

**Dr. Kalyan B. Goswami**  
Executive Director

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

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

Ref. NSAI/2016/117

Date: 21-09-2016

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



Sir,

**Sub: Order dated 12.9.2016 of the Hon'ble High Court at Hyderabad in WP No.30734/2016 – Reg.**

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We wish to inform that Seedsmen Association, Hyderabad along with one of its members filed Writ Petition bearing No. 30734 of 2016, challenging the requirement of NOC from the technology provider, stipulated by PPV & FR Authority, for registering transgenic plant varieties under the provisions of PPV & FR Act, 2001. Seedsmen Association and the petitioner company are the members of National Seed Association of India (NSAI).

The Hon'ble High Court of Judicature at Hyderabad, on 12.9.2016, was pleased to dispose of the above WP with directions to decide the application of the petitioner dated 29.8.2016 and pass appropriate orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of the order. Copy of the WP No. 30734 of 2016 and order copy dated 12.9.2016 are enclosed herewith as **Annexure-I** and **Annexure-II** respectively.

In this connection, we submit that, recently, one of our members obtained certain documents pertaining to enactment of the Patents (Amendment) Act, 2002 from Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry, under RTI Act. One of the documents contains copy of a news item, "The Monsanto amendment", published in the Economic Times dated 25.5.2002 after the Patent Amendment Act, 2002 was passed by the Indian Parliament in May 2002. On this news item, DIPP gave its comments on 27.5.2005.

The Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry has authored and piloted the Patent (Amendment) Act, 2002 after series of consultations with various ministries, NGOs, Industry Associations etc. Therefore, DIPP's comments are very relevant and pertinent in the present matter and shows the intention of the legislature in bringing out the amendment and in incorporating the new provision section 3 (j) to keep seeds and plants including transgenic varieties outside the purview of the Patents Act. The DIPP's comments, relevant to plants, seeds including genetically modified plants, are extracted from its note dated 27.5.2002 hereunder:

*"Seeds" have been specifically excluded from patentability through insertion of new clause, namely, clause 3(j) of the newly enacted law. This exclusion is also applicable to genetically engineered seeds.*

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*The omission of word "plants" in 3(i) is not related to patenting of plants. This is related to method of treatment of plants and has been done to comply with TRIPs obligations [Article 27.3(a)].*

*Section 3(j) specifically excludes patenting of plants. Therefore, no patent on Bt cotton can be allowed.*

*Production or propagation of genetically modified plants is not patentable under section 3 (h) read with section 3 (j).*

*Section 3 (h) excludes "method of agriculture or horticulture."*

*No patents for plants including transgenic plants can be allowed under section 3 (j). Genetically modified plants are excluded from patenting by implication as the term "plants" includes any type of plants including genetically modified plants.*

*No patent on plants including genetically modified plants are permissible under section 3 (j).*

*Section 3 (j) explicitly excludes "plants and animals other than micro-organisms in whole or any part thereof including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals" from patentability. Thus, the inventions relating to parts of the plants including seeds are excluded from the patentability.*

*Since no patent for plants/seed is permissible under section 3 (j) of the Patents Act, the question of infringement does not arise.*

**The above comments of DIPP corroborate NSAI's interpretation of the relevant provisions of the Patent Act, 1970, as amended.**

**The Economic Times news item clipping dated 25.5.2002 and DIPP note dated 27.5.2002 with its comments on the news item are enclosed herewith as Annexure-III.**

**In view of the above unambiguous comments of DIPP, soon after enactment of the Patents (Amendment) Act, 2002, that seeds, plant varieties including transgenic varieties cannot be patented, the subject matter becomes very clear and there would be no justification for the PPV & FR Authority to insist for NOC from the technology provider, who has no patent rights on seeds and plant varieties including transgenic varieties, and thereby deprive the breeder of his researcher's right under section 30 to develop a new variety, commercialize and seek protection under the PPV & FR Act.**

**In this connection, I invite kind attention to sub-section (1) of section 8 of the PPV & FR Act and the same is reproduced here for kind reference:**

**8. General functions of Authority.- (1) It shall be the duty of the Authority to promote, by such measures as it thinks fit, the encouragement for the development of new varieties of plants and to protect the rights of the farmers and breeders. (Emphasis supplied)**

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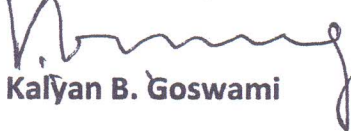
In contrast to the above provision, the Authority by insisting for NOC, without backing of any law, is in effect extinguishing the right of a breeder, available to him under section 30 of the PPV & FR Act.

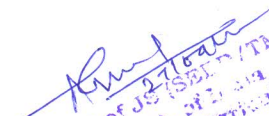
We once again request the Chairperson, PPV & FR Authority to consider the above provision and also other relevant provisions of the PPV & FR Act, 2001, relevant provisions of the Patents Act, particularly in the light of DIPP's comments dated 27.5.2002 (DIPP is the author of the Patents (Amendment) Act, 2002) and take decision on our representation dated 29.08.2016 (Copy enclosed as Annexure-IV for ready reference) to dispense with the requirement of NOC. We request the Chairperson, PPV & FRA, not to get swayed by the false and misleading propaganda of the vested interests, claiming patent rights on the plant varieties including transgenic varieties.

We request for early decision as directed by the Hon'ble High Court at Hyderabad on our representation dated 29.08.2016.

Thanking you,

Yours sincerely,

  
Kalyan B. Goswami

  
Office of JS (SEED/TMOP)  
Govt. of India  
Ministry of Agriculture  
(Deptt. of Agri. & Coopn.)  
Krishi Bhawan, New Delhi

Copies to:-

1. Secretary, Agriculture, Dept. of Agriculture, Cooperation & Farmers Welfare, Ministry of Agriculture & Farmers Welfare, New Delhi
2. Joint Secretary, Seeds, Dept. of Agriculture, Cooperation & Farmers Welfare, Ministry of Agriculture & Farmers Welfare, New Delhi.

*Shankar Giri*  
26/9/2016  
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