

FL 2027 patent case: Delhi HC Vs PepsiCo

Why in news?

The Delhi High Court upheld an order by the Protection of Plant Varieties and Farmers' Rights Authority (PPVFRA), revoking the registration of patent for a potato variety (FL-2027) to PepsiCo India Holdings Pvt. Ltd.

What is potato plant variety FL-2027?

- FL 2027 (commercial name FC-5) is a potato variety with high dry matter and low sugar content better suited for making chips.
- It was developed in 1996 by a US breeder employed in PepsiCo Inc.
- This processing-grade variety is used in manufacturing potato chips sold under its Lay's brand.

What is the rights of PepsiCo over FL 2027 in India?

- PepsiCo India Holdings (PIH), the subsidiary of PepsiCo Inc., was granted a certificate of registration for FL 2027 on February 1, 2016.
- The validity period was *6 years* from the date of registration and extendable up to 15 years.
- During the validity period nobody else could commercially produce, sell, market, distribute, import or export it without the breeder's authorisation.

How farmers in India cultivate patented FL 2027 variety?

- Farmers in India cultivate these potato varieties under a contract and has a buyback agreement with PepsiCo India Holdings (PIH).
- The company supplies the FC5 seed variety to a group of farmers who grow the potatoes exclusively for PepsiCo and sell them back at a fixed price.

PepsiCo established its first potato chip plant in India in 1989.

- **Controversy** - In 2019, [PepsiCo sued some Indian farmers](#) for cultivating the FC5 potato variety, accusing growers of infringing its patent.
- Within months, [PepsiCo withdrew lawsuits](#) against farmers.

What is the case about?

- Protection of Plant Varieties and Farmers' Rights Authority (PPVFRA) had granted registration for patent for potato variety FL 2027.
- **Revoke** - PPVFRA revoked the same through an order passed on December 3, 2021

based the Protection of Plant Varieties and Farmers Rights Act, 2001 (PPV&FR).

- It also rejected PepsiCo India's application for renewal of its registration on February 11, 2022.
- **Delhi HC** - PepsiCo challenged both the order and the letter before the Delhi High Court.
- The court, in its ruling, upheld the PPVFRA's decision of revoking the IP protection rights of PepsiCo over FL 2027.

Why did PPVFRA revoke the registration?

- **Section 34** (grounds for revocation of registration) of the **Protection of Plant Varieties and Farmers Rights Act, 2001** (PPV&FR) provides grounds under which registration can be revoked.
- Any protection granted for a plant variety is subject to the applicant making a complete disclosure of his claimed invention or development.
- In relation to **Section 34(a)** (incorrect information furnished), PPVFRA revoked the protection granted to a breeder.
- **Application Date** - PepsiCo had sought the registration of FL 2027 as a "new variety" in its application on February 16, **2012**.
- **Incorrect Category** - A "new variety" had to conform to the criterion of novelty.
- FL 2027 could satisfy only the criteria of distinctiveness, uniformity and stability (*DUS*) and eligible to be only granted registration as an "extant variety".
- **Commercialisation Date** - In that the company had given the date of its commercialisation in India as December 17, **2009**. (more than one year before registration)
- **Incorrect Info** - The variety had already been commercialised in 2002 in Chile leading to furnishing of incorrect information by the applicant.
- PPVFRA also stated that Indian regulations do not permit patents on seed varieties.

Novelty criteria - The propagated or harvested material from the variety should not to have been sold in India earlier than one year before the date of filing the application for registration.

Quick Facts

Protection of Plant Varieties and Farmers Rights Act, 2001

- The Act provides an effective framework for the protection of plant varieties, the rights of farmers and plant breeders.
- It also encourages the development of various plant varieties in India.
- It recognises the rights of breeders, researchers and farmers.
- It also facilitates the mushrooming of the Indian seed industry to ensure the availability of high-quality seeds and planting materials to farmers.
- **PPVFRA** - Protection of Plant Varieties and Farmers' Rights Authority (PPVFRA) was established to implement the provisions of the Act in 2005.
- It functions under the Department of Agriculture, Cooperation and Farmers Welfare,

Ministry of Agriculture and Farmers Welfare.

References

1. [IE - Delhi HC rejects PepsiCo's appeal over potato patent](#)
2. [Business Today - Delhi HC dismisses PepsiCo's appeal in FC5 patent case](#)
3. [The Hindu - What is the legal row between farmers and PepsiCo?](#)
4. [Protection of Plant Varieties and Farmers' Rights Authority](#)
5. [Vikaspedia - Protection of Plant Varieties and Farmers' Rights Act, 2001](#)

