



सत्यमेव जयते



National Biodiversity Authority

Proceedings of the 58th Authority Meeting [Virtual Mode]

held on 17th July 2020

The 58th Authority meeting of the National Biodiversity Authority (NBA) was held on 17th July, 2020 in 'virtual mode' under the Chairmanship of Dr.V.B. Mathur, Chairman, National Biodiversity Authority. The list of participants is placed as **Annexure-I**.

2. At the outset, Dr.V.B. Mathur, Chairperson, NBA welcomed the Members and highlighted the principles of Access and Benefit Sharing (ABS) and also mentioned that there were certain issues in the implementation of the ABS, which had to be suitably addressed. Similarly, the issues relating to definitions of the Act also need to be addressed in the amendments to the Biological Diversity Act, 2002. He added that amendments to the Biological Diversity Rules, 2004 would be finalized at the first instance and amendments to the BD Act, 2002 would be taken up soon after the completion of the BD Rules. He also mentioned that Chairman of the Expert Committee Shri A.K.Goyal, IFS (Retd.) Former Special Secretary, Ministry of Panchayati Raj; Co-chairman of the Expert Committee, Shri Achalender Reddy, IFS, Principal Chief Conservator of Forests, Arunachal Pradesh and Shri T. Rabikumar, IFS., Former Secretary, NBA have been invited for this meeting as special invitees for briefing the members about the proposed amendments.

3. Shri. J. Justin Mohan, Secretary NBA presented the agenda items for the meeting.

58.01: Confirmation of the Proceedings of the 56th Authority meeting
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Pursuant to the decision taken in 57th Authority meeting held on 07th July, 2020, comments of Dr.J.L.N. Sastry, Chief Executive officer, NMPB, Dr. Alka Rao, Principal Scientist, IMTECH, and Shri. Chaitra, Director, Aarohi have been incorporated appropriately in the draft proceedings and the revised draft Proceedings of the 56th Authority meeting of the NBA held on 23rd and 30th June 2020 have been circulated to the members vide email dated 09th July, 2020 for seeking their comments.

2. Members noted that as there were no comments on the draft (revised) proceedings, Authority confirmed the revised Proceedings of the 56th Authority meeting.

Decision: The Authority confirmed the revised Proceedings of the 56th Authority meeting.

Action: Secretary, NBA.

58.02: Comments offered by Members on the proposed amendments to the Biological Diversity Rules, 2004, circulated to the members on 9th July 2020

The Chairman, NBA invited Dr. Alka Rao to present her comments/views on the proposed amendments to the Biological Diversity Rules, 2004. Dr. Alka Rao made a power point presentation about the current situation on the conservation and access of Indian microorganisms. She also mentioned that Form-C issued by NBA has a clause that the International repository should inform the person accessing the microorganism to take the required approvals from NBA, which has become an impediment to research activities by scientists. According to Dr. Alka Rao, this is not in line with International protocol.

2. She narrated the problems faced by microbial research community to publish research publications and depositing their novel strains in international repositories. She informed that few international repositories are refusing to accept microorganisms from India as they are not able to freely distribute the same to those who are interested to access the same for research. She put forth two remedies (a) To bring changes in section 19 of the BD Rules that will allow all those who have been given approval for accessing of biological resources including microorganisms for research purpose to freely transfer their research results abroad based on the agreement signed between the NBA and the researcher at the time of applying for research. (b) To delegate the powers of NBA to Indian repositories for monitoring the movement of microorganisms deposited by Indian microbiologists in foreign repositories and also to receive and process applications pertaining to research on microorganisms.

3. The Chairman, NBA, then invited Dr. J. L. N. Sastry, CEO – NMPB to speak on issues faced by the AYUSH Industries. Dr. Sastry made a power point presentation where he stated that AYUSH Industry is already paying 5% GST for their products and additional tax in the form of ABS is a burden to the sector. He also stated that there should not be any disparity between section 3(2) and section 7 entity and that all AYUSH products should be exempted under the Act by declaring them as Normally Traded as Commodities. He also informed that AYUSH industry is based on medicinal plants cultivated by farmers and hence they should be completely exempted from the Act. He further wanted that research activities by all companies should be exempted

to promote research activities. He suggested that NBA may delegate its functions to National Medicinal Plant Board (NMPB) for the purpose of processing applications and deciding on issues pertaining to ABS. He further added that based on his vast experience with the private sector, he has a proposal for a buy back guarantee scheme wherein the top companies of AYUSH would directly pay the farmers, which would be a better mechanism than the existing ABS provisions of the BD Act.

4. Dr. J. L. N. Sastry further mentioned that considering the AYUSH is a heritage of India and therefore the Ministry of AYUSH has recommended to exempt AYUSH sector from ABS during the discussions with the Secretary, MoEFCC which was agreed upon by the Secretary. In response, Dr. Sujit Kumar Bajpayee, Joint Secretary, MoEFCC categorically objected to this statement of Dr. Sastry and informed that there was no such decision taken by the Secretary, MOEFCC during the informal meeting referred by Dr. Sastry.

5. While offering her comments, Dr. R. Jaya, IAS., Joint Secretary, Ministry of Tribal Affairs (MoTA) informed that her Ministry was not in agreement with the comments of Dr. Sastry seeking complete exemption from ABS for the AYUSH sector as it is primarily dealing with the bio resources and traditional knowledge of the tribal communities which is being repackaged and marketed. According to her, the ABS mechanism should be in place so that the tribal communities are duly compensated for their efforts to the cause of conservation and sustainable use of the biological resources.

6. Dr. Jaya highlighted the fact that the provisions of the BD Act should in line with the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, so that the rights of the tribal communities are adequately safeguarded. She also suggested that the Community Forest Rights Committees should also be consulted before accessing biological resources and traditional knowledge. She suggested that BMCs, CRFCs and Gram Sabhas that are existing at the local body level should be synchronized holistically while implementing ABS mechanism that would benefit the tribal community.

7. After hearing the views from the Members of the Authority, the Chairman, NBA requested the Secretary, NBA to brief the Authority on the existing legal framework. Shri. Justin Mohan, Secretary, NBA made a power point presentation in which he responded to the comments and views expressed by the members both during the meeting and received by the NBA Secretariat in writing.

8. With regard to the proposal given by Dr. J. L. N. Sastry *viz on Buy Back Guarantee Scheme in lieu of the ABS mechanism*, the Secretary, NBA informed that the AYUSH industries consume major portion of raw material (85%) from wild sources. The concept of ABS is within the existing legal framework, with a view to ensure that there is a fair and equitable sharing of benefits arising out of the end use of biological resources between the providers and users. The ABS amount is an incentive for those communities who conserve the biological resources and make them available on a sustainable basis. Buy back guarantee scheme proposed by NMPB is not a substitute for globally negotiated principles of ABS. There was no rationale for replacing the existing ABS mechanism with a buy back guarantee scheme proposed by the member. The proposal of buy back guarantee scheme is only ensuring the fair price to the farmers and not ensuring the ABS mechanism.

9. For the proposal of NMPB to exempt the medicinal plants that are under large scale commercial cultivation as 'Normally Traded as Commodities" for the benefit of the farmers, Secretary, NBA stated that a proposal may be forwarded to NBA for consideration to include such medicinal plants under NTAC. He further mentioned that section 3(2) is mainly to differentiate the categories of companies for sharing of responsibilities between NBA and SBB. He then reasoned why a section 3 (2) of the BD Act cannot be amended on the lines of the Company's Act by stating that India has sovereign rights over its biological resources and therefore has the right to regulate the same as part of the commitment given by 196 countries including India in the CBD and the Nagoya Protocol. He also mentioned that such regulations helps to curtail the threat to bio piracy of our precious biological resources and associated traditional knowledge. Regulation of companies having foreign participation is a precautionary principle which is followed by all countries party to the CBD. With respect to the request of Dr. Sastry to amend the provisions of section 3(2) of the Act to categorize companies who have more than 50% foreign participation in its share capital as foreign

companies, Shri. Justin Mohan informed the Authority that the BD Act regulates different entities including individuals, traders, researchers, institutions, partnership firms etc apart from companies. The objectives for enacting the Companies Act and those of the BD Act are different and hence categorization of companies on the lines of the BD Act is not feasible and will not serve the purpose since the ABS obligations and the procedures for obtaining approvals remain the same for all companies.

10. The Secretary NBA informed that irrespective of whether an entity is section 3(2) or not, the ABS obligations remain the same and it is in the interest of the section 3(2) entities to have their approvals accorded by the NBA through a single window clearance for ease of doing business. He also explained that it is an added advantage for a Section 3(2) entity as they would get their Internationally Recognized Certificates of Compliance (IRCC) issued by NBA as a certificate having global recognition for obtaining and use of biological resources in a lawful manner, which is likely to promote their business abroad.

11. Secretary, NBA informed the members about the legal position on the comments given by Dr. Alka Rao. He informed that microorganisms fall under the category of biological resources and the provisions of the BD Act. NBA, being the Competent National Authority to the Nagoya Protocol, it has to perform its functions as national checkpoint for the movement of microorganisms from India for research or commercial utilization in order to prevent bio piracy. He stated that Rule 19 does not apply for Indian scientists who are otherwise free to conduct research in microorganisms. This rule is applicable only for a section 3 (2) entity who has been accorded approval under Form-I for accessing biological resources including microorganisms for research to transfer the same to any third party.

12. Shri. Justin Mohan informed that it was only based on the request made by the microbiologists, NBA has been issuing 'Form C' as part of NBA's facilitating function to enable microbiologists to get due credit for their findings by depositing the same in international repositories. NBA has not been an impediment for accessing these microorganisms. In fact, once the microbiologists transfer the microorganisms, they just inform NBA in Form C and there is no approval process involved. Besides permitting Indian microbiologists to transfer the microorganisms abroad, the Form C

merely informs the managers of the repository to intimate the accessor of these microorganisms to obtain the required approval from the NBA. This is in line with article 17(iv) of the Nagoya Protocol. Till date 183 novel microorganisms from India have been deposited in different international repositories. He informed that unless there is a permission from the National Competent Authority recognized by the CBD, International repositories would not accept biological resources like microorganisms. He further added that there are more than 200 international repositories and if any repository does not accept Indian microorganisms on the ground of obtaining approvals from NBA, a complaint from the microbiologist can be referred to the National Focal Point of the concerned country for appropriate action.

13. Secretary, NBA explained that if third party transfer of resources / traditional knowledge abroad is allowed without approval of NBA, it would cause serious threat to the sovereign rights of the country over its biological resources and could lead to bio piracy. He further informed that issues faced by microbiologists for hassle free deposition of microbial strains in international repositories can be managed administratively, if NBA receives a proposal. Bringing this into the Act or Rules to accord freedom to all those approvals given for conducting research on biological resources to freely transfer the research results abroad would affect the genuine interests of the country. Shri. Justin Mohan informed that NBA is a statutory body and has been recognized as the National Competent Authority for according approvals by the CBD. He informed the authority that there may be a dip in the royalty to be received by the Indian microbiologists for their novel microbial strains in lieu of the ABS and this should be accepted in the national interest as this amount would be ploughed back for strengthening the conservation in the field.

14. With respect to the suggestions from Shri. M.S. Chaitra for reducing the time for obtaining the approvals, Secretary, NBA informed that the Expert Committee has recommended to reduce the time for according approvals by half. The period of 90 days proposed includes holidays and time taken by SBBs to give their consent. He informed that this is an upper time limit and NBA would be striving to accord approvals at the earliest. With respect to the suggestion for replacing the word validation by ratification of PBRs prepared by BMCs, the Secretary informed that Rule 22 (10) of

the BD Rules mandates validation of PBRs by BMCs and preparation of PBRs would be supported by technical support group.

15. Dr. Unnat Pandit requested to provide clarification on the steps taken by NBA for ease of doing business. Secretary, NBA informed that an online software was launched by NBA in November 2017 for filing applications through online mode. NBA has authorized the Chairperson to dispose of applications recommended by the Expert Committee on ABS since 2018. NBA Secretariat has issued guidelines to streamline the processing of applications as suggested by an Expert Committee in March 2020. Secretary, NBA also informed that action is being taken to install e-office software through NIC and this would greatly improve the efficiency and functioning of the NBA.

16. Dr. R.Jaya, MoTA informed that traditional knowledge and the rights of the tribal communities recognized under the provisions of the FR Act needs to be adequately safeguarded in the BD Act, Rules and ABS Guidelines. Secretary, NBA informed that the BD Act has provisions for safeguarding the biological resources and rights held by the tribal communities are also to be protected. He also mentioned that the objectives of the Forest Rights Act fully complement with the objectives of the BD Act. Section 59 clearly states that BD Act shall be in addition to and not in derogation of the provisions of other laws, relating to forests and wildlife.

17. The members deliberated on the presentation made by Secretary, NBA. Dr. Alka Rao expressed that NBA should take steps and get into agreements with different repositories outside India to facilitate and ease the deposition of microbes by the Indian microbiologists and further transfer the microorganisms for conducting research as per International instruments. Dr. Unnat Pandit informed that Section 17(1) of the Biological Diversity Rules, 2004 overrides Article 2(c) of the Nagoya Protocol as there is no mention of monetary gain for transferring results of research relating to biological resources obtained from India to foreign nationals, companies and Non-Resident Indians. He also mentioned that Rules are implemented differently from what has been mentioned in the Rules.

18. Dr. Kutty and Dr. Sujit Kumar Bajpayee stated that members were not coming to any consensus and suggested that comments offered by members may be referred

to the Expert Committee for examination. The Chairman, NBA agreed to the views of the members and informed that the comments given by the members shall be referred to the Expert Committee for immediate consideration. Dr. Jaya, MoTA informed that she did not have a power point presentation and therefore requested that the Expert Committee should hear the views of MOTA to address their concerns.

Decision:

1. Authority decided that comments offered by the members of the Authority on the draft amendments to the Biological Diversity Rules, 2004 may be referred to the Expert Committee constituted for this purpose for examination and response.
2. Members decided that next meeting of the Authority meeting would be convened on 07th August, 2020 at 10 AM.

Action: Secretary, NBA

58.03: Any other matter(s) with the permission of Chair
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The meeting ended with vote of thanks from and to the Chair.

Annexure -1

List of Participants

S.no	Official Members
1	Dr V.B. Mathur , Chairman, National Biodiversity Authority, Chennai
2	Dr. Sujit Kumar Bajpayee , Joint Secretary, Ministry of Environment, Forest and Climate Change, New Delhi
3	Dr.J.L.N. Shastry Chief Executive Officer, National Medicinal Plant Board, New Delhi
4	Mrs R. Jaya, IAS , Joint Secretary, Ministry of Tribal Affairs, New Delhi
5	Dr. Manoj Kumar Modi , Scientist 'E', Department of Biotechnology, New Delhi <i>(Represented Dr.Aslam, Advisor, DBT)</i>
6	Dr. R.K. Singh, Additional Director General (Commercial crops), Division of Crop Science, Krishi Bhavan, New Delhi 110 001 <i>(Represented Dr.Raj Tilak, DDG (Crops), ICAR)</i>
7	Dr. Sanjay Kumar , Director, Institute of Himalayan Bioresource Technology
	Non-official Members
8	Dr. M.M. Kutty, IAS (Retd.) , 14/6, Officers Flat, Tilak Marg, New Delhi.
9	Dr. Unnat P. Pandit , Professor of IP, Innovation and Entrepreneurship, IPMC, JNU, New Delhi
10	Dr. Alka Rao , Principal Scientist, CSIR- Institute of Microbial Technology (CSIR-IMTECH), Chandigarh
	Secretary to the Authority
11	Shri. J. Justin Mohan, IFS , Secretary, National Biodiversity Authority, Chennai
	Special Invitees
12	Shri A.K.Goyal IFS (Retd) , Former Special Secretary, Ministry of Panchayati Raj, New Delhi. <i>(Chair of the Expert committee to examine BD Act, 2002, BD Rules, 2004,etc.)</i>
13	Shri C. Achalender Reddy, IFS , Principal Chief Conservator of Forests, Arunachal Pradesh. <i>(Co-Chair of the Expert committee to examine BD Act, 2002, BD Rules, 2004,etc.)</i>
14	Shri T. Rabikumar IFS , Additional Principal Chief Conservator of Forests, Office of the Pr. Chief Conservator of Forests, Forest Complex, Sheikh Bagh, Near Lal Chowk, Srinagar, Jammu & Kashmir. <i>(Member of the Expert committee to examine BD Act, 2002, BD Rules, 2004,etc.)</i>