# 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**


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