

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)14/2018

Date: /4 -03-2019

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

Ref:1. Proc.No. AGC02-12027(31)14/2018 dt: 25-01-2019 of Licensing Authority, O/o C&DA, A.P., Guntur.

2. Appeal letter no. nil of dated 07-02-2019 of M/s Neo Seeds India Pvt Ltd, Vijayawada.

ORDER:-

Vide 1st reference the Licensing Authority had issued reasoned order to the firm M/s Neo Seeds India Pvt Ltd, Vijayawada suspending the Licence no. **No.RRD/O/ADDL.DA/CSL/2014/506** for a period of one year from the date of Order.

Aggrieved by the above order of the Licensing Authority M/s Neo Seeds India Pvt Ltd, Vijayawada 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 Respondent has drawn only one sample at the time of inspection for the purpose of testing. The said sample shall be given to the manufacturer for the purpose of testing and reconfirming the same. However, the

respondent has not given any sample to the Appellant and has now deprived the Appellant from retesting and said sample and confirming whether he alleged HT trait is present in Appellants variety.

2. The Licensing Authority Suspended the License alleging that the Appellant has contravened Clause 3 of the SCO, 1983.
3. 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.
4. Form VII prescribed under rule 35 of the Seeds Rules, 1968 read with section 16(1) of the Seeds Act, 1966 enclosed to the show cause notice. Therefore, as per section 16(2) of the Seeds Act, 1966 the Appellant is entitled to make an application to the court for sending the sample, handed over to him as per section 15(2)(a) of the Seeds Act to the Central Seed Laboratory for its report by making payment of prescribed fee. The Central Seed Laboratory shall supersede the report given by the seed analyst under sub section (1) of the section 16 of the seeds act.

Testing of second sample is a mandatory requirement and a final decision cannot be taken based on the initial report received from seed analyst.

Seeds Act is applicable to the quality parameters specified under section 6(a) of the Seeds Act to the notified kind or variety. Cotton hybrid Navya BG II is not notified under section 5 of the Seeds Act. Therefore, there is no question of violation of the provisions of section 6,7,21 and 23 of the Seeds Act, 1966.

5. Unconfirmed presence HT gene cannot be considered as contravention of Clause 8A of the SCO, 1983. Allegation of contravention of Clause 8A of the SCO, 1983 is also incorrect.
6. There is no sampling procedure developed and notified by the competent authorities for sampling of leaf or seed to conduct tests for Ht gene. Similarly, there is no approved procedure to determine the presence or absence of HT gene in a leaf or seed sample.
7. The provisions of Environmental Protection Act are specifying the various authorities which would be designated to perform the function there under. The Ministry of Environment has notified Seed Inspectors, Seed Analyst and the Seed Testing Laboratories for the purpose of initiating any action under the said act.

8. The Licensing Authority under the provisions of Clause 11 of the Seeds (Control) Order, 1983 is not a notified authority for purpose of EP Act, 1986 or Rules made there under.
9. The drawl of sample from the Packaged seed to determine the presence or absence of unapproved HT gene falls under the provisions of the EP Act and 1989 Rules and it is absolutely incorrect to apply provisions of the Seeds Act or SCO, 1983 for the samples drawn before processing of the seed lots.
10. The report of ADA, DNA Laboratory based on which the show cause notice and the impugned order is issued is false and incorrect, in as much as Appellant has not accessed the Herbicide Tolerance trait from its developer or anyone else and did not develop its cotton hybrid with HT trait Before passing orders on the appeal.
11. Even when the authority states there is Herbicide Tolerant trait in cotton seed variety, the authority has proceeded to suspend the license for production of all other seed varieties as well.
12. EP Act and 1989 Rules provide the stringent action for violations of the provisions of EP Act and 1989 Rules. It is humbly submitted that action lies against the perpetrators of wrongful act and not against the victims of wrongful deeds under the provisions of EP Act and Rules 1989.
13. FISEC report it is established that Mahyco's parent line is involved in illegal cultivation of unapproved HT Cotton. FISEC has also recommended investigation against Mahyco.
14. Appellant is entitled for compensation under Rule 15 of 1989 Rules, for contamination of its hybrids, parent lines and germ plasm.

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.

MAO, Yemmiganur has drawn three (3) portions of sample of Navya (Neo 1651) BG II Lot No 1042503416 from the NEO Seeds stock available at Navatha Transport, Yemmiganur as per the provisions of Section 14(1) a. (ii) of the seeds act 1966 and sent one sample to DNA Lab, Guntur for HT analysis and handed over 2nd sample to the Manager, Navata Transport, Yemmiganur as the Dealer M/s Sai Ram Seeds & Pesticides, Yemmiganur refused to accept the sample and retained the 3rd sample with the MAO, Yemmiganur as per legal procedure.

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.

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. on the basis of submission of Office Memorandum in respect of the approved Cotton seed varieties by the Genetic Engineering Appraisal Committee (GEAC) in the name / title or Neo 1631 BG II, Neo 1651 BG II & Neo 1601 BG II expressing events Cry 1Ac & Cry 2Ab with MON 15985 for commercial release in south zone.

The Section 14 of Seed Act 1966 deals with powers of Seed Inspectors.

That under section 14(1) The Seed Inspector may

- a. Take samples of any seed of any notified kind or variety from
 - i) Any person selling such seed; or
 - ii) **Any person who is in the course of conveying, delivering or preparing to deliver such seeds to a purchaser or consignee**
 - iii) A purchaser or a consignee after delivery of such seed to him.

As per the above status, the Inspector has drawn the sample from the cotton seed packets of the Appellant Firm M/s Neo Seeds India Pvt Ltd, Vijayawada. As per the License terms, it is supposed to produce cotton hybrid Navya (Neo 1651) BG II bearing lot no.1042503416 must be positive for Cry1Ac and Cry2Ab with MON 15985 event only as per GEAC approval as stated above.

Further the Seed sample was drawn as per procedures laid under Section 15 of Seed Act 1966, were subjected to DFTCML Lab tests and test results clearly showed the presence of CP4EPSPS gene with MON 88913 event that is Herbicide Tolerant (HT) trait which is unapproved in India, therefore the Appellants their act / actions was contrary to the Varieties/ Events mentioned in this Seed License application and also terms of license issued to the Appellant Firm. This is a case of misrepresentation of

material in particular, therefore, the actions of the Firm attracted the **Clause 15(a) 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 vide S.O.3604 (E) i.e., the date of publication of the notification dated 15.11.2017 in the official gazette.

Further, it is also a fact that, the prime responsibility of the Appellant firm is to monitor/supervise/inspect the seed production, strictly maintaining the genetic purity and production of quality seed. Simply throwing the blame on the others, stating that contamination of crop due to others is not convincing argument and the statement clearly shows that the firm lacks seed quality control mechanism over seed production and appears to be lackadaisical approach of the firm which resulted in production of unapproved Bt cotton seed with HT Trait.

The Government of India, Department of Biotechnology, Ministry of Environment, Forest & Climate Change under the instructions of the PMO has constituted a Committee to ascertain the spread of unapproved HT Genes called "Field Inspection and Scientific Evaluation Committee (FISEC)". The FISEC visited / inspected major Cotton growing States and prepared a report in which, it clearly dealt about claims like contamination stating that the pollen escapes up to 5m is 4% & from 6m-10m is 3.3% and beyond 10m is negligible. As per the "Indian Minimum Seed Certification Standards", 2013 to ensure/maintain Genetic Purity for certified seed production, the cotton seed production plots should have at least 30m Isolation distance on all sides from other fields. The firms, which are producing Hybrid Seeds / Transgenic crops has to follow minimum standards prescribed for notified kind and variety of seeds as envisaged under section 6,7 of Seeds Act 1966 r/w Clause 8A of SCO, 1983. Further to state that cross pollen even in case of open pollination varieties is not possible, when adhere to seed production protocols/rules etc. As stated in above paras, in cotton crop, pollen is heavy and sticky, hence the range of pollen transfer is limited as scientific isolation distance has to be maintained and whatever pollination happens, it happens with conscious efforts such as genetic selection.

The presence of HT trait is unapproved and is illegal as per the terms and conditions of the license. 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 Commissionerate 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. 1042503416 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 Navya (Neo 1651) BG II lot no 1042503416 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 packing and mislabeling of the unapproved seeds for selling 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 TheHon'ble High Court of Judicature for the state of Telangana and for the 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 this license 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, necessitates a time barrier is to be observed to stop further spread of HT Cotton. However, in view of Appellants plea that the suspension of Seed License in totality will be deprive the sustenance of the Appellant company and the distribution of all 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 Cotton crop Hybrid Neo 1651 BG II only for a period of one year from the date of order of Suspension of license vide Proc. No. AGC02-12027(31)14/2018-Seed Sec dt: 25-01-2019 in order to stop proliferation of HT trait further and it will not be applicable to any other varieties/hybrids.

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 Cotton Crop Hybrid Neo 1651 BG II 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 Neo Seeds India Pvt. Ltd, D.NO.76-11-23, Kollafarm Road, Bhavanipuram,
Vijayawada, Krishna District.

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