

[2012] 4 S.C.R. 553

ARUNA RODRIGUES AND ORS.

v.

UNION OF INDIA AND ORS.

(Writ Petition (Civil) No. 260 of 2005)

MAY 10, 2012

**[S.H. KAPADIA, CJI, A.K. PATNAIK AND
SWATANTER KUMAR, JJ.]**

Environmental Laws:

Public health – Bio-safety concern – Release of Genetically Modified Organisms (GMS) – PIL – Prayer for issuance of direction to Union of India to stop release of GMOs into the environment by way of import, manufacture, use or any other manner and to prescribe protocol, to which all GMOs released would be subjected and for framing rules in that regard – Supreme court directed the constitution of Technical Expert Committee as well as terms of reference as suggested in the Minutes of the Ministry’s meeting dated 15th March, 2011 – Committee is directed to submit its final report within 3 months and in the event the committee is not able to submit its final report within the stipulated time, the Committee is directed to submit its interim report regarding issue as to whether there should be any ban, partial or otherwise, upon conducting of open field tests of GMOs and in the event of permitting open field trials, what should be protocol in that regard.

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 260 of 2005 etc.

Under Article 32 of the Constitution of India.

WITH

W.P. (C) No. 115 of 2004.

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A Contempt Petition (C) No. 295 of 2007 in W.P. (C) No. 260 of 2005.

B Prashant Bhushan, Sumeet Sharma, Rohit Kumar Singh, Shashank Singh, Kamini Jaiswal, Sanjay Parikh, Mamta Saxena, A.N. Singh, Bushra Parveen, Anitha, Shenoy for the Petitioners.

C H.P. Rawal, ASG, T.A. Khan, Kiran Bharadwaj, B.K. Prasad, S.N. Terdal, Anil Katiyar, S. Hariharan, Jitendra Mohan Sharma, Abhijat P. Medh, Srikkala Gurukrishna Kumar, Kamini Jaiswal, Vijendra Kumar, Shaikh Chand Saheb, Subramonium Prasad for the Respondents.

The Order of the Court was delivered by

O R D E R

D **SWATANTER KUMAR, J.** 1. The petitioners, who claim to be public spirited individuals possessing requisite expertise and with the access to information, stated that a grave and hazardous situation, raising bio safety concerns, is developing in our country due to release of Genetically Modified Organisms (for short 'GMOs'). The GMOs are allowed to be released in the environment without proper scientific examination of bio safety concerns and affecting both the environment and human health. Thus, the petitioners in this Public Interest Litigation, under Article 32 of the Constitution of India, submit that the intent and substance of the petition is to put in place a protocol that shall maintain scientific examination of all relevant aspects of bio safety before such release, if release were to be at all permissible. On this premise, their prayer in the main writ petition is for the issuance of a direction or order to the Union of India, not to allow any release of GMOs into the environment by way of import, manufacture, use or any other manner. The ancillary prayers seek prescribing a protocol, to which all GMOs released would be subjected and that the Union of India should

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frame relevant rules in this regard and ensure its implementation. A

2. This Court, vide its order dated 1st May, 2006, directed that till further orders, field trials of GMOs shall be conducted only with the approval of the Genetic Engineering Approval Committee (for short 'GEAC'). I.A. No. 4 was filed, in which the prayer was for issuance of directions to stop all field trials for all genetically modified products anywhere and everywhere. The Court, however, declined to direct stoppage of field trials and instead, vide order dated 22nd September, 2009 directed the GEAC to withhold approvals till further directions are issued by this Court, after hearing all parties. Except permitting field trials in certain specific cases, the orders dated 1st May, 2006 and 22nd September, 2009 were not substantially modified by the Court. As of 2007, nearly 91 varieties of plants, i.e., GMOs, were being subjected to open field tests, though in terms of the orders of this Court, no further open field tests were permitted nor had the GEAC granted any such approval except with the authorization of this Court. This has given rise to serious controversies before this Court as to whether or not the field tests of GMOs should be banned, wholly or partially, in the entire country. It is obvious that such technical matters can hardly be the subject matter of judicial review. The Court has no expertise to determine such an issue, which, besides being a scientific question, would have very serious and far-reaching consequences. B
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3. Nevertheless, this Court, vide its order dated 8th May, 2007, lifted the moratorium on open field trials, subject to the conditions stated in that order, including a directive in regard to the maintenance of 200 metres isolation distance while performing field tests of GMOs. A further clarification was introduced vide order of this Court dated 8th April, 2008, whereby all concerned were directed to comply with the specific protocol of Level Of Detection of 0.01 per cent. G

4. The controversy afore-referred still persisted and further H

A applications were filed. Amongst others, I.A. No. 32 of 2011 was also filed. The prayers, in all the aforesaid applications, related to imposition of an absolute ban on GMOs in the country and appointment of an Expert Committee whose advice might be sought on these issues. Due to non-adherence to specified
 B protocol and in face of the report of one of the independent Experts, Dr. P.M. Bhargava, who was appointed to meet with the GEAC by the orders of this Court dated 30th April, 2009, the Government, on its own, imposed a complete ban on Bt Brinjal.

C 5. In I.A. No. 32 of 2011, besides making prayers as noticed above, the Minutes of the meeting of the Ministry of Environment and Forests, Union of India dated 15th March, 2011 where even the petitioners had participated was also annexed. In these Minutes, the composition of the Expert
 D Committee as well as the terms of reference was suggested. The learned Additional Solicitor General appearing for the Union of India had initially taken time to seek instructions, if any, for further modifications, as suggested by the learned counsel appearing for the petitioner, to be made to the constitution of
 E the Committee. Later, it was stated before us that the Government prayed only for constitution of the Committee as well as the terms of reference, exactly as proposed in its Minutes dated 15th March, 2011, without any amendments.

F 6. We heard the learned counsel appearing for the different parties at some length. They all were ad idem on the constitution of the Expert Committee and the terms of reference as suggested in the Minutes of the Ministry's meeting dated 15th March, 2011 and jointly prayed for its implementation.
 G However, then it was submitted on behalf of the petitioner, respondent and other intervenors that before taking a final view and submitting its Report to this Court, the Committee may hear them. In view of the above, we pass the following consented order, primarily and substantially with reference to the Minutes
 H dated 15th March, 2011: -

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(1) There shall be the Technical Expert Committee, the constitution whereof shall be as follows: A

a. Prof. V.L. Chopra

Specialization/Work Focus: Plant Biotechnology Genetics and Agricultural Science. Former Member, Planning Commission and Former Member, Science & Advisory Committee to the PMO, Receptient of several awards including the Padma Bhushan. B

b. Dr. Imran Siddiqui C

Specialization/Work Focus : Plant Development Biology

Scientist & Group Leader, Centre for Cellular & Molecular Biology (CCMB) D

c. Prof. P.S. Ramakrishnan

Emeritus Prof. JNU

Work Focus : Environmental Sciences and Biodiversity. E

d. Dr. P.C. Chauhan, D.Phil (Sci)

Work Focus : Genetics toxicology and food safety F

e. Prof. P.C. Kesavan

Distinguished Fellow, MS SRF (Research Foundation), Emeritus Professor, CSD, IGNOU, New Delhi. G

Work Focus : Genetics Toxicology, Radiation Biology and Sustainable Science.

f. Dr. B. Sivakumar H

- A Former Director, National Institute of Nutrition (NIN),
Hyderabad.
- (2) The terms of reference of the said Committee shall
be as follows:
- B a. To review and recommend the nature of sequencing
of risk assessment (environment and health safety)
studies that need to be done for all GM crops
before they are released into the environment.
- C b. To recommend the sequencing of these tests in
order to specify the point at which environmental
release through Open Field Trials can be permitted.
- c. To advise on whether a proper evaluation of the
genetically engineered crop/plants is scientifically
tenable in the green house conditions and whether
it is possible to replicate the conditions for testing
under different agro ecological regions and
seasons in greenhouse?
- D
- E d. To advise on whether specific conditions imposed
by the regulatory agencies for Open Field Trials are
adequate. If not, recommend what additional
measures/safeguards are required to prevent
potential risks to the environment.
- F e. Examine the feasibility of prescribing validated
protocols and active testing for contamination at a
level that would preclude any escaped material
from causing an adverse effect on the environment.
- G f. To advise on whether institutions/laboratories in
India have the state-of-art testing facilities and
professional expertise to conduct various biosafety
tests and recommend mechanism to strengthen the
same. If no such institutions are available in India,
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recommend setting up an independent testing laboratory/institution. A

- g. The Expert Committee would be free to review reports or studies authored by national and international scientists if it was felt necessary. The petitioners opined that they would like to formally propose three Expert Reports from Prof. David Andow, Prof. Jack Heinemann and Dr. Doug Gurian Sherman to be a formal part of the Committee's deliberations. The MoEF may similarly nominate which experts they choose in this exercise. B
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3. The Court will highly appreciate if the said Committee submits its final report to the Court within three months from today. D

4. The Committee may hear the Government, petitioners and any other intervenor in this petition, who, in the opinion of the Committee, shall help the cause of expeditious and accurate finalization of its report. E

5. In the event and for any reason whatsoever, the Committee is unable to submit its final report to the Court within the time stipulated in this order, we direct that the Committee should instead submit its interim report within the same period to the Court on the following issue: "Whether there should or should not be any ban, partial or otherwise, upon conducting of open field tests of the GMOs? In the event open field trials are permitted, what protocol should be followed and conditions, if any, that may be imposed by the Court for implementation of open field trials." F
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7. Let the matter stand over to 6th August, 2012.

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Matter adjourned.

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