



Environmental Social
Justice
&
Governance Initiatives

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Regd. Post Ack. Due

Sri. Shivanna, I.F.S.,
Member Secretary,
Karnataka Biodiversity Board,
Ground Floor,
VANAVIDAS,
18th Cross, Malleshwara,
Bangalore 560003.

15 February 2010

Reg.: Violation of Biological Diversity Act, 2002 in matters relating to access and utilisation of local brinjal varieties for development of Bt Brinjal by M/s Mahyco and ors., and related issues

Sir,

We write to you to place on record various documents that point to the fact that the whole process relating to the commercial/environmental release of Bt brinjal developed by M/s Mahyco (with 26% shareholding by US TNC, M/s Monsanto) in collaboration with M/s Sathguru (a front company of US Agency for International Development - USAID and Cornell University) and University of Agricultural Sciences, Dharwad (UAS-D) based on their agreement dated 2nd April, 2005 is blatantly violative of the provisions of the Biological Diversity Act, 2002 (BD Act). A copy of the said agreement is annexed at **Annexure A**.

First and foremost, we bring to your attention a letter written by the Vice Chancellor of UAS-D on 9th February, 2010 which explicitly and categorically claims that the provisions of the BD Act do not at all apply to the research and commercial release of the said Bt brinjal product. The said letter, along with its one-page enclosure giving details of the types of approvals secured by the University, is enclosed at **Annexure B**.

We find this claim to be fundamentally false and a tactic employed to divert attention from gross violations of the provisions of the BD Act. We say this for the following reasons:

- A) The BD Act enacted in 2002 explicitly prohibits foreigners, NRIs, or foreign institutions from initiating any research involving access to biological resources of India, without prior approval of National Biodiversity Authority (NBA). Sec. 3 of the Act makes this amply clear. The only exemption from this statutory requirement is for "collaborative research projects" involving both Indian and foreign institutions, so long as they are not commercial and fulfilling the Guidelines of the Central Government per Sec. 5(3) of the Act. It is also stated at Sec. 5(2) of the same Act that any research project that is not exempted under Sec. 5(1) of the Act, if initiated prior to the enactment of the BD Act or being implemented in variance to the provisions of the Act shall become void. The said Guidelines per Sec. 5(3) were only formulated and issued on 8th November, 2006 by the Ministry of Environment and Forests (MoEF). As a result, it was mandatory under Sec. 18 of the Act for the contracting parties to the agreement to have approached the NBA for necessary approvals prior to initiating research. In addition, the Karnataka Biodiversity Board (KBB) should have been intimated per Sec. 7 of the BD Act. As evidenced in Annexure B above, there is positive confirmation that all these provisions have been fundamentally violated.
- B) The contracting parties to the said agreement are in comprehensive violation of the provisions listed under Ch. 10 of the BD Act. Annexure 1 to the agreement referred to at **Annexure A** above lists six local varieties of brinjal which may be crossed or back-crossed with the B.t. gene. These varieties are: Malpur local, Manjari gota, Kudachi local, Udupi local, 112 GO, Pabkavi local. Sec. 41(2) of the Act categorically

states that "National Biodiversity Authority and the State Biodiversity Boards shall consult the Biodiversity Management Committees who are taking any decision related to the use of biological resources and knowledge associated with such resources occurring within the territorial jurisdiction of the Biodiversity Management Committee." Since the contracting parties did not enjoy any immunity from the exemption clauses, as mentioned above, the fact that these local varieties were accessed without any clearance from the National, State, or Local Biodiversity Authorities amounts to a clear violation of the Act. It may also be said that this violation denies the local communities who have cultivated and protected these varieties from time immemorial from their due right to benefit from the commercial gains that would be made from the access and use of these biological resources.

- C) While reviewing the documents relating to the above incident, we have come across many instances of access to biological resources of India by various Indian public sector and private sector organisations, which also seem to be in blatant violation of the BD Act, in particular Sec. 7. It is a matter of great concern that these activities also involve research towards commercial release of Genetically Modified Organisms.
- D) Needless to state, it is mandatory on the part of the KBB to be extremely watchful in matters relating to the access of biological resources for research or for commercial utilisation or for biosurvey or for bioutilisation. The above cases reveal that not only have various private and public sector agencies blatantly violated the provisions of the BD Act, but they seem to have been encouraged to do so because of the weak monitoring and regulation by the Karnataka Biodiversity Board.

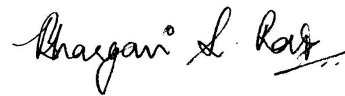
Keeping the above in view, we demand the following:

- a) Conduct a comprehensive inquiry to fix the responsibilities and liabilities to establish the nature and extent of the criminal violations of the BD Act in the case of initiation and conduct of research leading to the potential commercial release of Bt brinjal by M/s Mahyco, M/s Sathguru and UAS-D.
- b) Based on such an investigation, initiate criminal proceedings against the violators as required per law.
- c) Conduct an inquiry into all ongoing research, commercial utilisation, biosurvey and bioutilisation activities being undertaken in the State of Karnataka to establish if they are in conformance with the BD Act, failing which necessary action must be initiated as required per law.
- d) Investigate if M/s Mahyco has conformed with the Biological Diversity Act when commercially releasing Bt Cotton into the market. In case it has not, then appropriate legal action must be initiated.

Yours,



Leo F. Saldanha
Coordinator



Bhargavi S. Rao
Coordinator (Education)

Environment Support Group

Encl.: As above

Cc. (UCP):

1. Sri Jairam Ramesh, Union Minister of State for Environment and Forests (I/c)
2. Sri B. S. Yeddyurappa, Chief Minister of Karnataka and (I/c) of Ecology and Environment
3. Sri J. Krishna Palemar, Karnataka Minister of Port, Ecology and Environment
4. Sri. Umesh Katti, Karnataka Minister for Horticulture
5. Sri Vijai Sharma, Secretary, MoEF
6. Sri S. V. Ranganath, Chief Secretary, Government of Karnataka

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7. Dr. P. J. Dilip Kumar, Director General of Forests and Special Secretary, MoEF
 8. Dr. P. L. Gautam, Chairman, National Biodiversity Authority of India
 9. Dr. A. S. Anand, Chairman, Organic Farming Mission, Government of Karnataka
 10. Mr. M. S. Farooqui, Additional Secretary (Conservation), MoEF
 11. Dr. Ranjani Warriar, Director (Scientific) and Member Secretary, Genetic Engineering Approval Committee, MoEF
 12. Ms. Meera Saxena, Principal Secretary, Karnataka Department of Forests, Ecology and Environment
 13. Mr. I. B. Srivatsav, Principal Chief Conservator of Forests, Karnataka State Forest Department
 14. Principal Secretary, Karnataka Department of Agriculture
 15. Mr. Kanvarpal, Secretary (Environment), Karnataka Department of Forests, Ecology and Environment
 16. Director, Karnataka Directorate of Horticulture
 17. Appropriate Biodiversity Management Committees and Panchayats where aforementioned Brinjal Varieties are grown