



PRESS RELEASES

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Monsanto Wins in Canada; Can It in India?

On 21st May 2004, the Canadian Supreme Court passed an adverse decision against the Canadian Farmers accused by Monsanto of violating the company's patent on genetically modified canola (oilseed rape). The Saskatchewan farmers Louise and Percy Schmeiser claim that Monsanto's GM seed invaded their property while Monsanto claims that they have violated its patent rights in the GM seed. The Court ruled against the farmer. As a result of this decision patent rights over genetic inventions, in Canada, will now extend to anything that the patented gene gets into, be it a plant, animal, or human being as the decision finds that a gene patent extends to any higher organism that contains the patented gene. In other words this decision amounts to granting 'patents on life forms'.

Secondly the decision seriously undermines the right of a Canadian farmer to save and reuse his seeds. Simply put this is because the court ruled that regardless of how the patented genetic material gets into a farmer's crop, the fact that he has planted seeds containing patented genes means that he has violated the patent in the gene. Since GM crops are difficult to contain and easily contaminate neighboring non-GM crops, this means that whenever a farmer saves and reuses his seeds, he is taking the risk of unintentionally planting patented GM seeds and being sued by large biotech corporations.

Fortunately, the Indian lawmakers have shown farsightedness in precluding 'genes' and 'gene sequencing' from getting patented, thanks mainly to a sustained campaign by civil society groups, spearheaded by Gene Campaign. The Indian Patents Act, 1970 as amended in 2002 categorically excludes plants and animals in whole or in part, specifically seeds, varieties and species, from patent protection. Instead India opted for a *sui generis* approach to provide plant variety protection (PVP). The Protection of Plant Varieties and Farmer's Rights Act, 2001, contains elaborate provisions to safeguard the rights of Indian farmers in addition to plant breeder's rights.

The Act recognises the Farmers' Rights (not 'privileges', not 'exemptions' but 'rights') to save, use, sow, resow, exchange, share or even 'sell' seeds, including seeds of a protected variety. In addition, the Indian PVP law protects farmers against innocent infringement of rights recognised in the Act. As a result in a similar case in India where genes from crops of a protected variety contaminate the field of a farmer who is unaware of such contamination, s/he can get the benefit of this provision.

"In our opinion, the present legal framework safeguards Indian farmers against the consequences that the Canadian farmers have met or will meet", says a representative of Gene Campaign. Farmers cannot be prosecuted in India, in similar situation. However, Gene Campaign is concerned that if India chooses to join UPOV (International Convention on the Protection of New Plant Varieties), farmers in India may face the same plight as Canadian farmers, since the UPOV does not recognise farmer's rights. "India will have to shed bilateral pressures from countries like the US and the European Union to avoid joining UPOV," adds the Gene Campaign representative.

Another very important issue that the Canadian case highlights is that of 'liability'. The decision holds a farmer, found to have planted seeds containing protected genes on his land, liable for patent infringement. However the case seems to be silent on the question of whether the holder of the patented gene may be sued by a farmer for contaminating his fields. By inference, the Canadian decision seems to establish that "if patent follows the gene, so does the liability". This might mean

that if a farmer can show that his fields have been contaminated by a gene from a GM variety, he may sue the owner (read patent holder) of the gene for compensation. "This looks like a positive development which should be taken into account in developing liability law at the national and international levels," opines Gene Campaign representative.