

File No.C-12015/2/2012.CS-III (Pt.File II)
Ministry of Environment & Forests
CS-III Division

Subject: Response of MoEF on the draft affidavit prepared by Ministry of Agriculture with inputs from DBT on the Final Report submitted by 5-Members of TEC and Report of Dr. R S Paroda, Sixth Member of TEC

FR from Secretary, Ministry of Agriculture may be seen.

1. In the matter of Writ Petition (Civil) 260 of 2005, Aruna Rodriguez & Ors; Vs. Union of India & Ors., the Hon'ble Supreme Court, by its order of May 10, 2012, had constituted a six member Technical Expert Committee (TEC) to provide technical advice to this Court on matters related to field trials of GM crops. The TEC was directed to submit a report with respect to six TORs. The TEC had submitted an interim report on October 17, 2012 which was not accepted by the Union of India through its joint affidavit filed by Ministry of Agriculture before the Hon'ble Supreme Court on November 8, 2012. The Hon'ble Supreme Court vide Order dated 9.11.2012 directed the TEC to consider the objections filed by all respondents, interested parties and the UoI and submit its report within six weeks. Vide the same order, the Hon'ble Supreme Court also appointed Dr. R.S. Paroda, as the Sixth Member of the TEC in place of Prof. V. L. Chopra.

2. The TEC has now submitted its final report which has the concurrence of five of its six members. The dissenting opinion of TEC Member Dr. R. S. Paroda through an independent Report has also been received. Both the reports are placed on file and have been examined. Draft response of this Ministry placed at F/A has been earlier submitted and is awaiting approval of MEF.

3. As UoI is represented by Ministry of Environment & Forests, Ministry of Agriculture and Ministry of Science and Technology in the above mentioned Writ Petition, it has been the practice to file a combined affidavit. As respondent No. 1, MoEF has been earlier filing the affidavit on behalf of UoI. However, the last affidavit on the response of UoI to the interim report submitted by TEC was filed by Ministry of Agriculture on behalf of UoI. It is in this context, Secretary Ministry of Agriculture has forwarded a draft affidavit prepared by Ministry of Agriculture with inputs from DBT for comments of this Ministry. As the matter is now listed for 19.11.2013, MoEF has been requested to expedite its response by November 11, 2013.

4. The draft affidavit forwarded by Ministry of Agriculture has been examined and it is submitted that the position taken by Ministry of Agriculture and DBT is not in line with the views of MoEF and therefore we may not be in a position to accept the proposed draft affidavit. Brief comments on the combined affidavit are as follows.

a) The combined affidavit appears to be a rehash of the affidavit filed by UoI in response to the interim report and other counter affidavits submitted to the SC earlier. It gives the impression that the UoI's strategy is to ask the Hon'ble SC to reject the majority report. For this, the UoI has made an elaborate case arguing that a) the majority members did not conduct themselves and TEC meetings professionally, using sections from Dr. Paroda's report; b) that the majority report gives undue weight to isolated studies by individual scientists rather than the consensus views of international organizations like Codex and regulatory authorities of other countries; c) that the majority report goes far beyond its mandate and beyond present-day scientific consensus in terms of its sweeping recommendations; and d) that the UoI has already offered detailed counter-arguments to these recommendations in its objection to the interim report but the majority members have failed to take these into account. While these arguments may merit consideration, it is unlikely the SC will reject a majority report as baseless.

b) While there is an attempt to accept that there is scope for improving the regulatory process, the affidavit does not say upfront on which are the recommendations acceptable to UoI and timeline for implementation.

It merely highlights the ongoing initiatives of UOI. This section is particularly weak in the whole affidavit.

- c) The affidavit concludes that accepting the report of TEC would have far reaching implications on farmers need and scientific development which gives the impression that TEC report is being rejected by UOI. This may not be a good strategy as the defense for doing so has been elaborated many times in our earlier affidavits. These arguments were not accepted by the SC as they were of the view that they are not in a position to decide on highly technical matters which subsequently led to the setting up of TEC.
- d) The argument at para 22 (v) on whether Norway is an appropriate choice or not based on contribution of agriculture to its GDP is not a sound line of reasoning. It may be borne in mind that the same argument can be made for disqualifying USA too, where contribution of agriculture to GDP is about the same or less than that in Norway. Instead of attacking the choice of Norway as a template for India, the Uoi can assure the Court that it will consider best practices from suitable countries including developing and developed countries.
- e) General statements about the safety of Bt proteins, may be perceived as a contradiction to Uoi's position that safety has to be assessed on a case-by-case basis. If safety has to be assessed on a case-by-case basis, it is not feasible to speak of the safety of Bt proteins, Bt transgenics in general. We can only say that there are no safety issues as far as Bt proteins approved by regulatory authorities worldwide are concerned. It is therefore important to avoid making statements about the entire class of Bt proteins in the affidavit.
- f) In paragraphs 15 and 20 of the draft affidavit, the Uoi has claimed that the majority members of the TEC were biased towards ideological groups without offering any evidence to substantiate the same. Even Dr. Paroda's report does not make such an explicit allegation against the other 5 members.

5. In view of the above we may not agree to accept the position proposed by MOA and DBT in the draft affidavit. As MoEF is the nodal Ministry for regulating GMOs, it may be more effective and productive strategy to adopt a tone of acceptance and conciliation. In other words, the Uoi may, as a strategy, convey to the Hon'ble Court that it is willing to accept the recommendations in the two reports - only in so far as they fall within the scope of the TORs. Uoi could prepare a table where it indicates responses to the recommendations along the following lines - a) accepting recommendations that are common to both reports or proposing courses of action that will address recommendations common to both reports; b) refusing recommendations that are beyond the scope of the TORs exactly on these grounds, and; c) accepting/modifying/rejecting recommendations that are unique to the two reports on a case-by-case basis. MoEF's response at F/A has been prepared on these lines.

6. We may also indicate to the SC that MoEF as the regulatory agency is ready to comply with 'X' number of the recommendations in both the two reports that fall within the scope of the TORs. We may even offer to the SC an approximate timeframe for implementation and pray to the SC that they dispose of the petition. If required, the Uoi can also provide an assurance that field trials will be permitted only after a set of recommendations made in both the reports have been implemented. This approach will have certain advantages. First, the Uoi will come across to the Court as reasonable, committed, flexible and willing to engage with the process outlined by the SC in consultation with the Petitioners and Respondents on merits. Second, this will suggest to the Court that the Uoi is taking a more nuanced and considered approach to the TEC than the petitioners, who are likely protest against Dr. Paroda's report. An approach where Uoi is willing to accept many of the recommendations will pre-empt the petitioners from making charges against Uoi. Finally, this may result in saving of time as the Court may accept the implementation plan proposed by Uoi and dispose of the petition.

7. In light of the above it is proposed that the set of recommendations in respect of all six TORs of both the reports which is acceptable to MoEF (as indicated in F/A) may be divided into two categories. Recommendations that would be implemented prior to allowing field trials and those that would be implemented prior to commercialization as all recommendations will not be applicable to all crops/traits. In this regard it is proposed that the minimum set of conditions that would be fulfilled before allowing field trials may include; (i) notification of sites for field trials; (ii) setting up of dedicated monitoring mechanism; (iii) notification of crop specific isolation distance; (iv) crop specific SOPs for conduct of field trials; and (v) development of crop specific biology document for conduct of ERA. As the generation of data during field trials and its evaluation will take a minimum of 2-3 years, the other recommendations such as setting up of dedicated RAU, accredited laboratories, training, ERA guidelines etc. will also be initiated parallelly and completed before any decision on commercialization is taken.

8. It may also be noted that a meeting of the COS is scheduled for 12.11.2013 at 5:00 PM to discuss the above issue. The COS note circulated by MoEF at the direction of Cabinet Secretary may be seen at page 431/c.

File submitted for orders please.

[Signature]
(Dr. Ranjini Warrier)
Director
11.11.2013

JS (SPSP)- on tour

AS-HP

[Signature]
11/11/13

Secretary (EAF)

May be approve

Para-7 above appears to be a reasonable way forward.

[Signature]
11/11

~~MoEF~~

I do NOT agree with the averments made in the draft affidavit sent by MoA. MoEF is a regulatory Ministry and there is char conflict of interest. MoEF has also filed criminal cases against the major companies conducting field trials. MoEF cannot file a joint affidavit with MoA for this reason. This issue should be taken to the CCI or Cabinet for resolution. I have also written to Honble PM in this regard. →

26/M
11/11/13

MoEF (EAF)
No. 57 (M)
11/11/13
7.15 pm

255/M
11/11/13

(4)

Para 7 need NOT be discussed at this stage. My noting above may be articulated at the COS meeting today.

Jayanthi Natarajan
12/11/13

Secy (E&F)

M

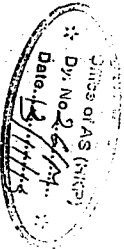
12/11

AS (HP)

S. R. V.
14/11/13

Swamee
12/11/13

O/O MOS/JC/E&F
Dy. No. S.F.C.M.
Date... 11/11/13...



Subject: Filing of Common UoI Affidavit / Response on the Final Report submitted by 5-Members of TEC and Report of Dr. R S Paroda, Sixth Member of TEC prepared by Ministry of Agriculture on the basis of the COS meeting

Reference Note at pre-page and Minutes of the COS meeting held on 12-13, November, 2013 may be seen.

In the matter of Writ Petition (Civil) 260 of 2005, Aruna Rodriguez & Ors; Vs. Union of India & Ors; in accordance with the Hon'ble Supreme Court orders of May 10, 2012 and October 9, 2013, the Technical Expert Committee (TEC) has submitted its final report. Two reports have been received from TEC members. One report having the concurrence of 5 Member of TEC whereas the second report has been submitted by Dr R S Paroda, sixth member of TEC.

341/Dir(RW)/13
22/11

The current issue pertains to the filling of a unified UoI affidavit/ response to both the above reports. In view of the diverging positions taken by the three responding Ministries, a meeting of the COS was held on November 12-13, 2013 wherein a decision was taken that UoI would file a common affidavit and Ministry of Agriculture was requested to redraft the affidavit taking into concern the MoEF's concern. In the COS meeting held on November 13, 2013, the draft prayer to be made in common affidavit prepared by Secretary, DST was discussed with a view to arrive at a harmonized approach. The draft prayer may be seen at page 3 of the minutes of the COS meeting.

Office of Secretary (E&F)
Dy. No. 341
Date: 22/11/13

On the basis of discussions held in the COS meeting, the Ministry of Agriculture has forwarded a draft common affidavit for approval of the responding Ministries on November 21, 2013 at 3:40 PM. The draft affidavit has also been seen by Mr. Paras Kuhad, ASG. The same has been examined and it is noted that MoEF's suggestions that important recommendations where there is scope for further strengthening of the regulatory mechanism has been accepted. On the issue of a ban on certain classes of GM crops such as Bt food crop, HT crops and crops for which India is a center of origin, it has been argued that UoI may be allowed to follow a case by case approach. The prayer as agreed in the COS meeting has been incorporated.

Office of AS (M&P)
Dy. No. 341
Date: 22/11/13

Director PMO (Mr Santosh D. Vaidya) had contacted the undersigned telephonically this morning and sought the status of MEF's approval on the draft affidavit. It was also indicated that they would like to see the affidavit before it is filed. I understand from Director (Seeds), MoA that the common affidavit has been forwarded to the PMO.

Office of AS (M&P)
Dy. No. 341
Date: 22/11/13

In view of the urgency in the matter, it is proposed that the draft prepared by Ministry of Agriculture may be forwarded to Secretary, E&F for further directions on the matter. *The next date of hearing is Nov 26.*

(A)

File submitted for orders please.

[Signature]
(Dr. Ranjini Warriar)
Director
22.11.2013

JS (SPSP)

(A) for kind approval,

AS/HP

May please e-mail also

[Signature]
24/11/13

Secretary (E&F)

22/11/13
25/11/13

Next date of hearing please!

[Signature]
25/11/13

*14. 11/13
22/11
25/11*

[Signature] 25/11/13

Reference note at pre-page may be seen.

Arun Rodrigues case (WP 260/2005) on GM crops which was scheduled for hearing on Nov 26, 2013 has now been postponed to Dec 6th 2013 (Miscellaneous day).

(A) We may also seek time from Sec (CAF) for discussion on the matter.

311/Dir(RW)/13
25/11

~~JS (SPSP) submitted for (A) please.~~ 25/11

~~AS(HT)~~

~~Shaykh~~

25/11/13

Dec 6, 2013 is the next date now at the Supreme Court.

~~Shaykh~~

25/11/13

Secretary (CAF)

We have discussed the case with DoAC & DBT to get the affidavit modified.

2/2

AS(HP) 26/11

~~JS (SP2)~~

26/11/13

Dir (RW)

27/11/13

AS (SPSP), W/O E&F
D.O. No. 341
25/11/13

AS (SPSP)
341
25/11/13

AS (SPSP)
341
27/11/13

File No.C-12015/2/2012.CS-III (Pt.File II)
Ministry of Environment & Forests
CS-III Division

Subject: Draft Common Affidavit prepared by Ministry of Agriculture on the Final Report submitted by 5-Members of TEC and Report of Dr. R S Paroda, Sixth Member of TEC

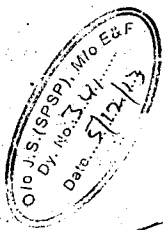
Reference note at page 1-5 n/ante and remarks of MEF at page 3n/ante may be seen.

This file pertains to the filing of a common UoI affidavit to the two TEC reports; one submitted by five member TEC and the second report by Dr. R.S. Paroda, Member TEC in accordance with the Supreme Court order dated May 10, 2012 and October 9, 2013 in the matter of Writ Petition (Civil) 260 of 2005 filed by Aruna Rodriguez & Ors; Vs. Union of India & Ors.

In the COS meeting held on November 12-13, 2013, a decision was taken that UoI would file a common affidavit. A draft prayer prepared by Secretary, DST was discussed and subsequently the draft prayer was revised with a view to arrive at a harmonized approach. Minutes of the COS meeting may be seen at F/A. Based on the discussions held therein, the Ministry of Agriculture has forwarded a revised common affidavit for consideration of this Ministry.

The revised affidavit submitted by Ministry of Agriculture was discussed with Secretary (E&F) and AS (HP) on November 29, 2013. On the basis of the discussions and directions therein, the common affidavit of MoA has been further revised and is placed below for consideration (F/X). AS (HP) is currently on tour but has seen the affidavit and a copy of the same was forwarded to Secretary (E & F) on December 2, 2013. As the matter is now listed for December 16, 2013, file is submitted for orders please.

341/DIR(RW)/13
5/12/2013



In view of (A) above, *[Signature]*
(Dr. Ranjini Warriar)
Director
5.12.2013
Common affidavit (F/X) for
kind perused and approval.

JS (SPSP)
AS (HP) - on tour
Secretary (E & F)

[Signature]
5/12/13

O/o MOS (I/C) E&F
Dy. No. 2541
Date: 6/12/13
7:15 PM

MEF 06/12

My views on this subject are well documented on file. However, ~~despite~~ despite my insistence that MoEF should file a separate affidavit, it has been felt that UoI should not be seen to be at cross purposes and that a common affidavit should be filed. As before, I had agreed that this may be done. However, this proposed common affidavit does not reflect MoEF views at all. Specifically

341
5/12/13

(8)

Paragraphs 30 onwards should be deleted. Paras 30 to 40, and also remarks from Page 39 to 42 (both pages inclusive) entitled "Other key issues" should be deleted, as these do not represent MoEF views.

The elaborate comments on both reports - the 5 Member TEC and Dr Parada's dissent note and the views of Government of India contained from Pages 6 to Page 33, are not reflective of my views or that of MoEF. These are the views of MoA. It is not known on what basis, these views have been taken, and whether views from environmental scientists have been recorded along with agricultural scientists. These submissions require modification, and may perhaps be deleted due to time constraint in sorting out the differences.

Although my view - as articulated in Page 3 ante remains the same, in the interests of UoI presenting a unified front, I have agreed to the filing of a joint affidavit. However the modifications mentioned by me above on Pages 7/8 must be carried out before this is done. A further draft affidavit modified as above may be sent by MoEF to MoA - as our modified suggested draft for the joint affidavit. Subject to the above the joint affidavit may be filed - after the corrected version is vetted by me.

Jayanthi Natarajan
11/2/13

~~Subject~~

P70

(9)

With reference to my observations above, I once again reiterate that MoEF is a regulatory body, and therefore the MoEF mandate requires arms length and impartiality in deciding these issues. Whereas MoA is certainly mandated with the task of encouraging productive agriculture. Therefore to comment so vehemently - in a joint affidavit against a 5 member TEC appointed by the court may not be advisable. The Report of The Parliament Standing Committee which is radically different is nowhere mentioned in the proposed draft affidavit.

A proper joint affidavit, while emphasising CoI's commitment to science and research should also address legitimate concerns raised by stakeholders.

Further in a federal constitutional structure, that fact that virtually none of the State Governments have given permissions for field trials and that Rajasthan has withdrawn earlier given permission is not mentioned. It is not known if CoS discussed this aspect.

It is also not known if CoS has collated a consensus of scientific views on this subject or just represents one set of views. In this context a more general affidavit, with the modifications I have suggested should be attempted.

Jayanthi Natarajan
11/12/13

Sicy E & F

