

## NOTICE ISSUED TO GOVERNMENT ON PIL FILED BY GENE CAMPAIGN ON GM TECHNOLOGY

### DR. SUMAN SAHAI

A three judge bench of the Supreme Court, consisting of the Chief Justice Sri VN Khare, Justice GP Mathur and Justice SH Kapadia, has issued a notice to the government through the secretary, Ministries of Environment and Forests, Science and Technology and Agriculture, on a public interest litigation filed by Gene Campaign and Dr. Suman Sahai, challenging the validity of the rules made for genetically modified organisms and seeking a moratorium on the commercial release of GM crops until an 'effective' oversight mechanism is put in place.

Arguing the petition, Sri Sanjay Parikh, Advocate submitted that biotechnology is being promoted in India in the absence of a national policy and without national consensus. Implementation is being done in an *ad hoc* manner and without adequate precautions or appropriate regulations prescribed by international practice and convention. There is neither clear-cut direction nor an effective oversight mechanism. There is no provision for 'Prior Informed Consent' in the rules to prevent introduction of genetically modified organisms that could have a devastating effect on our biodiversity, especially since our country is a center of origin for major crop plants.

### Why this PIL

Gene Campaign has been voicing its concerns since long, over:

- The arbitrariness in the application of biotechnology in food and agriculture;
- Inadequate regulatory mechanism to control the potential environmental and health hazards due to genetically modified organisms (GMOs);
- Lack of attention to the socio-economic and ethical aspects of GM technology in food and agriculture; and
- Lack of transparency and public participation in the decision-making process.

Unfortunately the Indian government has chosen to promote this technology without responding to public concerns, showing no sensitivity to the concerns that Gene Campaign was raising. Gene Campaign wrote several letters to the relevant agencies, including the Genetic Engineering Approval Committee (GEAC; the key regulating body) and the Department of Biotechnology (DBT; the key body promoting biotechnology). Those letters contained suggestions for the improvement of the existing GM regulations and/or seeking field-trial data on which decisions were taken with respect to Bt cotton (India's first and so far the only approved GM crop) and GM mustard. None of the letters or phone calls was acknowledged. This was a clear infringement of the people's right to know and to participate in a matter that has grave implications for their life and welfare.

On November 26-27, 2003, Gene Campaign organised a multi-stakeholder consultation at New Delhi in the form of a National Symposium titled "Relevance of GM Technology to Indian Agriculture and Food Security." The well-attended Symposium brought forth a wide range of views. (*More information on the Symposium is available at [www.genecampaign.org](http://www.genecampaign.org)*)

A set of 20 recommendations was one of the outcomes of the Symposium, which clearly stated that the Indian oversight mechanism needs amendment and that India needs a distinct National Biotechnology Policy. These recommendations, *inter alia*, were sent to the DBT (and other departments) for consideration. The DBT sent a response rebutting every single recommendation. According to the DBT there is no need for a separate Biotechnology Policy and the existing regulatory regime is good enough to meet biosafety requirements. (For details see [www.genecampaign.org](http://www.genecampaign.org))

Faced with the continuing stonewalling from the government departments, Gene Campaign was left with no alternative but to approach the Judiciary for relief. It filed a PIL in the Supreme Court of India on 7<sup>th</sup> January 2004.

The PIL challenges the constitutionality of the Rules for the Manufacture, Use, Import, Export and Storage of Hazardous Micro-organisms, Genetically Engineered Organisms or Cells, 1989 that have been framed under the Environment (Protection) Act, 1986.

The PIL alleges that the Rules are not in consonance with the principles evolved under Article 21 (Right to Life) of the Constitution. Various judgments by the Supreme Court have not only kept environment and human health as a part of Article 21 of the Constitution, they have also made essential principles like precautionary principle, sustainable development, polluter pays principle and inter-generational equity doctrine a part of Articles 14 (Right to Equality) and 21 of the Constitution. The Court has also held that “the Right to Information and Community Participation necessary for the Protection of Environment and Human Health is an inalienable part of Article 21 and is governed by the accepted environment principles. The Government and the authorities have to motivate the public participation by formulating the necessary programmes”.

The PIL alleges that the Rules in India have not been brought in line with the International Conventions like the Biosafety Protocol of the Convention on Biological Diversity, to which the Indian Government is bound, being a signatory and which has come into effect from September, 2003.

### **Lacunae in the present regulatory regime**

The PIL points out lacunae in the Rules of 1989 and the bodies set up under it, which includes GEAC. The important lacunae include:

- The Rules do not provide for qualifications / expertise required by the members of various agencies (such as GEAC). At present people who lack technical competence and the skills to perform important tasks pertaining to biosafety assessment man such bodies.
- The Rules do not have any provisions to evaluate socio-economic impact of GM crops and products derived from GM technology.
- The majority of the members of the regulatory agencies, such as GEAC, are civil servants in their *ex officio* capacity, who do not have the experience or technical competence to discharge their duties.
- The field agencies (State Biotechnology Coordination Committees and District Level Committees), which have crucial supervisory and monitoring responsibilities, are either not set up or are dysfunctional.

- There is lack of transparency in the GM regulatory regime. There is no provision for public participation in the decision making process, nor any requirement to make information available to the public
- There is no accountability or liability on the part of regulatory agencies and/or occupiers.
- There are no effective penal provisions for cases of violation of the Rules.

### **Grounds raised in the PIL**

In light of the above discussions, the major grounds raised in the PIL are:

- The Rules of 1989 are arbitrary and unconstitutional, and violate the Fundamental Rights of people granted under Articles 14, 19 and 21 of the Constitution of India. Various environmental principles that have been held to be part of Article 21 by the Supreme Court have not been incorporated in the Rules of 1989.
- The regulatory agencies set up under the Rules of 1989 lack technical competence, transparency, and public participation. They are not competent to deal with the potential environmental, health and socio-economic risks posed by GMOs in India.
- The Rules do not incorporate the principles and provisions given under various international instruments, like the Biosafety Protocol, Convention on Biological Diversity etc., which India has signed/ratified.
- Many countries, including developing countries, are setting up new regimes or revising the existing ones in light of new scientific evidence and latest international developments, India must do the same.

### **Remedies sought through the PIL**

The following remedies have been sought from the Court through the PIL:

- The Rules of 1989 are to be brought in consonance with various provisions of the Constitution, especially Article 21 (Right to Life) that includes Right to Environment and Human Health. If the respondents (Union of India) fail to do so, then the Rules of 1989 should be declared unconstitutional.
- The Government should set up a High Powered Committee to formulate a National Policy on GMOs through a multi-stakeholder consultation process.
- The Government must observe a moratorium on various permissions / approvals / trials concerning GMOs, especially those of a commercial nature, particularly those crops for which India is a Centre of Origin / Diversity, till the Rules are amended and a sound Regulatory and Monitoring System is put in place.

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