

GOVERNMENT OF ANDHRA PRADESH  
DEPARTMENT OF AGRICULTURE  
PROCEEDINGS OF THE APPELLATE AUTHORITY & SPECIAL COMMISSIONER OF  
AGRICULTURE, ANDHRA PRADESH, GUNTUR

PRESENT: D.MURALIDHAR REDDY, IAS

Procs. No. AGC02-12027(31)/27/2018

Date: 14-03-2019

Sub: Seed Regulation Cell- Seeds Act, 1966- Seeds (Control) Order, 1983- Suspended the CSL of M/s Kaveri Seed Company Ltd, Guntur- Appeal preferred to Appellate Authority under Clause 16 of SCO, 1983- Orders issued – Reg.

Ref: 1.Proc.No. AGC02-12027(31)27/2018 dt: 28-01-2019 of Licensing Authority, O/o.C&DA, A.P., Guntur.  
2.Appeal letter no. nil of dated 07-02-2019 of M/s Kaveri Seed Company Ltd, Guntur.

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ORDER:-

Vide 1<sup>st</sup> reference the Licensing Authority had issued reasoned order to the firm M/s Kaveri Seed Company Ltd, Guntur suspending the Licence no.GUN/26/ADDL.DA/CSL/2014/41 for a period of one year from the date of Order.

Aggrieved by the above order of the Licensing Authority M/s Kaveri Seed Company Ltd, Guntur preferred appeal to Appellate authority under the Clause 16 of the Seeds (Control) Order, 1983, on the grounds of suspension of Centralized Seed License by the Licensing Authority under the provisions of Clause 15 of the SCO, 1983.

The Appellant has submitted the following grounds for consideration of their appeal, and it was heard on 28/02/2019. The Appellate Authority heard the appellants

Appeal Grounds:

1. The production, processing and packing activities are not covered under either the Seeds Act, 1966 or the Seeds (Control) Order, 1983. These activities are applicable only when the seed is put for sale and not during production and processing. It is mandatory for any person or dealer under section 7 of the Seeds Act, 1966 read with Clause 8A of the Seeds (Control) Order, 1983, to comply with the requirements of section 6 of the Seeds Act for selling the seeds and liable for action under section 19 of the Seeds Act and Clause 13 of the Seeds (Control) Order, 1983 if the seed put for sale does not meet the requirements of section 6 of the Seeds Act.

2. MAO had drawn the samples of hybrid 234 with lot no.EK234N0021 at raw stage and the said lots were yet to undergo delinting process and after delinting, further processing and cleaning and thereafter testing was required to be conducted to ensure that the seed lots meet the specified quality standards. However the MAO has drawn the samples at raw stage before completion of processing,testing, packing and labelling.
3. The Appellants states that the report of FISEC nowhere states that the appellant has deliberately involved in breeding of HT trait. Thus the report of FISEC has no bearing so far as the present appellant is concerned. The Appellant herein is victim of contamination of its crop. There is no approved procedure for sampling and testing to determine the presence or absence of HT gene.
4. The Licensing Authority cancelled the License alleging that the Appellant has contravened clause 3 of the Seeds (Control) Order, 1983. Clause 3 mandates the requirement of license to carry on the business of selling, exporting or importing of seeds. The Appellant is in compliance with the Clause 3 of the SCO, 1983.
5. The Licensing Authority suspended the License under the provisions of the Clause 15 of the Seeds (Control) Order, 1983. The Appellant has not obtained the license by misrepresentation. The Appellant has not contravened any of the provisions of the SCO 1983 or any condition of the License. The Licensing Authority has arbitrarily suspended the license without specifying the contravention.
6. Form VII prescribed under rule 35 of the Seeds Rules, 1968 read with section 16(1) of the Seeds Act, 1966 enclosed to the show cause notice. Therefore as per section 16(2) of the Seeds Act, 1966 the Appellant is entitled to make an application to the court for sending the sample , handed over to him as per section 15(2)(a) of the Seeds Act to the Central Seed Laboratory for its report by making payment of prescribed fee. The Central Seed Laboratory shall supersede the report given by the seed analyst under sub section (1) of the section 16 of the seeds act. Testing of second sample is a mandatory requirement and a final decision cannot be taken based on the initial report received from seed analyst.
7. Allegation of clause 8A of the SCO, 1983 is also incorrect. It is not applicable in the instant matter and the unconfirmed presence of HT gene cannot be considered as contravention of clause 8A of the SCO, 1983. Deliberate or unintentional release of unapproved cotton is an offence under Rule 9 of the Manufacture, use/import/export and storage of hazardous microorganisms/Genetically engineered organisms or cells, 1989. Accidental release of genetically engineered organisms or cells which may be harmful to environment, nature or health or involve any danger there to lies under Rule 16 of 1989 Rules.

8. There is no sampling procedure developed and notified by the competent authorities for sampling of leaf or seed to conduct tests for Ht gene. Similarly, there is no approved procedure to determine the presence or absence of HT gene in a leaf or seed sample.
9. The provisions of Environmental Protection Act are specifying the various authorities which would be designated to perform the function there under. The Ministry of Environment has notified Seed Inspectors, Seed Analyst and the Seed Testing Laboratories for the purpose of initiating any action under the said act.
10. The Licensing Authority under the provisions of Clause 11 of the Seeds (Control) Order, 1983 is not a notified authority for purpose of EP Act, 1986 or Rules made there under.
11. The drawl of sample from the unprocessed raw bulk seed to determine the presence or absence of unapproved HT gene falls under the provisions of the EP Act and 1989 Rules and it is absolutely incorrect to apply provisions of the Seeds Act, 1966 or SCO, 1983 for the samples drawn before processing of the seed lots.
12. The report of ADA, DNA Laboratory based on which the show cause notice and the impugned order is issued is false and incorrect , in as much as Appellant has not accessed the Herbicide Tolerance trait from its developer or anyone else and did not develop its cotton hybrid with HT trait.
13. Even when the authority states there is Herbicide Tolerant trait in cotton seed variety , the authority has proceeded to suspend the license for production of all other seed varieties as well.
14. EP Act and 1989 Rules provide the stringent action for violations of the provisions of EP Act and 1989 Rules. It is humbly submitted that action lies against the perpetrators of wrongful act and not against the victims of wrongful deeds under the provisions of EP Act and Rules 1989.
15. As per the FISEC report it is clear that appellant is not involved in illegal cultivation of unapproved HT cotton.
16. The competent authorities constituted sub rules (4), (5) and (6) of Rule 4 of 1989 Rules, which have powers to take action under section 15 and 16 of the EP Act and Rules 13(2) (b) and 15 of 1989 Rules should gear up to take action against real culprits by conducting thorough investigation against them as recommended by FISEC. Instead of taking action against the real culprits under EP Act and 1989 rules, the Ministry of Environment ,Forest and Climate Change is depending on the State Departments of Agriculture to take action under the provisions of the Seeds Act, 1966 and SCO, 1983 against seed companies.

The Appellate authority heard both sides i.e., Appellant and the records of the Licensing Authority and concluded the hearings on the basis of material evidence / records.

**Clause 15. of Seed Control Order / Suspension/ Cancellation of License says that:**  
The Licensing Authority may, after giving the holder of the license an opportunity of being heard, suspend or cancel the license on the following grounds, namely:

- (a) that the license had been obtained by misrepresentation as to a material particular: or
- (b) that any of the provisions of this order or any condition of license has been contravened.

In the present case, the Appellant applied for license in Form-A (clause 4), has obtained license in Form-B (clause 5) and renewed the license in Form - C (clause 7) in accordance with the terms and conditions as per Clause 3 of SCO, 1983, on the basis of submission of Office Memorandum in respect of the approved Cotton seed varieties by the Genetic Engineering Appraisal Committee (GEAC) in the name / title or KCH-707, KCH 14K59., KCH 15K39& KCH 36 BG II, KCH-999 BG II expressing events Cry 1Ac & Cry 2Ab with MON 15985 for commercial release in south zone.

**The Section 14 of Seed Act 1966 deals with powers of Seed Inspectors.**

That under section 14(1) The Seed Inspector may

- a. Take samples of any seed of any notified kind or variety from
  - i) Any person selling such seed; or
  - ii) Any person who is in the course of conveying, delivering or preparing to deliver such seeds to a purchaser or consignee
  - iii) A purchaser or a consignee after delivery of such seed to him.

As per the above status, the Inspector has drawn the sample from the Seed cotton lot of the Appellant Firm M/s Kaveri seeds Company Ltd, Guntur. As per the License terms, it is supposed to produce cotton Hybrid 234 (KCH 707 BG II) bearing lot no. of EK234N0021 must be positive for Cry1Ac and Cry2Ab with MON 15985 event only as per GEAC approval as stated above.

The contention of the appellant is that the sample cannot be drawn from Raw seed is not correct because GOI has instructed the States to inspect all the sale, storage, production and processing plants to curb illegal and unapproved HT cotton with presence of CP4EPSPS gene MON 88913 event in cotton seed at any state in production, processing, sale and storage vide DO LR No.13-134/2017/SD.IV, dated 29.01.2018 and the samples were also drawn as per the provisions of Section 14(1) a. (ii) of the seeds act 1966 from the seed lots, under preparation for delivery to the Consignee.

Further, the Seed sample was drawn as per procedures laid under Section 15 of Seed Act 1966, were subjected to DFTCML Lab tests and test results clearly showed the presence of CP4EPSPS gene with MON 88913 event that is Herbicide Tolerant (HT) trait which is unapproved in India, therefore the Appellants act / actions were contrary to the Varieties/ Events mentioned in this Seed License application and also terms of license issued to the Appellant Firm. **This is a case of misrepresentation of material in particular, therefore, the actions of the Firm attracted the Clause 15(a) of the SCO, 1983.**

DNA Fingerprinting and Transgenic Crops Monitoring Laboratory (DFTCML), Guntur is one of the notified State Seed testing laboratory cum National Referral laboratories for detection of Living Modified Organisms(LMOs) /Genetically Modified Organisms (GMOs) and authorized under Sub-Section (1) of Section 4 of the Seeds Act, 1966 read with Rule 5 ( C ) of the Seeds Rules, 1968, with effect from vide S.O.3604 (E) i.e., the date of publication of the notification dated 15.11.2017 in the official gazette.

During the course of hearing the Appellant has orally submitted that the land was taken on lease for taking up the production of cotton seed by entering into Cotton Seed Production Agreement with the seed growing farmers. As per the submission made it is a fact that, the prime responsibility of the Appellant firm is to monitor/supervise/inspect the seed production, strictly maintaining the genetic purity and production of quality seed simply throwing the blame on others, stating that contamination of its crop, **due to others** their seed was contaminated is not convincing argument and the statement clearly shows that the firm lacks seed quality control mechanism over seed production and appears to be lackadaisical approach of the firm which resulted in production of unapproved Bt cotton seed with HT Trait.

The Government of India, Department of Biotechnology, Ministry of Environment, Forest & Climate Change under the instructions of the PMO has constituted a Committee to ascertain the spread of unapproved HT Genes called "Field Inspection and Scientific Evaluation Committee (FISEC)". The FISEC visited / inspected major Cotton growing States and prepared a report in which, it clearly dealt about claims like contamination stating that the pollen escapes up to 5m is 4% & from 6m-10m is 3.3% and beyond 10m is negligible. As per the "Indian Minimum Seed Certification Standards", 2013 to ensure/maintain Genetic Purity for certified seed production, the cotton seed production plots should have at least 30m Isolation distance on all sides from other fields. The firms, which are producing Hybrid Seeds /Transgenic crops has to follow minimum standards prescribed for notified kind and variety of seeds as envisaged under section 6,7 of Seeds Act 1966 r/w Clause 8A of SCO, 1983. Further to state that cross pollen even in case of open pollination varieties is not possible, when adhere to seed production protocols/rules etc. As stated in above paras, in cotton crop, pollen is heavy and sticky, hence the range of pollen transfer is limited as scientific isolation distance has to be maintained and whatever pollination happens, it happens with conscious efforts such as genetic selection.

The presence of HT trait is unapproved and is illegal as per the terms and conditions of the License. As stated earlier, the Seed samples are drawn as per procedure and protocols laid under Section 15 of Seeds Act 1966 and tested in the National Notified Lab called DFTCML of Andhra Pradesh and test results/ reports were generated and therefore action was initiated base on seed test results. The present appellants in case having any doubt about test result he would have approached the competent authority for reanalysis. In the present case, the appellants has not approached Agriculture Commissionerate OR Licensing Authority OR the Hon'ble High Court for sending the samples for reanalysis to any of the Central seed laboratory in their appeal.

It is further stated that the Seed lot no. EK234N0021 belongs to the Appellant reported the presence of the unapproved HT gene. This can happen only on years of experienced skilled breeder's efforts, hence the presence of HT is deliberate.

**Seeds (Control) Order, 1983 Clause 8A is reproduced here under.**

**Clause 8A. Dealers to ensure certain standards in respect of seeds:** Every dealer of seeds in notified kind or variety or other than notified kind or variety of seeds shall ensure that the standards of quality of seeds claimed by him shall conform to the standards prescribed for the notified kind or variety of seeds under Section 6 of the Seeds Act, 1966 and any other additional standards, relating to size, colour and content of the label as may be specified.

Under Clause 8A to ensure certain standards in respect of seed production, the Appellant has to maintain purity of parental lines of cotton crop, but as per the DNA lab test report, the appellants failed to maintain genetic purity of Seeds in case of Cotton Crop hybrid 234(KCH 707) and the samples found to contain illegal and unapproved Transgenic Gene CP4EPSPS.

The firm further stated that they are the victims of things done by some others, the statement made only to shift the responsibility on all others including Technology developers to escape from the real facts of their acts.

The appellants Firm also claims that there are no sampling procedures and protocols for testing HT trait and with this conclusion, it can be concluded that the Firm actually indulging in packing and mislabeling of the unapproved seeds for selling to gullible farmers. However, the firm has admitted in writing that they are conducting Herbicide Tolerant trait test on their Seed lots from last 3 years. This establishes that the Firm is aware of protocols, kits for detecting HT trait.

**The functions of the Central seed laboratory under rule 5 of THE SEEDS RULES, 1968 under Seed Act, 1966 (Act No. 54 of 1966) reproduced here under**

**Functions:** - In addition to the functions entrusted to the central Seed Laboratory by the Act, the Laboratory shall carry out the following functions, namely;

- a. Initiate testing programmes in collaboration with the State Seed Laboratories designed to promote uniformity in test results between all seed laboratories in India;
- b. Collect data continually on the quality of seeds found in the market and make this data available to the Committee; and
- c. Carry out such other functions as may be assigned to it by the Central Government from time to time.

The methodology being adopted in case of unapproved Herbicide Tolerant Cotton is similar to the testing procedures communicated by Govt of India vide OM No.2-6/2012-SD IV Dt: 16-09-2015 of GOI, MoA&FW, New Delhi in case of Bt Cotton (approved transgenic) and the same was also reiterated by RCGM (Review Committee on Genetic Manipulation) in their Submission before The Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the state of Andhra Pradesh of its WP No 4445/2018. Dip-stick Strip Test, Elisa test and PCR test are the prevalent methods for detecting approved Transgenic BT Cotton and the said methods are used for testing HT Cotton or any approved/unapproved Transgenic Crops.

The show cause issued by the Licensing Authority only under the Seeds Act, 1966 & The Seeds (Control) Order, 1983 and the rules made under. However, separate proceedings under the Environmental Protection Act, 1986 & E.P Rules 1989 may be initiated by the State Biotechnology Coordination Committee(SBCC)/ District Level Committee(DLC) or any competent authority under sub rules (4),(5) and (6) of rule 4 of 1989 rules. The Seed Licensing Authority has not issued the present order under EP ACT and this appeal is heard under the jurisdiction of Seeds Act 1966 / Seed (Control) Order 1983 only.


**The FISEC committee reported that the genotyping studies reveal that the spread of HT gene is not due to pollen/gene flow from field trials as claimed by some stake holders. Moreover, in the same FISEC report it is reported as all HT Cotton hybrids and their parental lines present to be declared as unapproved/illegal seeds.**

In view of the said facts, the Appellant has contravened & violated the provisions of Section 6, 7 of Seeds Act, 1966 read with section 21, 23 and Clause 3, 8A of the Seeds (Control) Order, 1983 and terms and conditions of the license and hence the Licensing authority has no option but to Suspend this license for a period of one year.

From the above, it is evident that there are no reasonable grounds to interfere with the orders passed by the Licensing Authority dated: 28-01-2019, in view of the magnitude and potential risk for the further spread of unapproved and illegal cultivation of HT trait, necessitates a time barrier is to be observed to stop further spread of HT Cotton. However, in view of Appellants plea that the suspension of Seed License in totality will be deprive the sustenance of the Appellant company

and the distribution of all other seed varieties to the farming community. The Appellate authority considers the said plea; as a matter of natural justice, and therefore the suspension of license is confined to the Cotton crop Hybrid KCH - 707 BG II only for a period of one year from the date of order of Suspension of license vide Proc. No. AGC02-12027(31)27/2018-Seed Sec dt: 28-01-2019 in order to stop proliferation of HT trait further and it will not be applicable to any other varieties/hybrids.

In the result the appeal is disposed with a partial modification of order of the Licensing Authority Dt: 28.01.2019 and the suspension of license is confined to Cotton Crop Hybrid KCH-707 BG II only for a period of one year, w.e.f 28.01.2019.



Appellate Authority and  
Special Commissioner of Agriculture,  
Andhra Pradesh, Guntur.

To,  
M/s Kaveri seed company Ltd, D.No. 25-25-32, Narayani ,Nethaji Nagar, 1st Line,  
Near KKR cinema Hall, NH 5, Guntur.

Copy to the Joint Director of Agriculture, Guntur with request to serve the copy to the firm and obtain acknowledgement with date and submit the same to the Appellate Authority.