

Dr. Kalyan B. Goswami
Executive Director



Ref. NSAI/2017/005

Date: 06.02.2017

Shri K V Chowdary
Central Vigilance Commissioner
Central Vigilance Commission
Satarkata Bhavan, A-Block
GPO Complex, INA
New Delhi - 110 023



Respected Sir,

Sub: Monsanto's activities in India contrary to the provisions of the law

National Seed Association of India (NSAI) is the apex organization of the Indian Seed Industry, having a member base of 407 seed companies. NSAI actively contributes to seed Industry policy development, with the concerned governments, to ensure that the policies and regulation create an enabling environment, including public acceptance. NSAI also strives that its members and farmers get fair deal and are not exploited.

In this connection, we wish to bring to your kind notice about the illegal activities of Monsanto in India, which are contrary to the provisions of law, in collusion with certain officials of the Government, which has been greatly harming the 80 lakh farmers, public sector research programs and the domestic public and private sector seed industry. Monsanto conspired with few officials to loot farmers and continued this despite state government attempts to stop this through legislations by misrepresenting before Hon'ble high courts.

Monsanto with the active support of certain officials has been falsely claiming patent rights on seeds and plants, containing transgenic trait, and has been misleading the authorities and even the courts. The Indian Patent Act, as amended to comply with the TRIPS agreement, does not allow patenting of seeds and plants. The patents No. 214436 and 232681 granted to Monsanto for Bt cotton technology by the Indian Patent office in 2008 and 2009 respectively, therefore did not allow any claims to Monsanto on seeds and plants or parts thereof. The intellectual property rights for all plant varieties including transgenic varieties are accorded under Protection of Plant Varieties and Farmers Rights (PPVFR) Act which was enacted as per the provisions of Article 27(3) of the TRIPS agreement. Despite being aware of the fact that there are no patent rights granted on seeds, Monsanto made false propaganda with the help of few scientists in PPVFR Authority, Department of Biotechnology (DBT) and Genetic Engineering Appraisal Committee (GEAC) under Ministry of Environment & Forests to get certain conditions like "No Objection Certificate" (NOC) stipulated for granting GEAC approval for new hybrids developed through research by anybody including private or public institutions or even the farmers. Further for registration of such GEAC approved new hybrids by PPVFR so to obtain intellectual property protection, they got NOC stipulated by the PPVFR also. As such, such stipulations are contrary to the provisions of the

Environment (Protection) Act (EP Act) or the PPVFR Act. To comply with the NOC stipulation, the seed companies in India were forced to approach Monsanto, which compelled the seed companies to enter into one sided license agreement to issue NOC. EP Act or Rules, made thereunder do not lay down requirement of NOC. Under the PPVFR Act also, there is no need for signing such license agreement, as it is the right of the breeder under Section 30 to access any protected variety for developing new varieties. This manipulation was done by Monsanto with the connivance of certain officials of GEAC and PPVFR Authority so that it can establish a monopoly, though it does not have valid patent rights so as to excessively charge trait value from farmers. It is interesting that the excuse cited by the officials for imposing NOC is the patents granted to Monsanto. It is a deliberate and unlawful imposition by the officials on seed companies and Indian public to help Monsanto make huge money. Due to such license agreements entered through manipulations, Monsanto established a monopoly in cotton seeds and could collect Rs. 6000 Crores on Bt cotton trait from farmers through seed industry without having any patent rights. It is relevant to also state that Monsanto offered the Bt cotton trait for a one time of payment of Rs 18 Crores to Govt. of India in 1994. Curiously the Government rejected the offer as the cost was found to be too high. Due to the connivance of the officials, for the same trait which Monsanto themselves valued at Rs. 18 Crores, they could collect Rs. 6000 Crores. Effectively they could override the rights of the plant breeders and farmers through this manipulation. Monsanto did not adopt the legal route, which is available under section 26 of the PPVFR Act, for getting the trait value fixed by the PPVFR Authority. Under Section 26, the PPVFR Authority alone has the power to determine the amount of benefit sharing based on the commercial value of the trait, on application of the trait (including transgenic trait) provider.

Even after repeated representations to GEAC and PPVFRA to remove the stipulation of NOC, NSAI failed to get any response. Thereupon, one of the member associations from Hyderabad, filed writ petitions and obtained directions in August and September, 2016 respectively, from Hon'ble High Court, Hyderabad to both GEAC and PPVFRA to act in accordance with law. Curiously, the action by GEAC and PPVFRA is still pending.

The abuse of dominance and monopolistic business practices of Monsanto are also being investigated by Competition Commission of India.

The Dept. of Agriculture, Cooperation & Farmers Welfare (DACFW), under the Ministry of Agriculture has also pointed out the stipulation of NOC by GEAC without backing of law and is the reason for the monopoly enjoyed by Monsanto, in their submissions before the Hon'ble High Court in a Writ Petition No.12069/2015 challenging the Cotton Seeds Price (Control) Order, and WP 1776/2016 challenging the investigation by CCI, filed by Monsanto before Hon'ble Delhi High Court.

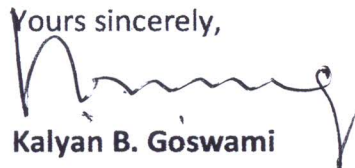
It is pertinent to note that under the provisions of Section 26 fixing of trait value for the Bt cotton trait is a power vested with PPVFR Authority established under the Act of the Parliament, after consultations with all the stakeholders including farmers. Instead of protecting the rights of the plant breeders and farmers by implementing the Act and fixing a reasonable trait value after

considering the interest of all stakeholders like farmers, seed companies and Monsanto, the Authority had chosen to back only Monsanto by stipulating NOC, which led to monopoly, and did not fix the trait value which resulted in charging of excessive trait value by Monsanto. In this process, Monsanto could get away fixing excessive trait value on its own without any regulation by a statutory authority. The members of the NSAI are prepared to submit any information as required to support the above facts and contentions. Monsanto is making a vicious campaign against NSAI to cover up their unethical practices which are being exposed.

Since the matter involves connivance of some of the officials in the GEAC, DBT and PPVFRA, an investigation may be kindly carried out so that the culprits are identified and suitable action can be taken against them to curtail such illegal activities from now onwards. NSAI shall submit all the information as required to support the probe.

Thanking you,

Yours sincerely,



Kalyan B. Goswami

List of attachments:-

1. DAC letter to DIPP in 1999 clarifying that no patents can be granted on seeds and plants even if they have transgenic trait.
2. Vandana Shiva Article and DIPP explanation to 2002 amendment of Patent Act clarifying no patents can be granted for seeds or plants even if they carry transgenic traits.
3. Parliament Question & answers (two) on provisions for not patenting seeds.
4. SMA WP-30734 against stipulation of NOC by PPVFRA in Hon'ble High Court, Hyderabad & Order issued by HC
5. SMA WP-28478 against stipulation of NOC by GEAC in Hon'ble High Court, Hyderabad & Order issued by HC
6. Written Submission made by NSAI before PPVFRA justifying the illegality of NOC stipulation
7. PPVFR Order dated 22.11.16
8. Union of India (Ministry of Agriculture) Additional Affidavit in WP 12069 of 2015 filed by Monsanto challenging the wires of Cotton Seeds Price (Control) Order, 2015
9. Union of India (Ministry of Agriculture) counter to WP 1776 of 2016 filed by Monsanto against the investigation orders by CCI
10. Article published by Bharat Ramaswami in Feb 2011 which also confirms that the actions of GEAC and PPVFR have resulted in granting *defacto* rights to Monsanto despite the Patent Act not having provisions for patenting seeds.