

THE SUPREME COURT OF INDIA

CONTEMPT PETITION NO. _____ OF 2015
IN

WRIT PETITION (CIVIL) No. 260/2005

IN THE MATTER OF:

1. ARUNA RODRIGUES
D/O THERESA RODRIGUES
R/O BUNGALOW 69,
MHOW CANTT.,
MADHYA PRADESH – 453441 PETITIONER

VERSUS

1. MR. SHRI HEM PANDE
CHAIRPERSON
GENETIC ENGINEERING APPROVAL COMMITTEE
MINISTRY OF ENVIRONMENT AND FORESTS
PARYAVARAN BHAVAN, CGO COMPLEX
LODI ROAD, NEW DELHI
2. CO-CHAIRPERSON
GENETIC ENGINEERING APPROVAL COMMITTEE
MINISTRY OF ENVIRONMENT AND FORESTS
PARYAVARAN BHAVAN, CGO COMPLEX
LODI ROAD, NEW DELHI
3. MEMBER SECRETARY,
GENETIC ENGINEERING APPROVAL COMMITTEE
MINISTRY OF ENVIRONMENT AND FORESTS
PARYAVARAN BHAVAN,
CGO COMPLEX, LODI ROAD
NEW DELHI RESPONDENTS/ ALLEGED CONTEMNORS

AND IN THE MATTER OF:-

ARUNA RODRIGUES & ORS. ...PETITIONERS

VERSUS

UNION OF INDIA & ORS. ...RESPONDENTS

APPLICATION ON BEHALF OF THE APPLICANT/PETITIONER U/S 12 OF THE CONTEMPT OF COURTS ACT, 1971 READ WITH RULE 3 (c) OF THE RULES TO REGULATE PROCEEDINGS FOR CONTEMPT OF THE SUPREME COURT, 1975 FOR INITIATING CONTEMPT PROCEEDINGS AGAINST THE ALLEGED CONTEMNORS ABOVE NAMED

To
The Hon'ble Chief Justice &
His Companion Justices of the Supreme Court of India

The humble application of the Petitioner above named.

MOST RESPECTFULLY SHEWETH:-

1. That the Applicant above-named is filing the instant application seeking the initiation of contempt proceedings against the above-named contemnors/Respondents for wilfully and deliberately disobeying the explicit orders of this Hon'ble Court dated 8th May 2007, 15th February 2007, 8th April 2008 and 12th August 2008 passed in the abovementioned Writ Petition and for wilfully proceeding with numerous GMO field trials in our food crops, small scale BRL I in respect of which these Orders were passed, and thereafter, proceeding with large-scale field trials (LSTs) or BRL II, the latter for commercial introduction into India for the first time of herbicide tolerant (HT) crops of Mustard, cotton and corn (stacked Bt and HT). These field trials have ignored fundamental bio-safety precautions as Ordered by the Court. Contamination during open field trials is specifically barred in the order of 8th May 2007 passed by this Hon'ble Court. In the light of this specific Order, which was underpinned by two enabling Orders to ensure compliance, the Regulatory adventurism with regard to LSTs/BRL II is particularly unconscionable as they expose India to undue and high risk of GMO contamination of our food crops (mustard, LST which were undertaken in July 2014), (and also corn)). BRL II / Large-scale field trials (LSTs) are the final stage of field trials before commercialisation and are especially risky for contamination as their focus is seed-setting

for commercial planting-out, not for conducting bio-safety studies, which must be completed and the crop signalled as utterly safe before proceeding to the BRL II phase, precisely because seed-setting entails contamination risks of an exceedingly high order of magnitude. Thus, Bio-safety studies and risk assessment protocols must be addressed and essentially completed during BRL I trials, particularly gene flow. Such sequencing provides the bio-safety assurance for approvals to proceed to the next stage i.e. BRL II. This is precisely the sequencing required by this Hon'ble Court's appointed TEC (unanimous 5- member Report). The risk of contamination from GM mustard and corn is of an unprecedentedly high order and proven in other cases involving Canada, (rape) Japan (rape) and Mexico (corn). US (rice). The case of Mustard called DMH 11 is especially critical since the Application for commercialisation has reportedly been sent by the crop developer Dr Deepak Pental of the Centre for Genetic Manipulation of Crop Plants' (CGCMP) to the GEAC in Sept 2015. It is being considered for surreptitious approval for commercialisation according to newspaper reports. The relevant four Orders of this Hon'ble Court and the DNA article reporting the above matters are referenced below:

Annexure C1 (Pg _____): Order Dated 15-02-2007 passed in WPC 260 of 2005

Annexure C2 (Pg _____): Order Dated 08-05-2007 passed in WPC 260 of 2005

Annexure C3 (Pg _____): Order Dated 08-04-2008 passed in WPC 260 of 2005

Annexure C4 (Pg _____): Order Dated 12-08-2008 passed in WPC 260 of 2005

Annexure C5 (Pg _____): DNA newspaper Report of 5 November 2015: 'Regulators hiding trials data on GM mustard'.

It is emphasised that all bio-safety data/safety dossiers/Meeting Minutes have been barred from public domain access. This is in explicit contempt of this Hon'ble Courts Orders, which were applied to and upheld for Bt brinjal in 2007-2008. Bt brinjal has become a regulatory test case of fraud and incompetence, which were made amply apparent when the bio-safety dossier was forced into the public domain on this Hon'ble Court's Orders. These matters are addressed in this Application. Petitioners make the further point that in the pendency of the adjudication of the unanimous 5-Member final report of the SC-appointed TEC of June-July 2013, which has specifically recommended a ban on Ht crops, as well as crops of origin/diversity, the collective irresponsibility displayed by our Regulators, concerned Ministries (MoA, MoEF and MoS&T), and Institutions of GMO governance (ICAR, DBT), in approving LSTs, demonstrates a clear agenda to push GMOs into India's agriculture. This is now undeniable because approval of LSTs is undisguised malfeasance and regulatory delinquency. The risk of contamination in such trials and especially from GM mustard will be hard to avoid.

2. That the above mentioned Writ Petition was filed by the Petitioners seeking to put in place a protocol that shall mandate the independent, sound and transparent scientific-examination of all relevant aspects of bio-safety before each GMO is sought to be approved and released into the environment. These objectives were recognised by this Hon'ble Court through its Orders mentioned above. Petitioners are now constrained to file this Application for Contempt for violation of interim orders of this Hon'ble Court, which remain in force today. This Application may kindly be read in conjunction with the Additional Affidavit filed by Petitioners in September 2015, The Contempt Petition

of Sept 2007 with regard to Bt brinjal and Advocate Prashant Bhushan's Legal Notice referenced under:

Annexure C6 (Pg _____): Legal Notice to M/s Ranjini Warriar, Secy GEAC, dated September 2014 'Non-compliance of the Orders of the Hon'ble Supreme Court in the matter of secrecy and no active testing for contamination'.

THE HISTORY OF CONTEMPT IN THE TEST CASE OF BT BRINJAL IN 2007 AND 2008 REPEATS ITSELF NOW IN MUSTARD DMH 11 IN 2015

3. Petitioners highlight the case of Mustard DMH 11 because it is believed from newspaper reports that it may get GEAC approval for commercialisation within November/ or in time for Rabi sowing. It is therefore, pertinent to revisit the case of Contempt of Court in the matter of Bt brinjal because the situation India faces at this juncture with Mustard DMH 11, is virtually identical, but in some respects even more grave; it is being done with impunity, this despite the earlier and complete failure by the Regulators to prevail with Bt brinjal. The current and un-nerving repetition of this history now with Mustard DMH 11 confirms in no uncertain terms the official Government agenda that supports GM crops, despite the serious and growing evidence of independent science, of the grave threats to health and the environment. This includes the empirically proven failed technology of herbicide tolerant (HT) crops. Recognising these hazards, two thirds the European Union have moved to ban GMOs, and not just HT crops. Mustard, corn and flex cotton are all HT crops and all of them have been subjected to LSTs (ref Petitioners' Additional Affidavit of September 2015). Thus, India faces a very present, dire crisis; the consequences to health, food purity, food security, farming practices, farmers' livelihoods and

biodiversity, are irremediable, because genetic contamination at the molecular level is irreversible.

4. In 2006 Petitioners filed an Application for Urgent Interim Orders (*kindly see I.A. No. 4 of 2006 filed on 1.08.2006, Volume Index XI*). The Hon'ble Court, recognising the need for great caution in the matter of GM crops, particularly GM food crops, granted relief with an injunction on 'approvals' from 22nd September, 2006, thereby forestalling the imminent, ill-conceived approvals being planned by the Regulator of LSTs of Bt brinjal. The Regulators nevertheless, proceeded with granting approval for LSTs of Bt brinjal in clear 'Contempt', in 2007 and 2008, and in secrecy of its bio-safety implications. But, the regulatory secrecy imposed by the regulators, under the garb of CBI (confidential business information), with regard to the self-assessed Monsanto-Mahyco Bt brinjal safety dossier was disallowed by this Hon'ble Court, upholding the primacy of the Public Interest over private interest, through its Order of February 2007 (Annexure C1). The Bt brinjal safety Dossier was finally forced into the public domain about 18 months later in September 2008. The hugely tardy response thereafter, despite a Court Order highlighted the sheer degree of regulatory support for the 'Industry'. Subsequent to this, the independent appraisal of the raw data by Internationally eminent scientists, several of whom were advisors to the UN and the CBD process of GMO risk assessment protocols, found the regulatory oversight inept and unprofessional and even worse, the Dossier to be fraudulent (studies said to be done, but were not done). These matters indicated gross regulatory corruption, incompetence, lack of expertise, and regulatory institutions too conflicted to carry out safety assessment of GMOs with integrity and rigour, putting in jeopardy the Nations bio-safety on several dimensions of the problem presented by

GMOs. It bears repeating that these conclusions were later attested and confirmed between 2010 and 2013, by 4 official Government of India reports including the Jairam Ramesh Report of 2010.

However, despite the seriousness of a proven fraudulent dossier, which therefore, should have been removed from the regulatory record, the GEAC in October 2009, hastily approved Bt brinjal for commercial cultivation, in a process of decision-making, which was deeply 'conflicted'. However, the approval was immediately barred in the interim by the erstwhile Minister MoEF Shri Jairam Ramesh while he instituted a transparent and public process of scientific appraisal, public response, and State government reaction since agriculture is a State subject. His report duly recognised the dangers of contamination by Bt brinjal, (India being a centre of origin of brinjal with the world's greatest diversity), to domesticated and wild varieties of brinjal and the lack of independent, long term and expert testing and analyses. Based on the adverse findings, he therefore, imposed an indefinite moratorium on Bt brinjal in these words as follows:

"it is my duty to adopt a cautious, precautionary principle-based approach and impose a moratorium on the release of Bt-brinjal, till such time independent scientific studies establish, to the satisfaction of both the public and professionals, the safety of the product from the point of view of its long-term impact on human health and environment, including the rich genetic wealth existing in brinjal in our country.

A moratorium implies rejection of this particular case of release for the time being; it does not, in any way, mean conditional acceptance. This should be clearly understood."

RECAP OF ORDERS & THEIR BASIS IN BIO-SAFETY PROTECTION: DMH

11 IS COMPREHENSIVELY IN CONTEMPT OF COURT

5. There are two Orders accompanied by two enabling orders of this Hon'ble Court that have been sidelined by the Regulators and Institutions of GMO governance. As of now, large-scale field trials (BRL II) of Mustard DMH 11, which is an HT crop and a GURT (Genetic Use Restriction Technology), have been completed, also perhaps of HT/Bt stacked corn and HT cotton (Flex/Bollgard III), and surreptitiously, intending to open up a second line of GMO crop technology (HT) quietly and secretly into India; without independent and expert scientific scrutiny and public debate; a technology of proven unsustainability based on the empirical evidence of USDA (US Department of Agriculture) crop data of 20 years.

The Regulators have, in Contempt of Court, (a) removed all data and access to IGMORIS, the official website in defiance of the specific Order for public disclosure of all data (please see the Legal Notice at Annexure C6); and (b) comprehensively sidelined enabling Orders to ensure the Court's directive of "*no contamination*". Petitioners single out mustard DMH 11 because of the exceptional contamination risks associated with mustard and the specific grave hazards consequent to contamination through the Event DMH 11, which is a GURT technology. Nevertheless, and notwithstanding this, all LSTs are in contempt of the clear and explicit intent of the Order of the Court of "*no contamination*", precisely because the two enabling Orders that are coupled with the requirement of "*no contamination*" to ensure compliance and which were passed for BRL I field trials have been comprehensively violated. In large-scale BRL II field trials, contamination is virtually uncontrollable and no measures for mitigating contamination risks are effective. Several submissions attest to these facts, with the broad outline of evidence provided again in this Submission. It is therefore, relevant and appropriate for Petitioners to provide the relevant Orders of this Hon'ble

Court and present the evidence, which proves that the Regulators are in Contempt on multiple grounds. The operative parts of the Orders are as follows:

- i. **Order of 15 February 2007** (Annexure C1): *“Learned counsel for the petitioner submitted that in 91 varieties field testings are going on. The Union of India will file a report within a period of six weeks stating therein as to what would be the implications and biological results of these tests”.*
- ii. **Order of 8 May 2007** (Annexure C2): In its 8th May Order of 2007, the Court declared its intent that field trials (which were all limited scale BRLI) should not cause *“any contamination to the cultivation of neighbouring fields”* also requiring *“validated event-specific protocols of testing to an LOD (Limit of Detection) of at least 0.01% to detect and confirm that there has been no contamination”* as a necessary precaution and alert system to contain any contamination, that may occur because of these (limited/small-scale) field trials. That risk was clearly acknowledged by the SC through this Order. Indeed, the GEAC has also acknowledged the risk of contamination when it accepted the principle that no BRL I (limited) field trials would be conducted in basmati areas. This Hon’ble Court also required trials to be supervised with the *“name of the scientist and other details, who will be responsible for all aspects of the trials should be reported to the GEAC and there should be regular supervision by them”.* (Emphasis by Petitioner).

These orders were passed for BRL I (limited/confined) field trials.

It is pertinent in this connection, to also bring to the notice of the Hon'ble Court, its Order of 13-10-2006 when it allowed as an interim measure, exceptional status for Mustard DMH 11 and allowed BRL I or small-scale, limited field trials as follows:

“Meanwhile, subject to the applicant taking all precautions as mentioned in the application and subject to further orders that may be passed for uprooting the plant, as an interim measure, for the present, the applicant is permitted to plant its newly developed DMH-11 variety for experimental purpose in its field within this month”.(Emphasis Petitioners’). This Order is appended below:

Annexure C7 (Pg _____): Order of 13-10-2006 passed in WPC 260 of 2005

To elucidate, this Hon'ble Court's deliberate use of the term “*uprooting the plants*” (or field trials), was specifically aimed to circumvent the flowering stage of mustard, which would lead to pollen flow and seeding because the nature of the crop is such that it defies other measures for mitigating risks of contamination like isolation distances etc. But, the purpose of large-scale field trials, which are the penultimate stage of commercialisation, is specifically for setting seed for commercial-scale planting (requiring huge quantities of seeds). Therefore, the question of uprooting pre-commercial planting does not arise and it therefore, makes little sense to require “*no contamination*” from large-scale field trials (BRL II). Contamination is likely, and particularly in crops like mustard (very small seeds which can be carried on the wind several miles and is mainly pollinated by bees in India), as well as corn.

The above Order in the specific case of mustard DMH 11 in 2006 highlights the criticality of this Hon'ble Court's subsequent Orders with regard to contamination during limited/confined open field trials. The Regulators are in contempt of the SC's enabling Orders to ensure compliance of its Order of "*no contamination*"; i.e. requiring active testing for contamination to an LOD of at least 0.01% during limited field trials. No active testing for contamination with validated protocols has been done to demonstrate regulatory commitment and intent to contain any risk of contamination and under the supervision of named scientists for each field testing to ensure that all aspects of bio-safety are taken care of during BRL I or limited field trials. LOD and other precautions have not been complied with. Contempt of these Orders means that the requirement of "*no contamination*", which is the thrust of the SC's objective during BRL 1 field trials, is not maintainable. As explained earlier, in large-scale field trials, this Order is infructuous. Petitioners provide clear and unambiguous proof of these matters from RTI s and other evidence appended herein. Petitioners also demonstrate that these Orders of May 2007 are still in force (please see below).

A conscionable Regulator would never have entertained these trials. It is emphasised that these crops constitute the opening up of a second front in GMO technology, i.e. HT crops, and with stealth, which make the contempt of Orders with respect to these LSTs even more unconscionable.

iii. Order dated 8 April 2008 (Annexure C3): In a progression of the Order of 15 February 2007 for bio-safety data to be made available, the Court stated in April 2008: "*In I.A.No.1 in W.P.(C) No.115/2004 and I.A.No.18 in W.P.(C)No.260/2005*

the applicants have complained that the data regarding toxicity and allergenicity has not been placed in public domain by those conducting the trials, in regard to nine crops to be field tested. It is submitted that unless the toxicity and allergenicity data are made known to the public the applicants and concerned scientists in the country would not be in a position to make effective representations to the concerned authorities. Learned Addl. Solicitor General submits that as regards Bt cotton and Bt brinjal, required data has already been put on the website. He also stated that in regard to other seven crops, data is being collected and as soon as the full data is available with the GEAC, the same would be put on the website. In view of the said statement, it may not be necessary to further consider the said two applications”.

The Hon'ble Court also stated: *“GEAC will examine this issue (of isolation distances – Petitioner clarification) and prescribe the isolation distance depending upon the nature of the crop. The applicants in I.A.s 22 and 23 have also sought modification of another direction issued under the order dated 8.5.2007 that the validated protocol should be 0.01% LOD before field trials. The submission of the applicants is that the said requirement should be dispensed with. The petitioner opposes such dispensation. GEAC may also examine and give a finding as to what should be the LOD, whether it should continue to be 0.01% or be less than 0.01% or more than 0.01% or whether it should be dispensed with altogether with an alternative protocol, and if so, what should be the alternative protocol”*

It is clear that in April 2008 there was no vacation of the Order of May 2007 with regard to LOD to at least 0.01% or 'named scientists'. Indeed, the LOD aspect was subsequently made a

part of the TOR of the SC-appointed TEC in May 2012. The specific TOR for limited field trials on LOD (Limits of Detection) reads as follows in the Order of May 2012 (Annexure L2):

“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”.

iv. Order of 12 August 2008 (Annexure C4): When the GEAC had failed to comply with their guidelines for approval (their Minutes of Meetings – Petitioner clarification) and the raw data of Bt brinjal specifically, the court stated: *“Counsel for the petitioners stated that the guidelines framed by GSE (GEAC – clarified by Petitioner) for granting approval are not published by the respondents. The respondents to provide the copy of the guidelines for granting approval. Counsel for the petitioners also made his objection that the order passed by this Court on 8/4/08 has not been complied with and the data still not put on the website. The respondents to file the satisfactory proof regarding the compliance of the Order”.*

Subsequent to this Order, the raw data of Bt brinjal was posted on the Ministry’s official website about four days later. It had taken the GEAC almost 18 months to comply with this Order.

CURRENT EVIDENCE OF CONTEMPT OF THE ORDERS OF THE SC

6. In the light of the evidence of the foregoing Orders, and to summarise, there are 2 Orders and 2 enabling Orders of this Hon’ble Court that Respondents have conspicuously failed to uphold as follows:

i. Public access to information including full bio-safety dossiers (raw data): (with ref to Orders and the Court process that ensued from the 1st Order of 15th Feb 2007, then 8th April 2008 and finally 12th August 2008; please see para 4, i, iii & iv above): Counsel for Petitioners, Advocate Prashant Bhushan stated in his Legal Notice to the Secy. GEAC Dr Ranjini Warriar in the opening para that *“the official GMO website www.igmoris.nic.in is no longer active for up-to-date information”* and went on to provide details of the official Minutes (119th Meeting) confirming the discontinuation of public domain access (please see para 2 of Annexure C6).

Several requests for data made through RTIs have been rejected. Petitioners provide evidence of one of the most important RTIs with respect to Mustard DMH 11 that went in ‘Appeal’. RTI for complete bio-safety data for Mustard DMH 11 and the basis on which the approval for BRL II trials was granted was rejected by the Joint Secy and Appellate Authority (GEAC), saying that the *“aforesaid matter is under process, because --- THE FINAL REPORT HAS NOT BEEN RECEIVED ----- “* (emphasis Petitioners’). *“Thus I come to the conclusion that the information which is sought is covered under the exemption from disclosure clause laid down under Section 8 of the RTI Act and Section * (1) (d)” ---regarding “third party viz Centre for Genetic Manipulation of Crop Plants (CGMCP) is exempted from disclosure”*. This evidence is provided below:

Annexure C8 (Pg _____): Reply received by Ms. Kavitha Kuruganti dated 18 June 2015 from the Director, MoEF

Annexure C9 (Pg _____): Reply dated 29 July 2015 by the Joint Secy and Appellate Authority (GEAC) to Ms. Kuruganti.

ii. Bio-safety measures during open field trials to ensure there is “no contamination”: (with ref, to the Order of 8th May 2007, please see 4:(ii)): This Order to ensure “*no contamination*” provides for a modus operandi through Orders during BRL I field trials, two aspects of which remain in force, ie (a) mandated *event specific protocols to an LOD of at least 0.01% detect and confirm that there has been no contamination*” and (b) the presence of a scientist nominated “*for every aspect of the trials*” with “*regular supervision*” of field trials. These Orders have been comprehensively side-lined. This being the case, Respondents are manifestly unable to implement the Order of “*no contamination*”. It bears repeating that BRL II or LSTs are the penultimate stage of commercialisation and our essentially for ‘setting seed’ to meet huge seed requirements for commercial planting out. The Order of “*no contamination*” therefore, cannot apply to such field trials and would be infructuous. These matters are discussed in appropriate detail in point (b) below.

(a) Testing for contamination to an LOD of 0.01%: (please refer pg 2 of Annexure C6). It is understood that testing is not the solution to avoiding GMO contamination, especially given the laxness with which BRL I field trials have continued to be conducted and countenanced by the regulators; but it is the route to caution and corrective action. Indeed, Petitioners are not aware, despite repeated requests for event specific data to ascertain whether these so-called protocols (that are referenced in the GEAC Minutes (in the past)) and merely filed away are even valid, and that crop developers are strictly adhering to the requirement as a mandatory pre-requisite for field trials. The definitive statement on this is

by the 5-member TEC, which confirms a lack of rigour in the protocols that are being merely filed on paper.

- The LOD requirement to at least 0.01% for an event-specific protocol should be strictly adhered to; but the TEC has clearly pointed out in their report (page 33) that in at least three of the six approved events of Bt cotton, a reduced interpretation of the test has been knowingly accepted by the regulator in a form that is no longer event-specific. The report concludes that the LOD protocols of the following three Bt cotton events are not event specific and do not confirm to specificity of 0.01% as directed by the Supreme Court:
 - The LOD protocol to 0.01% for Event 1 (M/s JK Agrigenetics Pvt limited) is not an event-specific protocol and would detect the presence of Cry1Ac in other transgenic events as well.
 - The LOD protocol to 0.01% protocol for MLS9124 event (Metahelix) provided in the dossier is construct/gene specific for Cry IC (the reagents are designed to detect Cry IC) and cannot rigorously be said to be event-specific as another event harbouring the same Cry IC gene would also give a positive test.
 - The LOD data for GFM CryIA (Nath Seeds) showing an event-specific protocol has been presented, however it does not include the sensitivity at which it works.

There are several newspaper reports and information received under RTI which confirm Contempt of the Order of the 8 May 2007. Petitioners also provide a few examples from among several RTI replies received from the GEAC and PIOs. They cover a gamut of violations including lack of gene flow studies. In addition to the RTI proof already given

above (Annexure C8), the following 3 added examples provide adequate proof of comprehensive violations of the 8th May 2007 Order:

Example No 1: No contamination testing: Information received under RTI from the Maharana Pratap Univ. of Agriculture and Technology dated 4 April 2013 confirms at S No. 3 that “no contamination testing has been done” in field trials spanning 5 years.

Annexure C10 (Pg _____): Letter from the PIO of MPUAT dated 4 April 2013

Example No. 2: The DNA of 22 Sept 2015 is a scathing report from RTIs filed by the newspaper stating only 39 of 133 GM crop field trials were monitored during the 6 years from 2008 – 2014, *“busting the claims of the Indian government and scientists that the country has a robust regulatory mechanism to test genetically modified (GM) crops”*. It provides considerable detail of the lack of monitoring. With regard to Mustard DMH 11, it says: *“In 2014, three GM mustard trials of Delhi University were taken up – at two sites in Punjab and one in Delhi – during the rabi season. There are enough evidences that there were no post-harvesting fool-proof monitoring in these cases”* (these were BRL II or LSTs, Petitioner Clarification).

Annexure C11 (Pg _____): DNA, ‘Lie of the Land’: Only 39 of 133 crop field trials monitored in 6 years’ dated 22 September 2015.

Example No. 3: The Coalition letter provides details of specific and serious bio-safety violations of BRL II trials of Mustard DMH 11 of which photographic evidence also exists, dated 7 June 2015. The trial was conducted in RRS of Punjab Agriculture University, Bhatinda. *“The crop was not destroyed fully as prescribed. This is only one more example of the negligent way in which crop developers and regulators have been handling open air field trials, and this is not the first time we have brought such biosafety violations to your notice”*.

Annexure C12 (Pg _____): Coalition Letter of 16 June 2015 urging the GEAC to take action on serious bio-safety violations.

b. Contamination: Since the risk of contamination in LSTs/BRL II trials is very high and for mustard in particular, it is therefore, a regulatory requirement of rigorous risk assessment, also required and stressed in the 5-member unanimous TEC Report that independent, rigorous and comprehensive risk assessment protocols must have been completed including, crucially, long term, life time toxicity testing, and the GMO judged safe for health and the environment BEFORE it is given approval for environmental release in LSTs, (even assuming such action should be countenanced at all in any event, because GMOs are mutually exclusive --- they will contaminate non-GM crops with certainty under commercial conditions and possibly in LSTs as well, thereby negating the rights of farmers and consumers to grow non-GM crops. and eat Non-GM food respectively). Notwithstanding this issue, the above RTI (Annexure C8), and there are several others which say the same thing, states that the GEAC has still not received the safety dossier of mustard DMH 11. It is similarly so for Ht/Bt Corn as well. This is alarming. This state of fundamental non-regulation is an unacceptable, dangerous and unconscionable breach of bio-safety. Furthermore, Dr. Deepak Pental has stated that *“all the risks have already been assessed”* since *“people have been consuming canola oil (Canada) with similar genetic engineering since 1995”*. This is an anecdotal and unscientific statement being used to justify the lack of safety testing of DMH 11. It is also a thoroughly erroneous statement; Canola, in any case is rape not mustard (there is no equivalence). DMH 11 is Toxic. No safety testing has been done. Petitioners state unequivocally that since permission was given by the GEAC for LSTs of mustard DMH 11 and other crops

without scrutiny of its bio-safety, the Regulators, Promoters and Developers and Funders are collectively guilty of perjury, Contempt of Orders and worse, ie the criminal offence of exposing the country to a significant and irremediable biosecurity risk of the contamination of our food, foundation seed stock and the environment. The question then is, on what basis have large-scale field trials been approved by the GEAC for mustard, corn and Flex cotton and this too in the second line of GM technology ie herbicide tolerant crops, which are empirically proven to be unsustainable with significant health and environmental hazards? We are confronted with wholesale Contempt of Court and perjury. Petitioners amplify as follows:

i. There is a long and detailed history of evidence of contamination by GMOs of non-GM crops in this WP in several Submissions including a brief outline in Petitioners Affidavit of Sept 2015 (please see Point 19 vii). Serious contamination has occurred from even single, small-scale open field trials (confined field trials). Contamination is a function of frequency of trials, size of the plot, the GMO product characteristic and of course rigour, or in the case of India's Regulators, 'utter laxity' would be the more appropriate description. In so far as the latter is concerned, the Regulators and crop developers have a proven history of fundamental bio-safety violations even after the Oder of May 2007 which was made recognising the violations.

ii. Why large-scale field trials (LSTs) are in clear 'contempt of the Order of "no contamination": The Order of '*no contamination*' may only be applied to BRLI or small scale field trials, along with the specific other enabling measures of LOD and supervision by a nominated scientist, imposed by this Hon'ble Court to ensure compliance with its Order of '*no contamination*'. It is an infructuous order for application to BRL II or LSTs. This is the logic and the science. As stated in the

previous para, if a GMO crop is considered ready for LSTs, it means that it will usually be commercialised when these are over as LSTs are essentially for setting seed for commercial planting out. Commercial planting will in certainty, contaminate non-GM crops and other sexually compatible species. It is also why many countries that are centres of origin or diversity of crops, ban GMOs in at least such crops, like Mexico which has banned maize and even soy, the latter for its risks to bio-safety in a land of an enormously rich gene pool (the cradle of Maize diversity). This concern in the case of India was also acknowledged for Bt brinjal. Petitioners charged and filed Contempt proceedings at the time of LSTs of Bt brinjal and the moratorium was imposed by Shri Jairam for this main reason among others. The 5-member unanimous TEC Report also clearly recognises the certainty of contamination eventually, that there can be no co-existence between GM and Non GM crops, and has recommended a ban on GMOs in those crops for which India is a centre of origin or diversity. Mustard like brinjal is a crop of origin in India. There is a rich genetic pool of domestic and wild relatives.

iii. LSTs are conducted in large tracts of farmland/institutional lands which approximate near commercial scale. The high risk of contamination from LSTs is acknowledged. Setting seed which is the objective of these trials significantly exacerbates this risk. LSTs/BRL II take the potential for contamination to a different order of magnitude as compared to BRL I field trials. It is emphasised that contamination in even SINGLE confined (BRL I) field trials have occurred and there are proven examples worldwide.

iv. India's predominantly small- farm holdings are at great risk from contamination from large-scale trials. Many published studies use small

plots, thus often underestimating outcrossing rates that actually may occur in agricultural fields. And when the donor (GE) field is much larger than the receiving field (e.g. a small-holding non-GE mustard farmer), rates of contamination will also generally be higher than for two fields of equal size (Gurian Sherman evidence in Petitioners' Additional Affidavit). India is a centre of origin/diversity of mustard like brinjal. Mustard has the greatest potential for contamination of any crop because of very small, tiny seeds and sticky pollen which pollinators (bees and insects) love. It is mostly self-fertile, but still cross pollinates, or outcrosses, at rates close to 20 percent. Point to point seed dispersal by wind and insect-mediated pollen transfer by bees and insects (bees play a pre-dominant role in India in the pollination of mustard), means that cross pollination occurs over several km. Isolation distances employed during field trials to contain contamination especially in large-scale trials of mustard have no meaning.

These LST should not have been even contemplated leave alone conducted, given that the TEC report, which is under adjudication, bars HT crops and goes much further -- bars mustard, like Bt brinjal and rice, and other crops for which India is a centre of origin or diversity. It is worth repeating that the GEAC assurance that it will not conduct 'limited' small scale field trials of rice in Basmati areas plainly endorses/confirms these matters. It is a most serious matter that the GEAC is in brazen disregard of this Hon'ble Court's Orders concerning 'public access' , both enabling Orders of event specific LOD to at least 0.01% and 'named scientists' to oversee all aspects of the field trial being conducted and therefore, the Order of '*no contamination*'.

It is now accepted that containment measures EVEN OF SEVERAL MILES will not stop contamination. *In general, the US National*

Academy of Sciences, in a report in 2004, concludes that it is very difficult to ensure that gene flow will not occur.

7. There is a great chasm between what is required for proper GMO risk assessment & oversight, which prioritises bio-safety and upholds the National interest, and what is taking place in India. The regulatory vacuum constitutes deliberate malfeasance and fraud, putting us at infinite and irremediable and irreversible risk. Given that it was required by this Hon'ble Court to constitute a TEC, this state of affairs may perhaps be expected. The history of contempt in the matter of GMOs in this WP with regard to Bt brinjal was profoundly dismaying. The LSTs of Bt Brinjal were a *universal first* and that too in a country that is a Centre of Origin/the world's greatest diversity for this plant. These had never been contemplated before anywhere, for very sound reasons. It is for this reason that Peru has successfully banned any transgenic crop in native species including potato (*kindly see para 8 of I.A. No. 18 OF 2007*). It may be noted that India is also the Centre of Origin/diversity of rice, mustard and many other native species; an 'ecological hotspot', and one of 17 centres of megadiversity, worldwide. These facts impose on us urgent, rectifying action to safeguard India's crop biodiversity from irreversible contamination and harm from GM crops.

However, what we are now confronted with, in the specific matter of Mustard DMH 11 and also LSTs of corn and flex cotton all of them HT crops, is more corrupt and even sinister because we have brazen and repeated contempt including 'underground' approvals to keep the bio-safety fraud of these approvals secret and promote a clear agenda to promote GMOs into Indian Agriculture. The Regulators and our Institutions of GMO governance are 'serial offenders' without compunction.

8. Mustard DMH 11: The Conflict of Interest: (please see Additional Affidavit, point 17): The core problem is the proven and pernicious conflict of interest which has pervaded the entire system. In so far as Mustard DMH 11 is concerned, the Regulators, Promoters, and Developers have stitched up every angle to facilitate the commercialisation of this crop. This is what this interwoven tapestry of 'mutual interest' for mustard DMH 11 looks like: the NDDDB (National Dairy Development Board) is the 'partner developer' with the DBT (Department of Biotechnology of which the RCGM, the regulator, is part of) in this research project; the ICAR (the 'Mother' Institution of the National Research Centre, and India's premier agri-institution of the MoA), has historically been responsible for the supervision of these trials; As of 31st March 2015, the historical involvement of the ICAR (Indian Council of Agricultural Research) in this mustard from its beginnings, has become entrenched through the appointment of Dr S Ayyappan to the Board of Directors of the NDDDB. Dr Ayyappan is DG ICAR and Secy. Department of Agriculture and Education (DARE); and finally, add to this, the extraordinary conflict of interest through the appointment of Prof. Akshay Kumar Pradhan to the GEAC Committee, in order to 'fix' regulatory approvals concerning DMH 11. Prof Pradhan is of the Department of Genetics, University of Delhi, South Campus, who are the Developers of mustard DMH 11. This fully establishes the fact that our Regulators, Developers and Promoters (concerned Ministries of S & T, MoA and MoEF), are hand-in-glove, interested parties to the approvals given to mustard DMH 11 – BRL I, BRL II (LSTs) approvals and critically, plans for its commercialisation. It is also being justified as a public sector GMO which is equally outrageous. There is nothing of public interest in Mustard DMH 11 and for which it is

believed that the Crop developer Dr Pental holds patents. Petitioners accuse the Regulators, Developers and Promoters collectively of perjury, fraud and criminal offence for exposing India to a serious bio-security risk.

The significance of this charge is highlighted by the very recent initiative to try Monsanto of the crime of ECOCIDE. Called the 'Monsanto Tribunal', it will be held in The Hague (the Netherlands) from 12-16 October 2016. Members of the steering committee include the former UN special Rapporteur on the right to food and co-chair of the International Panel of Experts on Sustainable Food Systems (IPES-Food), Olivier de Schutter.

Annexure C13 (Pg _____):'International lawyers and NGOs launch tribunal to try Monsanto for "ecocide", GM Watch dated 3 December 2015.

Therefore, India is in great danger. Any further regulatory approval of any environmental release of a GMO, barring a status quo on Bt cotton, will be gravely detrimental to the health and safety of our citizenry and the non-negotiable sovereign issue of the protection of India's BIODIVERSITY. The only recourse is to eliminate the peril of an utterly delinquent regulatory system, through a full moratorium on GMOs including specific bans as required by the unanimous 5-member TEC report. It is also clear that the Paroda report must be struck off, (ref para 29 of the Additional Affidavit). We are well beyond the point when the Precautionary Principle must be applied, because the build-up of evidence of environmental and health hazards points to unremitting fraud in the regulation of GMOs (please see para 30 of Petitioners Additional Affidavit). This technology is a classic case of "*unforeseeable*

systemic ruin”, which means that we will know we are ruined after it happens. As they say, the dead cannot make a comeback.

PRAYER

It is therefore, prayed that this court may be pleased to:

- a) Initiate contempt proceedings against the alleged contemnors / respondents for wilfully and deliberately disobeying the orders of this Hon'ble Court dated 15th February 2007, 8th May, 2007, 8th April 2008 and 12th August 2008;
- b) Prohibit any commercial approval of any GMO, and specifically Mustard DMH 11;
- c) Prohibit all open field trials as an interim measure
- d) Direct the respondents to immediately restore public domain access and publish all data on the Ministry's official website, including full bio-safety dossiers of relevant GMO products including immediately, mustard DMH 11, as well as the Minutes of Meetings by both the RCGM and GEAC.
- e) Pass any other or further order/s as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

PETITIONER

THROUGH: PRASHANT BHUSHAN
COUNSEL FOR THE PETITIONER

NEW DELHI
DT. DECEMBER 2015