

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)26/2018

Date: 4-03-2019

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

Ref: 1. Proc.No. AGC02-12027(31)26/2018 Dt: 28-01-2019 of Licensing
Authority, O/o C&DA, A.P., Guntur.

2. Appeal letter no. nil of dated 11-02-2019 of M/s Nuziveedu Seeds
Ltd, Guntur.

ORDER:

Vide 1st reference the Licensing Authority had issued reasoned order to the firm M/s Nuziveedu Seeds Ltd, Guntur, suspending the License No.RRD/0/ADDL.DA/CSL/2014/1 for a period of one year from the date of Order.

Aggrieved by the above order of the Licensing Authority M/s Nuziveedu Seeds 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. Seed License is liable to be suspended/cancelled under clause 15 of the Seeds (Control) Order, 1983, if the license is obtained by misrepresentation as to a material particular or any of the provisions the Seeds (Control) Order or if any condition of License has been contravened.
3. Section 6 or 7 are not relevant in the present matter, as the samples were drawn from the raw seed, before processing, testing, packing and labelling of seed containers and further samples were drawn for the purpose of determine the HT gene, which falls under the provisions of EP Act and 1989 Rules.
4. The Licensing Authority has misunderstood and wrongfully relied on section 14(1)(a)(ii) and (b) of the Seeds Act. Preparing to deliver do not mean the seed lots which are undergoing delinting, processing and testing etc, as misrepresented by the Licensing authority. It means preparing to deliver packed and labelled seeds to a purchaser or a consignee.
5. Section 21 of the Seeds Act referred in the impugned order is in respect of offences by companies and hence not applicable in the instant case in as much as there is no contravention of section 6 & 7 of the Seeds Act, release of HT gene which has not been approved under the Environment (Protection) Act and its Rules 1989 Rules, can attract action only under EP Act and 1989 Rules against the person who are held responsible for the illegal release of unapproved HT gene and not the victims of contamination.
6. The sample drawn by the MAO, Nandyal before completion of processing, testing, packing and labelling and alleged 10% presence HT Cotton, which is disputed, cannot be construed as contravention of Section 6 & 7 of the Seeds Act read with Clause 8A.
7. The show cause notice was issued by the Licensing Authority as per the Seeds Act, 1966 and the Seeds (Control) Order, 1983 and not as per the EP Act, 1986 and 1989 Rules. However the Licensing Authority had not established violations of any provisions. The Appellant has not made any misrepresentation for obtaining the seed license and has not contravened any provisions of the Clause 15 of the SCO, 1983. of Seeds Act & SCO, 1983, Which would warrant issuing of show cause notice under the said two statutes.
8. Drawl of samples from the unprocessed raw bulk seed by the MAO to determine the presence or absence of unapproved HT gene falls under the provisions of EP Act and 1989 Rules. There are no provisions under the Seeds Act, 1966 and the SCO, 1983 Which provide for sampling of seeds to determine presence of unapproved transgenes.

9. The Appellant has not made any misrepresentation for obtaining the seed license and has not contravened any provisions of the Clause 15 of the SCO, 1983.
10. On the basis of the unconfirmed and disputed report of the State DNA lab alleged skilled breeding in the impugned order based on a report of the FISEC and without the presence of HT gene only could be due to contamination considering the above facts suspended the seed license.
11. There is no sampling procedure and notified by the competent authority for sampling and conducting test to determine the presence or absence of HT gene.
12. The Licensing Authority under the provisions of the Clause 11 of the SCO, 1983 and is not a notified authority for the purposes of EP Act 1986 or Rules made thereunder.
13. The analytical report of the DNA lab is stoutly disputed by the Appellant for adopting unapproved analytical report is incorrect, action lies under the provisions of EP Act.
14. Under Rule 4(5) of the 1989 Rules, the State Biotechnological Coordination Committee (SBCC) has been authorized to inspect, investigate and take punitive action in case of violation of statutory provisions. The conspectus of the said provisions clearly disables the Licensing Authority from initiating any steps with regard to any alleged violation of the provisions of the EP Act or Rules made thereunder.
15. The report of ADA, DNA Lab has been submitted without following the approved procedure while analyzing the sample drawn under the statute.
16. The presence of HT gene only could be due to contamination.
17. Suspending of the License would have huge impact on the business of the Appellant. The Appellant company produces and supplies major part of Bt cotton apart from seeds of Hybrids/varieties of other crops.
18. If the Appellant had resorted to skilled breeding, as alleged by the Licensing Authority in the impugned order based on the report of the FISEC the sample of the Appellant would have recorded 90-100% positive for HT cotton and not just 10%.
19. The Licensing Authority without initiating any action against the actual culprit who has led to present situation by releasing of unapproved Herbicide Trait into the environment is purely illegal, arbitrary and discriminatory.

20. The Appellate Company produces and supplies major part of Bt cotton seeds apart from the seeds of Hybrids/Varieties of Various other crops.

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.

The arguments through grounds of appeal of the appellant are answered here under:

1. The statements made in the para are not understood in its true context. The Seed inspectors were empowered to do /conduct inspection/verification of the seed production materials, standing crops, the harvested seed, stored unprocessed/ processed seed and packed seed. In other words, the seed inspectors are empowered to check and take samples at every stage of seed production under section 14 of the Seed Act 1966.
2. Seed License was suspended under clause 15 of Seed (Control) order 1983 for the violation of the terms of the seed license issued by the licensing authority and other provisions of Seed (Control) order (SCO) 1983.
3. Seed samples drawn as per the procedure laid under section 14 of Seed Act 1966, as stated above para (1), since the seed is under the preparation.
4. In year 2009, a team from Commissionerate of Agriculture inspected Echodamandal of Adilabad District and collected leaf samples from suspected HT fields. The samples tested positive for Herbicide Tolerant trait CP4EPSPS Mon 1445 which was illegal and unapproved for cultivation in India. On enquiry, the HT positive field farmers confessed that those seeds were supplied by Mr Ganesh of M/s Pravardhan Seeds. The District collector approved the Note on 30.12.2009 and through reference C2/1995/2009 Dt: 02.01.2010 under EP Act 1986 a Showcause notice was issued to M/s Pravardhan Seeds and they replied denying the allegation. The Case is pending with DLC, Adilabad and the HT positive fields were destroyed on 28.01.2010 in presence of Farmers and Mandal Agricultural Officer, Echoda. M/s Pravardhan Seeds is a subsidiary company of the Nuziveedu Seeds Ltd and Nuziveedu Seeds was aware of this issue as reflected in their draft herring prospectus dt April 22, 2015. Similarly, in the 100th GEAC meeting minutes, Dt: 25.05.2010, some case referred to Pravardhan seeds. This clearly show that the firm has knowledge of about HT cotton.
5. As defined in section 21, the Nuziveedu seeds Ltd (NSL) treated as a company and hence is liable for the offences committed in seed production in contravention to the seed license issued by the licensing authority under clause 3 of SCO 1983 (under section 3 of Essential Commodities Act 1955), hence the competent licensing authority has suspended license under the power of competency.

6. As explained in the above paras, especially in para 1, the Agricultural Officer of the concerned jurisdiction is the Seed Inspector for all the purposes. Hence he acted judiciously, fundamentally to protect the farmers, took samples as per the procedure laid under the section 14 of the Seed Act 1966, Seed (Control) Order 1983 and rules there under.
7. It is agreed that the licensing authority has not issued show cause under EP Act 1986 and the rules framed thereunder. It is a fact that the Seed license was issued by the licensing authority in accordance with terms and conditions of the clause 3 of the Seed Control Order 1983, the said license was misused, terms of the Seed license was violated, hence the same seed licensing authority has issued under clause 15 of Seed control order 1983, since section 6,7 of the Seed Act 1966 was violated and also action required under section 21,23 of Seeds Act 1966 r/w clause 3, 8A.
8. Samples were drawn as stated above as per procedure laid under section 14 of the Seed act 1966, by the Seed inspector/Agricultural officer who is also inspector in respect of Environmental Protection Act 1986 and the Rules 1989. In this case the action was initiated in consonance with Seed Act 1966, SCO 1983 and the rules there under, pending action by the competent authority under the provision of EP Act 1986.
9. As stated above it is observed that the appellant here has violated the terms of seed license issued to them for production of seed crops under certain terms however in violation of the same the appellant herein produced HT cotton seed which is offence, hence attracted action.
10. The appellant having a habit of denying, contesting even truth, since they were caught red handed hence the source of seed is belonging to them, the parental lines belong to them, they further admitted before the appellant authority that they are actually did seed production by taking lands on lease from farmers. Hence, it is a seed production, belong to them and same was tested in DFCTM lab and the results found positive for HT for which action initiated.
11. The statement made in the para are false, the sampling policy is robust, rational, transparent and abundant and same as in case of other Bt seeds, other open pollinated varieties and other notified varieties as laid in section 14 of Seeds Act 1966, SCO 1983 and the rules made under.
12. The licensing authority issued license in accordance with terms and conditions of clause 3 of SCO,1983 since the same were violated, he has suspended the license under clause 15 of SCO,1983 and not under EP ACT 1986 as wrongly understood by the appellant herein.
13. It is not true that the DNA lab report was disputed in its true sense, in case the appellant has any doubt or dispute about the efficiency, genuineness,

authenticity of the lab report they have every right to choose a remedy such as preferring reanalysis of the same, in such a case the competent authority would have allowed the same. It is fact that NSL so far not denied the fact that they are producing seed with HT unapproved genes in contrary to the license granted to them. They always beating around the bush to escape from the law, that too without any basis or material evidence.

14. It is true that the State Biotechnology Coordination Committee (SBCC) is authority to take action under EP ACT 1986 and Rules 1989 for production/presence of any unapproved genes. It is expected that the SBCC may also initiate / prosecute separately, simultaneously for wrongful acts of the unapproved gene production by the Appellant NSL. In the present case, the licensing authority has initiated process of legal action under provision of Seed Act 1966 , SCO ,1983 and the rules made under and not under EP Act 1986 and suspended the seed license for violation of seed license terms laid in the license which was issued in accordance with terms and conditions of clause 3 of SCO, 1983 and it is reiterated that the seed licensing authority has not issued notice/ initiated action under provisions of EP ACT 1986 for which separate authority was notified and they may also initiated legal action/ prosecution for violation of provisions of EP ACT,1986 and Rules 1989.
15. The contention made in this ground has no merit and not followed by any record evidence. The seed samples were drawn under section 14 of the Seeds Act 1966, SCO 1983 and rules made thereunder. The said samples were subjected to testing at the National notified lab called DNA Fingerprinting and Transgenic Crops Monitoring Laboratory (DFTCML), and test results were communicated to the appellant by the concerned seed inspector through proper printed copy of the analysis report. The appellant has not disputed the test results rationally or otherwise so far, where they can dispute.
16. The statement made by the appellant herein in this para is false, baseless and there is no merit. The appellant in their submission before the appellate authority categorically admitted that they have taken up seed production fields on lease, supplied the parental lines and produced seed, harvested, processed. Therefore the entire seed /seed production belongs to them. If they claim there is a contamination, it is false because the cotton seed is produced through conscious genetic selection by the trained persons or experts in the field of breeding Bt cotton. It is also fact that involving in seed production, the company has to ensure to adhere to Indian Minimum Seed certification standards, where isolation, genetic purity, of the parental seed shall be maintained along with pre harvesting/ post harvesting precautions to be observed. In the present case the company made a casual statement saying that it is a contamination, which means the company lacks capability, capacity and technical Knowhow to produce genetically pure seeds, as claimed in their license application, hence the company license deserved to be suspended till it gains, equip with the requisite standards in seed production.

17. The appellant herein worried/ concerned about their business and but not about the fate of farmers, the damages on environment etc. and not made single word or line to that effect. It is not that how much quantity of seed the company is producing but it in fact it should focus/ concern about how much good quality seed it could produce and supply to the farmers and to protect the environment.

18. The appellant claimed that they are producing seed by taking cotton production fields on lease and the parental lines belongs to them, there the seed inspector could take random samples and such sample found some percentage of HT unapproved transgenic genes in the approve Bt cotton seed for which they were given license to produce, in terms of sensitivity that percentage of impurity is very high. In case of any chemicals, medicines, food items if the contaminations of this proportion what will be the societal reaction and what are the repercussions on the society. Due to the quality concerns, due to violation of seed license terms, the license was suspended by the licensing authority, for a period of one year, to safe guard the society/environment.

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 /code or Hybrid NC65/B with Lot No. 204112, 204112/Aexpressing eventsCry 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 samples from the Seed cotton lots of the Appellant Firm M/s Nuziveedu seeds Ltd, Guntur. As per the License terms, it is supposed to produce cotton Hybrid(code)NC65/B with Lot No. 204112, 204112/A 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 clause (c) of Rule 5 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 stated that the land was taken on lease for taking up the production of cotton seed by entering into Seed Production Agreement-Cotton with the seed growing farmers. As per the said agreement, 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 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 appellant in case having any doubt about test result he would have approached the competent authority for reanalysis in the present case, the appellant 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. 204112, 204112/Abelongs 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 appellant failed to maintain genetic purity of Seeds in case of Cotton Crop hybrid NC65/Band 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 appellant 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.

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) 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 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 NCS 459 BG II only for a period of one year from the date of order of Suspension of license vide Proc. No. AGC02-12027(31)26/2018-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 NCS 459 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.Nuziveedu Seeds Ltd, 5/97/5, 6th Lane 12th Cross Road, Brodipet, Guntur - 522002.

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.