Dr. Kalyan B. Goswami
Executive Director

nsa National Seed Association of India
(Registered under the Societies Registration Act.)

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

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Section 30 of PPVFR Act and had to stop cotton varietal or hybrid breeding with Bt trait. The stipulation also deprived the farmers of their rights under Section 39. Furthermore, it is important to note that Section 92 provides over riding effect to PPVFR Act over any other existing enactments.

We are thankful to the Authority for providing us time to discuss our concerns and explain why this NOC is not required citing the provisions of the Patent Act, PPVFR Act and the draft notification of the DACFW published on 24.05.2016.

The legal advisor of the Authority has pointed out to the provision under Section 18(h) of the PPVFR Act. We have submitted that the 18(h) relates to access to the varieties that are used in the breeding program. In the plant breeding, two or more varieties are used to create hybrids and then select from the segregating population in subsequent generations to develop a new variety. No genes patented or otherwise are directly used in a breeding program. Therefore the interpretation of 18(h) may have to be with reference to the access to the varieties for research. As Section 30 provides access to any variety including protected varieties, the 18(h) may have to be interpreted with reference to the stipulations under Bio Diversity Act, Import seeds of varieties for breeding following plant quarantine norms etc. This provision should not be interpreted as a provision pertaining to the patented genes or events. We have further submitted to you that as the applicant under 18(h) undertakes that the genetic material or parental material acquired for breeding, evolving or developing the variety has been lawfully acquired, there is no need of any additional documents like the private agreements, NOCs etc., from a trait developer. NOC cannot be equated with self-declaration. The declaration of the applicant shall be sufficient under Section 18(h) and the existing practice of asking NOC of any private party is not required, particularly when the third party is misusing it to force the seed companies to sign one sided agreements though not required under the law. If there is IPR infringement including the patent infringement by anybody, there is a remedy available under the jurisdiction of the civil courts which enforces the IPR effectively in our country. Therefore, we submit that the Authority need not have to waste its time on looking into the IPR under any other law other than the PPVFR.

In view of the submissions made above, we request you to kindly arrange for issuance of orders to remove the stipulation of NOC from the technology developer for registration of transgenic varieties.

Thanking you,

Yours sincerely,

Kalyan B. Goswami

C.C:

1. Joint Secretary, Seeds
2. DS Mishra, Dy. Commissioner