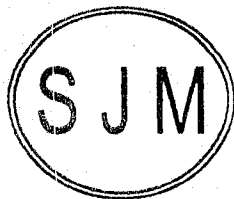


IN THE HIGH COURT OF DELHI AT NEW DELHI
EXTRA ORDINARY CIVIL WRIT JURISDICTION



W.P(C) NO. 12069 OF 2015

IN THE MATTER OF:

MAHYCO MONSANTO BIOTECH

(INDIA) PRIVATE LTD. & ANR

...PETITIONERS

VERSUS

UNION OF INDIA AND OTHERS

...RESPONDENTS

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Bhardwaj
RESPONDENT/DOI

Filed by
Bhardwaj
DEV P. BHARDWAJ
Central Govt Standing Counsel
Ch. No. 459, Delhi High Court,
Block-1, Delhi High Court,
New Delhi

Date:

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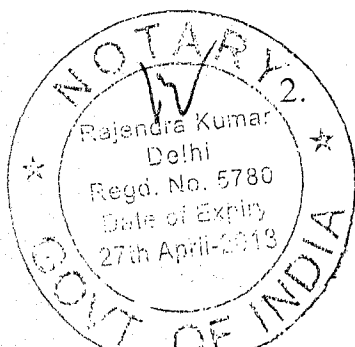
...RESPONDENTS

COUNTER AFFIDAVIT ON BEHALF OF UNION OF INDIA

I, Rajendra Kumar Trivedi, age 59 years old, s/o Shri Vishwanath Trivedi, Deputy Commissioner(Seeds), Government of India, Ministry of Agriculture and Farmers Welfare, Department of Agriculture, Cooperation and Farmers Welfare, New Delhi, the respondent herein, do hereby solemnly affirm and state as oath as under:

1. That I am presently working in Ministry of Agriculture and farmers Welfare, Government of India and as such I am the authorized person in the aforesaid matter and I am fully conversant with the facts of the case and hence competent to swear this affidavit.

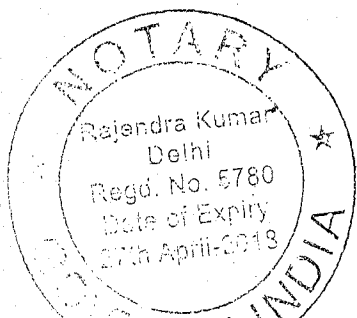
That I have gone through the contents of the Petitioner's Writ Petition and I hereby, deny each and every averments,



submissions and statements made in the aforesaid affidavit except those which are expressly and specifically admitted by me herein.

Preliminary Submissions

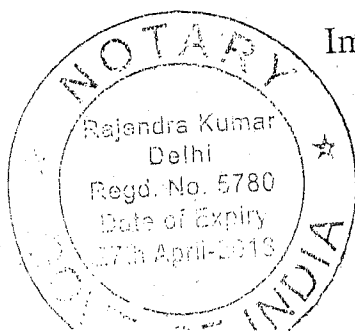
3. That the present petition is without substance as it seeks to challenge Respondent's legitimate exercise of statutory powers under the Essential Commodities Act, 1955 to control prices of Essential commodities.
4. That at the outset, it is submitted that the Petitioner made bald claims that the proprietary technology, owned by Monsanto Technology LLP, has been licensed to the Petitioner No.1 through Monsanto company (based in USA) and Monsanto Holdings Pvt. Ltd with a right to further sublicense the said technology. The Petitioner further claims that by virtue of such licensing arrangements, Petitioner No.1 is entitled to inter alia test, produce and sell Genetically Modified Hybrid Cotton Planting Seed in India, either on its own or by way of grant of further sub-licenses to seed companies in India. The Petitioner has not submitted any documentary evidence establishing the proprietary rights over the technology, referred to and described in the petition as Monsanto technology. Assuming but not admitting that Monsanto Technology LLP owns the said technology, as claimed by the Petitioner, the Petitioner has not submitted any document in support of the licensing arrangements referred in the petition.



5. That the impugned Price control order was promulgated with the objective of regulating the maximum sale price of cotton seeds in India inclusive of various hybrid varieties of cotton seeds including Bt Cotton Seeds and it was done in the interest of the farmers to make the cotton seeds available at fair prices.

The farmers across the country have been financially burdened due to the increasing prices of the Bt cotton seeds. In addition to the prices of the cotton seeds, the famers also have to spend on pesticides and other resources to make the crop more pest resistant and high yielding. This results in escalated expenses. As a result, there is very less margin of profit for the farmers. Since Bt cotton seeds is the major seed used by cotton farmers, a farmer succumbs to the pressure to use the best seed available in the market even when he might not have the means to cultivate such a crop. Consequently, in case of a crop failure, the farmers incur enormous debts in view of the loans taken to cultivate such Bt cotton crop. In the event of failure to raise a profitable yield, the farmers end up piling up huge debts which in turn has caused a rise in farmers' suicides across various cotton growing states.

6. That it is submitted that the objectives, given in the recital of the Impugned Price Control Order, are extracted hereunder:



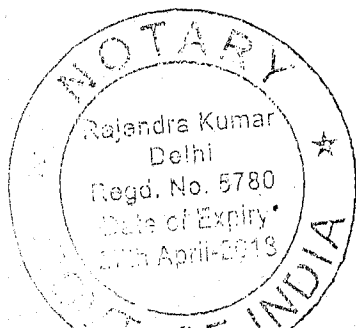
- (i) To regulate the quality of certain seeds for sale and for matter connected therewith.

- (ii) To regulate prices of genetically modified cotton seeds such as seeds of Bt cotton which are highly priced.
- (iii) Certain State Governments enacted state legislations, in order to regulate the Bt cotton seed prices including trait value components.
- (iv) Fixation of sale price by multiple authorities resulted in fixation of different prices in different states and necessitated fixing of uniform prices for Bt cotton seeds across the country and
- (v) To have uniform regulation across India for sale of cotton seed with the existing and future Genetic Modification (GM) technologies.

7. That it submitted that "Cotton Seeds" is defined in the Impugned Cotton Seeds Price (Control) Order, 2015 as under:

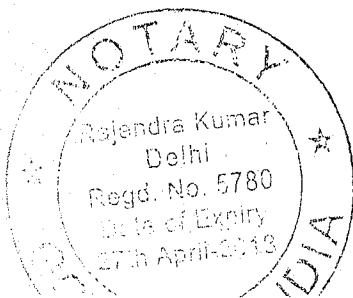
"Cotton Seeds" means cotton seeds of any variety and includes transgenic and genetically modified cotton seed varieties such as Bt Cotton used for sowing;

From the above, it is clear that Bt cotton seeds are nothing but cotton seeds, in as much they are meant for sowing and agriculture purpose. Furthermore, for like any seed, quality parameters (including the purity in terms of quantum of gene express of *Bacillus thuringiensis* (Bt) Protein (toxin) are prescribed for Bt



cotton seeds also under section 6 of the Seeds Act, 1966. Even the Petitioner's license agreements also specifies minimum seed standards. Hence, cotton seeds including Bt versions come under the purview of the Essential Commodities Act, 1955 [Act] and under the said Price Control Order, maximum sale price has to be fixed after duly fixing and regulating the seed value and license fee including royalty / trait value.

8. That it is submitted that in this case, Bt Cotton Seeds cannot be separate from the technology therefore, if trait value and license fees is not regulated, then Bt cotton seeds cannot be made available to the farmers at fair, reasonable and affordable prices.
9. That the present petition is motivated to derail the efforts made by the Respondent to regulate cotton seed prices so as to help the estimated 80 lakh cotton farmers get cotton seeds at uniform prices across the country. The Impugned Price Control order also provides for duly balancing the interest of the all stakeholders such as the seed companies and technology providers as can be seen from various provisions and processes defined in the Order.
10. That it is submitted that in the instance of Bt cotton seeds, the price of a unit (450 gms) of Bt cotton seed comprises of the seed value and trade margins as well as the license fee of the technology provider in this case Petitioner no. 1. In order to effectively control maximum price of cotton seeds, the Respondent sought to exercise of its power, controlling the various



price components. License fee and seed value are the two essential components of the overall Bt Cotton Seed price. The Respondent has through the Price Control Order, effectively sought to strike a balance by taking into account the interest of all in the seed industry including the technology provider, seed producers as well as the interest of the farmers at large.

11. That it is important to mention in this regard that the Respondent has exercised its power under Section 3 of the Act, the relevant extract of which is reproduced as under;

“ 3. Powers to control production, supply, distribution etc of essential –commodities—(1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, or for securing any essential commodity for the defence of India or the efficient conduct of military operations, it may, by order, provide for regulating, or prohibiting the production supply and distribution thereof and trade and commerce therein.

2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide-

(a);

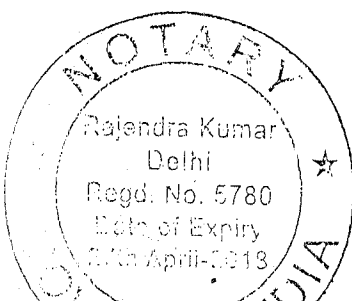
(b);

(c) for controlling the price at which any essential commodity may be brought or sold;

(d);

(e);

(f);



(g) : *for regulating or prohibiting any class of commercial or financial transactions relating to food stuff or cotton textiles which, in the opinion of the authority making the order, are or , if unregulated, are likely to be detrimental to public interest."*

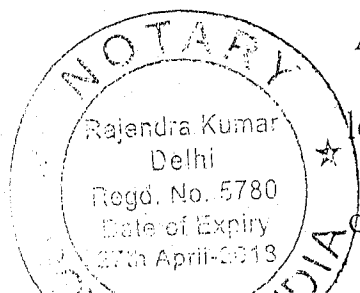
[Emphasis added]

As noted above, the Respondent - Central Government may exercise this power under Section 3 to control prices of essential commodities to ensure that they are available at fair prices and to check unregulated transactions which are likely to be detrimental to public interest. In doing so, the Respondent through this enabling provision was empowered to issue the Cotton Seeds Price (Control) Order, 2015 to regulate various price components of the sale price of cotton seeds in India.

12. That such exercise of power under Section 3 of the Act is not ultra vires as contended by the Petitioners. It is further submitted that according to Section 6 of the Act, any order issued under section 3 of the Act shall have overriding effect over any other enactment. Section 6 is reproduced hereunder:

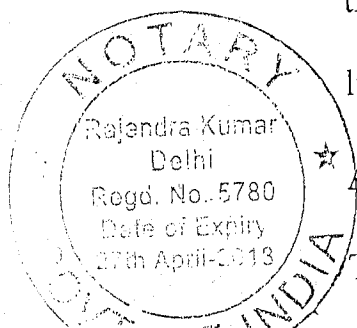
*"6. Effects of orders inconsistent with other enactments:
Any order made under section 3 will have effect notwithstanding anything inconsistent therewith contained in any enactment other than this act or any instrument having effect by virtue of any enactment other than this act"*

A perusal of Section 6 makes it evident that the intention of the legislature was to address any such possible conflict with any other statutory enactments.



13. That it is humbly submitted that the Hon'ble Supreme Court has laid down very clear principles while interpreting such provisions such as Section 6 of the Act. The effect of such provisions essentially is that the effect and operation of the other enactments are by passed during the continuance of such an order issued.
14. That it is further submitted that Section 6 of the Act is a essentially a Non Obstante clause which make the intention of the legislature clear and unambiguous in as much as – (i) it contemplates and envisages that in exercise of its powers under Section 3 of the Act, the Central Government will possibly also touch upon fields governed by other enactments and (ii) the Order under Section 3 where it so touches upon fields governed by other enactments will have an overriding effect over the other enactment.

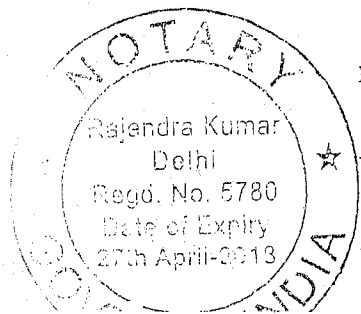
For Instance in the case of Misra Brothers v. State of U.P, 1999 4 AWC 2775 All, Clause 3B of Uttar Pradesh Kerosene Control Order, 1962 had been inserted by U. P. Kerosene Control (Amendment) Order, 1998 which provided that if the dealers fail to construct underground/ above ground storage tank for kerosene oil within the date fixed, their licence shall be deemed to have been cancelled. The Petitioners therein challenged the Order on the grounds that the wholesale dealers store kerosene oil under a licence in Form 11 granted under the provisions of the Petroleum Act, 1934 and the Petroleum Rules of 1976, framed thereunder. The conditions of the licence specifically provided in detail the



manner in which the petroleum (kerosene oil), shall be stored by the licensee. The Petitioners argued that as the storage of petrol is specifically governed by the provisions of Petroleum Act, 1934, and the Petroleum Rules, 1976, the State Government had no authority in law to enact and insert Clause 3 in the Control Order in exercise of delegated power under Section 5 of the Act and the impugned Clause 3B are unconstitutional, ultra vires, void and illegal. The court held that "in view of the provisions contained in Section 6 of the Act even if there is any inconsistency in the provisions contained in the order made under Section 3 by the Central Government or by the State Government with the provisions of Petroleum Act and Petroleum Rules, the provisions contained in the order shall prevail."

15. That similarly, the Hon'ble Supreme Court while considering the legality of price control orders issued under the Act has rejected the contention that the controlled price must ensure a reasonable return on the capital employed in the business of manufacturing or producing essential commodities. The over - riding concern in such cases has been public interest at large.

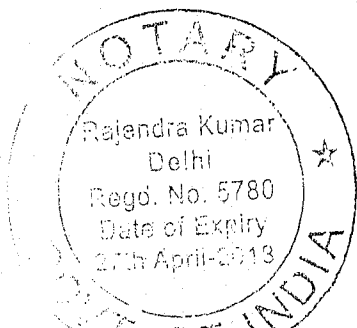
16. That Bt cotton seed prices have become unaffordable to cotton farmers primarily due to high trait value fixation resorted to by Petitioner no 1 and its parent company, Monsanto as they have a near monopoly in the market place leading to market failure as there are almost no alternate technology providers as an option to the farmers. The regulation of Bt cotton seed prices under such



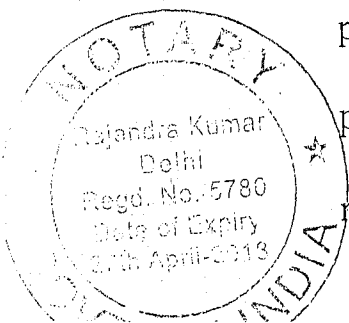
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situation cannot be meaningful if the trait value or license fee or royalty is not regulated. Since the Bt cotton seeds have three important components, seed value which pertains to the costs and profit margins of the seed company, the trade margins which are provided to the seed sellers and the license fee. The Order provides for regulating all these components so that there is a harmony and balanced regulation ultimately leading to affordable prices for the 80 lakh cotton farmers of the country.

17. That it is submitted that the Petitioners have not placed on record the sub-license agreements entered into between itself and the other seed companies. These Agreements establish that the licensee fee levied by the Monsanto USA through its Associate Company namely Petitioner no 1 in the form of a 'Trait Value' is done without any rational basis and becomes an essential, integral and significant component of the price of the Bt cotton seeds. The sale price of the Bt Cotton seeds is nothing but an aggregation of the license fee (trait value" according to the Agreements executed by the Petitioner no 1), the seed value (which includes the production cost) and the trade margins which are standard percentages. Here the greater the License Fee that is levied by the Petitioner no 1, the greater is the price of the cotton seeds sold to the farmers. The Petitioners are guilty of suppression of such essential documents and on this ground alone the writ petition deserves to be dismissed with costs.



18. That since commercialization of Bt technology in 2002, the "trait value" levied by Petitioner no. 1 has been mired in controversy because of being exorbitantly high. Initially the trait value was at Rs.1200/- per packet but subsequently in 2005 it was raised to Rs.1250/- because of which the price of Bt cotton seeds went up as high as Rs.1800/- per packet. This resulted in strong protests from the farmers and complaints were filed before the MRTP Commission against the Petitioner no 1. The Director General of Investigation & Registration (DGIR), MRTP Commission, conducted a thorough enquiry and submitted a report on 29.3.2006 to the MRTP Commission stating that the Petitioner no 1 imposed "unjustified costs and restrictions on the farmers" which amounted to monopolistic trade practice under section 2(i) of the MRTP Act, 1969. Subsequently, the State Government of Andhra Pradesh filed a reference on 27-01-2006 before the Hon'ble MRTP Commission against the illegal practices being followed by Petitioner No. 1 and the domestic seed companies. The Hon'ble MRTP Commission heard the complaint and after detailed hearings where it took into account the submissions of all concerned parties including farmers organizations passed an interim order on 11-05-2006 under Section 12 A of the MRTP Act where it came to a finding that prima facie the Agreements and practices of the Petitioner no. 1 amounted to "restrictive trade practices" within the meaning of the MRTP Act. The Petitioner no. 1 MMBL approached the Hon'ble Supreme Court against

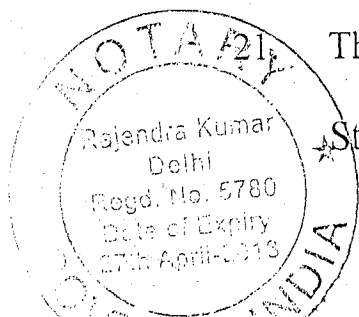


order of the MRTP Commission but the Hon'ble Supreme Court did not grant any relief to Petitioner no. 1. Subsequently, Petitioner no. 1 withdrew its petitions before the Hon'ble Supreme Court.

19 That it is pertinent to mention that certain State Governments legislated state enactments to regulate the cotton seed prices including the trait value. These cotton enactments and price fixations were challenged by Petitioner no 1 itself or by its sublicensees.

20. That it is also pertinent to submit here that whether it is the instance of MRTP Commission intervention or State enactments, one of the main causes of action has been the high trait value of Petitioner no. 1, which issue Petitioner no. 1 has been dodging through litigations from 2006 onwards and continues to collect higher trait value . In this connection, it is necessary to submit here that Petitioner no. 1 technology BG-I was not patented in India, yet Petitioner no. 1 collected huge royalty running into thousands of crores from the farmers through its agreements with the seed companies on the technology which was not even patented in India.

That due to fixation of Maximum Sale Price (MSP) by the various State Governments, MSP is not uniform across the country. Each

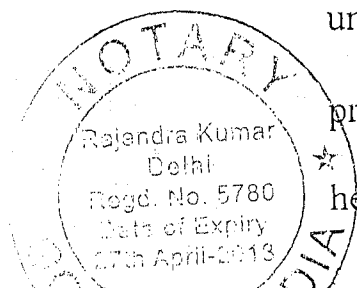


state has got its own MSP. Even the royalty charged by Petitioner no. 1 is varying and not uniform across the cotton growing states.

22. That given the above circumstances, Government of India – Respondent cannot be a mute spectator and allow poor farmers to be exploited by Petitioner no. 1 by its high trait value on a technology patented or otherwise. The Respondent - Government of India through Ministry of Agriculture & Farmers Welfare is committed to the farmers welfare and after lot of deliberations thought it fit to intervene in the matter of high cost of Bt cotton seeds and with the objective of regulating the maximum sale price of Bt cotton seeds with all its components. The objective of the Impugned Price Control Order is to provide Cotton seeds inclusive of Bt Cotton seeds at fair, affordable and uniform prices to the farmers across the country.

23. That it is also necessary to submit here that the agreements of Petitioner no. 1 signed with seed companies are anti-competitive and monopolistic. The issue is being examined by the Competition Commission of India.

24. That Petitioner no. 1 claims and asserts its patentee rights but conveniently ignores the principles laid down on the patentee under section 83 of the Patent Act, 1970. Some of the relevant principles from section 83 of the Patent Act are reproduced hereunder:



“83. General principles applicable to working of patented inventions: -- Without prejudice to the other provisions contained in this Act, in exercising the powers conferred by this Chapter, regard shall be had to the following general considerations, namely:--

(a)

(b) that they are not granted merely to enable patentees to enjoy a monopoly for the importation of the patented article;

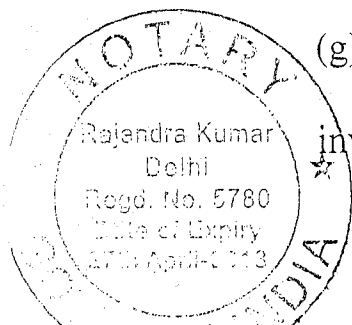
(c) that the protection and enforcement of patent rights contribute to the promotion of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations;

(d)

(e).....

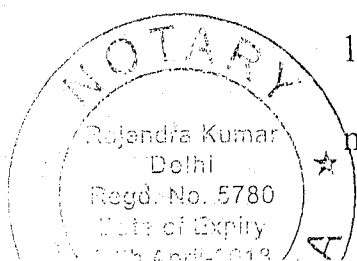
(f) that the patent right is not abused by the patentee or person deriving title or interest on patent from the patentee, and the patentee or a person deriving title or interest on patent from the patentee does not resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology; and

(g) that patents are granted to make the benefit of the patented invention available at reasonably affordable prices to the public.”



By promulgating the said Price Control Order, the Respondent is addressing the above issue as Petitioner no. 1 is guilty of blatant abuse of its patentee rights.

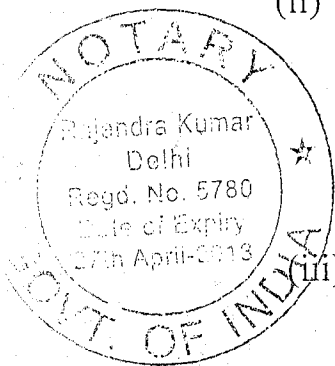
25. That the adoption of seed rate by the farmers has gone up due to adoption of high density population concept, thereby requiring two to three packets of 450g each to cover an acre. This resulted in more trait value per acre to Petitioner no. 1 compared to previous years.
26. That it submitted that the first generation technology viz., BG-I commercialized by Petitioner no. 1 in 2002 in India lost its efficacy because of which Petitioner no. 1 withdrew the said technology and its place has been taken over by BG-II technology. Pink bollworm, a major pest to the cotton crop, has already developed resistance in last two to three years and the farmers are a worried lot having sown Bt cotton seeds purchased at high price the crop is getting damaged due to pink bollworm incidence. It is natural phenomenon that over the years efficacy of the technology goes down, hence the royalty on technology should also be reduced.
27. That significantly in this regard, Petitioner no. 1 has executed fresh Sub License Agreements in 2015 in respect of its Bt Technology. It has fixed Trait Value on the basis of MRP of Rs 930 as Rs 163.28 and on the basis of MRP of Rs 1100 as Rs 174.90. The 2015 Sub License Agreements continue to contain more or less the same stipulations as the earlier Sub License



Agreements. The current MRP of cotton seeds is Rs. 830/- for BG II and Rs. 730/- for BG I in Maharashtra, Rs. 930/- for BG II and Rs. 830/- for BG I in Andhra Pradesh, Telangana, Karnataka, Madhya Pradesh and Gujarat while it is Rs. 1000/- for BG II and Rs. 825/- for BG I in Punjab, Haryana and Rajasthan. The non-uniformity of the price orders is affecting the cotton farmers. It is therefore in the interest of the farmers that the Respondent - Government of India steps in and regulates and creates uniformity in the Trait Value and the seed prices. From the order of MRTP Commission, the clauses and stipulations of the agreements and the representations filed before the Hon'ble Courts by Petitioner no. 1 and its sublicensees, it is very clear that the cost of Bt cotton seeds consists of two important parts; the seed value and the trait value. Unless both of them are assessed and regulated, the justified fixation of MRP of Bt cotton seeds cannot be arrived making the seeds available to the cotton farmers at fair prices.

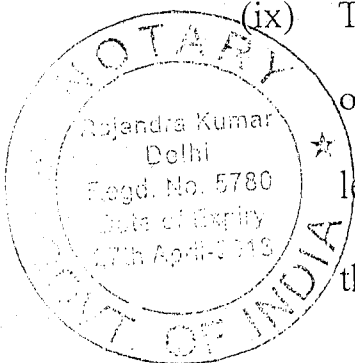
28. That it is pertinent to state the following:

- (i) The Trait Value fixation is arbitrary, excessive and exploitative. It is adding to the cost of seed and thereby to cost of cultivation substantially making it burdensome to the farmer.
- (ii) The Trait Value is actually paid by the farmers to Petitioner 1 as the seed companies are only collecting it and depositing with the Petitioner 1.
- (iii) Farmers have been paying the trait value for the technology for more than 10 years and so far have paid nearly Rs. 5500 Crores.



The Bollgard (first generation) technology did not even have a patent.

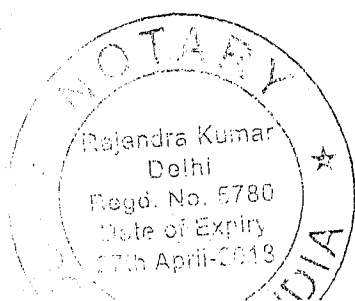
- (iv) The cotton yields were stagnant in the last 5 years due to the fact that the technology is not for yield improvement and it is only for loss prevention.
- (v) The expenses for plant protection to control sucking pests has been increasing steadily in the last 10 years and now there is no significant saving in overall plant protection cost even though the costs for controlling bollworms alone is reduced.
- (vi) Due to the adoption of high density planting, the farmers are using more seed per acre thereby paying much higher trait value on per acre basis.
- (vii) As per the MRTP Commission order, the Trait Value imposed by the Petitioner's parent company is only Rs. 40/- per Kg in China, a finding the Petitioner no 1 never challenged; nor has the petitioner submitted any details regarding the trait value on Bt cotton seeds that it may be charging in other countries.
- (viii) The Petitioner is fixing trait value arbitrarily leveraging its monopoly to earn unjustified profits by collecting 8 times more as trait value on its costs.
- (ix) The Bt cotton seed prices are not uniform across the country and only some States are regulating them through price control legislations while other States, they are not regulated necessitating this intervention of the Respondent – Government of India.



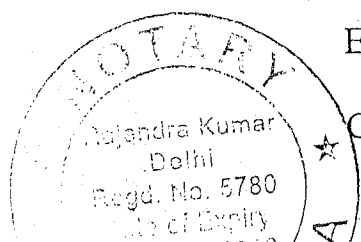
29. That it is submitted that in present circumstances, it is evident that the Writ Petition is pre-mature as no action has been taken against the Petitioners for them to be "aggrieved". The mere passing of the Cotton Seeds Price (Control) Order 2015 for the purpose of enabling the competent authority to take appropriate decisions, as laid down there under does not affect the rights of the Petitioners in any manner whatsoever and does not vest any cause of action in the Petitioners to maintain the present petition.

Parawise Reply

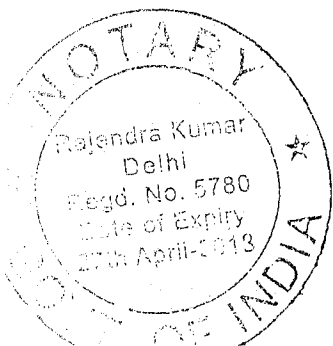
30. That the contents of para 1 are denied. It is submitted that there is no ground based on which the Petitioners can contend that they are constrained or aggrieved to approach this Hon'ble Court against the Impugned Price Control Order.
31. That the contents of para 2 are denied. It is denied that the Impugned Price control order is illegal and ultra vires of Section 3 of the Act. It is submitted that the Respondent has exercised its power under Section 3 of the Act which empowers it to regulate sale prices of "essential goods". Schedule to Section 2A of the Act under 7(iv) lists "cotton seed" as an essential commodity. It is important to mention that the Respondent seeks to regulate the overall price of the cotton seeds inclusive of Bt Cotton Seeds (which are nothing but cotton seeds sold/distributed for agricultural purpose) through the Impugned Order and the license



fee (trait value) is an integral price component and while formulating the Price Control Order, all components were taken into account keeping in mind the needs of the Technology provider, seed producers and end users i.e. farmers. It is submitted that courts have repeatedly held that the provisions of section 3 of the Act have wide jurisdiction and must be given a liberal and not restrictive construction. In the case of P.P. Enterprises v. Union of India, 1982 (2) SCC 33, An order of the Central Government under Clause 5 of the Sugar Control Order 1966 was assailed on the grounds that Section 3 did not empower government to regulate stocking of vacuum pan and open pan sugar (khandasari). The Court held that Sugar, which term includes khandasari, is an essential commodity and over the years it has become a scarce commodity. In the public interest it became essential to pass the impugned order to secure its equitable distribution and availability at fair prices. To that end it became necessary to prevent hoarding and black-marketing. The expression "to secure their equitable distribution and availability at fair prices" is wide enough to cover the impugned order. Likewise, the expression "storage and distribution" used in cl. (d) of sub-s. (2) of s. 3 should be given a liberal construction to give effect to the legislative intent of public welfare. So construed, the impugned order is fully protected and is not ultra vires s. 3 of the Essential Commodities Act, 1955. Further in the case of Jai Bharat Cold Storage v. State of Haryana & Ors, AIR 1980 P&H 52, the



vires of cl.18 of the Haryana Cold Storage (Licensing and Regulation) Order, 1979, were sought to be assailed inter alia on the grounds that the State Government had no power under the Act or the Order (by which powers u/s.3 were delegated to State Government) to regulate storage charges. The Court held that "The provisions of Section 3 of the Act have very wide jurisdiction. Also in the case of The Commercial and Ahmedabad Mills Co. Ltd. and Another v Union of India and Others, AIR 1993 GUJ 20, it was contended that the power to regulate the production, supply and distribution under S. 3 of the Act does not carry with it the powers to issue directions as to how the goods produced should be packed and, therefore, Clause 21A of the Control Order, which empowers the Textile Commissioner to issue such directions, is beyond the scope of S. 3 of the Act. The Court held that "We find no lawful justification for giving a restricted meaning to the word "regulating" appearing in Sub-S. (1) of S. 3 cannot be understood in restricted sense of the Act as to mean that no order can be promulgated by the Central Government providing for a direction to producer with a spinning plant or group of producers to pack such minimum quantity of such cloth and during such period as may be specified in the direction. The dominant object of S. 3 is maintenance and increase in supplies, equitable distribution and availability, at fair price, of the essential commodity, and, with that object in view, the Government has to take measures for regulating the production or

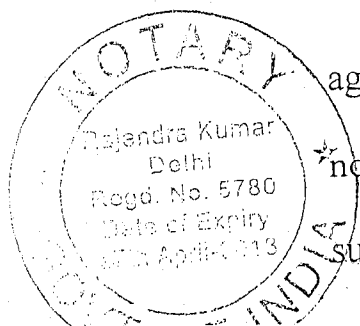


manufacture of any essential commodity and far controlling the price at which such commodity may be bought or sold. Fixation of fair price only will not necessarily render the essential commodity available to the consumers. In order to make the essential commodity available to the consumers at a fair price, not only the fair price has to be fixed, but, if there is no adequate supply of the essential commodity, supply thereof has to be increased."

32. That the contents of para 3-5 are matters of record and warrants no response.

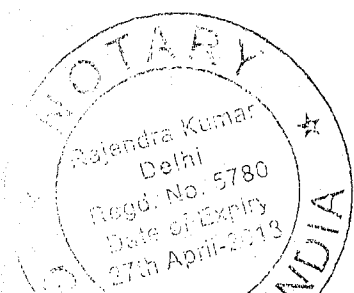
33. That the contents of para 6(i)-(ii) are denied except where they are matters of record. It is submitted that the Petitioner made bald claims that the proprietary technology, owned by Monsanto Technology LLP, has been licensed to the Petitioner No.1 through Monsanto company (based in USA) and Monsanto Holdings Pvt. Ltd with a right to further sublicense the said technology. The Petitioner further claims that by virtue of such licensing arrangements, Petitioner No.1 is entitled to inter alia test, produce and sell Genetically Modified Hybrid Cotton Planting Seed in India, either on its own or by way of grant of further sub-licenses to seed companies in India. It is submitted that the Petitioners have not approached this court with clean hands as the sub-license

agreement which the Petitioners have repeatedly relied upon have not been placed before this Hon'ble Court and in fact have been suppressed from this Hon'ble Court. The said agreements clearly



demonstrate and establish how the license fee (trait value) is an integral component of the price of the Bt cotton seeds. The ultimate price of units of Bt Cotton seeds depends on the license fee levied by the Petitioner no. 1. The higher the license fee, the higher is the price of the Bt Cotton seeds making the license fee the main controlling determinant of the price.

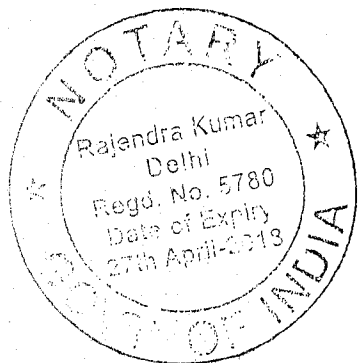
34. That the contents of para 6(iii) are denied. It is a settled position of law that price fixation is in the nature of a statutory measure and principles of natural justice stand completely excluded and do not apply to price fixation. The Act does not prescribe any procedure for consultation or pre-publication of the Order intended to be issued by the Central Government under Section 3 of the Act. The Pre-Legislative Consultative Policy outlines what a government ministry hopes to achieve and the methods and principles it will use to achieve them. It will however be necessary to pass a law to enable government to put in place the necessary institutional and legal frameworks to achieve their aims. Thus, although the Pre-Consultative Legislative Policy is an intended goal of the government, a statutory order cannot be vitiated for failure to follow it unless there is any express law requiring a prior consultation or publication. The Pre-Legislative Consultative Policy in any event contemplates that "If the Department/Ministry concerned is of the view that it is not feasible or desirable to hold the pre-legislative consultation as detailed above, it may record



the reasons in the note for the Cabinet The Impugned Order, which is a statutory order and not as legislation was passed by the Government due to the urgency and pressing circumstances – Seed growing season, farmer's plight, potential lack of access to seeds at fair prices. Without Prejudice, even if it is held that prior consultation was necessary, it is a settled position of law that where due to peculiar circumstances, no pre-decisional hearing has been granted, a post decisional hearing can salvage an administrative action from being quashed. It is significant to note that the Impugned Order provides a mechanism to take into account all issues of all stakeholders. The Order also provides that in the event that the MSP is fixed, a provision for review has been provided. Therefore, no prejudice to the petitioner has been caused by the Impugned Order.

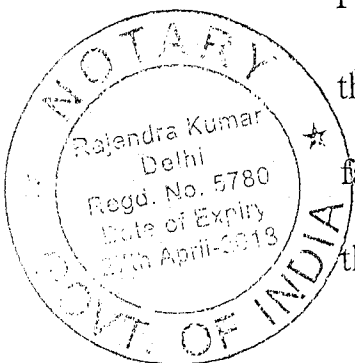
35. That the contents of para 6(iv)-(vii) are matters of record and warrant no response.

36. That the contents of para 6 (viii) are denied except where they are a matter of record. It is submitted that order dated 12.11.2015 in WP No.14716/2015 was challenged by the Government of Telangana by way of Writ Appeal No.1031/2015 before the Hon'ble Division Bench of High Court of Judicature at Hyderabad for the States of Telangana and the State of Andhra Pradesh and is still pending final adjudication. All the Writ Petitions filed by the Petitioner no. 1 are clubbed with WA 1031/2015 for final hearing.



37. That the contents of para 6(ix)-(xi) are matters of record. But it is pertinent to mention that the Hon'ble Nagpur Bench of High Court of Bombay observed that Government of Maharashtra took into consideration the recommendations of Rahuri Agricultural University Report of 2011 and upheld the price notification. The Rahuri Agriculture University had recommended Rs.20- as trait value, which was taken into consideration. Thereby, the MSP was reduced by Rs.100/- and fixed at Rs.830/- for BG-II.

38. That the contents of para 6(xii) are denied. It is denied that the Trait fee charged by Petitioner 1 in India is amongst the lowest in the world. Despite all the tall claims made by the Petitioners, the farmer community still continue to suffer due to high prices of the cotton seeds for a unit/packet of seeds (approx 450 gms). Since Monsanto Company, USA through the Petitioner 1 is the only company which has been licensing the Bt technology in India, they have in turn created a very oppressive situation for seed producers as well as the cotton farmers. The contentions of the Petitioners in respect of savings to farmers is incorrect and misleading. Due to the abnormally high Trait value unilaterally imposed by Monsanto USA through its sub Licensor namely the Petitioner no 1, the Bt cotton seed prices are much higher of what they ought to be making exorbitantly expensive for the cotton farmers to purchase Bt Cotton seeds. It is most pertinent to note that according to various State Government estimates, by

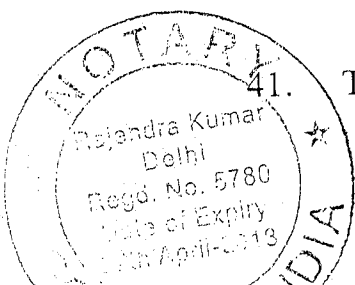


imposing these unreasonable and unjustified Trait values through the sub license agreements with the seed companies which in turn have a direct impact of the ultimate sale price, Petitioner no. 1 has managed to collect over Rs 6000 crores and is projected to collect much more in future . As a result of orders passed under the various legislations of various States, the Trait Value considered in the price orders for BG I varies from Rs. 10/- (Telangana), Rs. 20/- (Maharashtra) and Rs. 50/- (Andhra Pradesh) and for BG II, it is Rs. 20/- (Maharashtra), Rs. 50/- (Telangana) and Rs. 90/- (Andhra Pradesh). Significantly in this regard, Petitioner no. 1 has executed fresh Sub License Agreements in 2015 in respect of its Bt Technology . It has fixed Trait Value on the basis of MRP of Rs 930 as Rs 163.28 and on the basis of MRP of Rs 1100 as Rs 174.90.

39. That the contents of para 6 (xiii) is a matter of record and thus warrants no response.

40. That the contents of para 6(xiv) and (xv) are denied except where it is a matter of record. It is submitted that contents of sub para (xiv) (e) are denied to the extent that the clause 5(3) of the Order in sub-clause (v) provides for one representative from the "seed industry" which would certainly cover the technology provider.

41. That the contents of para 7 warrant no response.

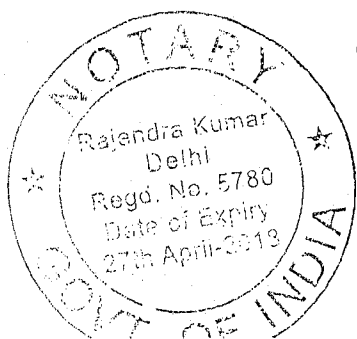


42. That the contents of para 8 are denied. As submitted above and in view of the preliminary submissions set out above, it is denied that the Impugned Price Control Order is ultra vires. The Respondent's specific response to each of the Grounds raised by the Petitioners is set out hereinafter.

Reply to Grounds

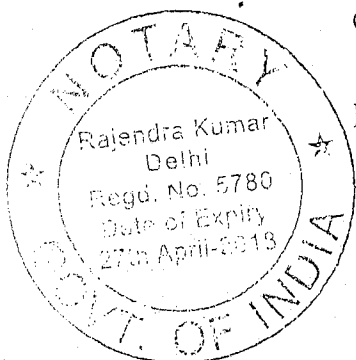
43. That the contents of Ground A are denied. For the sake of brevity, the preliminary submissions above are reiterated here and as such it is denied that the Cotton Seeds Price(Control) Order, 2015 is ex facie illegal, ultravires, and unconstitutional. The Respondent has issued this Order in exercise of the powers given under Section 3 of the EC Act and is well within the ambit of the legal provisions available to exercise the same. A perusal of the license agreement of the petitioner and the provisions relating to trait value will reveal that the agreements are illegal and liable to be declared invalid.

44. That the contents of Ground B are denied. It is denied that the Respondent have erred in passing the Impugned order by over-reaching the express power granted to it under Section 3 of the Act. It is submitted that through Section 3, the Respondent is empowered to make/promulgate Price control orders fixing Maximum Sale Price (MSP) of a commodity/product. The MSP comprises of various price components which determines the final

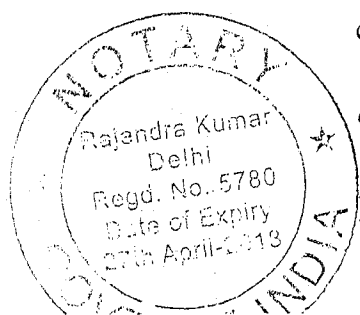


price of the commodity. The Price component includes seed value, Dealers margin, license fee and other taxes, therefore the license fee is equally vital which arriving at the price. The Respondent through the Order has tried to factor in the interest of all the stakeholders, namely, the technology provider, seed producer and the farmer. Since the end product herein. i.e. the Bt. Cotton seed is an essential commodity as per the Act, the Respondent has stepped in to promulgated Price Control Order to regulate the cotton seed prices. The Respondents have sought to only regulate the MSP which is inclusive of the license fee.

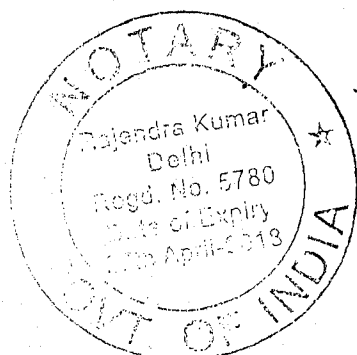
In this regard, the Section 6 of the Act provides for situations where the provisions of the Act are in conflict with other enactments. As set out in the preliminary submissions above, the Hon'ble Supreme Court has also fortified the position of the predominance of orders passed under Section 3 of the Act. Furthermore, the Courts have held that the power to regulate is with the background of the object which the statute seeks to achieve. Keeping that in mind, it would not be correct to limit the ambit of section 3 such to hold that it contemplates mere fixation of only sale price and no other price or only in relation to a named 'Essential Commodity'. According to the Courts Section 3 also contemplates fixation of prices of the elements which affect the price of the essential commodity. The fixation of the prices of various elements is to ensure availability, of the essential commodity at a fair price. As set out earlier, in the case of Jai



Bharat Storage v. State of Haryana & Ors, AIR 1980 P&H 52, the vires of cl.18 of the Haryana Cold Storage (Licensing and Regulation) Order, 1979, were sought to be assailed inter alia on the grounds that the State Government had no power under the Act or the Order (by which powers u/s.3 were delegated to State Government) to regulate storage charges. The Court held that "the provisions of Section 3 of the Act have very wide jurisdiction. The object of exercising powers under this Section is for maintaining or increasing supplies essential commodities or for securing their equitable distribution and availability at fair price and the power extends to provide for regulating or prohibit the production, supply and distribution thereof and trade and commerce therein. It cannot be disputed that the charge paid for storing the food-stuffs in cold storage have to be added to the ultimate price of the essential commodity. With a view to ensure that the essential commodities are made available at fair prices, the regulation of the cold storage charges is essential and is one of steps which will certainly help in ensuring fair price of the essential commodities. This contention is also, therefore, without any merit." Further, in the case of Union of India and Others v Hindustan Aluminum Corporation Limited and Another, AIR 1983 CAL 307, the Court held that "it is not correct to say that Section 3 of the Act contemplates fixation of one price, that is, the sale price and no other price. In the instant case, the Government has fixed one sale price at which the essential commodity namely, aluminum will be



sold to the consumers. It is true that the Government has also fixed for each producer a retention price which a producer will be entitled to get out of the sale price. Fixation of retention prices is necessary for the purpose of fulfilling the object of availability of aluminium at a fair price. We are unable to accept the contention of the learned Counsel for HINDALCO that Government has no power to fix retention prices. Such power can be found in Section 3 itself, and that is the regulatory power of the Government. It is obvious that the power to regulate has been conferred on the Government in order to achieve the objects of Section 3. It has been already discussed that if retention prices are not fixed and no payment is required to be made to the Aluminium Regulation Account, there would be no supply commensurate with the demand and, consequently, non-availability of the commodity at a fair price. Thus it was incumbent upon the Government to fix the retention prices for different producers and provide for payment to the Aluminium Regulation Account. The expression 'regulation' in Section 3 of the Act should be given a liberal interpretation (See P.P. Enterprises v. Union of India AIR 1982 SC 1016). Thus unless it is manifestly unjust, any action by the Government in exercise of its regulatory power in the matter of availability of any essential commodity at a fair price will be perfectly legal and justified. For all this we hold that the provisions for fixation of retention prices and for payment in the Aluminium Regulation Account are quite legal and valid."

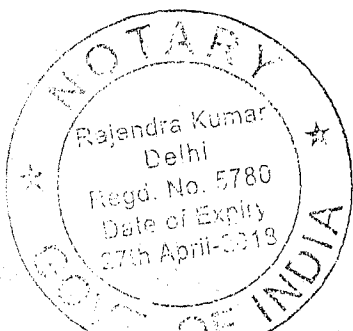


It is humbly submitted that both the Act and the Patents Act are central legislations. The Impugned Order has also been passed by the Central Government and therefore there can be no issue as to legislative competence as both subjects are within the legislative competence of the Union. It is well settled that the various entries in the three lists are not 'powers' of legislation, but 'fields' of legislation. [Hoechst Pharmaceuticals Ltd. v. State of Bihar and others, (1983) 4 SCC 45]. Secondly, Section 6 of the Essential Commodities Act provides that

“Any order made under Section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.”

It is a settled position of law that the dominant purpose in construing a statute is to ascertain the intention of Parliament. One of the well recognized canons of construction is that the legislature speaks its mind by use of correct expression and unless there is any ambiguity in the language of the provision, the Court should adopt literal construction if it does not lead to an absurdity. [Lt. Col. Prithi Pal Singh Bedi v. Union of India,]

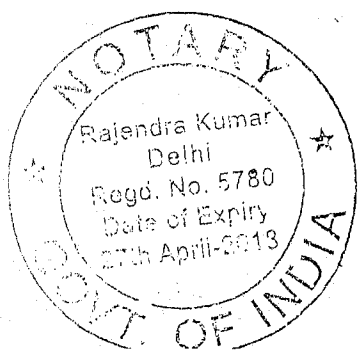
Therefore even though the Patents Act may govern matters on compulsory licensing and other matters concerning a patent, to the extent that the matters relating to patents are incidental to determination of the prices of the essential commodities, the



Central Government would be empowered to regulate the same in view of Section 3 read with Section 6 of the Act.

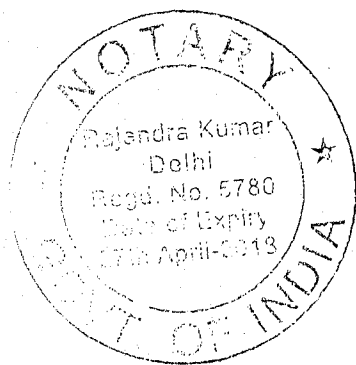
45. That the contents of Ground C are denied. It is denied that the Impugned Price Order specifically seeks to regulate Petitioner's technology by bringing it within the purview of the Act. It is submitted that the non-obstante clause in the Act, i.e. Section 6 clearly shows that how the orders passed under Section 3 of the Act have an overriding affect on other enactments. A statutory right can be circumscribed by various provisions keeping in view of public interest and it is a settled position of law that the courts lean towards an interpretation which would allow fairness and equity. In the instant case there is and was never a level playing ground and Monsanto and its associate company, Petitioner no 1 abused their position in disregard to the consumer's interest at large namely the cotton farmers. The averments made in the above paragraphs are deemed to be reiterated herein and are not repeated for the sake of brevity

46. That the contents of Ground D are denied. It is denied that the Impugned Price Control Order is bad in law. It is reiterated that all types of "Cotton seeds" are an essential commodity and while arriving at a regulated price costs of all components have to be determined, without which the exercise becomes meaningless. It is to be noted that cotton seeds, being declared as an essential commodity, can be subject to price regulation by an order under section 3 of the Act. No price fixation of a commodity can be



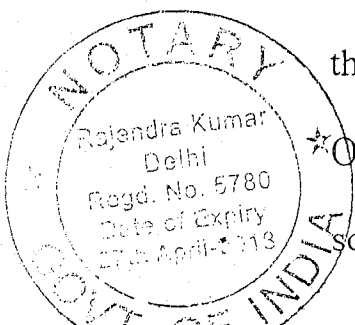
done without fixing the cost of components, which are integral part of commodity. While promulgating the Price Control Order, the Respondent has also taken into consideration multitude of pending litigations with regard to price fixation of cotton seeds, various price fixations by various states, various trait value charged by Petitioner in various states. It is submitted that the Petitioners have deliberately not brought on record any licensing agreement to show this Hon'ble Court its mechanism of levying the licensee fee on seed companies.

47. That the contents of Ground E are denied. It is denied that the Respondent has sought to indirectly achieve a result. It is submitted that on a complaint filed earlier by farmer's organizations, the Hon'ble MRTP Commission has observed that the practices adopted by the Petitioner have been monopolistic in nature and have been anti-competitive in nature. The Petitioner 1's technology had produced satisfactory results in the Cotton seed agriculture scenario in India. Importantly, the Petitioner's have enjoyed unbridled benefits of the royalty rates for over 10 years now which has caused severe difficulty to the famers. Agriculture is the back bone of the Indian economy. Seed plays a vital role in increasing productivity and agricultural production. In the absence of good quality seed, the effect of other agricultural inputs such as fertilizers, pesticides etc., in increasing crop yields will be limited to a great extent. Thus, for raising the productivity levels in crops, good quality seed is a great necessity. In view of this,

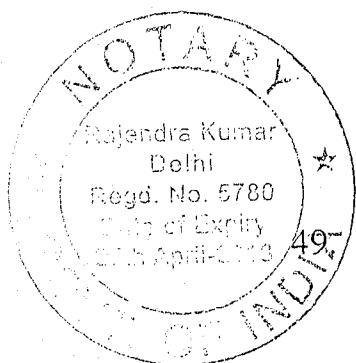


farmers select and prefer only high quality seed even if the cost of seed may be unreasonable and unaffordable. As such farmers are going for Bt cotton seeds despite their exorbitantly high cost. It is submitted that reliance on the FDI regime is misplaced and cannot be used as a trump card over the power of the Respondent to exercise its legitimate power under section 3 to ensure availability of an essential commodity such as "cotton seeds" in this case to the farmers at a fair price. Submissions in respect of Section 6 of the Act are reiterated here. It is necessary to submit here that the Petitioner feels that it has got total freedom to fix and collect from the poor Indian farmers exorbitant royalty at their whims and fancy and there is no law to control the Petitioner, which is evident from the fact that right from 2005 the Petitioner no 1 was challenging the decisions of the Government before different High Courts and even Supreme Court. The Respondent cannot be a mute spectator and allow the Petitioners to continue to collect the trait value according to their whims and fancy.

48. That the contents of Ground F are denied. It is submitted that the impugned order is not bad in law, but the so called commercial negotiations with the sub licensees which in turn imposes a huge burden on the poor farmers is bad in law. Such unlawful and collusive actions have only resulted in unjustified enrichment on the part of Petitioner No.1. It is submitted that the Impugned Order seeks to regulate the whole cotton seed industry. By doing so, the Respondent has factored in the various needs of the



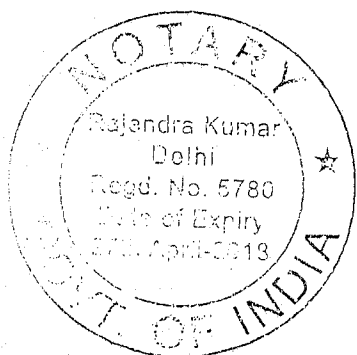
interested parties affected by it. It is true that the inventor is allowed to commercially use his invention to his own advantage but there are restrictions against his unbridled use. There is no statutory provision in Indian Law which prescribes unrestricted exploitation of a patented invention for such a long duration as in this instant case which is 11 years which is not only against public interest but principally contrary to the provisions available under law. The Petitioners are attempting to divert the mind of the Court to extraneous and unconnected issues. The Petitioners' argument that the order amounts to expropriation is bogus and frivolous. At the outset, the Respondent - Government of India has not fixed the trait value but provided a mechanism by which it will be fixed which will take into account the opinions of all stake holders including the Petitioner and it will be with the objective of ensuring that the price of the cotton seeds is fair and reasonable for the farmers of India. The Order therefore does not amount to expropriation. Be that as it may, the Order of the Government is made in the exercise of their normal regulatory powers, in a non-discriminatory and bona fide manner aimed at welfare of the farmers i.e. for a public purpose. The Government has followed the due process under the Act in passing the Order and the same is in accordance with the Constitution of India.



That the contents of Ground G are denied. It is denied that the Order travels beyond the mandate of the Act. Submissions in

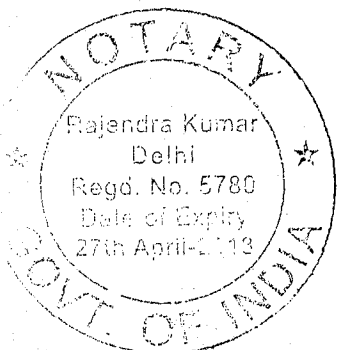
preceding paragraphs with regard to scope of the Act. It is reiterated that Bt cotton seeds is an essential commodity whose price is sought to be regulated by the Respondent which it is entitled to do so under the Act. The regulation of the License fee becomes unavoidable as the same is the determinant factor of the price of the Bt cotton seed.

52. That the contents of Ground J are denied. It is denied that the Order is bad in law. The Petitioners cannot claim an unfettered right to levy a trait value/license fee for which there is no reasonable basis through its Licensing Agreements which in turn results in higher prices of the Bt Cotton seeds which are covered under the Act. As submitted above, the license fee is levied by the Petitioner 1 on each unit of cotton seeds sold by the seed companies to the farmers and the price of the cotton seeds necessarily has to factor in the license fee. The higher the license fee, the higher the price of the Bt Cotton seeds. Further, it is settled law, that a legislation cannot be struck down on the ground that it is contrary to a provision of an International Treaty. Therefore if the terms of a statute are clear and unambiguous, they must be given effect to whether or not they carry out the State's treaty obligations [See Maganbhai Ishwarbhai Patel v. Union of India & Anr., AIR 1969 SC 783; State of West Bengal v. Kesoram Industries Limited & Ors., (2004) 10 SCC 201; Karan Dileep Nevatia v Union Of India and others, 2010 (1) Bom.C.R. 588]. Be



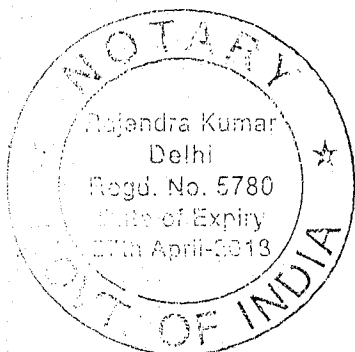
that as it may, the Impugned Order does not breach India's obligations under the TRIPS Agreement and the Petitioner has not identified any specific clause of the Agreement that is even potentially violated by the Impugned Order. The TRIPS Agreement incorporates certain "flexibilities." These aim to permit developing and least- developed countries to use TRIPS-compatible norms in a manner that enables them to pursue their own public policies in establishing macroeconomic, institutional conditions that support economic development. Therefore the Order is in consonance with the State's international obligations and does not violate the Trips Agreement.

53. That the contents of Ground K are denied. It is denied that there is no rational nexus between the Order and its objectives. It is submitted that the Price control order was promulgated with the objective of regulating in India the sale price of cotton seeds which include Bt cotton seeds which come within the purview of the Act and it was done in the interest of the farmers to make available all kinds of cotton seeds at "fair prices". As submitted earlier, the price of a unit of Bt cotton seeds comprises of the seed value and trade margins as well as the license fee of the technology provider. In order to effectively control the maximum sale price, the Respondent went in exercise of its power of controlling the various price components. License fee and Seed Value are two essential components of the price. The Respondent has through the Price control order, effectively sought to strike a



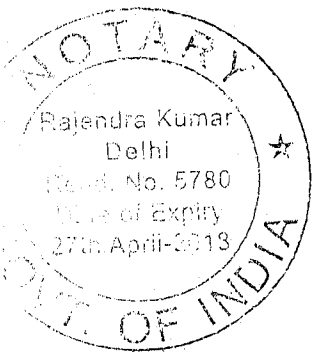
balance by taking into account the interest of all in the seed industry including the technology provider, seed producer as well as the interest of the farmers at large. Importantly, since the Petitioner 1 is guilty of not disclosing the licensing agreement, and also in view of the monopolistic trade practices adopted by the Petitioner 1, the Respondent has very much incorporated clause 5(8) of the Order within the basic objective of the Cotton Seed Price Control Order to regulate and formulate a uniform pricing mechanism across the country.

54. That the contents of Ground L are denied. It is denied that the said Price Control order is not in conformity with the doctrine of proportionality. It is submitted that at the outset this Writ Petition is pre-mature at this stage since no specific order has been passed by with respect to Petitioner 1. It is important to mention here that the rights protected by Article 19(1) are not absolute but qualified. The qualifications are stated in clauses (2) to (6) of Article 19. The fundamental rights guaranteed in Article 19(1)(a) to (g) are, therefore, to be read along with the said qualifications. Even the rights guaranteed under the Constitutions of the other developed nations are not absolute but are read subject to the limitations on them. Those limitations are made explicit by clauses (2) to (6) of Article 19 of the Constitution of India. Importantly, it has been held in cases of price fixation that "merely because some producers lose some money for some time, the price fixed does



not become unreasonable, for the purpose of price fixation is not only to consider the profit of the manufacturer but also to the price line. Trade and commerce undergoes periods of prosperity and adversity because of economic, social or political factors.”[See *Meenakshi Mills v. Union of India*, AIR 1974 SC 366]. The Respondent – Government of India’s action is not disproportionate and is in furtherance of the object of the Act. This is more so in the light of the present facts inasmuch as it is not the Petitioner’s case that it has not received fair value and/or has suffered any loss on that account. On the contrary the Petitioners have in fact received thousands of crores of rupees.

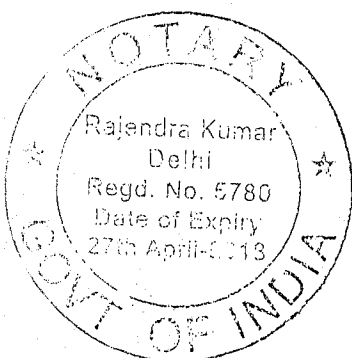
55. That the contents of Ground M are denied. It is submitted that the Committee proposed to be constituted for fixation of MSP shall be made by the Respondent as per the Order keeping in view the peculiar needs of the cotton industry comprising of competent personalities well versed with the needs of the industry. The Committee envisaged by the Impugned Order involves all the stakeholders in this regard as does not suffer from any ambiguity of vagueness as is incorrectly contended by the Petitioners. It is further submitted that the order is neither vague nor capable of misuse. On the contrary the order contains specific factors that ought to be taken into account by the Respondent - Government of India before fixing the sale price and the committee appointed by the Government will also be guided by the same factors and the



object of the Act while fixing the maximum sale price. Such guidelines have been held by the Hon'ble Supreme Court of India in several price fixation cases to be clear, and effective and exclude any chance of capricious or arbitrary fixation of price. [See Diwan Sugar Mills v. Union of India, AIR 1959 SC 626; Union of India v. Bhanamal Gulzarimal, AIR 1960 SC 475; Saraswati Syndicate v. Union of India, AIR 1975 SC 460; New India Industrial Corp Ltd. v. Union of India, AIR 1980 Del 277]

As regards the members of the Committee, they have been specifically and sufficiently been identified and it has been widely regarded by the courts that, the mechanics of price fixation has to be accepted in the generality of cases as valid. The courts concede a good deal of discretion to the administration in matters of price fixation. [See Prag Ice and Oil Mills v. Union of India, AIR 1978 SC 1296; Welcome Hotel v. State of AP, AIR 1983 SC 1015].

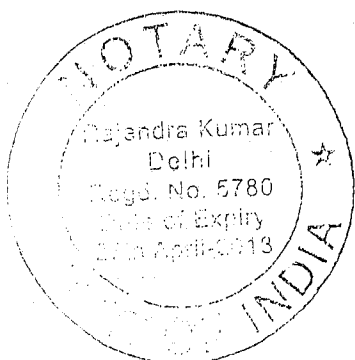
56. That the contents of Ground N are denied. There are no self contradictory provisions in the Impugned Order. The main objective is to regulate the Maximum Sale Price (MSP) of the cotton seeds to ensure availability of cotton seeds at fair price. Towards the main objective, in order to meaningfully achieve the purpose, the Respondent legitimately would also regulate the essential and integral price components namely the license fee and the Seed Value. It is humbly submitted that the Price of the cotton



seeds at which the farmers purchase units/packets are nothing but an aggregation of the license fee and Seed Value along with standard trade margins.

57. That the contents of para O are denied. It is denied that the Order fails to comply with the principles of natural justice. It is submitted that the Cotton seed price control order was primarily issued based on the various representations by the farmers' groups and as well as representations by the seed industry. It is a settled position of law that price fixation is in the nature of a legislative measure and principles of natural justice stand completely excluded and do not apply to price fixation as held in the following decisions namely *Saraswati Industrial Syndicate Ltd. v. Union of India*, 1975 (1) SCR 956; *Prag Ice & Oil Mills v. Union of India*, 1978 (3) SCR 293; *Laxmi Khandasari v. State of U.P.*, 1981 (3) SCR 92; *Union of India v. Cynamide India Ltd.* 1987 (2) SCC 720 ; *Shri Sitaram Sugar comany's case*, AIR 1990 SC 277

It is also significant to note that the Act does not prescribe any procedure for consultation or pre-publication of the Order intended to be issued by the Central Government under Section 3 of the Act. On a thorough investigation the Respondent realized the trade practices followed by the Petitioner 1 have been against the fair trade practices for which action has been initiated separately before the Competition Commission of India.

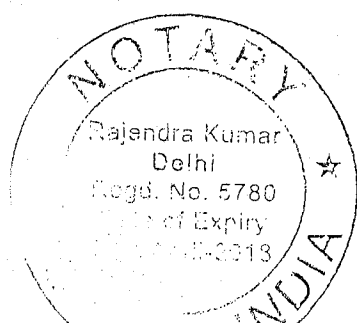


has been granted, a post decisional hearing can salvage an administrative action from being quashed. In this regard, reliance is placed on the law laid down in the cases of *Maneka Gandhi v. India*, AIR 1978 SC 597; *Swadeshi Cotton Mills v. India*, AIR 1981 SC 818 ; *Liberty Oil Mills v. India*, AIR 1984 SC 1271 and *Bari Doab Bank v. India*, (1997) 6 SCC 417

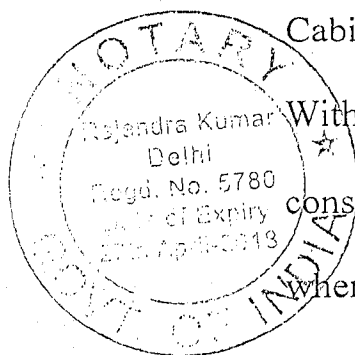
In any event, it is significant to note that the order provides a mechanism to take into account all issues of all stakeholders. The Order also provides that in the event that the MSP is fixed, a provision for review has been provided. Therefore, no prejudice to the petitioner has been caused by the Impugned Order and the petition on this ground is frivolous. In any event, as stated above, representations of farmers groups and the seed industry were considered before notifying the Impugned Price Control Order

59. That the contents of para 9 are denied. The Petitioner ought not be allowed to add and amend the grounds as based on the record their Writ Petition lacks merit to warrant interference by this Hon'ble Court.

60. That the contents of para 10 are denied for want of knowledge.



58. That the contents of paras P to S are denied. It is denied that the Order is violative of the Pre-legislative Consultative policy. The obligation to hold consultations is not cast in stone. The contents of the Pre-legislative Consultative policy annexed by the Petitioners would itself show at clause 11 therein that the concerned Ministry of the Respondent could do away or by pass any pre legislative consultation if it was not desirable or feasible. The Pre-Legislative Consultative Policy is as the name suggests a Policy and does not have the force of law. A policy outlines what a government ministry hopes to achieve and the methods and principles it will use to achieve them. It states the goals of the ministry. It will however be necessary to pass a law to enable government to put in place the necessary institutional and legal frameworks to achieve their aims. Thus, although the Pre-Consultative Legislative Policy is an intended goal of the government, a statutory Order will not be vitiated for failure to follow it unless there is any express law requiring a prior consultation or publication. In any event the Policy itself states "If the Department/Ministry concerned is of the view that it is not feasible or desirable to hold the pre-legislative consultation as detailed above, it may record the reasons in the note for the Cabinet"

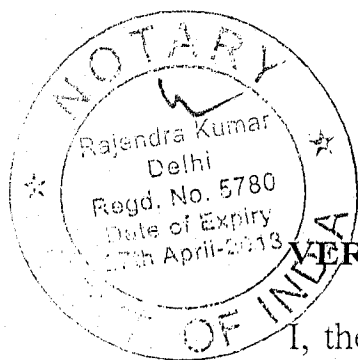


Without prejudice to the foregoing, even if it is held that prior consultation was necessary, it is also a settled position of law that where due to peculiar circumstances, no pre-decisional hearing

61. That the contents of para 11-12 are denied. As submitted above, the present petition is premature and lacks a bonafide cause of action and hence ought to be dismissed by this Hon'ble Court.

62. That the contents of para 13 are matters of record and hence warrant no response.

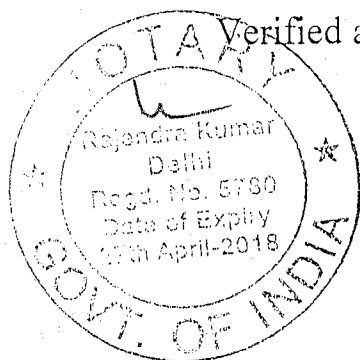
63. That the contents of the prayer clause are wholly misconceived. In view of the present facts and circumstances submitted above, the present petition is premature and lacks a bonafide cause of action and hence ought not to be entertained by this Hon'ble Court.



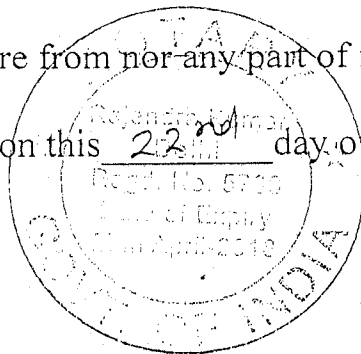
VERIFICATION

I, the above named deponent, do hereby verify that the contents of the above noted affidavit are true and correct and state that nothing material has been concealed there from nor any part of it is false.

DEPONENT
 श्री राजेंद्र कुमार/Dr. Rajendra Kumar
 भारत सरकार/Min. of Agriculture
 कृषि विभाग/Min. of Agriculture
 कृषि एवं सहकारी विभाग/Dir. Agri & Coops.
 नई दिल्ली/New Delhi



Verified at New Delhi on this 22nd day of January, 2016.



DEPONENT

श्री राजेंद्र कुमार/Dr. Rajendra Kumar
 भारत सरकार/Min. of Agriculture
 कृषि विभाग/Min. of Agriculture
 कृषि एवं सहकारी विभाग/Dir. Agri & Coops.
 नई दिल्ली/New Delhi

CERTIFIED THAT THE CONTENTS EXPLAINED TO THE DEPONENT EXECUTANT WHO IS SEEMED PERFECT TO UNDERSTAND & AFFIRMED DEPOSED BEFORE ME AT DELHI ON 22.01.2016 IDENTIFIED BY Rajendra Kumar ATTESTED BY Rajendra Kumar NOTARY, DELHI-R-5780 GOVERNMENT OF INDIA SUPREME COURT OF INDIA COMPOUND, NEW DELHI Register Pg.181. No. 6012

RAJENDRA KUMAR, NOTARY, Reg No. 5780
 F No.-5(486)
 EMPOWERED TO ADMINISTER THE OATH
 SECTION 139 OF CPC 1908
 SECTION 297 OF CRPC 1973
 DELHI HIGH COURT RULES 1967

IDENTIFY THE EXECUTANT/DEPONENT WHO HAS SIGNED IN MY PRESENCE

22.01.2016