



**12TH SURANA & SURANA INTERNATIONAL TECHNOLOGY
LAW MOOT COURT COMPETITION, 2013
SLS, PUNE**



MOOT PROBLEM

BEFORE THE HIGH COURT OF SANGALORE

Criminal Appeal No. 1/2013

BETWEEN

- 1) **BIOREV JEEVANTI LTD REPRESENTED BY DR.G.D.MAITI & 5 OTHERS**
- 2) **SANGALORE AGRICULTURAL UNIVERSITY REPRESENTED BY DR.P.CHAWLA
(VICE CHANCELLOR) & 5 OTHERS**
- 3) **NATIONAL BIODIVERSITY AUTHORITY REPRESENTED BY ITS CHAIRPERSON**

.....APPELLANTS

AND

FUTURE FARMER FOUNDATION REPRESENTED DR.TAMANNA SHENOY & 5 OTHERS

.....RESPONDENTS



1. INDUS is a developing country with the world's second largest population. It got its independence from colonial powers in 1947 and thereafter focussed on Industrial development. The Developed countries in the world were getting concerned about the degrading of environment and a huge conference was held in HOLMSTOCK to address the concern on environmental degradation where the prime minister of INDUS made a moving speech

“On the one hand the rich look askance at our continuing poverty, on the other they warn us against their own methods. We do not wish to impoverish the environment any further and yet we cannot for a moment forget the grim poverty of large numbers of people. Are not poverty and need the greatest polluters? For instance, unless we are in a position to provide employment and purchasing power for the daily necessities of the tribal people and those who live in or around jungles, we cannot prevent them from combing the forest for food and livelihood, from poaching and from despoiling the vegetation. When they themselves feel deprived, how can we urge the preservation of animals? How can we speak to those who live in villages or slums about keeping the oceans, the rivers and air clean when their own lives are contaminated at the source? The environment cannot be improved in conditions of poverty. Nor can poverty be eradicated without the use of science and technology.”

2. However, INDUS valued environment and in 1986 made several legislations related to protection of Environment and it also continued to be a major player while negotiating International Conventions / treaties dealing with Environment. In 1992, the United Nations agreed on the Convention on Biological Diversity and INDUS ratified the same in April of 1994.
3. In the meantime INDUS grew up as a substantial power in world affairs and its citizens were known for their research capabilities and innovativeness. However, Indus as a country could not take advantage because of weak political will. On the other hand, rapid strides in the field of biotechnology were made by developed countries and anything and everything could be manipulated at the genetic levels which thereby gave immense power to find solutions for several problems faced by mankind.
4. INDUS was one of the 17 mega diversity countries owning up to 13 % of world Flora and 7 % of world Fauna. Owing to the large population, INDUS was increasingly becoming a top priority for every country because of the market it offered to exploit. INDUS had also signed the Agreement on Trade Related Aspects of Intellectual Property Rights in 1995 and therefore had a good standard of Intellectual property protection. However, INDUS never



5. allowed for Plant Patents, in 2001 it had enacted the Protection of Plant Varieties and Farmers Rights Act, 2001. INDUS also came out with the Biological Diversity Act in 2002.
6. The world's largest seed companies had eyed the development and the future potential of INDUS and had made entry in the late 90's. INDUS had virtually no law related to Biotechnology and the government had only started a small department to support Biotechnology. RULES FOR THE MANUFACTURE, USE, IMPORT, EXPORT AND STORAGE OF HAZARDOUS MICRO ORGANISMS GENETICALLY ENGINEERED ORGANISMS OR CELLS under the Environment Protection Act, 1986 were the only rules governing biotechnology. However, the seed companies were conducting research and were acquiring Indian Seed Companies.
7. BioRev Corp, a company registered in SARDONIA, the world's largest superpower and economy acquired 26% shares in an Indian Seed Company Jeevanti India Private Limited and after the acquisition, the name of the company was changed to BioRev Jeevanti Limited the chairman and managing director being Dr.G.D.Maiti.
8. Bacillus thuringiensis (Bt) is a naturally occurring Bacterium but was really effective in preventing attacks of certain pests and worms on plants if these genes were incorporated into the plant. BioRev Corp has patented a BT gene GRC and the same was incorporated into the cotton seeds in or around 1998 and was given commercial approval for Marketing in 2002 by the Department of Biotechnology of the Government of INDUS.
9. The Department of Biotechnology of the Government of INDUS was the only body that regulated the use of Biotechnology in INDUS and in spite of large scale protests; the use was approved for cotton seeds as the same were not for human consumption. By, 2010, BioRev Corp owned more than 90% of the INDUS market by licensing its GRC gene. BioRev Corp also brought out statistics of how it prevented the largescale suicide by farmers and how it has changed livelihoods. However, in 2009, they also found that the red bollworm became resistant to the GRC gene and had started to attack the cotton plants. It urged the farmers to use GRC-b (GRC Beta) which it developed to overcome the resistance of the Red Bollworm.
10. In 2010, the Dr.Pillai, the head of Cotton Research Centre of INDUS in a press conference stated that he was extremely happy with the biotechnology in the cotton sector as it had helped better yields. However, he also mentioned that he was worried by the loss of traditional cotton varieties of seeds. From around 300 varieties that was grown, the Bt. Technology used only about 10 varieties and the traditional seed banks of farmers became commercially unviable for them as many farmers had stopped saving of seeds.
11. Dr.Tamanna Shenoy was an expert in plant genetics and was interested in improving farming by using traditional methods and reviving organic farming and had started a Trust called the Future Farmer Foundation. In a press conference, Dr.Shenoy stated that biotechnology killed



the diversity that was available to the farmers and farming became increasingly controlled by foreign companies by their control over genes. She rebutted Dr.Pillai's claims bringing statistics of yield growth owing to the increase of land under cultivation. She promised to fight the unbridled use of Biotechnology under the false pretext of supporting farmer's livelihoods and food security.

12. Unknown to the people of INDUS, BioRev Jeevanti Limited had started research in 1998 on the Bt.gene and had incorporated the same in cauliflowers, ladies finger, tomato, rice, potato and egg plant. However, the Department of Biotechnology only gave approvals for Eggplant considering its advanced stage of research. The report was submitted to the Department of Biotechnology by Dr.Nirmala Kanan as the head of a special team in her capacity as the Vice Chancellor of SRINADU Agricultural University.
13. In 2008, the Department of Biotechnology gave commercial approval to market the genetically modified eggplant variety of BioRev Jeevanti Limited. Due to the widespread protests across INDUS, the minister for Environment put a moratorium until the issue was seriously studied and a report was given to him.
14. The Future Farmer Foundation along with 5 farmers who were cultivating the varieties of eggplants used by BioRev Jeevanti Limited sent a notice to the National Biodiversity Authority to look into the matter along with specific allegation of breach of Sec.3 & 4 of the Biological Diversity Act as well as brought attention of the Government of Indus to Sec.36(4)(ii) of the Biological Diversity Act.
15. The National Biodiversity Authority (the NBA) started its inquiry and found that the research started much before the Biological Diversity Act came into force; however the actual incorporation of the Bt. Gene into the five popular varieties was done only in 2005 with BioRev Jeevanti Limited getting into an agreement with Sangalore Agricultural University. The NBA sought an explanation from the Vice chancellor of Sangalore Agricultural University, who wrote back saying that he was conducting Research under the Guidelines of Government of INDUS and he was thereby exempt from the provisions of the Biological Diversity Act, 2002 under Sec.5 of the Act. He also informed that the project was partially funded by government funds and partly by the grant of SARDONIA National University and also the Government of SARDONIA which was based upon a High Level Technology Transfer agreed to by Government of INDUS and Government of SARDONIA.
16. The NBA was approached voluntarily by the BioRev Jeevanti Limited which gave a very detailed explanation along with the Agreement it signed with the Sangalore Agricultural University (Annexure A). It maintained that the Project was to support poor farmers and no commercial exploitation was allowed. It also showed approvals granted by the NBA in 2006 for export of Bt.cotton seeds. The NBA looked into the files of the approval and found that the permission was granted to transfer research results, but the company had written to the



then chairperson Ms.Nirmala Kannan who had approved the changes to standard clauses that prohibited transfer of biological materials without seeking any legal advice.



17. The Department of Biotechnology of the Government of INDUS released a press statement stating that Biotechnology is the only tool that could help INDUS in being self sufficient in its future food needs. It said all approvals were given with a view of Food Security and also the safety of the GM products.
18. The Future Farmer Foundation sought all documentation related to their complaint under the Right to Information Act, 2005. The documents clearly showed that the agreement between BioRev Jeevanti and Sangalore University had nothing to do with the Technology transfers between the two countries other than the fact that the Bt. Gene was patented by BioRev Corp. Without data of research trials, BioRev corp would not have been in a position to seek regulatory approvals and none of the seeds were to be distributed free of cost to any farmer other than for the field trials approved by the Department of Biotechnology. After receiving the documents, The Future Farmer Foundation along with the 5 Farmers approached the criminal courts in Sangalore making BioRev Jeevanti Ltd and its officers along with the Vice Chancellor and other functionaries of the Sangalore Agricultural University as accused and also sought action against officers of NBA for dereliction of duty and negligence causing death of some people after consuming Bt.Eggplant. However, the NBA also filed complaints against BioRev Jeevanti Limited and Sangalore Agricultural University and both the complaints were tried together by the Magistrate.
19. The Future Farmer Foundation holding a press conference stated that the BioRev explanation of supporting poor farmers do not hold water as the seeds that would eventually be supplied by BioRev would be 30 times more expensive than the hybrid seeds and the resistance offered is only of 2-3 common pests and worms and eggplant has many other pests and worms attacking it. As regards the explanation of the Department of Biotechnology, Ms.Tamanna Shenoy stated that the Government of INDUS was not serious with its Agricultural Policy. There were more than 5000 varieties of egg plant and there was no strain on demand and supply requirements of the market. However, she pointed out that the commercial potential of the egg plant and stated that in the name of food security and food sufficiency, the Department of Biotechnology was misleading the people of INDUS.
20. In its defence, the Sangalore Agricultural University stated that they are exempt under Sec.5 of the Biological diversity Act and that the project was undertaken on the basis of a wider technology transfer agreements signed between the government of INDUS and SARDONIA and the funding for the same was also received from the government, though it was also partially funded by the BioRev Foundation. The University also does not engage in commercial exploitation and its participation was only limited to helping the poor farmers.



21. In its defence, the BioRev scientists stated that they used traditional back crossing to incorporate the seed into the traditional varieties that were always in the possession of the scientists from the Sangalore Agricultural University.
22. Future Farmers Foundation produced documents to show transfer of research data in pursuance with the 2005 agreement without which the Department of Biotechnology would have been unable to get the commercial approval as the research data should be available of two seasons.
23. The criminal court convicted BioRev Jeevanti and its officials for violation of Sec.3 of the Biological Diversity Act, 2002 and punished its CMD and 2 other officers with a maximum 5 year term and another 3 officers with a 3 year imprisonment and fined the company Rs.10 lakhs and directed the NBA to calculate the loss caused and recover the amount as compensation and distribute it to the farmers as Benefit Sharing.
24. The Criminal Court convicted the Vice chancellor and other 2 officers for 3 years and 2 officers to a 1 year imprisonment for violation of Sec.4 holding that the Sangalore Agricultural University was not exempt under Sec.5 and the notification therunder. The Court also strongly criticised the role of NBA but stopped short of convicting the officers as the deaths could not be established due to the consumption of the GM eggplant but stated that the officers clearly failed to do their duty and since no evidence of corruption was brought to its notice, it has no grounds to punish the officers.
25. The order of the criminal court was appealed to the High Court of Sangalore by both the Sangalore Agricultural University and BioRev Jeevanti against the conviction, while the NBA moved the High court to expunge the remarks of the Magistrate.
26. The students are free to challenge the constitutional validity of the BD Act as well as challenge the applicability of the BD Act.



ANNEXURE A



SALIENT POINTS IN AGREEMENT DATED 2 April 2005

BioRev Jeevanti Ltd (BJL) is an Indian Company engaged in the research and development of seeds of various crops, including vegetables, and the transfer of technology, which is the subject of this Agreement.

Sangalore Agricultural University (SAU), a leading agro technology provider of India with focus on agricultural extension, education, product development and commercialization, known for release of high quality varieties of agricultural crops, including eggplant, over the last several years, is one of the leading developers of eggplant varieties popularly known as “CO” varieties in Southern INDUS.

- BioRev Jeevanti Ltd has certain rights relating to the use of the B. t. gene;
- The parties to this Agreement perceive a common objective in development and delivery of pro-poor varieties of insect tolerant B. t. eggplant, with a view to facilitate technology access to resource-constrained farmers, and SAU have therefore approached BJL, in light of their expertise and research and development facilities, for development of pro-poor varieties of eggplant (*Solanum melongena*) that are insect tolerant, and BJL has received the request positively and has agreed to provide access to the technology;
- SAU has supplied to BJL, eggplant germplasm developed by, owned, controlled and / or licensed – in by SAU, hereinafter “SAU Material” and listed particularly in **Annexure No.A** hereto;
- BJL has made the initial cross from its proprietary insect tolerant eggplant lines into SAU Material in a laboratory setting at its facilities, and has tested the resultant progeny (hereinafter “Products” and listed particularly in **Annexure No.B** hereto) for presence of the B. t. gene;
- BJL, on the request of SAU, is willing to make available to SAU such products for the aforesaid purpose, subject to the following terms and conditions.

It is expressly understood by SAU that the Products are provided solely for the purpose of distribution at cost. SAU may only further develop Products in its breeding program for suitability for planting in the Territory. All other activities are prohibited, including but not limited to, backcrossing the B.t. Gene into any other eggplant germplasm or public bred germplasm or third party other than SAU Material listed in **Annexure No.A**, introducing into products any gene that does not naturally occur in eggplant, and any breeding whatsoever with the Products, except as provided for herein.



Supporting BJL's efforts to conclude regulatory compliances.

Annexure A

YLS I

NSM II

MAS I

JK II

Annexure B

YLS I x GRC 1 (Bt.)

NSM II x GRC 1 (Bt.)

MAS I x GRC 1 (Bt.)

JK II x GRC 1 (Bt.)

