



Monsanto in the Dock: Appeals indictment by MRTPC

Suman Sabai

Monsanto's trade practices are under the scanner of the MRTPC for selling its Bt cotton varieties at very high prices

Mahyco-Monsanto Biotech India Ltd. (MMB) has been indicted by the Monopolies and Restrictive Trade Practices Commission for charging exorbitant rates for its Bt cotton varieties containing Monsanto's proprietary Bt gene and for exercising a monopoly in India. MMB has gone into appeal to the Supreme Court.

The introduction of Bt cotton by Mahyco-Monsanto Biotech in India has been marked by controversy that refuses to abate. Bt cotton was approved for the planting season in 2002 amidst objections by Gene Campaign and other civil society groups that the base variety used by Mahyco-Monsanto Biotech - the MECH cotton varieties - were rated at best as modest, not good performers. Subsequently in all the three years for which it had received provisional per-

mission, the MMB cotton was found to fail in almost all the states where it was cultivated, its performance being particularly disastrous in Andhra Pradesh, Madhya Pradesh and Maharashtra. Farmers suffered huge losses and the extreme indebtedness of resource poor farmers that led to tragic suicides was exacerbated by the exorbitantly priced MMB Bt cotton. Reports prepared by State Agriculture Departments echoed the findings of civil society groups like Gene Campaign, which had produced the first report on the field performance of Bt cotton and reported that over 60 percent of the farmers had suffered such heavy losses that they could not even recover their investment. (See table below). The Agriculture Minister of Andhra Pradesh conceded that Bt cotton had failed the farmers.

As against 300 to 400 per 450 gm

bag charged for superior local cotton hybrids, MMB priced its Bt cotton at Rs1650 per bag, which they later raised to Rs 1800 per bag. Of the Rs 1650, Rs 1250 went to Monsanto as license fee for the use of Bt technology. Perhaps the license fee was increased when the price was hiked to Rs 1800. This is the highest license fee charged by Monsanto anywhere in the world. They charge about one-tenth this rate in China and Brazil. MMB also produces its Bt cotton in India as a hybrid, not as a true breeding variety. This consolidates their monopoly. Farmers cannot save seeds from hybrids and must buy fresh seeds every season. In the case of true varieties, they can save seeds from their harvest and plant the next crop. Thus, the financial burden on the farmer is lowered. Besides, the Bt cotton strategy for pest control works better in a variety that contains two Bt genes rather than a hybrid containing only one Bt gene and is therefore only half as effective as the true variety.

After the failure of the Mahyco-Monsanto Bt cotton, Gene Campaign had written to the then Agriculture Minister Sri Ajit Singh, making the demand that an enquiry should be conducted into the performance of Bt cotton and MMB be made to pay compensation to those farmers who had suffered losses. This is provided explicitly in the Indian law - the PPV-FR. MMB flatly refused to pay any compensation and neither the Ministry of Agriculture nor the GEAC (Genetic Engineering Approval Committee) took any action

Comparative income from Bt and Non-Bt cotton

FARM TYPE	NON-BT COTTON			BT COTTON		
	Farmers	Income/Acre	Net Profit/Acre	Farmers	Income	Net Profit/Acre
	(Per Cent)	(Rs)	(Rs)	(Per Cent)	(Rs)	(Rs)
Low yielding	35	7,394	2,661	60	5,637	-79
Medium yielding	58	12,512	7,779	35	9,737	4,021
High yielding	7	20,475	15,742	5	15,375	9,659

Ref. : Gene Campaign; Economic and Political Weekly, July 26, 2003.



against them. Subsequently, the AP (Andhra Pradesh) Government also claimed compensation from MMB for losses suffered by the farmers, a demand that was also rejected by the company, with the GEAC looking on.

The AP Government then banned the sale of MMB Bt cotton in the state. In the meanwhile, MMB had licensed the Bt technology to several Indian firms. On their initiative, the AP Government asked MMB to reduce the exorbitant license fees they were charging to something more reasonable, so that the seed could be more affordable to farmers. The steep price of GM cotton seeds was recognised as a major reason why the economics of Bt cotton was not working for many farmers. When MMB refused to do this, the AP Government and two farmer organisations moved the Monopolies and Restrictive Trade Practices Commission (MRTPC) against the company in January 2006 for charging "exorbitant" royalty for Bt Cotton.

On the instruction of the Monopolies and Restrictive Trade Practices Commission, the matter was investigated by the Director General of Investigation and Registration (DGIR). The DGIR report stated that MMB had failed to provide any rationale for the exorbitant license fees it charged. As there was no competition, the company was in a position to charge for the technology arbitrarily and unreasonably, thus establishing a monopoly. In an interim ruling, the MRTPC had directed Monsanto to reduce its technology fee in India to the rate it charged in China. Anticipating this, MMB had unilaterally reduced its license fee to Rs 900 per bag, but the MRTPC ruling could require Monsanto to cut down its license fee still further.

Having been indicted by the MRTPC, MMB has moved the Supreme Court challenging the order of the MRTPC directing it to fix a reasonable price for Bt cotton. It claims that the Commission has no jurisdiction to adjudicate on the issue as Intellectual Property Rights (IPR) issues and licens-

ing of technology do not fall under the classification of goods or services; since there was no trade in goods. It may be pointed out here that by introducing IPRs into trade via the Trade Related Intellectual Property Rights (TRIPS) of the WTO, the WTO has, in fact, made IPRs as tradable goods, so MMB's position is without substance.

MMB further contends that there can be no case against it since the license fee is being charged for Monsanto's technology and know-how, which the sub-licensees further incorporate into their own seeds. This contention is also baseless. The sub-licensee for this gene construct is Mahyco Monsanto Biotech India Ltd (MMB), a joint venture between Monsanto and Mahyco. This means that the company has licensed the technology to itself. Further, the case is against the price of Bt cotton sold by the name of 'Bollgard', which incorporates the specific Bt gene construct patented and owned by Monsanto.

MMB further claims that there was no rule or guideline prescribed in the Indian law to determine the prices that a technology provider could charge from its sub-licensees. This assertion of the company is easily struck down by the provisions of the Competition Act, which specifically prohibits any agreement between enterprises engaged in similar trade of goods as Monsanto and MMB are, which directly or indirectly determine the purchase or sale price.

MMB asserts that nothing in the law prevents an inventor of a new and useful product from allowing a person to use his product on payment of a fee for such use regardless of whether the inventor held a patent under the Indian law or not. When the patent law is applied in the same spirit, which recognises intellectual property with or without a patent grant, Section 83 (c) of the Patent Act can be invoked, which states quite clearly that *the protection and enforcement of patent rights must contribute to the promotion of the technological innovation and to the transfer and dissemination of technology to the mutual advantage of producers and users of*

technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations. Section 83 (d) further says that the patent granted should act as an instrument to promote public interest especially in the sectors of vital importance for socio-economic and technological development in India.

Both provisions make Mahyco-Monsanto's position untenable.

In a further desperate bid to fight its indictment, Mahyco-Monsanto Biotechnology has submitted to the Supreme Court that its technology is in the nature of undisclosed information or trade secret. This is a misrepresentation and absolutely incorrect. The Bt technology is no secret. On the contrary, its identity and composition is very well known. The Bt construct used in Monsanto's Bollgard has been patented; a fundamental requirement on the grant of a patent is disclosure of the patentable subject matter. So, all the details of the Bt technology used in Bollgard cotton, which is being used in India, is in fact in the public domain and cannot be considered "undisclosed information" or "trade secret" by any stretch of the imagination. Further, it has been licensed widely in many countries of the world so the Bt cotton know-how has been passed on several times to a number of parties. There is nothing undisclosed or secretive about it. A trade secret is where the composition of the product is completely secret. For instance, Coca Cola protects its special soft drinks formula by a trade secret and this formula is not licensed to anyone. The recipe is undisclosed information and no one knows what is in it. That is not the case with the Bt technology.

The Supreme Court will certainly be able to see that the Mahyco-Monsanto case is entirely baseless. A correct decision invoking the law, especially the public interest components of it, will hopefully set down the conditions for technology transfer in India and prevent greedy corporations from exploiting Indian farmers, under the guise of introducing superior technology. ■