

**IN THE HON'BLE HIGH COURT OF PANJAB & HARYANA AT
CHANDIGARH**

C.W.P. No 1976 of 2010

(Public Interest Litigation)

Hemant Goswami

...Petitioner

Versus

Union of India & Ors.

...Respondents

SYNOPSIS

Genetically engineered and modified food and substances are known to have very harmful and deleterious effect on the health and lives of human and other life-forms; especially if proper multi-generation scientific tests are not undertaken and more-so if such genetically engineered and modified substance/crop involves a living organism of any life form, including bacteria, etc. Use of life-form in genetically engineered foods/ crops/ substances is banned in most of the countries across the globe. Handling of issues relating to genetically engineered food and substance require great care, deliberation and proper long-term scientific trials by properly qualified full time scientists, free from any kind of influence and corporate affiliations. Sufficient safeguards, proper oversight regulations and laws, etc. are a basic requirement for such unnatural intervention in the form of genetically engineered substances/ food/ crops. The Government of India from time-to-time notifies the Ministry and the Departments to undertake specialised jobs and work by allocating work among them by using the rules made in exercise

of the powers conferred by clause (3) of article 77 of the Constitution. Proper legislation is also enacted from time-to-time by the Parliament to ensure proper authority, sufficient safeguards, oversight and supremacy of the Parliament on issues which affect the citizens and in accordance with the mandate of Article 246 of the Constitution. Despite the fact that the "Environment (Protection) Act 1986," the business allocation rules and the Constitution of India did not allow the Ministry of Environment and Forests to deal with genetically engineered crops and substances; the Ministry of Environment still made a temporary committee called the "Genetic Engineering Approval Committee (GEAC)" which meets only once every 2-3 months for a few hour and started giving approval to genetically engineered food/crop and substance without proper health assessment on human beings and without any authority of law. Not only this, the temporary body, GEAC, which neither has any lawful authority or even budgetary allocation, or even sanctioned strength of staff, started regulating the release of genetically modified food, substance and ingredients without any further checks-and - balances and in contravention of food safety and other laws relating to safety of human health and propagation of agriculture and bio-safety norms; as is apparent from the notification S.O. 1519(E). Such unlawful, unscientific, negligent and malafide action by the Union goes against the fundamental right of life guaranteed under Article 21 and other laws and is liable to be set aside.

Place: Chandigarh

Date:- February 3, 2010

Hemant Goswami

Petitioner

**IN THE HON'BLE HIGH COURT OF PANJAB & HARYANA AT
CHANDIGARH**

C.W.P. No 1976 of 2010
(Public Interest Litigation)

Hemant Goswami, S/o Sh B. M. Goswami, Managing Trustee,
Citizens' Voice, C/o Burning Brain Society, #3, Glass office,
Shivalikview Business Arcade, Sector 17-E, Chandigarh 160017

.....Petitioner

Versus

1. Union of India through Secretary – Ministry of Environment and Forests, Paryavaran Bhavan, CGO Complex, Lodhi Road, New Delhi - 110 003
2. Union of India through Principal Secretary – Prime Minister of India, South Block, Raisina Hill, New Delhi, India-110 101
3. State of Punjab through Chief Secretary , State of Punjab, Punjab Secretariat, Sector 1, Chandigarh 160001
4. State of Haryana through Chief Secretary , State of Haryana, Haryana State Secretariat, Sector 1, Chandigarh 160001

.. Respondents

CIVIL WRIT PETITION under Articles 226/227 of Constitution of India for issuance of an Order, Writ or direction in the nature of **Writ of Mandamus** or

any other appropriate Writ be issued directing the respondent not to grant any approval to any genetically engineered/ modified product/ food/ item etc. during the pendency of this petition.

And

for issuance of an Order, Writ or direction in the nature of **Writ of Certiorari** or any other appropriate Writ quashing the "Rules for the manufacture, use, import, export & storage of hazardous micro organisms, genetically engineered organisms or cells, 1989" vide G.S.R. 1037(E) as modified and amended to enlarge and enhance its scope in 1993, 2005, 2006, etc., including S.O. 1519(E), and all other notifications, orders, guidelines and regulations issued to carry out the objective of the said rules or issued under it.

And

for issuance of Order, Writ or direction in the nature of **Writ of Certiorari** or any other appropriate Writ quashing the notification (if any other than as mentioned above) w.r.t. unlawful creation of the "Genetic Engineering Approval Committee (GEAC)."

And

for issuance of **Writ of Mandamus** for directing the respondent number 2 to ensure creation of a full time technical and scientific body consisting of scientists and technical experts after involving the

State Governments and deputing/appointing scientists from all the States in such a body to carry on the objectives of dealing as much objectives as required for dealing with the commercial and corporate request for approval of Genetic engineered products/crop/ ingredients/ plants, etc; keeping in view the international guidelines and conventions; and the constitutional safeguards; including the oversight mechanism and necessary condition of the neutrality of all scientists and officials engaged in such a body/work.

And

for issuance of **Writ of Mandamus** for directing the respondents to recall from the trials, market and environment all such seeds, food stuff, items, micro-organisms, etc. which are have been approved by "Genetic Engineering Approval Committee (GEAC)" since its inception.

And

for issuance of **Writ of Mandamus** for directing the respondents to issue proper allocation in its business rules and to ensure supremacy of the parliamentary control with regard to the issue of bio-engineered and genetically engineered/ modified articles/ substance / crop of any form.

And

for issuance of **Writ of Mandamus** for directing the respondents to take all precautions and proactively share with the public, at all times and completely all studies, risks involved, corporate involvement, joint projects, commercial interests and safeguard measures, conflict of interest declaration of all scientists and others involved in the process, genetic make-up and genetical structure and extend of genetical manipulation intended/existing in any genetically modified substance/item/ organism/food /crop/ etc. and to do all what might be necessary to protect public health, safety and the right to life as guaranteed in article 21 of the Constitution.

And

for issuance of **Writ of Mandamus** for directing the respondents to ensure that the State Governments are not bypassed and are made equal partners at all times in all decisions and activities relating to Agriculture and the issue of pest resistance of all crops whether done or intended to be carried by genetical engineering or otherwise.

And

for issuance of **Writ of Mandamus** for directing the respondents and/or other investigation agencies to properly investigate, fix responsibilities and take penal action for continued illegal and unlawful action by respondent number 1 and 2 , and by all the person and bodies involved in the unlawful act.

And

for issuance of Writ, order or direction in the nature of **Quo Warranto**, instructing the Ministry of Environment and Forest to produce all such notifications, order and/or any other lawful powers vested in the Ministry to carry on the objective of approving and allowing genetically engineered food/ crop/ items / substance / organisms, etc.

And

for issuance of any other order, this Hon'ble Court deems fit and proper in the circumstances of this case be also made.

MOST RESPECTFULLY SUBMITTED:

1. That the Petitioner is a social activist associated with many civil society organizations including many national and international organizations and actively engaged in public welfare. The petitioner is engaged in various social, public interest and civil rights activities concerning the youngsters and the public in general. Petitioner is also heading civil society organizations called "Burning Brain Society" and "Citizens' Voice." Many of the activities undertaken by the petitioner have produced positive results and have been widely recognized nationally and globally. The circumstances of the present case entitles the petitioner to invoke the extraordinary jurisdiction of this Hon'ble Court for not only protection of the fundamental and constitutional rights of the petitioner himself; but since the matter involves lives of millions more, so the petitioner has also approached this Hon'ble

court by way of public interest litigation, even though, this civil petition will stand on its own on account of violation of fundamental and constitutional rights of the petitioner.

BACKGROUND

2. That the Environment (Protection) Act, 1986 is a legislation which came as a result of India's participation in the United National Conference on the Human Environment held in Stockholm in June, 1972. The legislation was enacted to provide necessary measures to protect the environment from environment pollutant (As defined in Section 2(b)) and hazardous substance (as defined in Section 2(e)).
3. That the Environment (Protection) Act, 1986 does not, in any way, provides for controlling the property or quality of seeds, engaging and/or accessing work related to Genetic manipulation, approving or recommending any form, procedure, technique and/or technology related to genes, genome, genetic structure, bio-technology or any form of genetic or biotech manipulation.
4. That the Environment (Protection) Act, 1986 also does not provide for any kind of control on food labelling, or packaging, or for declaring food-safety, or for declaring safety of any article for human consumption, or for defining and/or controlling the declaration of ingredients on food products, and/or any other related matter.
5. That even under the "Government of India (Allocation of Business) Rules 1961," also the business related to bio-

technology, genetics, agriculture research, pesticide/insecticide research, etc. has not been assigned to the Ministry of Environment and Forestry.

6. The "Government of India (Allocation of Business) Rules 1961," has been made in exercise of the powers conferred by clause (3) of article 77 of the Constitution. The President of India has distributed the business of the Government of India under it. The work is transacted in the Ministries, Departments, Secretariats and Offices specified in the First Schedule to the rules (referred to as "departments"). The distribution of subjects among the departments is as specified in the Second Schedule to the rules. The relevant extracts from the Government of India (Allocation of Business) Rules 1961 are annexed as Annexure P-3.
7. That the Constitution of India under Article 246 defines the subject-matter of laws made by Parliament and by the Legislatures of States. The Seventh Schedule defines that the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule referred to as the "State List." Though notwithstanding the Parliament still has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List; subject to the Constitutional provisions. While Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule; the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule.

8. That List II of the VIIth Schedule of the Constitution contains; Public health and sanitation, as item number 6; Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases, as item number 14. List III of the VIIth Schedule of the Constitution contains; Adulteration of foodstuffs and other goods, as item number 18; Drugs and poisons, as item number 19; Trade and commerce in, and the production, supply and distribution of, (d) Raw cotton, whether ginned or unginned, and cotton seed, as item number 33(d).

CAUSE OF ACTION

9. That the Ministry of Environment and Forestry issued a notification on 5th December 1989 under "The Environment (Protection) Act, 1986" citing the provisions of Section 6, 7 and 25 of the "Environment (Protection) Act, (Relevant extracts annexed as P-4). The notification brought into existence the "Rules for the manufacture, use, import, export & storage of hazardous micro organisms, genetically engineered organisms or cells, 1989" vide G.S.R. 1037(E). The said notification of rules has been subsequently also modified and amended to enlarge and enhance its scope in 1993, 2005 and 2006. Rules are annexed as "Annexure P-1."
10. That the said rules brought into existence virtual organisations (with no real existence) called a "Genetic Engineering Approval Committee (GEAC)," under the "Institutional Biosafety Committee (IBSC)," "Recombinant DNA Advisory Committee (RDAC)" and "Review Committee on Genetic Manipulation (RCGM)," despite the fact that the scope of the

Environment (Protection) Act or the allocation of business or the Constitution did not in any way provide for formation or regulation of any such bodies.

11. That the Ministry of Environment also has no financial allocation or budget for the said committees, it also has no expertise and/or even relevant expert people to head such highly technical, though temporary bodies (wherein all members are by invitation for short duration of a few hours every month). This is apparent from checking the expertise of even the Member Secretary, Genetic Engineering Approval Committee (GEAC) – Cum - Director, MoEF, Dr. Ranjini Warriar who is having qualification and doctorate in Geology (and not Genetics, with no published work on Genetics or Bio-Technology). She obtained her Ph.D. in "Adsorption / Desorption Studies on Uptake of Heavy Metals by Sediment Components to assess the – Self Purification potential of Clays and Geo-polymers under various physico-chemical condition," and her Masters in, "Applied Earth Science." Her subject of expertise has no relation what so-ever to Genetics and/or Bio-Technology.

12. The "Rules for the manufacture, use, import, export & storage of hazardous micro organisms, genetically engineered organisms or cells, 1989" have been made operational despite the fact that the principal Act, namely, The Environment (Protection) Act, did not even had the remotest scope for such rules. The rules have been made in utter violation of "The Environment (Protection) Act, 1986," Article 246 of the "Constitution of India," "Government of India (Allocation of

Business) Rules 1961," and other relevant legislation enacted by the Parliament.

13. That on 23rd of August 2007, the Ministry of Environment and Forest issued another notification, S.O. 1519(E) under the "Environment (Protection) Act" vide which the Ministry allowed companies selling, distributing or supplying edible or other products, Food stuffs, ingredients in food stuffs and additives including processing aids which used "Genetically modified/engineered organisms or cells," for its production/manufacturing, to be sold and marketed without any labelling requirement or even without declaring about the same. The notification is annexed as Annexure P-2.

14. That packaging/labelling, health effect of foods, effect on human health, food safety, prevention of adulteration and toxicity, food quality and safety of food item does not fall under the preview of the Ministry of Environment, nor does it have the requisite resources, budget and technical qualification within the Ministry of Environment and Forests to handle such intricate, technical and important matters.

15. That Genetically modified and engineered food, articles, items and ingredients are known to be highly dangerous with untold and devastating effect on any life-form if not properly tested with multi-generation tests/evaluation/studies by regular experts of the specialised field in a neutral setting with no influence of the promoter of such products. Use of any life-form in such genetically engineered/modified food/articles/items also has the capacity to bring in untold miseries and fatal consequences on human race and all life-forms. The GEAC

provides an illegal backdoor and relied only on the inputs provided by the big corporate engaged in genetically engineered and modified food/ substance, etc. and/or studies conducted mainly with the help of scientists directly and/or indirectly sponsored by the corporate houses at one point of time or other. Even the invites to the virtual and temporary body of GEAC are not asked to declare the "Conflict of Interest" declaration. Between 1993 and till date GEAC illegally, without any authority and mandate, approved many trials and many crops consumed by human beings without the trials by the concerned department of health of Union government, which should have actually undertaken multi-generation animal and other long-term trials to assess the true long term impact on human beings. Especially after many independent research labs (not supported by the corporate) from across the world reported about adverse impact of many genetically engineered substance when tested over multi generation.

16. That India has also signed and ratified internationally binding multilateral treaties, the "Cartagena Protocol on Biosafety to The Convention on Biological Diversity" and the "Convention on Biological Diversity."

17. That the health risks of genetically engineered food have also been sufficiently explained in many publications and research papers, including "Genetic Roulette" by "Jeffrey M. Smith." The 320 page book bearing the ISBN: 81-85569-78-9 is annexed as 'Annexure P-5' along with this writ petition and the same be read as a part of the present writ w.r.t. the documented and scientific evidence of genetically

modified/engineered foods and as example of the ill-practice and the manipulations of the governments, legislators and regulators by big powerful corporate by playing to the greed of a few individuals.

18. That the big corporate are known to sponsor scientists, legislators and bureaucrats by way of research funds, foreign tours, scholarship, free conference scholarships, etc. to win them to their side and to write and report in their favour. Such trans national corporate are also known (with documented evidence) to lobby and influence the legislators and political functionaries in many ways. Because of this there is an international practice to take on record (and make public) a "Conflict of Interest" declaration from all scientists' writing papers, evaluating or reporting on research and testing. Such declarations have to mention all kind of affiliations, share-holding, sponsorships, research grants etc. from any corporate house and/or its agency/subsidiary either directly or indirectly. In case of the Genetic Engineering Approval Committee (GEAC), which though unlawful, has been granting approvals to various corporate is known to have many members who are known to have affiliations, share-holding, sponsorships, research grants etc. from a corporate house which has interest in getting its products cleared. The details of such members may be available with the respondents in their conflict of interest declarations. It is also noteworthy that there has been no conflict of interest declaration by the respondents or the scientists though they were duty bound to do so. The petitioner too can provide some of the available details, despite his limited resources, if the hon'ble court so desires.

19. That the Ministry of Environment and Forests has apparently exceeded its brief and gone out of the way to create illegally an agency and provide a back-door for the big multinational to enter the genetically engineered food market in India for its improperly tested products and which have been banned entry in many parts of Europe and elsewhere in the world. Ministry of Environment and Forests was the most non-technical and least relevant department of the Central Government to decide on the issues of Genetically engineered items and such arrangement suits the private corporate as it offers a path of least resistance to them.

20. That the Ministry of Environment and Forests has apparently also tried to bypass the Parliament of India and the democratic spirit of the republic by abusing a process of law and by manipulating an unrelated legislation to expose the whole population of India to risk. The Department of Science and Technology; and, Department of Health Research (Swasthya Anusandhan Vibhag) in Ministry of Health, which has the expertise to deal with such like issues, and which should have been running a full time organisation with complete, full time and exclusive strength for such an important issue has been manipulated and bypassed, as far as proper scientific assessment of private genetically engineered food/item by corporate sector business houses is concerned. The authority, supremacy and the rights of the State Governments (and the local farmers) on the issues relating to "Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases" despite the fact that such genetically engineered food/crops is said to be for agricultural

purposes with the sole objective to increase yield by primarily making them resistant to pests, insects and diseases.

21. That the respondents have already released in market many genetically modified food items like the cotton-seed from which cotton-seed oil is extracted without proper testing on human beings and without any labelling requirements of such food items. That a series of such like products are already in the pipe line to be released in an improper and unscientific manner by an agency which is otherwise vested with no authority in law to do so.

22. That the "Right to Life" of the petitioner and all other people, as guaranteed under Article 21 of the Constitution is urgently and seriously threatened by the use of such unlawful process, improper scientific testing procedure, and by using defective mechanism to release Genetically modified and engineered food products in the human food chain.

23. That such action by the respondents is also against the spirit of Article 47, 48 and 48-A of the Constitution of India.

LAW POINTS

24. That the law points involved in this Writ petition are as follows: -

- i. Whether the "Government of India (Allocation of Business) Rules 1961," allocates the business of genetically engineered products/ food-items/organisms, etc. to the Ministry of Environment and Forests, and whether the Ministry of Environment has any authority to deal with such

technical subject, like, approval of genetically engineered items/food/organisms.

- ii. Whether "Environment (Protection) Act, 1986" empowers the Ministry of environment and Forests in any way to deal in genetically engineered food items, organisms, etc.
- iii. Whether it was correct and lawful to form the "Genetic Engineering Approval Committee (GEAC)" and such like bodies under the Environment (Protection) Act, 1986.
- iv. Whether "Rules for the manufacture, use, import, export & storage of hazardous micro organisms, genetically engineered organisms or cells, 1989" vide G.S.R. 1037(E) are bad in law and illegal and should be quashed.
- v. Whether Ministry of Environment notification S.O. 1519(E) dated 23rd August 2007 which exempts food items, etc. of genetically engineered nature to be offloaded in the market without any check and balances of the Government of India and by bypassing the necessary checks and balances; illegal and without authority; is liable to be quashed.
- vi. Whether approval of genetically engineered food items and related products, etc. require proper and full-time technical staff drawn from all the State Governments which conducts full time multi-generation test trials and studies to gauge the

comprehensive and integrated effect on human beings and environment.

vii. Whether the Union Government had done a lawful action by by-passing the State Governments for an item mentioned in List II of the schedule and by by-passing the authority of the Parliament on citizen welfare.

viii. Whether the human safety, the safety of all life-forms, etc. can be relaxed in any manner which can have long-term effect on human beings and all life forms and which affects the right to life, as guaranteed under Article 21 of the Indian constitution.

25. That the petitioner has not filed any such Writ petition in this Hon'ble Court or Supreme Court of India.

26. That the matter is of vital general importance affecting the general public and the entire region, infact the entire country and requires intervention of this Hon'ble Court.

27. That it is a fit case in which this Hon'ble Court may be pleased to intervene and issue the necessary directions.

28. That the petitioner has no remedy of appeal or revision under the Rules or any other statutory efficacious remedy except approaching this Hon'ble Court under Article 226/227 of the Constitution of India.

RELIEF SOUGHT

29. It is, therefore, respectfully prayed;

- i. that an Order, Writ or direction in the nature of **Writ of Mandamus** or any other appropriate Writ be issued directing the respondent to not grant any approval to any genetically engineered/ modified product/ food/ item etc. during the pendency of this petition.
- ii. that an Order, Writ or direction in the nature of **Writ of Certiorari** or any other appropriate Writ quashing the "Rules for the manufacture, use, import, export & storage of hazardous micro organisms, genetically engineered organisms or cells, 1989" vide G.S.R. 1037(E) as modified and amended to enlarge and enhance its scope in 1993, 2005, 2006, etc., including S.O. 1519(E), and all other notifications, orders, guidelines and regulations issued to carry out the objective of the said rules or issued under it.
- iii. Order, Writ or direction in the nature of **Writ of Certiorari** or any other appropriate Writ quashing the notification (if any other than as mentioned in para ii above) w.r.t. unlawful creation of the "Genetic Engineering Approval Committee (GEAC)."
- iv. **Writ of Mandamus** be issued for directing the respondent number 2 to ensure creation of a full time technical and scientific body consisting of scientists and technical experts after involving the State Governments and deputing/appointing scientists from all the States in such a body to carry on the objectives of dealing as much objectives as

required for dealing with the commercial and corporate request for approval of Genetic engineered products/crop/ ingredients/ plants, etc; keeping in view the international guidelines and conventions; and the constitutional safeguards; including the oversight mechanism and necessary condition of the neutrality of all scientists and officials engaged in such a body/work.

- v. **Writ of Mandamus** be issued for directing the respondents to recall from the trials, market and environment all such seeds, food stuff, items, micro-organisms, etc. which are have been approved by "Genetic Engineering Approval Committee (GEAC)" since its inception.
- vi. **Writ of Mandamus** be issued for directing the respondents to issue proper allocation in its business rules and to ensure supremacy of the parliamentary control with regard to the issue of bio-engineered and genetically engineered/ modified articles/ substance / crop of any form.
- vii. **Writ of Mandamus** be issued for directing the respondents to take all precautions and proactively share with the public, at all times and completely all studies, risks involved, corporate involvement, joint projects, commercial interests and safeguard measures, conflict of interest declaration of all scientists and others involved in the process, genetic make-up and genetical structure and extend of

genetical manipulation intended/ existing in any genetically modified substance/ item / organism / food / crop / etc. and to do all what might be necessary to protect the right to life as guaranteed in article 21 of the Constitution.

- viii. **Writ of Mandamus** be issued for directing the respondents to ensure that the State Governments are not bypassed and are made equal partners at all times in all decisions and activities relating to Agriculture and the issue of pest resistance of all crops whether done or intended to be carried by genetical engineering or otherwise.
- ix. **Writ of Mandamus** be issued for directing the respondents and/or other investigation agencies to properly investigate, fix responsibilities and take penal action for continued illegal and unlawful action by respondent number 1 and 2 and by all the person and bodies involved in the unlawful act.
- x. Writ, order or direction in the nature of **Quo Warranto** be issued, directing the Ministry of Environment and Forest to show all such notifications, order and/or any other lawful powers vested in the Ministry to carry on the objective of approving and allowing genetically engineered food/ crop/ items / substance / organisms, etc.
- xi. Any other order, this Hon'ble Court deems fit and proper in the circumstances of this case be also made.

- xii. Filing of certified and fair typed copies of annexure P1 to P-5 may kindly be dispensed with, and permission to file typed and fair legible Photostat copies and the book in its present form be granted.
- xiii. The present writ petition may kindly be allowed with costs.

Place:- Chandigarh

Date:- February 3, 2010

PETITIONER

(In Person)

VERIFICATION:-

Verified that the contents of paras No. 1 to 23 and 25 to 28 are true and correct to my knowledge, whereas, contents in para 24 and 29 are legal points raised and the relief sought respectively and based on legal advice which I believe to be true and correct. No part of it is false and nothing has been concealed therein.

Place:- Chandigarh

Date:- February 3, 2010

PETITIONER

(In Person)