

CENTRAL INFORMATION COMMISSION
Complaint No.CIC/WB/A/2006/00548 dated 7.5.2007
Right to Information Act 2005 – Section 18

Complainant- Respondent - Ms. Divya Raghunandan
Dep't. of Biotechnology

FACTS:

By our **Decision Notice of 13.4.2007**, we had directed as follows:

“As the department has averred it is in possession of only incomplete information, the response to the application would appropriately have been to disclose all such information as was held by the public authority, which is within the definition of the ‘right to information’ [Sec 2(j)]. This would have meant that the response should have been that the information available is incomplete but such information as is available could have been provided to applicant unless it fell under any of the exemptions of sec. 8(1). The Appellate Authority within the Department has himself admitted in deciding the 1st appeal that this does not fall within 8(1) (d). Therefore, any further grounds for non-disclosure are invalid even if the information was still in the process of development. **CPIO, Deptt. of Biotechnology is, therefore, directed to provide the information held or controlled by him or to which he has access to appellant Ms Raghunandan within ten working days of the date of issue of this Decision Notice**, since this is also a matter of considerable concern to the educated public and is also mandated u/s4(1)(d). **(4(1) (d)** requires that the public authority: provide reasons for its administrative or quasi-judicial decisions to affected persons; **the Department may consider its publication in printed form.**

It was pointed out by Dr. K.K.Tripathi that this information is readily available with the GEAC and as per their meeting of 1.6.06, is available for public scrutiny with regard to Bt Brinjal. CPIO, Deptt. of Biotechnology who has been directed to provide the existing data with regard to the other agricultural products will therefore also obtain this data to be provided to the appellant. With regard to point (c) it was argued by Shri Prashant Bhushan that exclusion under sec. 8(1) (d) will not apply because the information supplied to RCGM by the parties is patented information, to obtain patents for which the information is open to public disclosure. There is thus no proprietary information, which can be hidden. He interpreted 8(1) (d) to mean giving protection only from copying by a competitor. Shri Prashant Bhushan also argued that the minutes of the RCGM are open to Parliament, was Parliament to ask and, therefore, cannot be denied u/s 8(1) (d) Shri Tripathi on the other hand pointed out that the business of GMOs, being highly sensitive is also highly competitive. Therefore, the implications for the competitive element are wide which, in case of full

disclosure at the stage of R&D, which is the subject of RCGM discussion, would certainly compromise commercial confidence in competition. He also clarified that the RCGM is directly involved in the evaluation of Research & Development whereas final decisions on permission for investment is given by the GEAC. We have examined the minutes of the RCGM. As described above, these are not only a record of the applications and decisions taken thereon, but also of detailed arguments on every side under consideration for Research & Development which it is expected will lead to application of the technology patented by the different organizations. There can be little doubt that such information, including experimental technique, if opened to public disclosure, will not be damaging to a competitive position. However, the issue being of the sensitivity that it is, we cannot dismiss the importance of public interest in the matter. If as upheld by us that the subject falls within the exemption from disclosure of 8 (1) (d), a decision on disclosure can be taken only by the 'competent authority' under the RTI Act, 2005. Even though we therefore hold that this information can indeed be withheld u/s 8(1)(d), we would recommend that the competent authority in this case the President of India as defined u/s 2 (e) (iv) satisfy himself on whether the larger public interest would be best served by disclosing such information. We are recommending this on the considered ground that we are not experts in this particular area and any decision on disclosure or otherwise in this area must be taken on obtaining expert opinion, which is best done at the level of Government.

This leaves the question of applicability of the severability clause in respect of RCGM minutes. From my perusal of the minutes, if such information as described above, is withheld the remaining information which is only the introduction and conclusion covering subjects such as attendance, date of meeting, date of next meeting, the addresses etc. would be available. If the appellant applies for such information they may do so. CPIO may consider supply of such information under the provisions of Sec 10 (1) giving reasons for non disclosure of such information as is withheld, following the procedure laid down in Sec 10(2)."

In compliance CPIO Ms Rajalakshmi Muralidharan wrote to appellant on 26.4.'07, endorsing a copy to us. Not satisfied with the information provided Ms. Divya Raghunandan appellant then moved a complaint before us u/s 18(1) (b) on 7th May, 2007 alleging non compliance with some of our orders in the Decision Notice. This has, therefore, been treated as a fresh complaint u/s 18(1) (b), whereas the earlier orders were passed in appeal u/s 19(3).

In response to the complaint notice Ms. Rajalakshmi Muralidharan Scientist D and CPIO of Department of Biotechnology in a letter of 18.6.07 has attached a letter from Shri Sanjay Deshpande DGM Maharashtra Hybrid Seeds Co. Ltd. (MAHYCO) requesting as a third party that *“no further information (other than the summary reports pertaining to the allergenicity and toxicity studies on Bt Brinjal which are available on the website of GEAC) may be provided in this regard to the applicant.”* She also attached another letter of Nov. 6, 2006 from the above-mentioned Shri Sanjay Deshpande addressed to Dr. M.K. Bhan Secretary, Deptt. of Biotechnology seeking exemption from disclosure as follows:

“In this regard it is brought to your attention that the Right to Information Act 2005 provides certain exemptions from disclosure of information. Section 8 (a) provides that there shall be no obligation to provide any citizen, information, disclosure of which would prejudicially affect the scientific or economic interests of the state, or lead to incitement of an offence. Clause (d) of the same section provides that information including commercial confidence, disclosure of which would affect the competitive position of a third party is exempt from disclosure. Further clause (g) of the said section exempts from disclosure, information the disclosure of which would endanger the life or physical safety of a person.

In view of the above facts and circumstances we request you not to reveal the locations of trial fields to any person who may apply under the Right to Information Act, or otherwise. The same must be kept in strict confidence. Lives and property may be put to grave danger, apart from providing incitement for offences, if such information is revealed to third parties.”

CPIO Ms. Muralidharan has also attached a statement in response to the statement of non compliance attached to appellant Divya Raghunandan’s complaint, contesting each of the points raised by Ms. Raghunandan and submitting that the public authority is under the RTI Act *“bound only to the extent of the information to which it has access to. Further the Act under Sec.11 mandates that third party information may be provided, only after inviting submission from the third party”*.

Consequently, through a letter of 14.8.07 appellant Ms. Divya Raghunandan in referring to the exchange of letters between the Deptt. of Biotechnology and herself subsequent to her complaint of 7.5.07 has restricted her complaint to requesting information on the following:

“Toxicity, allergenicity and any other relevant data on transgenic brinjal, rice, mustard and okra.”

In this context she has prayed for the following relief:

“Information that is available, accessible to the CPIO, DBT should be provided within 15 days to the applicant.

Penalty should be imposed to the CPIO u/s20 (1) of the RTI Act 2005 for knowingly misinforming the applicant and the CIC of the availability/accessibility of the toxicity and allergenicity data for more than 16 months (from February 2006 to June 2007).”

She has also pleaded for grant of compensation u/s 19 (8) (b) for the “*loss of time, money and effort*”.

The appeal was heard on 12.11.2007. The following are present:

Appellant:

Shri Jai Krishna R.
Shri Shekhar Singh
Ms. Suchi Pande

Respondents:

Ms. Rajalakshmi M., Scientist D
Sh. S. Natish, Scientists H
Sh. K. K. Tripathi, Scientist G
Sh. Sanjay Deshpande
Sh. Udit Bhist
Sh. Arvind Kumar
Sh. S. K. Dubey

We have received Email dated 10.11.07 from Ms. Divya Raghunandan opting not to be present herself but authorizing the following to appear on her behalf:

Sh. Shekhar Singh
Sh. Prashant Bhushan
Sh. Jai Krishna

Ms. Suchi Pande

Subsequently, Shri Jai Krishna presented a signed copy of this request during the hearing, which has been taken on record. Complainants have submitted their arguments in writing. These are as follows:

Biosafety data of GE Brinjal

- The claim of the CPIO of 'DoBT' is that the data is presently with the MoEF. The information was with DoBT' at one point in time and they retain no copy of the data with them.
- The appellate authority had also claimed that the information was under consideration of the committee Genetic Engineering Approval Committee (GEAC) and thus cannot be given.
- But the CIC's decision notice in April, 2007 takes into account this argument and ensures that "the Appellate Authority within the Department has himself admitted in deciding the 1st appeal that this does not fall within 8(1) (d). Therefore, any further grounds for non-disclosure are invalid even if the information was still in the process of development"
- In any case the CIC ordered the data to be obtained and be provided to the appellant. "It was pointed out by Dr. K.K. Tripathi that this information is readily available with the GEAC and as per their meeting of 1.6.06, is available for public scrutiny with regard to Bt Brinjal CPIO, Deptt. of Biotechnology who has been directed to provide the existing data with regard to the other agricultural products will, therefore, also obtain this data to be provided to the appellant."
- We dispute the statement of CPIO of DoBT that they retain no copy of the data, which they have evaluated and recommended to the GEAC as it's unusual for any function of a department of the government.
- It is also unacceptable that the volume of the data is running to thousands of pages as a reason for non-disclosure because, under a recent Supreme Court order dated 1.8.07, the court had ordered the information on toxicity and allergenicity tests of bt cotton to be put on the website. This has been complied so far. Thus the real reason is to protect the interest of the company as the above said crops have not been permitted for sale in the market and the

requested data might expose the shortcomings of the product before hand.

Having proved this, we request:

1. The toxicity and allergenicity data of GE brinjal to be provided immediately to us.
2. A penalty should be issue to the CPIO of DoBT for delaying the case to unimaginable time of 20 months.
3. I request that CIC to grant me compensation of Rs.50,000/- under Sec.19(8)(b) of the RTI Act 2005, for the loss of my time, money and effort spent in chasing the information request filed under the RTI act more than 20 months ago.

Bio safety data of Rice, Okra and Mustard.

- In this case the claim of the CPIO of DoBT is that the data is not available and is under generation and thus cannot be given.

23 rd Feb., 2006	Application for toxicity and allergenicity from the appellant.
18 th May, 2006 In his response in the appellate authority of B has declared that	"It is understood that the data on these (rice, Okra and mustard) is under development and is yet to be evaluated by the RCGM. Hence it cannot be made public"
31 st January 2007 In a rejoinder the appellate authority of 'B' says.	"As regards the allergenicity and toxicity data on transgenic rice, mustard and okra, it is informed that the case is under consideration of the RCGM and it cannot be made public as it falls under the category of sec. 8(1) (d) of the RTI act which inter-alia states that Third party".
24 th April,2007 After the decision of the CIC the CPIO of 'B' states	"As regards providing information on the toxicity and allergenicity data on okra mustard and rice is concerned, I would like to draw your attention that the data is under generation by the applicant and has not submitted to RCGM so far."
18 th June 2007 When this contradiction was	"The Appellant is perhaps is not aware of the functioning and the procedures followed by the Statutory Bodies in Indian Biosafety Regulatory

<p>pointed out in our complaint, the CPIO elaborates.</p>	<p>System. The information provided by the Appellate Authority, DBT vide his letter of even number dated 31.1.07 that “as regards the allergenicity and toxicity data on transgenic rice, mustard and okra, the case is under consideration of the Review Committee on Genetic Manipulation (RCGM)”, was because of the fact that these data are being generated and are under the purview of concerned Institutional Biosafety Committee (IBSC). The IBSCs report to RCGM after the data generated by an applicant is considered by the IBSC. Since the concerned IBSCs of the applicants have not compiled and submitted the information to RCGM, it was stated that such data is not available. However, this can also be stated as “the data being generated, is under consideration of RCGM” because all IBSCs work under the purview and directions of RCGM.</p>
<p>Now – November 2007</p>	

- The argument that the data is yet to be generated is untenable and is in contradiction of their earlier stand.
- It is a violation of the RTI act to deny information because it is under consideration.
- The claim that institutional biosafety committee (IBSC) does not fall under the RTI act is not agreeable because the committee is set up under the EPA Act 1986 (rules for manufacture of GE organisms, 1989)
- In any case, CPIO DoBT is empowered under the EPA act to receive data from the IBSC and thus it cannot be denied for the appellant as it is mandated to be given under sec 2(f) of RTI Act 2005.
- They ought to have examined biosafety – particularly toxicity and allergenicity before open air MLRT. Doing so in any other way would be an act of great irresponsibility of the regulators.

We seek

1. An approximate time frame for the reception of the data by CPIO of DoBT

2. An undertaking that once the data is arrived it will be provided within 15 days of its reception.
3. The data will be given regardless of the fact whether the data is under consideration of any committee or authority.

Needless to say that there is a critical public interest involved on this information as stressed before by the CIC.

The issue has also become contempt of the court because; the committee 'C' has deliberately misinterpreted the orders of the SC and had permitted field trials of GE crops in contravention of the order. A show cause notice has been issued to the Committee "C".

4. A penalty should be issue to the CPIO of 'B' for delaying the case to unimaginable time of 20 months.
5. I request the CIC to grant me compensation of Rs.50,000/- under Sec.19(8)(b) of the RTI Act 2005,for the loss of my time, money and effort spent in chasing the information request filed under the RTI act more than 20 months ago."

Shri Sanjay Deshpande authorized representative of MAHYCO on the other hand presented an application pleading to make submissions under RTI Act with the following prayer :

"It is therefore, humbly prayed that the Applicant may be provided a copy of the appeal/documents annexed thereto, if any, and may be permitted to file a reply thereto or to make submission in response thereto in the instant matter, as any decision by this Hon'ble Commission will have an impact on the competitive position of the Applicant herein."

Respondents from Deptt. of Biotechnology have argued that the information provided by them to appellant is in full compliance with the decision of the Commission. Shri Shekhar Singh representative of appellant has, however, argued that the directions of Commission were specific in that the Deptt. of Biotechnology have been directed to provide the information held or controlled by them or to which they had access to appellant Ms. Raghunandan. Instead complainants have been provided only the names of tests, protocols and results summaries derived from the latter for genetically engineered brinjal but not actual data as required and no information on toxicity and allergenicity of

Okra, Mustard and rice, even if the data in the possession of the public authority was incomplete, as directed in the appeal.

DECISION NOTICE

In her letter of 26.4.07 Ms. Rajalakshmi Muralidharan Scientist D and CPIO Deptt. of Biotechnology reporting compliance with our orders of 30.4.2007 by the Dep't. of Biotechnology, has provided the following information with regard to toxicity and allergenicity data on Bt Brinjals:

“Since this was the first GM edible crop, the RCGM has taken each and every precaution to devise various tests and the data to be generated by the applicant. The entire biosafety data generated by the company was presented in person by the company representatives who have an interactive discussion to look into all aspects of food and environmental safety as well as risk vs. benefit analysis. The data generated on the biosafety aspects including toxicity and allergenicity was discussed in detail by RCGM in its 40th meeting held on 25.4.2006. Based on in depth discussion on various aspects like socio economic benefits, reduction in use of pesticides, increase in yields and lack of toxicity and allergenicity, the Bt Brinjal case was forwarded to Genetic Engineering Approval Committee (GEAC) in the Ministry of Environment & Forests to consider further expanded trials to generate more biosafety and other relevant data as required by the GEAC. The data submitted to RCGM is not final in any respect as far as releasing the product for public use. The final decision and any other data further to be generated to address the biosafety would depend upon the GEAC which is the final authority for commercialization of any GM product.

The RCGM has considered the rationale on the development of Bt Brinjal and it was observed that brinjal is attacked by numerous pests and fruit and shoot borer (FSB), which is the most destructive pest. Damage due to these pests range from 50% to 80% sprays of pesticides. However, the usual control measures undertaken are not effective and the general human health and environmental concerns are due to heavy use of pesticides in the produce as well as exposure of farmers to the pesticides. Heavy use of pesticides further cause lot of pesticide residue in the soil and to tide over all these issues, the development of Bt Brinjal was undertaken.

Bt brinjal is developed by using target gene cryI_{Ac}, isolated from *Bacillus thuringiensis* var *kurstaki* (B.t.k.) strain HD 73 with nptII as marker gene and the constitutive CaMV 35S promoter. The transformation method followed was *Agrobacterium tumefaciens* mediated method. The

biosafety and other studies undertaken by the applicant on the Bt brinjal include...”

The report goes on to discuss:

1. Greenhouse evaluation on efficacy of the target gene.
2. Germination and weediness studies.
3. Aggressiveness studies
4. Pollen flow studies
5. Effect on fruit and shoot borer.
6. Effect on non-target insects.
7. Effect on beneficial insects.
8. Effect on soil micro-flora studies.
9. Substantial equivalence studies.
10. Protein expression studies.
11. Molecular characterization and event ID.
12. Chemical fingerprinting of Bt and non-Bt Brinjal (alkaloids).
13. Baselines susceptibility studies (two years with 29 populations).
14. Acute oral toxicity studies in rats.
15. Sub-chronic (90 days) oral toxicity study in Sprague Dawley rats.
16. Sub-chronic (90 days) feeding studies using New Zealand white rabbits.
17. Sub-chronic (90days) feeding studies in Goats.
18. Responses, as a dietary feed ingredient to common carp (*Cyprinus carpio*) growth performance.
19. Effect on performance and health of broiler chickens.
20. Feeding studies in lactating crossbred dairy cows.
 - a. Allergenicity studies.
21. Food cooking and protein estimation in cooked fruits.
22. Socio-economic and risk assessment.

On the decision that the information available with GEAC be made available for public scrutiny with regard to Bt Brinjals, CPIO argued that since this data runs into thousands of pages this could be scrutinized in MoEF in the presence of GEAC representative, as decided by GEAC. On the question of providing information after application of severability clause, appellant was informed of the information available on the website of the Dep't., which she could access.

The issue at present before us, however, is the question of the information available with GEAC with regard to Bt Brinjals, with the Deptt. of Biotechnology

also obtaining the data in regard to other agricultural products so as to be provided to the complainant Ms Raghunandan.

In our Decision Notice of 13.4.07 we have directed that the CPIO Deptt. of Biotechnology “provide the information held or controlled by him” and in that context also directed that the information available with the GEAC be provided. The form in which this is to be provided has not been determined in our Decision Notice. We find from the response of the Deptt. of Biotechnology that they have not sought to deny access to the information now stated not to have been provided, but only that the data running into thousands of pages be inspected in MoEF in the presence of a GEAC representative. What is now under dispute is, therefore, the form in which the information directed to be provided is to be provided. While the Public Authority has suggested that this may be inspected, the appellant desires that this be provided on a CD ROM as per the RTI fee rules at Rs.50/- per CD.

In this regard we have also perused the “Rules for the Manufacture, Use, Import, Export and Storage of Hazardous Micro Organisms Genetically Engineered Organisms or Cells” notified in New Delhi on 5th Dec., 1989 and submitted to us by Dr KK Tripathi in the hearing. These rules have been made in connection with the application of genetechnology and microorganisms, on which the Central Government has made rules on “Genetically Engineered Organisms or Cells”

Rule 7 of these Rules states as follows:

Rule 7:

(1) No person shall import, export, transport, manufacture, process, use or sell any hazardous microorganisms of genetically engineered organism/substances or cells except with the approval of the Genetic Engineering Approval Committee.

(2) Use of pathogenic microorganisms or any genetically engineered organisms or cells for the purpose of research shall only be allowed in laboratories or inside laboratory area notified by the Ministry of

Environment and Forests for this purpose under the Environment (Protection) Act, 1986.

(3) The Genetic Engineering Approval Committee shall give directions to the occupier to determine or take measures concerning the discharge of micro organism / genetically engineered organisms or cells mentioned in the Schedule from the laboratories, hospitals and other areas including prohibition of such discharges and laying down measures to be taken to prevent such discharges.

(4) Any person operating or using genetically engineered organisms / microorganisms mentioned in the schedule for scale up or pilot operations shall have to obtain licence issued by the Genetic Engineering Approval Committee for any such activity. The possessor shall have to apply for licence in prescribed proforma.

(5) Certain experiments for the purpose of education within the field of gene technology or micro organism may be carried out outside the laboratories and laboratory areas mentioned in sub rule (2) and will be looked after by the Institutional Biosafety Committee."/>

This is further developed by Rules 13 and 14 as follows:

Rule 13:

(1) In connection with the granting of approval under rules 8 to 11 above, terms and conditions shall be stipulated, including terms and conditions as to the control to be exercised by the applicant, supervision, restriction on use, the layout of the enterprise and as to the submission of information to the State Biotechnology Coordination Committee or to the District Level Committee.

(2) All approvals of the Genetic Engineering Approval Committee shall be for a specific period not exceeding four year at the first instance renewable for 2 years at a time. The Genetic Engineering Approval Committee shall have powers to revoke such approval in the following situations”

Rule 14

(1) The Genetic Engineering Approval Committee may supervise the implementation of the terms and conditions laid down in connection with the approvals accorded by it.

(2) The Genetic Engineering Approval Committee may carry out this supervision through the State Biotechnology Coordination Committee or the State Pollution Control Boards/District Level Committee or through any person authorized in this behalf.”

From a perusal of these rules it is quite clear that genetically engineered organism or cells are recognized by government as an item potentially hazardous to public health. It automatically follows that full compliance with these rules is a matter of public interest. In light of this we cannot agree that inspection of this information can be provided only in a restricted environment to members representing Civil Society. Because this position had not been clarified in the original decision as explained above, the Dep't. of Biotechnology cannot be held in violation of our Decision Notice. However, **the information sought is best down loaded from the computer on which it is stored onto a CD by the Dep't. of Biotechnology and supplied to appellant on payment of the usual fee.** The supply of this CD will not qualify for exemption from fee u/s 7(6) because as mentioned earlier the form in which the information was to be supplied was not a subject addressed in the earlier application or determined in the appeal. This exercise will be completed within twenty working days of this Decision Notice. Following from this we see no reason to impose a penalty u/s 20 or for granting costs to appellant, on this account.

In addition to the above, however biosafety data of rice, okra and mustard has not been provided on the basis of the argument that the data is yet to be generated. In this connection, we have clearly held in our Decision of 13.4.07 that,

"any further grounds for non-disclosure are invalid even if the information was still in the process of development. CPIO, Dep't. of Biotechnology is, therefore, directed to provide the information held or controlled by him or to which he has access to appellant Ms Raghunandan within ten working days of the date of issue of this Decision Notice. I the alternative, she may within that time provide to appellant Ms Raghunandan a time frame by when such information will be made available. This is also a matter of considerable concern to the educated public and is also mandated u/s (4(1) (d). Sec 4(1) (d)), h requires that the public authority: provide reasons for its administrative or quasi-judicial decisions to affected persons, the Department may consider its publication in printed form."

We find, however, that the compliance report of 26.4.07 carries no information on any of the products other than Bt Brinjal. No reason has been given here for not adhering to our clear direction that CPIO, Dep't. of Biotechnology *“who has been directed to provide the existing data with regard to the other agricultural products **will, therefore, also obtain this data to be provided to the appellant.**”*¹ This is, therefore, a clear case of non-compliance. In their written argument appellants have pleaded for *“an approximate time frame for the reception of the data by CPIO of DoBT.”* **We, therefore, direct CPIO, Dep't. of Biotechnology to comply with our directions cited above, within ten working days of the date of issue of this Decision Notice, or in the alternative, and within that time, provide to complainant Ms Raghunandan the time frame demanded.** If the information is already part of the documentation directed to be supplied after download above, however that will have served the purpose

In this case although the failure to provide the information will not qualify for penalty u/s 20(1), which prescribes penalty specifically for violation of Sec 7(1), there is a case for compensation u/s 19(8) (b) which has been demanded by appellant Ms. Divya Raghunandan in her rejoinder to the letter of 18.6.'07 from CPIO Dep't. of Biotechnology. However, the details of the loss or other detriment suffered have not been supplied, and appellant Ms. Divya Raghunandan is directed to submit to us the details of such loss or other detriment suffered, also within ten working days of the date of issue of this Decision Notice, to enable us to take a decision on any compensation that will become payable.

The remaining question is that of third party. This issue has already been discussed in the original decision with regard to RCGM wherein it has been decided that only such information be disclosed which is not exempt u/s 8, while allowing for the fact that the information thereafter will be slim. We cannot,

¹ Emphasis added

therefore, agree with the plea of MAHYCO, even if so ardently put by young Shri Deshpande before us, to implead MAHYCO as 3rd party at this stage.

This complaint is disposed of accordingly. The decision reserved in the hearing is announced on 22.11.2007 in the open chamber.

Notice of this decision be given free of cost to the parties.

(Wajahat Habibullah)
Chief Information Commissioner
22.11.2007

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges, prescribed under the Act, to the CPIO of this Commission.

(Pankaj K.P. Shreyaskar)
Joint Registrar
22.11.2007