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Plant Variety Protection, Procedural Lapses and Farmers' Rights: A Comment on Pepsico India Holdings Pvt. Ltd. V. Kavitha Kuruganti

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ABSTRACT

The Delhi High Court's decision in PepsiCo India Holdings Pvt. Ltd. v. Kavitha Kuruganti was a major judicial review of how plant breeder's rights and farmer's rights relate to one another as established through the Protection of Plant Varieties and Farmers' Rights Act, 2001. In reversing the revocation of PepsiCo's registration for the potato variety FL 2027 (FC-5), the Division Bench clearly stated that procedural issues within an application to register a variety cannot be used as the sole basis to revoke a registration. The Court also emphasized that there is a limited number of statutory reasons why a registration can be revoked; namely, those that would affect whether the registration is valid. This article will examine the facts surrounding this case and the logic used by the Court when making its decision; assess how the Court interpreted the Act based on its dual purpose of protecting plant breeders and protecting farmers; and argue that while the Court's restrictive interpretation of what constitutes grounds for revoking a registration is legally sound, it did not adequately address farmer's rights or other larger public interest purposes of the Act.

INTRODUCTION

India did not choose to permit patents on plants or seeds; rather, India chose to implement a sui generis system for plant variety protection that was allowed under the TRIPS Agreement. The Protection of Plant Varieties and Farmers' Rights Act, 2001, is unique because it seeks to provide protection for both plant breeders and farmers. Breeders receive exclusive rights to registered varieties. Farmers are recognized for their participation in the cultivation, preservation and development of plant varieties. One of the main challenges of the Act is to balance the interests of each group. While farmers may use, sow, resow, exchange, share and sell their farm produced goods, including seeds of protected varieties, they cannot sell seeds of these varieties with a brand name.

The conflict that existed between the opposing interests was brought into focus with the PepsiCo litigation. This litigation began with PepsiCo suing a number of potato growers based upon the fact that they were growing PepsiCo's registered potato variety (FC-5). As time progressed, the litigation evolved from a claim that there had been a violation of the grower's right to cultivate his/her registered variety to whether or not PepsiCo had the right to register the FC-5 variety in the first place. Therefore, the judgment of the Delhi High Court Division Bench on January 9, 2024 is important not only to plant breeders and growers, but also to understand how the Indian judiciary interprets intellectual property rights in relation to agriculture and the public interest.

FACTS

The potato variety "FL 2027" (or "FC-5") is utilized by PepsiCo when making Lay's Potato Chips. The variety was developed in the U.S. by a potato breeder who worked for Frito-Lay's agricultural research department. This potato variety is ideal for chip processing due to several characteristics: low external defect levels; high dry-matter content; and stable sugar levels. When PepsiCo produces this potato variety in India, it does so using a contract farming method. Contract farming is where selected farmers are provided with seed potatoes from PepsiCo and then contractually obligated to provide their harvest to PepsiCo at an agreed-upon cost.

In 2011, PepsiCo sought to have FL 2027 registered under the Protection of Plant Varieties and Farmers' Rights Act, 2001. Initially, the registration was sought as a 'new variety'. However, PepsiCo later amended the application to seek registration as an 'extant variety'. On this basis, registration was granted to PepsiCo in 2016.

PepsiCo filed suit against multiple farmers in Gujarat in 2019 after those farmers were accused of growing and marketing the FC-5 potato variety with out prior authorization. PepsiCo requested compensation in excess of ₹1 crore per farmer. These suits generated substantial criticism among the general public and concerns regarding how the enforcement of plant breeder's rights would affect the livelihood of farmers. After withdrawing the suits, PepsiCo continued to pursue other means to protect its interests.

The registration of PepsiCo was subsequently challenged by Kavitha Kuruganti (a farmers' rights advocate), who filed an application with the Protection of Plant Varieties and Farmers' Rights Authority requesting the cancellation of the registration. Kuruganti argued that PepsiCo had misrepresented facts within their application, that the registration itself was unlawful, and that continuing to recognize PepsiCo's registration would be detrimental to the public interest. The Authority cancelled PepsiCo's registration on December 3, 2021.

PepsiCo challenged the Division Bench's ruling in the Delhi High Court. The Single Judge found that some parts of the Authority's order were invalid; however, the Single Judge upheld the revocation. After that, both sides went back to the Division Bench. PepsiCo was challenging the Division Bench's ruling revoking PepsiCo's registration, whereas Kuruganti was contesting the findings that were in PepsiCo's Favor. Cross-appeals were filed by both sides, which placed the dispute before the Division Bench to further examine whether the statutory grounds for revoking PepsiCo's registration existed and what competing interests are being protected under the Act.

ISSUES BEFORE THE COURT

1. Whether PepsiCo's registration of FL 2027 could be revoked under Section 34 of the PPVFR Act, 2001, on the ground that the application was filed under the wrong category or contained defective or inaccurate information.
2. Whether the date of first commercial sale of FL 2027 affected its eligibility for registration as an extant variety under the PPVFR Act, 2001.
3. Whether the registration of FL 2027 could be revoked on public-interest grounds, particularly in light of PepsiCo's legal action against farmers who allegedly cultivated the protected variety without authorization.

ARGUMENTS OF THE PARTIES

Appellant: PepsiCo India Holdings Pvt. Ltd.

PepsiCo argued that the original error in classifying FL 2027 as a non-existing variety was a clerical error and has since been corrected prior to registration. The Registrar reviewed the updated application and registered FL 2027 as an "extant variety." Thus, PepsiCo states that the original error does not negate the registration. PepsiCo also states that Section 34 of the PPVFR Act, 2001, lists the only reasons why a variety can be revoked; therefore, any other procedural errors that do not affect the validity of the registration can never serve as additional reasons for revocation. According to PepsiCo, the Authority can only use those statutory grounds for revocation listed in the Act.

Respondent: Kavitha Kuruganti

She argued that PepsiCo provided false information to the Authority and that FL 2027 met none of the criteria required to register as an extant variety based on the commercial sales date. In addition to arguing that the registration presented public interest issues, Kuruganti claimed that PepsiCo's enforcement efforts against farmers illustrated the negative impact that exclusive rights over a economically viable potato variety may have on farmers' livelihoods, as well as the infringement of those rights that were granted to farmers under the Act. Based on this argument, Kuruganti argued that PepsiCo's registration should be cancelled under the statutory provisions referenced in the litigation.

JUDGMENT

The Division Bench of the Delhi High Court allowed PepsiCo's appeal, reversed the Authority's revocation order of December 3rd, 2021, along with the Authority's letter of February 11th, 2022, and rejected Kuruganti's cross-appeal. The Court's rationale focused primarily on three primary areas.

First, the extent of Section 34: The Court ruled that the Authority's authority to rescind a registration of a plant variety must be done in strict conformity with the reasons set forth in Section 34. All of these reasons relate to issues regarding the validity of the registration itself. While there was a procedural error made during the initial filing of the application

(as it was filed in the wrong category), this was considered a procedural mistake and therefore, did not by itself invalidate the registration received after the application was corrected. Therefore, the Authority could not void the registration simply due to an error in the application process, which did not fall into any of the statutory reasons.

The second issue was the qualification of the plant variety as "an existing variety." The court addressed the disagreement over when the plant variety was sold commercially for the first time, and whether it could qualify as "an existing variety" to be registered. There was no sufficient reason to overturn the registration based upon the issues that were raised during the court proceeding.

Third, the public interest objection: The court rejected the argument that PepsiCo's treatment of farmers made the registration of the trademark invalid based on public interest. The court found that the legality of registering the trademark was separate from whether or not the company would take action against the farmers after it had registered the trademark. Essentially, the court found that the lawsuits brought by PepsiCo against the farmers did not create an independent basis under the statute to revoke the registration.

RATIO DECIDENDI

The fundamental rule that is established by this decision is that revocation of registration under the PPVFR Act, 2001, can only occur for those reasons which are explicitly stated in Section 34. A procedural error during the application process is not enough to revoke registration unless there exists a statutory reason for invalidating the registration. Thus, the decision illustrates the scope of the Authority's power to revoke registration, as well as the difference between errors in the registration process and controversies arising from how a person exercises their rights acquired through that registration.

CRITICAL ANALYSIS

The Court's decision to require revocation to occur only as authorized through the explicit language of Section 34 of the Protection of Plant Varieties and Farmers Rights Act, 2001, is consistent with how courts typically interpret statutes. Since revoking a registration is taking away a significant legal right, the Authority should only use its power as defined by the Legislature. A strict interpretation of the statute also provides certainty to registered breeders by allowing them to know that their registrations will not be revoked due to minor procedural mistakes that may have occurred but could easily be fixed.

In contrast, the challenge with this approach is determining whether the issues are due to a procedural irregularity or a substantive defect. As noted above, Section 34 specifically provides that a registrant's registration can be cancelled if the registrant provided false information that was relevant to the decision to register the variety. When the false information relates to either when the variety was first sold or what type of variety it is, the false information could potentially affect the variety's ability to qualify for registration. It will therefore be critical to distinguish between a procedural error and a material misrepresentation when considering the implications of the registrant's false statements.

The Court regarded PepsiCo's early classification of FL 2027 as a procedural matter that was resolved prior to registration. This is one way of viewing this issue; however, there are many others. One such view is whether the correction made later would protect a person who initially provided incorrect data. Whether the correction should be protective depends upon the type and importance of the error, how the error affected the eligibility of the person submitting the data, and when the error occurred. In addition to these factors, the court will consider whether the Authority is allowed to create additional reasons for canceling a registration, or whether the Authority may use established statutory provisions to cancel a registration when there are errors that meet the requirements of the provision.

The main issue resulting from the judgment was that it engaged in very little discussion regarding the rights of farmers that are protected by the Act. While protecting plant breeders, the PPVFR Act recognizes farmers as cultivators, conservers, and breeders of plant varieties. Section 39(1)(iv) provides protection for some types of activities related to farm products and seeds. This is an essential component of the overall scheme. There are other sections of the Act that provide for benefit sharing and compensation to farmers.

Since the primary focus of the appeal was on the validity of PepsiCo's registration, the Division Bench did not fully explore the extent of the farmer's privileges or the exceptions to branding seeds. However, since the issue in question

stemmed from PepsiCo initiating legal proceedings against farmers whom it alleged were cultivating and selling FC-5 without its authorization, the Division Bench's limited review of the farmers' rights is an important part of the overall decision.

Practical implications remain significant. Whether a farmer can save, re-plant, trade, give away, or sell seeds from a protected variety is determined by both the applicable statutory provisions and what type of activity the farmer engages in. Pursuant to Section 39(1)(iv), farmers have the right to keep and utilize products produced on their farms, such as seeds of a protected variety, provided they do not sell brand name seeds of that variety. Applying this exception can create some difficult issues for farmers when the seeds are packaged, labeled, or sold in commerce. Additionally, farmers who enter into contracts with a company may be limited in some way by the terms of the contract. However, evaluating the extent to which these contractual limitations apply will require independent analysis.

The judgment thus upholds the validity of PepsiCo's registration as well as the need for clarification regarding the manner in which farmers can use their statutory rights with respect to FC-5. This provides an opportunity for future courts to define the scope of the right of breeders to exclude others from using varieties developed by them; as well as the protection provided to farmers under the law. Uncertainty regarding these issues can be particularly detrimental to small scale farmers who are typically unable to afford the expense of defending themselves in long-running lawsuits.

I believe that the way the Court dealt with the public-interest argument should be looked at more closely. Section 34 allows for the cancellation of a registration if granting that registration would be against the public interest. However, in order to use this ground for cancellation, you must consider the conditions under which the registration was issued and what effects it will produce.

The issue raised by Kuruganti was related to the implications of granting an exclusive right to a commercially viable potato variety, as well as PepsiCo's lawsuits against farmers. The issues raised by Kuruganti have brought into question the conflict between private commercial interests and the general purposes of the PPVFR Act. However, simply because there has been litigation filed against farmers does not mean that the initial grant of registration was against public interest. Whether or not the registration itself is legal and how those rights derived from the registration are being used are two separate issues.

A much greater challenge is determining when public interest can justify revocation. Some relevant factors may include food supply, availability of planting materials, the consequences of limiting access to key agricultural varieties and the effects that such limits could have on farmer's livelihood. Such issues must be considered based on the statutory requirements for revocation, not as separate grounds for cancellation.

Clarifying legislation or creating clear regulatory frameworks will provide guidance on when the public interest is relevant. These clarifications will allow the Authority to assess competing interests in a consistent manner, while also maintaining the distinction between errors made during the registration process and issues relating to the subsequent use of breeders' rights.

The court decision should be read together with the U.S. Supreme Court's ruling in Monsanto Technology LLC v. Nuziveedu Seeds Ltd., that addressed the relationship of patent law and plant variety protection with respect to BT cotton. While there are some differences between the legal issues raised in the two cases, each demonstrates how important it is for courts to interpret intellectual property rights within the statutory scheme created by Congress.

In Monsanto, there was a question regarding how much patent protection may be available for biological materials and inventions related to plants under the Patents Act, 1970 and the PPVFR Act, 2001. In PepsiCo, the primary question was if the Authority had the ability to revoke a plant variety registration based on the reasons given against PepsiCo. The first case dealt with the extent of patent protection, whereas the second case addressed the limits of the Authority's statutory revocation authority.

The basic premise behind both the intellectual property right (IPR) system and the regulatory power of agencies is that each may be used only to the extent permitted by law. However, the effectiveness of the PPVFR Act will depend upon the ability of the courts to protect plant breeders from being unlawfully interfered with; but equally important is the court’s obligation to provide a real meaning to the rights and protections that have been given to farmers. A complete

and detailed review of all aspects of the PPVFR Act would assist in defining the proper relationship between the two purposes of the Act.

CONCLUSION

The Delhi High Court's ruling in PepsiCo India Holdings Pvt. Ltd. v. Kavitha Kuruganti provides more clarity to plant breeders by establishing that their registration will not be revoked due to a procedural error unless such error is covered by the statutory provisions of Section 34. This is an appropriate use of power on behalf of the Authority and serves to protect the certainty of registered rights.

However, the decision clearly demonstrates the difficulty that courts have when they attempt to balance the breeder's right to exclusivity with the farmer's protection afforded by the PPVFR Act, 2001. Although the Court did decide the issue of whether or not PepsiCo had a valid registration, there were many other aspects of the case that could have been further explored; such as how far-reaching the farmer's exemption was in terms of Section 39, what constituted branded seed and how that restriction would apply, where contract farmers stood relative to this issue, and under what conditions a registered plant variety would be deemed harmful to the public interest.

The above questions are at the heart of the successful implementation of the Act's two goals. Protecting plant breeders is essential for them to develop new varieties; however, this protection should be in addition to the statutory protection given to farmers for their contribution and rights. Additional court decisions or changes in legislation may create a more predictable system that provides breeders with legitimate protection while still allowing farmers to carry out their legal activities. Ultimately, the success of the PPVFR Act depends upon whether each side of this statutory balance receives consistent and significant protection.