

Dr. Kalyan B. Goswami
Executive Director

PROTECTION OF PLANT VARIETIES AND
FARMERS' RIGHTS AUTHORITY
GOVT. OF INDIA
NASC COMPLEX, DPS MARG,
NEW DELHI-110012



Ref. NSAI/2016/071

Date: 31.05.2016

To
The Chairperson,
Protection of Plant Varieties &
Farmers Rights' Authority,
Govt. of India, NASC Complex,
DPS Marg, Opp- Todapur Village,
New Delhi-110 012

Dear Sir,

Sub: Justification not to insist for NOC from the technology developer in case of applications filed for registration of transgenic varieties / hybrids

Ref: 1. Our letter No. NSAI/2016/039 dated 04.04.2016
2. Draft Guidelines issued by the Govt. of India
3. Provisions of Patent Act and PPVFR Act

We have submitted a representation under reference (1), requesting the Authority not to insist for "No Objection Certificate" (NOC) from technology provider, with the application filed for registration of a transgenic variety since this is leading to monopoly and being misused for charging of high amount of trait value to the farmers without any legal basis and rationale. In this connection, we draw your attention to the reference (2) cited above and provisions under Section 3(j) of the Patent Act, wherein it is clearly stated that the transgenic variety or transgenic trait cannot be patented. For the transgenic variety, protection is available only under Protection of Plant Variety and Farmers Rights (PPVFR) Act. Under Section 30 of the PPVFR Act titled researcher's rights, the transgenic variety can be used in a breeding program to develop new transgenic varieties carrying the transgenic trait. The Act provides for registration of such new transgenic variety under Section 14, 15 and 23 for exclusive right to commercialize of such new varieties under Section 28.

Certain companies, which have commercialized GM traits, having understood that there is no legal right to collect trait value from the seed companies, have cleverly created a mechanism of requirement of NOC stipulated by RCGM and GEAC under biosafety regulation. Similar NOC system was also got introduced in PPVFR Authority though not required by the PPVFR Act.

To enjoy the statutory rights under Section 30 of PPVFR Act, unfortunately due to the stipulation of NOC by RCGM and GEAC, the seed companies were forced to sign one sided so called "technology license agreements" by trait licensing companies. It is pertinent to note that there is no "technology transfer" but only seeds of a transgenic variety are transferred under this agreement. As these agreements contained several restrictive clauses including unilateral and arbitrary fixation of trait value, the farmers suffered due to high seed prices and the licensee seed companies as a consequence of state price controls. This stipulation also led to a situation where the public sector cotton breeding program completely got disbanded as they could not exercise their legal rights under

