

**IN THE SUPREME COURT OF INDIA
EXTRAORDINARY CIVIL JURISDICTION
WRIT PETITION (CIVIL) NO. 606/2007**

IN THE MATTER OF:

1. Gene Campaign (a Society registered under the Societies Registration Act, 1860) having its office at J-235/A, Sainik Farms, Khanpur, New Delhi-110 062 through its President Dr. Suman Sahai
 2. Dr. Suman Sahai
J-235/A Sainik Farms,
Khanpur, New Delhi – 110 062
- Petitioners

...

Versus

1. Union of India,
through the Secretary to the
Government of India,
Ministry of Environment & Forests,
"Paryavaran Bhavan",
C.G.O. Complex, Lodhi Road,
New Delhi-110 003.
2. Union of India
through the Secretary to the
Government of India,
Department of Science & Technology,
Technology Bhavan, Qutub Institutional Area,
New Delhi.
3. Union of India,
through the Secretary to the
Government of India,
Ministry of Food, Krishi Bhavan,
New Delhi.
4. Union of India
through the Secretary to the
Government of India,

Ministry of Food Processing Industries,
Panchsheel Bhavan, August Kranti Marg,
New Delhi-49.

... Respondents

**CIVIL WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION**

**TO
THE HON'BLE CHIEF JUSTICE OF INDIA AND
HIS HON'BLE COMPANION JUSTICES
OF THE SUPREME COURT OF INDIA**

**The Humble Petition of the above named Petitioners Most
Respectfully sheweth: -**

1. That this Writ Petition under Article 32 of the Constitution has been filed challenging the Notification dated 23rd August, 2007 issued by the Ministry of Environment & Forests by which in purported exercise of powers under Rule 20 of the Manufacture, Use, Import, Export and Storage of Hazardous Micro-organisms/ Genetically Engineered Organisms or Cells Rules, 1989 (herein after referred to as the Rules of 1989), framed in exercise of powers conferred by Sections 6, 8 and 25 of the Environment (Protection) Act, 1986, the occupier of the processed food derived from living modified organisms as given in the table of the said Notification has been exempted with effect from 11th September, 2007. The

exempted processed food item as given in the Table are as follows: -

Processed food items derived from living modified organisms (1)	Rule from which exempted (2)
Food stuffs, ingredients in food stuffs and additives including processing aids derived from Living Modified Organisms where the end product is not a Living Modified Organisms.	Rule II

It is also stated in the Notification that the provisions of Rules 7 to 11 of the Rules of 1989 will not apply on the said exempted items. A true and correct copy of the impugned Notification dated 23.08.2007 published in the Gazette of India Extraordinary on 11.09.2007 is **Annexure P-1.**

2. That it is submitted that the said Notification is violative of Articles 14 and 21 of the Constitution besides being ultra-vires the provisions of the Environment (Protection) Act and also the Rules of 1989 under which the said exemption is being granted. The exemption which has been granted in favour of the food-stuffs derived from living modified organisms shall have serious adverse impact on the public health and the environment; the exemption which has been

granted suffers from non-application of mind besides being arbitrary, unreasonable, unguided and violative of Article 14 of the Constitution. Hence, this Writ Petition.

3. That the Petitioner No.1-organization is registered under the Societies Registration Act, 1860. It began its activities in 1993 as a group of geneticists, social scientists, lawyers, agriculturists, economists, environmentalists, farmers and activists who were dedicated to the protection of the genetic resources of the world and the rights of rural and tribal communities to use these resources without hindrance. Gene Campaign has an Executive Committee of eminent experts from various fields. Over the years it has expanded to include several hundred members all over India. Gene Campaign works for the conservation of genetic resources, for long term sustainable food production and to strengthen self-reliance in agriculture. Dr. Suman Sahai (Petitioner No.2), its President has a Ph.D. in Genetics from the Indian Agricultural Research Institute (IARI) and for several years she has been involved in research and teaching in several research institutions including All India Institute for Medical Sciences (AIIMS), University of Alberta, Canada; University

of Chicago, U.S.A. and University of Heidelberg, Germany. She is opposed to the indiscriminate use of GM technology without adequate tests, safeguards and monitoring systems. Dr. Sahai is also opposed to commercialization of GM crops done without people's participation and in the absence of a strong regulatory regime, monitoring and post marketing surveillance. She is particularly concerned about the lack of technical competence, transparency and accountability in the regulatory agencies and in the decision-making process. The Petitioners have, therefore, sufficient knowledge and information about the cause which has been espoused in this Writ Petition in public and national interest. A true and correct copy of the Brochure about the activities of Petitioner No.1 is **Annexure P-2.**

4. That the Petitioners have filed a Writ Petition (Civil) No. 115/2004 in which Rules of 1989 have been challenged as being totally deficient in protecting the environment, bio-diversity and public health as the said Rules do not incorporate the essential environmental principles which have been accepted as part of Art. 21 of the Constitution as also the part of Municipal Law. The said Writ Petition points

out that the Genetically Modified Organisms (GMOs) have to be dealt with all needed precautions and that any deficiency or careless action may result in uncalculated harm to the biodiversity and human health and environment.

5. That it is shocking that during pendency of the above Writ Petition where this Hon'ble Court is examining the validity of the Rules of 1989, the Respondent No. 1 has chosen to issue the impugned notification, which will have a direct adverse impact on public health.

6. That the Rules of 1989 have been framed under Sections 6, 8 and 25 of the Environment (Protection) Act, 1986. Section 6 deals with the power to frame rules to regulate environmental pollution and sub-section 2(d) of Section 6 speaks about the "prohibition and restriction on the handling of hazardous substances in different areas". Section 8 says that "no person shall handle or cause to be handled any hazardous substance except in accordance with such procedure and after complying with such safeguards as may be prescribed". The Rules of 1989 with which the present Writ Petition is concerned say in the Preamble itself that "in

exercise of the powers conferred by Sections 6, 8 and 25 of the Environment (Protection) Act, 1986 (29 of 1986) and with a view to protecting the environment, nature and health in connection with the application of gene technology and micro-organisms". It is, therefore, clear that these rules deal with hazardous substances which require prohibition/regulation as they have the potentiality to harm the environment, nature and health. True and correct copy of the Rules of 1989 are annexed herewith for ready reference as **Annexure P-3.**

7. That Rules 7 to 11 from which the item provided in the impugned notification has been exempted are important as they are an integral part of the Rules. Rule 7 deals with the approval and prohibition and says that no person shall import, export, transport, manufacture, process, use or sell any hazardous micro-organism/genetically modified organisms/ substance/cells except with the approval of the Genetic Engineering Approval Committee (GEAC). Rule 8 says that any production, in which genetically engineered organisms (GEOs) are involved, shall not be commenced except with the consent of GEAC. Rule 9 says that no

deliberate/unintentional release of GEOs or micro-organisms shall be allowed. Rule 10 prohibits production, sale, import or use of substances and products which contain GEOs or cells or micro-organisms except with the approval of the GEAC. Rule 11 is important, which reads as follows: -

“11. Permission and approval for food stuffs.- Food stuffs, ingredients in food stuffs and additives, including processing aids, containing or consisting of genetically engineered organisms or cells, shall not be produced, sold, imported or used except with the approval of the Genetic Engineering Approval Committee.”

It is clear from Rule 11 that approval of the GEAC has to be taken for sale, import or use of food stuffs consisting of GEOs. By virtue of exemption granted under Rule 20, Rule 11 ceases to apply, as a result thereof all other safeguards which have been provided in Rules 12, 13, 14, 16 and 17 shall also not apply meaning thereby, that the “guidelines” which exist under Rule 12, “terms and conditions” which will be provided under Rule 13 and further supervision including penalties (Rule 15) in case of any harm to the environment, nature or health will not apply. There will be no responsibility of the occupier of this processed food containing the GEOs.

This would mean that in spite of recognition in the Environment (Protection) Act and under the Rules of 1989, the hazardous nature of the GMOs/GEOs, the processed food will be allowed to be imported, sold, used without any prohibition, restriction or regulation. This is clearly in violation of Articles 14 and 21 of the Constitution as well as ultra-vires the Environment (Protection) Act and Rules of 1989.

8. That the power of exemption which has been given under Rule 20 is only with regard to "a particular" micro-organism/GEO. This power of exemption has not been extended to food stuffs mentioned in Rule 11. The reason is obvious because the foodstuffs are consumed directly and may, therefore, have direct and immediate effect on human health. Even otherwise, as mentioned above, this power, if it is allowed to be used without any check, may have disastrous impact on environment and human health. Rule 20 has, therefore, to be read with other provisions of the rules as well as Environment Protection Act and also Articles 14 and 21 of the Constitution; otherwise, Rule 20 which is

totally unguided and uncanalised will be ultra-vires the Constitution and, therefore, liable to be struck down.

9. That it has been now well established that GMOs can have an adverse impact on the environment and health. The impact of GM foods on health is clear from the following, among other, studies/documents:
 - i) List of known health impacts prepared by the Petitioner – Gene Campaign which summarizes various studies done on the subject.
 - ii) Transgenic Expression of Bean – Amylase Inhibitor in Peas Results in Altered Structure and Immunogenicity.
 - iii) Effective risk assessment of GM field peas.
 - iv) Differential effects of Glyphosate and Roundup on Human Placental Cells and Aromatase.
 - v) Influence of Genetically Modified Soya on the Birth Weight and Survival of Rat Pups : Preliminary Study.
 - vi) Contaminated L-Tryptophan and 5-Hydrox Tryptophan, Eosinophilia Myalgia Syndrome – The 1989 Epidemic and the 1998 Warning.
 - vii) L-tryptophan.

- viii) The lancet – Effect of Diet containing genetically modified potatoes expressing *Galanthus nivalis* Lectin on rat small intestine.
- ix) Identification of a Brazil-nut allergen in Transgenic Soybeans.
- x) Report on MON 863 GM maize produced by Monsanto Company – controversial effects on health reported after subchronic toxicity test : a confidential rat 90 day feeding study.
- xi) Flavr Savr tomato & GM tomato puree : Problems with the first GM foods.
- xii) Crie-Gen – Report on NK 603 GM maize produced by Monsanto company.
- xiii) New Analysis of a Rat Feeding Study with a Genetically Modified Maize reveals signs of Hepatorenal Toxicity.
- xiv) Genetically modified foods ; potential human health effects.
- xv) Transgenic pollen harms monarch larvae.
- xvi) Commercial use of Genetically Modified crops in the U.K: the Potential Wider Impact on Farmland Wildlife

– Discussion paper by the Secretariat to the Advisory Committee on Releases to the Environment.

True and correct copies of these documents are **Annexure P-4(a)** to **P-4(o)** collectively.

10. That the exemption which has been allowed is general in nature, there are conditions imposed, there is no requirement for labeling of the imported items, which is required in the public interest. Our country has taken a firm position on mandatory labeling and segregation of GM and Non-GM food stuffs. The position taken by our country is clear from the Indian delegation's position paper in the 34th Session of the Committee (1-5th May, 2006), which is marked as **Annexure P-5.**

11. That India has signed and ratified the Cartagena Protocol on Bio-safety and is bound to implement its provisions by incorporating them in the 1989 Rules. The Protocol provides for number of steps to be taken before a GM food item is subjected to Trans-boundary movement (see Article 11 and Annex II of the Protocol), among several other provisions. A

true and correct copy of the Cartagena Protocol, 2000 is

Annexure P-6.

12. That without incorporating the provisions of the Cartagena Protocol in the domestic laws, it was not permissible for the Respondents to grant exemption in exercise of powers under Rule 20 of the Rules of 1989.

13. That the Indian Council of Medical Research (ICMR) has strongly recommended that "In India there is a need to compulsorily label a food if it contains novel DNA/protein or has altered characteristics". In addition, the report says that "Imported foods too should be subjected to label regulations. It should have certificate of origin indicating GMO status and proof of analysis from certified laboratories". True and correct copy of the relevant portion of the Report of 2004 is

Annexure P-7.

14. That it may also be mentioned that the Consumer Protection Act gives the right of informed choice to the consumer. By not following mandatory labeling, this choice to the consumer is also taken away. The notification is, therefore,

not in consonance with the provisions of the Consumer Protection Act.

15. That the GM foods may have serious impact on public health and will violate various provisions of the Prevention of Food Adulteration Act (PFA), 1954.
16. That the Petitioners have not filed any other Writ Petitions claiming reliefs as sought for in this Writ Petition.
17. That this Writ Petition has been filed on the following, among other, GROUNDS:-

GROUNDS

- I. Because the impugned Notification issued in exercise of powers under Section 20 of the Rules of 1989 is illegal, unconstitutional and liable to be struck down on the following, among other, reasons: -
 - a) Power of exemption under rule 20 is unguided and uncanalised and, therefore, likely to be abused. Rule 20 is, therefore, ultra-vires the Constitution, Environment Protection Act and Rules of 1989.

- b) No exemption can be granted under Rule 20 to the foodstuffs mentioned in Rule 11 of the Rules of 1989 for the reason that foodstuffs are directly consumed and may have direct and immediate impact on human health.
- c) The effect of exemption under Rule 20 is that practically all the approvals/safeguards/guidelines to prevent or regulate the use of GM foods and foods derived from GMOs are taken away and, therefore, such exemption will result in serious harm to the health and environment, in violation of Art. 21 of the Constitution.
- d) There is scientific evidence that GM foods can have an adverse impact on human health and environment. Their use as food stuffs without exercising proper control and risk assessment etc, will endanger public health.
- e) The impugned notification granting exemption does not provide any reports or scientific data showing evidence that no harm to human health is known from the use of GM foods.
- f) The exemption, therefore, suffers from non-application of mind; it is arbitrary, unreasonable and violative of Art. 14 of the Constitution.

- II. Because the Rules of 1989 themselves are totally deficient in providing the required protection against the manufacture, use, import, export, storage and sale of the GMOs. Among others, the Rules do not address themselves to the essential environmental principles which have been treated as part of Art. 21 of the Constitution as well as the Convention of Biological Diversity and Cartagena Protocol which India has signed and ratified. Granting such exemption under such deficient rules leads to unreasonable and illegal use of power without foreseeing high risks which it can cause to the environment, nature and human health.

- III. Because the exemption does not even provide for labeling on food stuffs derived from GMOs/GEOs/Micro-organisms. This is in violation of the provisions of the Consumer Protection Act, according to which consumers have the right to informed choice.

- IV. Because the exemption will result in import/use of such genetically engineered foodstuffs, which may affect human health in violation of various provisions of the Prevention of Food Adulteration Act, 1954.

V. Because the exemption will take away the particular food stuff out of the purview of the liability of compensation and even violations which are punishable under law. This will mean that even if harm has been caused to the health and environment, , there will be no redressal of such harm. Therefore, the impugned exemption is clearly in violation of Articles 14 and 21 of the Constitution.

PRAYER

The Petitioners therefore, pray that in view of the facts and circumstances of the case, this Hon'ble Court may be pleased to issue a writ of mandamus or certiorari or directions of the like nature to the Respondents: -

1. To strike down the Notification dated 23rd August, 2007 issued by the Ministry of Environment & Forests and published in the Gazette of India Extraordinary, Part II – Sec.3 (ii), S.O. No. 1519(E), New Delhi on the 11th September, 2007 as unconstitutional, being violative of Articles 14 and 21 of the Constitution;

2. Declare that the provisions of Rule 20 of the said Rules of 1989 are unguided, uncanalised, likely to be abused and violative of Article 14 of the Constitution;

3. Pass such other and further orders as this Hon'ble Court may deem fit and proper;

Settled by:

DRAFTED AND FILED BY

Mr. Sanjay Parikh,
Advocate Supreme Court

(ANITHA SHENOY)
ADVOCATE FOR THE
PETITIONERS

NEW DEHI

DATED: 03-10-2007