CASE ANALYSIS ON KAVITHA KURUGANTI V. PEPSICO INDIA HOLDINGS PVT. LTD (DELHI HIGH CT., JAN. 9, 2024)

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***Case analysis on Kavitha Kuruganti v. PepsiCo India Holdings Pvt. Ltd*[1]**

1. BACKGROUND

Under the PPV&FR Act, 2001,a unique sui generis regime designed to harmonize breeders' rights alongside farmers' privileges[2]. By obtaining a registration certificate, breeders gain exclusive rights to sell and market a variety,provided that compulsory licensing and farmer exceptions are respected. Section 39(1)(iv) preserves farmers' rights to sow, resow, use, save, exchange, share, or sell the farm produce, including seed of a registered variety, except that it should not be sold as branded seed. This ensures farmers' traditional practices are preserved even in a situation of registration of a variety. PepsiCo India developed a chipping potato variety FL-2027 (FC5), used in Lay's chips, and had it registered in 2016 for 15 years under the PPV&FR Act. Seeds were given by PepsiCo to farmers by way of contract farming, which they sold back to the company. In 2019, PepsiCo sued certain Gujarat-based non-contract farmers for supposedly growing and selling FL-2027 without permission. The suits were dropped due to widespread public backlash. Activist Kavitha Kuruganti sought cancellation of PepsiCo's registration, alleging it was based on false assertions about FL-2027 and undermined farmers' interests.

2. FACTS OF THE CASE

PepsiCo's potato variety FL-2027 (FC-5) had been registered under the PPV&FR Act in 2016 for 15 years. Although presented as a "new variety," the Registrar handled it as an existing one. PepsiCo asserted that FL-2027 was first used commercially outside India in the year 2002 and in India in 2009. In 2019, PepsiCo instituted nine lawsuits against Gujarat's non-contract

[1] *Kavitha Kuruganti v. PepsiCo India Holdings Pvt. Ltd.*, LPA 590/2023 & LPA 644/2023 (Del. H.C. Jan. 9, 2024)

[2] The Protection of Plant Varieties and Farmers' Rights Act, No. 53 of 2001, India Code (2001) [hereinafter *PPV&FR Act*]

farmers for infringement, claiming injunctions and compensation. The lawsuits precipitated mass farmer protests, after which PepsiCo dropped the suits after settling. On 8 August 2019, activist Kavitha Kuruganti submitted an application under Section 34 of PPV&FR Act to the Authority, requesting cancellation of PepsiCo's registration. She claimed that PepsiCo provided false information on the date of first commercial sale and falsely described FL-2027 as a "new" variety, which were against Sections 34(a) and 34(f). It was also claimed that the company did not file obligatory documents such as the deed of assignment pursuant to Section 34(c) and that what it did to farmers was against public interest and farmers' rights in terms of Sections 34(h) and 39(1)(iv)[3]. On 3 December 2021, the PPV&FR Authority cancelled PepsiCo's registration on the ground that it was granted through false and incomplete information. The Authority held that the variety was incorrectly classified and PepsiCo's actions had brought hardship to farmers, also rejecting its application for renewal. PepsiCo objected, but on 5 July 2023, the Single Judge of the Delhi High Court affirmed the cancellation on similar grounds of errors of classification and date of sale. But on January 9, 2024, a Division Bench consisting of Justices Yashwant Varma and Dharmesh Sharma upheld the order, finding that PepsiCo's procedural failures were neither intentful nor material. The court reinstated PepsiCo's registration for FL-2027 and remanded its renewal application for reconsideration by the Authority.

3. LEGAL ISSUES

a) Whether the application of PepsiCo contained factual inaccuracies or omissions of information, validating a revocation under Sections 34(a), 34(c) or 34(f) of the PPV&FR Act.

b) Whether FL-2027 appropriately denoted a "new" variety or an "extant" variety, and whether any misnaming/denoting constituted a clerical error or misstatement of fact under Section 2(j) and Rule 22(2A).

c) Whether PepsiCo was an eligible applicant under Section 16(1) of the Act given the alleged non-existence of a proper assigned deed from the original breeder.

d) Whether PepsiCo's legal actions against farmers violated the rights of farmers under Section 39(1)(iv) and were against the evidence of conduct "against public interest"

[3] *PPV&FR Act* § 39(1)(iv).

under Section 34(h).

e) Whether Section 34 should be strictly applied to any technical or procedural mistake or only to internally invalidity which fundamentally eroded the substance of registration.

4. RELEVANT RULES AND PROVISIONS OF LAW

Section 16(1)[4] – Eligible Applicants

The breeder, successor of the breeder, assignee of the breeder's rights, farmer or group of farmers (in their capacity as breeders), or any person authorized on their behalf can make an application for registration. The eligibility of PepsiCo was subject to establishing it possessed breeder's rights by a valid assignment.

Section 28[5] – Rights Grantable by Registration

A certificate of registration confers exclusive rights to the breeder (or successor/assignee) to manufacture, sell, market, distribute, import, or export the variety. This gives the breeder a limited monopoly over commercialization, akin to a patent right.

Section 34 – Reasons for Revocation

The Authority can revoke a registration certificate on application by any interested person due to the following reasons[6]:

§34(a): Registration procured by providing wrong information.

§34(b): Certificate given to an ineligibile individual under the Act.

§34(c): Default in furnishing material information or documents.

§34(d)–(g): Other technical reasons, eg, incorrect denomination, default in supply of seeds, or violation of the Act or orders of the Authority.

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[4] *PPV&FR Act* § 16(1)
[5] *PPV&FR Act* § 28.
[6] *PPV&FR Act* § 34(a)–(h).

§34(h): Non-registerability in the public interest.

Sections 34(a)–(c) deal with defects on grant, while 34(h) offers a general public-interest reason. Revocation is subject to advance notice and hearing.

Section 39(1)[7] – Farmers' Rights

Section 39(1), starting with a non-obstante clause, enshrines farmers' traditional rights. According to §39(1)(iv), farmers have a right to save, use, sow, re-sow, exchange, share, or sell farm produce, including seed of a protected variety, as they used to do prior to the Act—except for selling branded seed of a protected variety. The section maintains traditional seed-saving and sharing activities, weighing breeder rights against farmer privileges.

Rule 22(2A)[8] – Variety Classification (New vs. Existing)

According to the PPV&FR Rules, 2003, a variety shall be termed "new" or "extant" depending on the date of its first sale. An "extant" variety cannot be registered if 15 years or more have lapsed from its first sale. Thus, the first sale date is a material fact for eligibility for registration.

5. JUDGMENT

The Delhi High Court Division Bench granted the appeal in favour of PepsiCo and set aside the revocation order of the Authority, and directed the renewal application of the PepsiCo to be processed. The court held that misclassification, date-of-sale issues and other related inaccuracies of PepsiCo were not material to PepsiCo's right of registration. FL-2027 categorically constituted an "extant" variety and had been placed on the market in India within 15 years from the date of application. As the court opined, whether first sale was noted as Dec. 17, 2009 in India or Oct. 28, 2002 in Chile was immaterial to PepsiCo's entitlement to apply. Even if 2002 is being assumed as the date of first sale, PepsiCo's application was well within the 15-year time frame. The Division Bench was of the view that PepsiCo "derived no benefit or advantage" by announcing the subsequent date, and in any event the grant of protection "flows from the date of registration and not from the date of first sale". Therefore, the registration was not void ab initio.

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[7] *PPV&FR Act* § 39(1).

[8] *Protection of Plant Varieties and Farmers' Rights Rules, 2003*, r. 22(2A).

The court also held that any mis-characterization of FL-2027 as "new" was a minor error in drafting which was later corrected by PepsiCo in its subsequent clarification. The court clarified through this judgement that Section 34 is directed only to capture "fundamental invalidity" in grant of protection and not aimed to invalidate every careless mistake. It declared revocation under section 34(a) or (b) "*would hold only where it is found that the registration has been procured on the basis of furnishing false information*" or issued to an ineligible individual. Similarly, (c) and (f) should be construed against the background of (a) to (b) and pertain equally to grave flaws. The bench explained that Section 34 is of discretionary nature reemphasing that the registration "may be revoked" and is "not intended to serve as a trip wire to be triggered on the slightest of offenses". That is, minor or bona fide clerical errors do not invalidate otherwise valid registration. The court compared Section 34 to Patent Act section 64[9], which similarly demands evidence of basic invalidity for revocation of a patent. Further, the court found no basis to hold that PepsiCo's enforcement suits were "against public interest" or violated Section 39(1)(iv). It noted that Kuruganti's claim rested only on "mere reference" to the suits added with the failure of the party to establish or prove that those suits were vexatious or instituted as part of predatory tactics of PepsiCo. The bench clarified that in order to invoke section 34(h) one must have evidence that suits were being filed "merely to pressurize and intimidate farmers" or were frivolous and herein no such evidence was presented. PepsiCo had a legitimate certificate at the time of filing, so suing for infringement per se was not inappropriate. By providing the above rationale, the court altogether "set aside" the Authority's revocation order and restored PepsiCo's registration renewal process.

6. ANALYSIS

This case revolves around the Act's central guarantee, that is, encouraging plant breeding innovation while protecting farmers. Section 28 clearly states that once a certificate is issued, the breeder has an "exclusive right" which is similar to a patent on the variety. That is exactly what PepsiCo received for FL-2027. The Division Bench's reasoning confirms that exclusivity as long as a validly granted certificate existed, the registered breeder could enforce it. Essentially, the judgment supports Section 28 rights by making them fairly secure against collateral attack. Significantly, the court used patent-law parallels, noting that Section 34 is "pari materia" with Patent Act section 64 cancellations. That thinking underlines the PPV&FR scheme's structure of incentives that the breeders need to trust their statutory monopolies in

[9] *Patents Act*, No. 39 of 1970, § 64, India Code (1970)

order to find justification in investing in novel varieties. Here, the DB believed procedural defaults in PepsiCo's application did not invalidate the grant on substantive grounds, thus upholding the policy of safeguards for innovators.

In contrast, farmer-friendly provisions of the Act found narrow treatment, wherein Section 39(1)(iv) enshrines a wide farmers' seed-saving right. This implies that once protected seed is purchased, a farmer can use it freely again like before. But the DB categorically held that sec 39 does not ipso facto insulate farmers against infringement actions under sec 28. Since PepsiCo possessed a valid certificate, farmers planting FL-2027 in unlicensed areas were infringing on the breeder's rights. The court demanded positive evidence that the enforcement by PepsiCo exceeded legitimate protection. In the absence of any proof of malice or unfairness in the suits, mere litigation was considered valid exercise of the breeder's exclusivity. The Division Bench's opinion implies that the safeguards of sec 39 are basically in keeping with the exclusivity of sec 28's, as long as farmers employ seeds solely for household or local exchange purposes and not for commercial propagation. In total, sec 39 is a restriction on the manner in which breeders may exercise their rights, but not on their right to enforce valid claims[10].

Section 34(h) is vague with respect to "public interest" and the Authority had previously relied on it, implying that vexatious enforcement would be grounds for revocation. The High Court, however, limited this ground. It emphasized that "public interest" under the statute needs to be based on real harm, not generalized policy. The court faulted the Authority's undefined method, observing it had "taken its own view" of public interest without evidence. The court simply read sec 34(h) as more like a prosecutorial authority mandating factual demonstration of misconduct, not a permission to second-guess a breeder's enforcement approach. Therefore, even from the farmers' point of view, the choice makes clear that protective certificates will not be cancelled on policy grounds alone unless abuse is proven. The PPV&FR Act's framework envisioned both breeder and farmer protections to coexist. In reality, though, the two may conflict with each other, as is the case here. The court resolved the conflict by giving priority to the text wherein it applied sec 28 rights strictly with exceptions as made by sec 39's express exclusions. Farmers' "right" to reuse seeds won in so far as not at stake but did not invalidate the breeder's restriction on the variety. This result emphasizes that Section 39 is not

[10] Kalyan K. Banerjee, *Balancing Breeders' Rights and Farmers' Privileges Under the PPV&FR Act, 2001*, 12 INDIAN J. L. & TECH. 245 (2022).

a general exemption from the law of infringement but it only explicitly prohibits branded seed sales, and not the action of sheltered farmers in general. In fact, Section 42 states that an innocent farmer will not be subject to punitive damages if sued, and Section 41 guarantees compensation if the seed performs below standards. The court's analysis necessarily depended upon this statutory balance wherein PepsiCo's rights were still enforceable, but farmers continue to have safe-harbor protections under the Act, none of which were overruled here, because no farmer ever requested seeds.

7. IMPACT AND TAKEAWAYS FOR FUTURE CASES

This ruling has important consequences for breeders and farmers in the future. Firstly, breeders will take comfort that technical errors in a registration request will not automatically put their certificates at risk. The court explicitly stated that revocation is limited to situations of fundamental invalidity, that is, where a non-entitled individual received protection or basic fraudulent misrepresentation is established. As one observer pointed out, the High Court's upholding of PepsiCo's rights "sets a precedent" affirming the robustness of plant-variety IP[11]. This has now set a standard, wherein any future attempt to challenge a PVP certificate will require for stringent evidence of substantive defects and not merely referencing errors in documentation. Secondly, this judgment establishes that enforcement of a valid certificate even forcefully is in itself not a violation of farmers' rights. In order to prevail, there must be proof that a breeder has gone beyond the bounds of their rights and entered into abuse. As the court stated, "it was incumbent" upon the adversary to demonstrate on record that suits were "completely frivolous or unfounded" or brought only to intimidate. Without such evidence, sec 34(h) will not be applied. Therefore, it established that in subsequent cases charging public-interest violation, hard data or documentary evidence of predatory behavior must be forthcoming. The bar has been increased from policy argument to evidentiary standard.

Thirdly, lawmakers and regulators might take notice that the DB did not levy any penalty for PepsiCo's acknowledged misstatements. Commentators noted that the court "missed an opportunity" to also think about consequences for technical errors. As it is, PepsiCo got off scot-free with its registration in place. This might lead to demands for more transparent rules or guidelines on how to deal with mistakes in applications. Without reform, however, attention

[11] Devyani Gupta, *The Kavitha Kuruganti v. PepsiCo India Case: PPV&FR Act in Action*, *PATENT LAWYER MAG.* (Jan. 2024).

will no doubt continue to be on final outcomes, rather than punishing early sloppiness. Last but not least, the ruling may shape how IP dynamics play out in agriculture. It points out that India's PPV&FR Act is not an equivalent of a farmer-immovable right in all situations, as some members of the public incorrectly believe. It reconfirms breeders' confidence in the regime, potentially spurring additional corporate investment in crop R&D. Meanwhile, the move was criticized in NGO and social-media circles for appearing to favor agribusiness. Such criticisms serve only to highlight the tense balancing act between "farmers' rights" rhetoric and market reality[12].

8. CONCLUSION

Kavitha Kuruganti v. PepsiCo India Holdings is a precedent set with respect to the PPV&FR Act, the decision which reaffirmed the priority of awarded breeder rights and outlined the boundaries of farmers' privileges. The Delhi High Court Division Bench clarified that the PPV&FR Act's mechanism of revocation (§34) is not a panacea for redressing procedural errors, and that the balance between breeders and farmer tips in favor of maintaining valid registrations unless evidence of blatant statutory contraventions are established. For stakeholders, the case provides a step-by-step tutorial to Sections 28, 34 and 39 in action, where, breeders can use their certificates with assurance, farmers can still save and plant seeds as before, but neither can have carte blanche. Ultimately, this ruling will be a test case for how India's law balances innovation incentives and agrarian welfare, and it will influence future conflicts over plant varieties for years to come.

[12] Prabodh Jha, *Corporate Breeding and Public Interest: Lessons from PepsiCo v. Kuruganti*, *Bar & Bench Blog* (Feb. 2024).