

GOVERNMENT OF ANDHRA PRADESH
DEPARTMENT OF AGRICULTURE
PROCEEDINGS OF APPELLATE AUTHORITY AND
THE SPECIAL COMMISSIONER OF AGRICULTURE
ANDHRA PRADESH, GUNTUR
PRESENT: D.MURALIDHAR REDDY, IAS

Procs. No. AGC02-12027(31)24/2018

Date: 14-03-2019

Sub: Seed Regulation Cell- Seeds Act, 1966- Seeds (Control) Order, 1983- Suspended the CSL of M/s Sai Bhavya Seeds Pvt Ltd, Nellore - Appeal preferred to Appellate authority under Clause 16 of SCO, 1983- Orders issued – Reg.

Ref: 1. Proc.No. AGC02-12027(31)24/2018 dt: 25-01-2019 of Licensing Authority, O/o C&DA, A.P., Guntur.

2. Appeal letter no. nil of dated 06-02-2019 of M/s Sai Bhavya Seeds, Nellore.

ORDER:-

Vide 1st reference the Licensing Authority had issued reasoned order to the firm M/s Sai Bhavya Seeds Pvt Ltd, Nellore suspending the Licence no. No.MNR/24/ADDL.DA/CSL/2014/931 for a period of one year from the date of Order.

Aggrieved by the above order of the Licensing Authority M/s Sai Bhavya Seeds Pvt Ltd, Nellore preferred appeal to Appellate authority under the Clause 16 of the Seeds (Control) Order, 1983, on the grounds of suspension of Centralized Seed License by the Licensing Authority under the provisions of Clause 15 of the SCO, 1983.

The Appellant has submitted the following grounds for consideration of their appeal, and it was heard on 28/02/2019. The Appellate Authority heard the appellants.

Appeal Grounds:

1. The Appellant states that the Licensing Authority suspended the License alleging that the Appellant has contravened the Clause 3 of the SCO, 1983 which mandates requirement of license to carry on the business of selling, exporting or importing of seeds and claim that there is no violation of clause 3 of SCO, 1983.
2. The Licensing Authority has suspended the CSL of Appellant under the provisions of clause 15 of the SCO, 1983 submitting that none of the

grounds in Clause 15 are applicable in the instant matter. The appellant has not obtained License by misrepresentation and not contravened any of the provisions of the SCO, 1983. The Licensing Authority Suspended the License of the Appellant under the provisions of Clause 15 of the Seeds Control Order, 1983. The Appellant has not contravened the provisions and condition of the license.

3. Appellant claiming that he is entitled to make an application to the court for sending sample to central seed lab for its report by making payment of the prescribed fee and claiming that the testing of second sample is a mandatory requirement and final decision cannot be taken based on the initial report. Further Appellant claims that provisions of the Seed Act are applicable to the quality parameters under section 6(a) of the Seeds Act, to the notified kind or variety. Cotton hybrid Western Nirogi-51 is not notified under section 5 of the Seeds Act. So none of the provision of the Seeds Act is applicable in the case of Appellants Cotton Hybrid.
4. The allegation of contravention of clause 8A of the SCO is incorrect. The deliberate or unintentional release of unapproved cotton is an offence under rule 9 of the Rules for the manufacture, issued under EP Act, 1986.
5. There is no sampling procedure developed and notified by the competent authorities for sampling of leaf or seed to conduct tests for HT gene. The inspection, sampling and testing was done in adhoc, crude and unscientific manner.
6. The Licensing authority under the provisions of clause 11 of the SCO, 1983 is not a notified authority for the purposes of EP Act.
7. The drawl of samples from the packaged seed to determine the presence or absence of unapproved HT gene falls under the provisions of the EP Act and applying provisions of SCO, 1983 is incorrect.
8. The report of ADA DNA Lab is false and incorrect as the Appellant has not accessed the HT trait from its developer or anyone else. Suspension of License is done in an excessively disproportionate manner and proceeded to suspend the license for production of all other seeds and varieties as well.
9. From FISEC report, it is established that Mahyco's parent line is involved in illegal cultivation of unapproved HT cotton.

10. From FISEC report, it is clear that Mahyco is liable for stringent action under section 15 and 16 of the EP Act and rules 13(2)(b) and 15 of 1989 Rules.
11. Appellant is entitled for compensation under Rule 15 of 1989 Rules, for contamination of its hybrids, parent lines and germ plasm.
12. The competent authorities constituted sub rules (4), (5) and (6) of Rule 4 of 1989 Rules, which have powers to take action under section 15 and 16 of the EP Act and Rules 13(2) (b) and 15 of 1989 Rules should gear up to take action against real culprits by conducting thorough investigation against them as recommended by FISEC. Instead of taking action against the real culprits under EP Act and 1989 rules ,the Ministry of Environment, Forest and Climate Change is depending on the State Departments of Agriculture to take action under the provisions of the Seeds Act, 1966 and SCO, 1983 against seed companies.

The Appellate authority heard both sides i.e., Appellant and the records of the Licensing Authority and concluded the hearings on the basis of material evidence / records.

In the present case, the Appellant applied for license in Form-A (clause 4), has obtained license in Form-B (clause 5) and renewed the license in Form - C (clause 7) in accordance with the terms and conditions as per Clause 3 of SCO, 1983. The Licensing Authority had also issued Co marketing permission to the firm M/s Sai Bhavya Seeds, Nellore for marketing of Bt cotton Varieties /Hybrids i.e. Western Nirogi-51 BG II, Western Nirogi-108 BG II & Western Nirogi-555 BG II which was produced by M/s Western Agri Seeds Ltd, Kurnool.

As per the terms & conditions of the Marketing Agreement which was entered by M/s Western Agri Seeds Ltd, Kurnool and M/s Sai Bhavya Seeds, Nellore the producer shall supply only packed seed on the strength of Seeds Act,1966, Seed (Control)order 1983 and rules made there under and all other relevant Acts and Rules, and the Marketer shall market the said packed seed only and in case of any wrong doing / wrongful act committed they are jointly or severally responsible for their acts/actions such as product quality under relevant statutory provisions under various Acts including Seed Act 1966.

The Seeds (control) Order 1983/ Seeds Act 1966 and Indian Minimum Seed Standards are equally applicable to all seeds, irrespective of their category, crop variety or event etc. Further, the sampling procedure as laid under section 15 of Seeds

Act 1966 are meticulously followed. Yes, it is agreed with the appellant that the deliberate or unintentional release of unapproved gene is an offence.

The licensing authority has granted license with terms and conditions under Seeds Control Order 1983. Since the Appellant herein violated the terms and conditions, hence the license was suspended for a period of one year from the date of the order to correct the conduct of the Appellant any matter related between the Appellant and other companies, they have to settle among themselves. Being seed producer/ marketer the Appellant should ensure the seed quality, in the present case the Appellant indulged in wrongful act, hence suitable action was initiated.

In case, the Appellant feels that an action required against any company indulging in wrong deeds/acts, the Appellant should have submitted evidence /record proof to the competent authority. Leaving aside their argument, the Appellant herein has to pay compensation to the farmers for their misadventures/ wrongful act of misrepresentation and selling to the farmers.

In the instant case the show cause notice was issued under clause 15 of Seeds Control Order 1983 and the matter is dealt solely under Seeds Act 1966, Seeds (Control) Order,1983 and the rules framed there under, the Appellant appealed to the Appellant Authority under Clause 16 of Seeds (Control) Order,1983 and certainly not under EP ACT,1986.

Clause 15. of Seeds (Control) Order, 1983 / Suspension/ Cancellation of License says that: The Licensing Authority may, after giving the holder of the license an opportunity of being heard, suspend or cancel the license on the following grounds, namely:

- (a) that the license had been obtained by misrepresentation as to a material particular: or
- (b) that any of the provisions of this order or any condition of license has been contravened.

The label claim of the firm M/s Sai Bhavya Seeds, Nellore for the cotton hybrid Western Nirogi-51 lot no. SB-18-99011 must be positive for Cry1Ac and Cry2Ab with MON 15985 event only as per GEAC approval.

In the instant case DNA Lab report clearly showed the presence of CP4EPSPS gene with MON 88913 event that is Herbicide Tolerant (HT) trait which is unapproved and illegal for cultivation in India. This is clear violation of provisions section 6, 7 read with Clause 8A of SCO, 1983 and condition of license under Clause 15(b) of the SCO, 1983.

DNA Fingerprinting and Transgenic Crops Monitoring Laboratory (DFTCML), Guntur is one of the notified State Seed testing laboratory cum National Referral laboratories for detection of Living Modified Organisms(LMOs) /Genetically Modified Organisms (GMOs) and authorized under Sub-Section (1) of Section 4 of the Seeds Act, 1966 read with Rule 5(c) of the Seeds Rules, 1968; with effect from 15.11.2017 S.O.3604 (E) i.e., the date of publication of the notification in the official gazette.

As stated earlier, the Seed samples are drawn as per procedure and protocols laid under Section 15 of Seeds Act 1966 and tested in the National Notified Lab called DFTCML of Andhra Pradesh and test results/ reports were generated and therefore action was initiated base on seed test results. The present appellant, in case having any doubt about test result he would have approached the competent authority for reanalysis in the present case, the appellant has not approached Agriculture Commissioner ate OR Licensing Authority OR the Hon'ble High Court for sending the samples for reanalysis to any of the Central seed laboratory in their appeal.

It is further stated that the Seed lot no. SB-18-99011 belongs to the Appellant reported the presence of the unapproved HT gene. This can happen only on years of experienced skilled breeder's efforts; hence the presence of HT is deliberate.

Seeds (Control) Order, 1983 Clause 8A is reproduced here under.

Clause 8A.Dealers to ensure certain standards in respect of seeds: Every dealer of seeds in notified kind or variety or other than notified kind or variety of seeds shall ensure that the standards of quality of seeds claimed by him shall conform to the standards prescribed for the notified kind or variety of seeds under Section 6 of the Seeds Act.1966 and any other additional standards, relating to size, color and content of the label as may be specified.

Under Clause 8A in India the label claim of the firm for the cotton hybrid Western Nirogi-51 lot no. SB-18-99011 must be positive for Cry1Ac &Cry 2Ab with MON 15985 Event only as per GEAC approval whereas sample contains CP4EPSPS gene with MON 88913 Herbicide tolerant trait (HT) which is not approved by GEAC for commercial cultivation in India.

The firm further stated that they are the victims of wrongful deeds done by some others, the statement made only to shift the responsibility on all others including Technology developers to escape from the real facts of their acts.

The appellant Firm also claims that there are no sampling procedures and protocols for testing HT trait and with this conclusion, it can be concluded that the Firm actually indulging in sale of the unapproved seeds to gullible farmers.

The functions of the Central seed laboratory under rule 5 of THE SEEDS RULES, 1968 under Seed Act, 1966 (Act No. 54 of 1966) reproduced here under

Functions: - In addition to the functions entrusted to the /central Seed Laboratory by the Act, the Laboratory shall carry out the following functions, namely;

- a. Initiate testing programmes in collaboration with the State Seed Laboratories designed to promote uniformity in test results between all seed laboratories in India;
- b. Collect data continually on the quality of seeds found in the market and make this data available to the Committee; and
- c. **Carry out such other functions as may be assigned to it by the Central Government from time to time.**

The methodology being adopted in case of unapproved Herbicide Tolerant Cotton is similar to the testing procedures communicated by Govt of India vide OM No.2-6/2012-SD IV Dt: 16-09-2015 of GOI, MoA&FW, New Delhi in case of Bt Cotton (approved transgenic) and the same was also reiterated by RCGM (Review Committee on Genetic Manipulation) in their Submission before the Hon'ble High Court of Judicature at Hyderabad for the state of Telangana and State of Andhra Pradesh of its WP No 4445/2018. Dip-stick Strip Test, Elisa test and PCR test are the prevalent methods for detecting approved Transgenic BT Cotton and the said methods are used for testing HT Cotton or any approved/ unapproved Transgenic Crops.

The show cause issued by the Licensing Authority only under the Seeds Act, 1966 & The Seeds (Control) Order, 1983 and the rules made under. However, separate proceedings under the Environmental Protection Act, 1986 & E.P Rules 1989 may be initiated by the State Biotechnology Coordination Committee (SBCC)/ District Level Committee(DLC) or any competent authority under sub rules (4), (5) and (6) of rule 4 of 1989 rules. The Seed Licensing Authority has not issued the present order under EP ACT and this appeal is heard under the jurisdiction of Seeds Act 1966 / Seed (Control) Order 1983 only.


The FISEC committee reported that the genotyping studies reveal that the spread of HT gene is not due to pollen/gene flow from field trials as claimed by some stake holders. Moreover, in the same FISEC report it is reported as all HT Cotton hybrids and their parental lines present to be declared as unapproved/ illegal seeds.

In view of the said facts, the Appellant has contravened & violated the provisions of Section 6, 7 of Seeds Act, 1966 read with section 21, 23 and Clause 3,

8A of the Seeds (Control) Order, 1983 and terms and conditions of the license and hence the Licensing authority has no option but to Suspend the license of the Appellant for a period of one year.

From the above, it is evident that there are no reasonable grounds to interfere with the orders passed by the Licensing Authority dated: 25-01-2019, in view of the magnitude and potential risk for the further spread of unapproved and illegal cultivation of HT trait, and taking into consideration that the seed sample drawn from the seed packet at sale point / market, the activity necessitates, a time barrier is to be observed to completely stop further spread of HT Cotton. However, in view of Appellants plea that the suspension of Seed License in totality will deprive sale / production (whichever is applicable) of all other seeds varieties of the Appellant company and as well deprive the availability of the other seed varieties to the farming community, the Appellate Authority considers the said plea, as a matter of natural justice, and therefore the suspension of license is confined to the Marketing of Cotton crop varieties only, for a period of One Year from the date of order of Suspension of license vide Proc. No. AGC02-12027(31)24/2018- Seed Sec dt: 25-01-2019 in order to stop proliferation of HT trait further and it will not be applicable to supply of any other seeds (Hybrids/varieties).

In the result the appeal is disposed with a partial modification of order of the Licensing Authority Dt: 25.01.2019 and the suspension of license is confined to Marketing of Cotton Crop Seeds only for a period of one year w.e.f. 25.01.2019.


Appellate Authority and
Special Commissioner of Agriculture
Andhra Pradesh, Guntur.

To,

M/s Sai Bhavya Seeds Pvt Ltd, Door no.28-3-11/13, flat no.501, Kisannagar, vinayaka apartment, Block.281, Nellore-524001.

Copy to the Joint Director of Agriculture, Nellore district with request to serve the copy to the firm and obtain acknowledgement with date and submit the same to the Appellate Authority.