegetable hybrid seeds, was never known as a cotton seed producer, but thrived gained money and built reputation by adopting infringement approach by using the intellectual property of the Registered Breeder.

The Revocation Applicant has been accused of only trying to make a big issue of a minor mistake which was already corrected and filed. The clerical mistakes had been admitted to have happened and have been applied for correction before the respective authorities. The correction allowed by the Registrar-General is in respect of numerical note and not of the characteristics. Hence, it is the wrong contention of the Revocation Applicant that there was misrepresentation by the Registered Breeder. It is stated that the corrected documents have been filed before the Hon'ble City Civil Court Hyderabad. The same has been accepted and the Hon'ble II

Addl. Chief Judge, City Civil Court, Hyderabad and upon acceptance it has been pleased to accept the same and passed an interim order on 7.10.2013 in I.A. No.1817 of 2013 in O.S. No.761 of 2013 filed by the Registered Breeder in the Suit No.761 of 2013 pending before the said judge. The order passed by the Hon'ble II Addl. Chief Judge, City Civil Court, Hyderabad has been challenged before the Hon'ble High court of AP by the Revocation Applicant (now a non-existent company) by filing CRP No.5302/2013. It is contended that the stand of the Revocation Applicant in the CRP is very peculiar. The Revocation Applicant is not against testing of the hybrids in dispute but is strangely against sending the seeds of the hybrids in dispute and their parent lines to the Registrar, PPV&FR Authority for conducting DUS tests. The Revocation Applicant feels that the DNA test is more appropriate and stringent to determine dissimilarities of the varieties and take objection on the orders of the Lower Court for sending the varieties for DUS test. The order of the Civil Judge has neither been granted a stay legally nor the PPV&FR Authority has been barred from conducting the test. The CRP is filed only on this ground and the matter is pending for adjudication. The Registered Breeder has contended that the Revocation Applicant has hidden true and correct facts and has been filing documents on behalf of non-existent companies. It is alleged by the Registered Breeder that as on date there is no such company existing by the name of the Revocation Applicant or a Private Limited Company bearing the name BIOSEED RESEARCH INDIA PRIVATE LIMITED. It is also to note that the Revocation Applicant became a non-existent Company from March 2013 while the Private Limited Company was non-existent from 2009-10. In summary, it is alleged that the petition as well as the affidavit have been filed by the Non-existent

companies. Accordingly, it is sought that, the revocation application be dismissed with costs.

Having heard the arguments of Revocation Applicant and Registered breeder and after perusing meticulously the pleadings and evidence filed by the Revocation Applicant and the Registered Breeder the following issues are framed in this matter:-

- a) Whether the instant revocation application has to be disposed of on merits of the current status of the variety which is the subject matter of revocation?**

In the instant matter the variety which is the subject matter of revocation namely, NCS-207 MALLIKA (NCHH-207) has gone into public domain with effect from 12th March, 2018. Since, the registration of the NCS-207 MALLIKA (NCHH-145), is not in existence, the issue whether the revocation of the said variety has to be disposed of on merits has to be decided first, even though no pleading or argument has been advanced in this regard.

The certificate of registration, if revoked, takes effect from the date of grant of certificate of registration and more particularly in the instant case, since it is a notified variety the registration takes effect from the date of notification under Seeds Act that is on 12th March, 2003 and hence, if revoked, it also takes effect from 12th March, 2003. Since, revocation is retrospective in nature, the fact that the variety has gone into public domain does not make a difference in hearing and disposing of the matter on merits. However, it shall have an implication on the claims made, commercialisation agreements

entered into by the Registered breeder during the period from 24.06.2011 to 11.03.2018, in event of its revocation. Considering, the economic value the variety has had in the past, the implication could be of a large magnitude. Hence, utmost care needs to be exercised while assessing the allegation of wrong information submitted while claiming registration of the variety by the Registered Breeder.

b) Whether the Revocation Applicant is an interested person within the meaning of Section 34 of the PPV&FR Act, 2001. ?

The mere fact that the Registered Breeder has filed an infringement suit against the Revocation Applicant clearly brings the Revocation Applicant as an interested person within the meaning of section 34 of the Act and is competent to file a Revocation Application and the same is maintainable. The argument of the Registered Breeder that the Revocation Applicant has not filed opposition does not carry any force as non-consequence of filing an opposition has no significance or relevance in a revocation proceedings. It is well settled law that a revocation applicant can even be a person who has missed the opportunity of filing an opposition.

c) Whether the Revocation Applicant is a non-existent Company ?

This issue has to be examined as the Registered Breeder has alleged that the Revocation Applicant is a non-existent Company. The Revocation Application was filed by Bioseed Research India Limited which was formerly known as Bioseed Research India Private

Limited. The Shriram Bioseed Genetics (SBG) licensee of the Revocation Applicant, got amalgamated with DCM Shriram Consolidated Limited ("DSCL"/"DCM") through the Scheme of Amalgamation sanctioned by the Hon'ble High Court of Delhi on 19th August, 2010 and is currently functioning as a division of DSCL. In accordance with the Scheme of Amalgamation sanctioned by the Hon'ble High Court of Delhi the license granted by the Revocation Applicant to SBG got transferred to DSCL and thereby DSCL became the Licensee of the Revocation Applicant. A copy of the order passed by the Hon'ble High Court of Delhi on 19th August, 2010 sanctioning the Scheme of Amalgamation of SBG with DSCL has been enclosed as Exhibit P-6. Subsequent to the filing of the Revocation Application against the Registered Breeder with the Authority, the Revocation Applicant also got amalgamated with DSCL through the Scheme of Amalgamation sanctioned by the Hon'ble High Court of Delhi on 22nd March, 2013. Subsequent to the amalgamation of the Revocation Applicant with DSCL, the Revocation Applicant has been functioning as a division of DSCL. A copy of the order passed by the Hon'ble High Court of Delhi on 22nd March, 2013 sanctioning the Scheme of Amalgamation of the Applicant with DSCL is enclosed herewith as Exhibit P-7. Pursuant to the orders passed by the Hon'ble High Court of Delhi sanctioning the Scheme of Amalgamation, the license in relation to the varieties bearing denomination BIO-322-2 (Gabbar) and BIO-110-2 (Bajrang) got transferred from the Revocation Applicant to DSCL and DSCL become the absolute owner of the said varieties. The Revocation Applicant is the developer of the Revocation Applicant's varieties and is directly aggrieved by the action of the Registered Breeder alleging that its rights in relation to the registered plant varieties of

Cotton Hybrid seeds namely NCS-145 Bunny (NCHH-145) and NCS-207-Mallika (NCHH-207) have been infringed by SBG, the licensee of the Revocation Applicant. Hence I have to agree with the contention of the Counsel for Revocation Applicant that neither the Revocation Applicant nor the licensee of the Revocation Applicant's Varieties is in existence as separate entities and both the parties are now operating as mere divisions of DSCL and an action submitted against one division would affect the other as if such action is initiated against itself as both are part of the same company. Accordingly, the contention of the Registered Breeder that the Revocation Applicant is a non-existent company is not tenable.

d) Whether the Registered Breeder has furnished different information before Authority and Court and consequently has furnished incorrect information in obtaining the registration ?

It is no doubt that the Registered Breeder has filed the numeric value of the essential character of the variety with respect to Plant: Growth Habit and Fiber: Fineness differently before different forums. But that does not give rise for the case of revocation as both have been amended and rectified. With regard to essential character relating to fiber fineness, the Registered Breeder filed PV-21 to amend the note value for fiber fineness in respect of their registered variety NCS-207 MALLIKA (NCHH-207) from '3' to '5'. The said PV-21 was allowed by Registrar-General of this Authority by order dated 30th August, 2016 in PV-21 filed by the Registered Breeder after hearing both the Registered Breeder and the Revocation Applicant as the intervener.

The character of the Plant Growth Habit is concerned, the Registered Breeder's claim has been that of "SPREADING" before the PPV&FR Authority. There was typographical mistake with regard to Plant Growth Habit which was corrected and fresh statement was filed along with Rejoinder to the written statement in the Hon'ble District Court claiming as spreading.

Hence, both the inconsistencies alleged by the Revocation Applicant have been corrected and accordingly the contention of Revocation Applicant that inconsistent and false information has been furnished before different forums have no substance. The following table makes the same clear.

Essential Character	Before Authority	Before Court	Amended and corrected
Plant: Growth Habit	7	5	Amended the Plant Growth Habit to Spreading before City Civil Court, Hyderabad.
Fiber: Fineness	3	7	Amended from '3' to '5' by order dated 30.8.2016 in PV-21 filed by the Registered Breeder.

As a consequence, this issue is answered in favour of the Revocation Applicant.

e) Whether the PV-1 filed by the Revocation Applicant is not stamped and hence it not proper ?

The Registered Breeder has contended that PV-1 filed by the Revocation 1 is not proper since the same has not been stamped and the stamp duty attached with Form PV-1 is for the purpose of affidavit and not proper. Per Contra the Revocation Applicant

contended that PV-1 is a form and not a power of attorney as claimed by the Registered Breeder. Moreover, assuming but not admitting that such stamp duty is required to be paid, it is relevant to note that it is a settled law that hyper technical procedural irregularities shall not be a ground for rejecting any application.

I perused the PV-1 filed by the Revocation Applicant and it has been stamped to the value of affidavit and PV-1 is essentially an authorization form given by an applicant for registration of a variety to an attorney to file the same and make and receive correspondences relating to registration. It is in substance a power of attorney form and must be duly stamped in accordance with law. The PV-1 is stamped already and hence, an adjudication in this regard is not necessary at the final hearing stage.

f) Whether the name of the Revocation Applicant is given on the seed container as per Rules framed under Environmental Protection Act, 1986.?

This issue has been framed as it is the allegation of the Registered Breeder that the name of the Revocation Applicant is not given on the seed container, though GEAC Approval is in the name of the Revocation Applicant. Such suppression of information on the container is violation of Environmental (Protection) Act, 1986 read with Rules for Manufacture, Use/Import/Export and Storage of hazardous micro organisms/ Genetically engineered organisms or cells 1989. Per contra the Revocation Applicant has denied the same.

At the outset this issue is beyond the statutory mandate of this Authority and is to be enforced by a different authority and further Revocation Applicant's variety is not registered with this Authority and is also not the subject matter of revocation. Hence, this issue has no nexus with the issue on hand.

I have no hesitation to conclude that the Registered Breeder has not furnished any incorrect information in obtaining the Registration of the variety NCS-207 Mallika (NCHH-207) and there is no iota of material available to revoke the variety.

Accordingly, I hereby dismiss the PV-15 (Application to revoke the registration of NCS-207 MALLIKA (NCHH-207) filed by the Revocation Applicant. However, there shall be no order as to costs.

Given under my hand and seal on this the 8th day of January, 2020.

Sd/-
(K.V.PRABHU)
CHAIRPERSON