BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

Appeal No. 61 to 63 2021 (SZ)
(Through Video Conference)

IN THE MATTER OF

DCM Shriram Limited,
2nd Floor World Mark-1,
Aerocity, New Delhi- 110037.
Rep by its Authorized Signatory Mr. B.K. Khurana.

...Appellant(s)
(In all Cases)

Versus

The National Biodiveristy Authority,
Rep by its Member Secretary,
5th Floor, TICEL Park, CSIR Road,
Taramani, Chennai- 600113.

...Respondent(s)
(In all Cases)

(In All Cases)
For Appellant(s): Mr. Sathish Parasaran, Senior Advocate along with Mr. Adarsh Ramanujan and Mr. T. Sai Krishnan.

For Respondent(s): Mr. R. Sankarnrayanan, ASGI along with Mr. M.R. Gokul Krishnan for R1.

Judgment Reserved on: 5th December, 2022.

Judgment Pronounced on: 30th May, 2023.

CORAM:
HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER
HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER

JUDGMENT

Delivered by **Smt. Justice Pushpa Sathyanarayana*, Judicial Member***

1. The above appeals involving important question of interpretation of the application of the Biological Diversity Act, 2002 (herein referred as BD Act) which would have a significant impact on the agriculture sector. The above appeals are directed against a

common impugned order passed by the sole respondent, National Biodiversity Authority (NBA) under Section 3 read with Section 21 of the BD Act.

2. The appellant is, M/s DCM Shriram Ltd, India, a public listed company incorporated under the laws of India. The appellant filed three applications pursuant to the Office Memorandum dated 10.09.2018 issued under Section 48 of the BD Act. As large number of entities were not fully aware of the provisions of the Act but were desirous of complying with the same, the Central Government directed the BDA to provide an opportunity to all such entities which are required to obtain prior approval of the Authority for undertaking activities as specified under Sections 3, 4 and 6 of the Act. The NBA would consider the applications post-facto, which would be decided on merits, even though the access of biological resources was in the past. Accordingly, the appellant had availed the amnesty scheme of the MoEF&CC by filing three separate Form-I applications for the access of watermelon, cotton and bitter gourd pertaining to research. In this regard, the appellant also had received two access and benefits sharing agreement (ABS) agreements for each of the Form-I application i.e., one agreement is for research and the other is for commercial utilisation.

3. After hearing, the NBA had (i) directed the appellant to pay the ABS fixed by NBA under the existing provisions of the Act, (ii) irrespective of the outcome of the research work, the company is liable to pay ABS for accessing biological resources for research activities upfront as per the existing rates fixed by the authority, (iii) directed the appellant to inform the areas from where these

biological resources were accessed and the activities for which they would use the ABS amount as per Section 27(2) of the Act.

4. Aggrieved by the above orders the appellant has preferred the above appeals contending that the impugned order has not given any reason for arriving at such a conclusion for the arguments advanced on behalf of the appellant. The questions that arise for determination in these appeals are:

(i) Whether the appellant company undertaking "Conventional Breeding" is liable to take prior approval under Section 3(1) of the BD Act?

(ii) Whether the ABS imposed by the respondent is in accordance with law?

5. Mankind is living in a competitive relationship with nature. In the pursuit of comfort, progress and security, the humankind has exercised tremendous stress on the environment. The advancement of science and technology increased population resulting in indiscriminate utilisation of natural resources etc., and abandoning of traditional practices to preserve and conserve natural resources by the people have resulted in environmental degradation. Long before the ecological concerns became a global phenomenon, there existed customary and community practices evolved by the ancestors to protect the environment. India and Indians were first amongst other countries to show their reverence to natural elements with religious beliefs. The most valuable natural resources were protected and conserved. The manusmriti, which is one of the legal texts of ancient India, there were

provisions of self-punishment for damaging the system of bio-diversity. Kautilya's Arthashastra also prescribed punishments for causing pollution and un-civic sanitation. Thirukural is a classic Tamil language text which is written more than 2000 years ago in couplet No. 322 stated,

"பகுத்துண்டு பல்லுயிர் ஓம்புதல் நூலோர்

தொகுத்தவற்றுள் எல்லாந் தலை".

Which means "share the food and serve all lives". This is the law of all the laws. T is explained that the chief of all the virtues which the authors have summed up is the partaking of food that has been shared with other and the preservation of the manifold life of other creatures.

6. Biodiversity is about life and in terms of significance and value of life and life forms. It's globally, nationally and locally those with life and life forms appearing in a wide variety of forms all over are considered as commons or the common property that belong to the entire humanity as a whole. Therefore, a State would have a complete right over those resources including the biological resources and at the local level the communities of people who are closest to it become the stakeholders having a claim over them. In other words biodiversity is significant in meeting the food, security needs, the livelihood requirements of the people and to meet health demands. The loss of the resources through human intervention has resulted in loss of several species of plants and animal varieties. The destructive developmental activities in addition to the natural process of evolution are the reasons. When new technologies are developed for our comfort based on the

education, same should be implemented without disturbing our nature/environment. Unplanned and unscientific ways of dealing with resources have led to the loss of resources forever. This has been elevated to the status of piracy of international dimensions. Every development enhanced the quality of human life but at the same time it degraded our environment and paved way for depletion of natural resources.

7. In this regard, the international legal arrangement under the Convention of Biological Diversity (CBD) gave the frame work at the global level. The first protocol is the Cartagena Protocol, 2000 which is the Bio-safety protocol. The said convention referred to cooperation in research and Bio-technology and equity in sharing of benefits on mutually agreed terms. This CBD provided for conservation and sustainable use and designed to give effect to this particular provision of CBD as to require equity in sharing of benefits of research and in evolving effective safeguards to ensure bio-safety aspects in particular. Thus under this CBD a bio-safety clearing house was set up to ensure the parties to exchange information in the manner as prescribed there.

8. The second protocol is the Nagoya Protocol for access and benefit sharing (ABS). One of its objectives is the fair and equitable sharing of benefits that are derived out of the use of genetic resources. So the basic idea behind this is if anyone wants to access the resource or the traditions, practice and knowledge associated with it, it cannot be taken free. Secondly, if one takes it, it is on certain terms, mutually agreeable to the parties so that equity is done. Thus, the benefits that are derived is shared and is

not appropriated by the one who derives the benefit to the extreme to the one who provides it.

9. Generally biological diversity has three types which include genetic diversity, species diversity and ecosystem diversity. Genetic diversity refers to the variation in the genetic constitution within the species or within the population. For example genetic diversity of barley, rice, maize etc., shows variation in the same species. Due to the genetic diversity, species are able to show adaption and respond to the environmental changes. It is also helpful in evolution and speciation. Species diversity is a biological diversity at the basic level. These species functions individually or in a group in the food web. Species diversity is measured by species richness and relative abundance. Ecosystem diversity consists of both living and non-living components and their interaction with each other. Ecosystem like mountains, deserts, grassland, mangrove etc., show diversity. The activities of the appellant involves access to species diversity watermelon, cotton and bitter gourd.

10. As stated supra the present appeals arise from a common impugned order passed by the respondent, NBA under Section 3 read with 21 of the BD Act. The impugned order was passed by the respondent directed the appellants to execute a total of six agreements, two agreements per application *interalia* imposing monetary sharing obligation on the appellants under Section 19 of the BD Act. The said impugned order is assailed by the appellant on various grounds.

Office Memorandum dated 10.09.2018

11. Admittedly, the appellant had made the applications pursuant to the office memorandum issued by the MoEF&CC to regularise the activities of the appellant since 2004 without any statutory approvals from the respondent. Hence, the appellant filed an application in Form-I for accessing the biological resources under the office memorandum issued by the MoEF&CC to regularise their past activities. The said office memorandum is intended to facilitate companies who are not fully aware of the Act but are desirous of complying the same by providing an opportunity to all such entities who are required to obtain approval of the authority for undertaking activities specified under Sections 3, 4 and 6 of the Act.

Exemption

12. Now it is contended by the Learned Counsel for the appellant that the appellant is exempted from seeking prior approval and it ought not to have filed the applications in the first place. Merely because the appellant had filed an application, it cannot be stated that it is not exempted. The applications itself were filed only in doubt as per the office memorandum. If the appellant need not require any approval then the authority should have returned the application and ought not to have proceeded with the application and passed the order against the appellant.

13. Regulation 17 of Guidelines on Access to Biological Resources and Associated Knowledge and Benefit Sharing Regulations, 2014 provides for exemption of certain activities or persons from getting approval of NBA or SBB. Regulation 17(d) exempts conventional breeding or traditional practices to the extent that the accessed

biological resources are used in agriculture, horticulture, poultry dairy farming, animal husbandry or bee-keeping in India. The appellant, herein, is not involved in any of the above activities. On the contrary, they are involved in research leading to commercial utilization and also create market at the global level. Hence, Regulation 17(d) is not applicable to the appellant and its contention in this regard also cannot be accepted.

14. The exemption is provided only when the exempted biological resources are normally traded as a commodities subject to the terms enumerated in the notes given in the notification table thereto. Admittedly, the appellant did not access the biological resource for trade as a matter of common practice but they were used in research activities with commercial motive. The objective of the BD Act is not to exempt such activities as any such exemptions contrary to the objectives would lead to depletion of the biological resources and hamper the conservation of the precious biodiversity in India. The above referred notifications only facilitate trade of biological resources which are normally traded as commodities and if any of these items are to be used for any other purpose, the relevant provisions of the Act will apply. The appellant having undertaken research activities and falling under Section 3(2) of the Act, it is governed by the BD Act. The appellant being a seed company that has undertaken 'Conventional breeding' would be slotted under the concept of 'Research' which also requires approval under Section 3(1).

15. In this regard, it is worthwhile to refer to the Office Memorandum dated 10.09.2018 which requires direction under Section 48 of the

BD Act to the NBA for enhancing implementation of the Act. The office memorandum specifically states that a number of entities were not fully aware of the provisions of the Act but were desirous of complying with the same. Hence in order to provide an opportunity to all such entities which were required to obtain approval of the authority for undertaking the activities as specified in Section 3, 4 and 6 of the Act, the above office memorandum was issued.

16. In Para-4 of the office memorandum it is stated that as per the powers vested under Section 48 of the Act, the Central Government directs that all such cases where prior approval was required but a person/entity who has not obtained such approvals shall be heard by the authority which shall then pass appropriate orders with respect to acts that may have occurred in the past taking into scientific evidence as well as any damage that might have been caused in furtherance to the powers available to the authority under Section 18 of the Act. The Office Memorandum was a positive action initiated by MoEF&CC with an intention to regularise all past violations which were without necessary approvals and not to condone the said violations. The authority shall consider all such cases on the basis of the merit and shall ensure that only those cases are granted approval for future activities which would have otherwise been approved in normal course.

17. According to the appellant it was under belief that it need not require an approval, however, applied under the above office memorandum. If the NBA believed that an approval is not required

for the appellant it could have returned the application. The Learned ASG pointed out that all such regularisation of the past activities are done on the basis of merits considering the quantity of biological resources accessed, the nature of the species accessed, adverse impact on the environment due to the access, genetic erosion or impact caused to the ecosystem, adverse impact on the livelihood of the local people and the access that are contrary to the national interest or the international agreement entered into by India etc.

18. It is further stated that in consultation with the concerned local bodies and after collecting information from the appellants only necessary approvals are granted. The applications are filed by the appellant pursuant to the office memorandum were decided by the specially constituted scientific committee under Section 13 of the BD Act and placed before the authority for final decision. Accordingly, the authority decided the contravention cases and accorded approvals after imposing conditions in the form of "upfront case" as a measure for conservation and sustainable use of biological resources. The appellant had voluntarily applied before the NBA admitting their past violations based on which the orders impugned are passed. Therefore, the appellant cannot have any grievance particularly when they moved this Tribunal after a period of two years of the decision of the Expert Committee on access and benefit sharing. To be noted is that the appeals are filed by the appellant without an endorsement "without prejudice".

19. In this regard the respondent, NBA had decided in its 49th Authority meeting that in case Form-I application where approval

is sought to do research of bio-resource obtained from India by industries, an upfront payment as per the approved guidelines may be included while communicating the approval. A person or entity covered under Section 3(2) cannot obtain any biological resource occurring in India or knowledge associated thereto for research or commercial utilisation or for bio-survey and bio-utilisation without obtaining 'prior approval' from NBA under Section 3 of the Act. Those persons covered under Section 7 have to give prior intimation to the State Bio-diversity Board while obtaining any biological resource of commercial utilisation or for bio-survey. Accordingly, all approval to access are given in the form of written agreement duly signed by the authority and the appellant as per the Rule 14(5) of the Biodiversity Rules, 2014. Having filed application relating to the past unapproved access of biological resources for 14 years and after consideration of the application by NBA the appellant has no right to file an appeal before this forum challenging the conditions imposed by NBA. The voluntary filing of the applications by the appellant is only owning to the past violations. Having accessed the biological resources without approval for over 14 years, the appeals by them cannot be maintained.

Appellant's capacity to pay:

20. The next point urged by the appellant is that the BDA cannot decide the application on the applicant's capacity to pay. It is alleged that merely because the appellant is a large commercial player that undertakes R&D towards commercialization, the highest rate of benefit sharing should be levied. The levy of benefit

sharing component cannot be based on the size of the applicant or the capacity to pay or the commercial motive. An effort was made by the Learned Counsel for the appellant to point out that the size of the appellant's company capacity to pay or commercial motives would became irrelevant if there is no prior approval obligation. He also argued that the R&D Division of the appellant is also irrelevant as the decided factor is whether "conventional breeding" amounts to "research". Hence the upfront payment demanded is incorrect. However, this said argument is countenanced by the respondent stating that the BDA has decided to levy the highest rate of benefit sharing component as per the existing guidelines for applications approved under the office memorandum dated 10.09.2018 and 18.03.2019 pertaining to violations cases for Form-I application and to collect the upfront payment as per the guidelines issued by the authority for research applications. The Learned ASG Submitted that taking into consideration the period of access i.e. from 2004 to 2018 for 14 years without approval, the quantity of biological resource that was accessed (220 varieties of bitter gourd) it was imposed an upfront payment and other conditions for approval. According to the respondents, the imposition of upfront payment was in consonance with ABS Regulations. The guidelines for upfront fee was approved by the 46th Authority Meeting and revised by the 50th Authority meeting. Further, it was decided to regularise the violations by fixing an upfront payment as the applicant had already reaped the benefit out of such biological resources by conducting a series of research activities. The BDA decided to levy the highest rate of benefit sharing component as per existing guidelines for application approved under Office Memorandum dated 10.09.2018 and 18.03.2019 pertaining to

violation cases and to collect the upfront payment as per the guidelines issued by the authority for research applications. Therefore, the levy of upfront payment for research activities by Section 3(2) mentioned persons and entities is in accordance with fair and equitable sharing of benefits and the ABS amount shall be utilised for the cause of conservation and to promote research activities as decided by the authority. Hence the above issue is also decided against the appellant.

Conventional Breeding with commercial motive:

21. The next issue relates to the conventional breeding with commercial motive which requires prior approval under Section 3(1) of the BD Act. The stand of the appellant throughout is that it was only accessing the biological resources for the purpose of 'Conventional Breeding'. According to the appellant, it is involved in crossing and selection of different varieties within the same species in order to obtain a new or improved variety with desired characteristics. In this regard interpretation of Section 2(f) of the BD Act becomes relevant which reads as follows:

> *"....2(f) "commercial utilisation" means end uses of biological resources for commercial utilisation such as drugs, industrial enzymes, food flavours, fragrance, cosmetics, emulsifiers, oleoresins, colours, extracts and genes used for improving crops and livestock through genetic intervention, but does not include conventional breeding or traditional practices in use in any agriculture, horticulture, poultry, dairy farming, animal husbandry or bee keeping;"*

22. The Learned Counsel appearing for the appellant would state that the above definition excludes convention breeding done even by the seed companies whether for commercial gain or otherwise. It is contended that the impugned order does not discuss about the conventional breeding but merely states that the company is

accessing biological resources with the commercial motive. As there is no real reasoning for reaching this conclusion and there is no discussion of any of the interpretative principle involved, the order impugned is incorrect and is very cryptic. It was submitted that the reasoning of NBA in having a difference between a company and a farmer and assumption being that only the companies will have a commercial motive and not farmers is incorrect. According to the appellant, even the farmers/cultivators may undertake conventional breeding but for a commercial motive. This principle is also recognised in Protection of Plant Varieties and Farmers Rights Act, 2001 which allows the farmers to seek plant variety registration through a separate category called farmer's variety. The Learned Counsel also invited the attention to Section 14 (c) read with Section 2(I) of the Protection of Plant Varieties and Farmers Rights Act, 2001 which reads as follows:

> "14 (c) which is a farmers' variety."
>
> 2(I) "essentially derived variety", in respect of a variety (the initial variety), shall be said to be essentially derived from such initial variety when it—
>
> (i) is predominantly derived from such initial variety, or from a variety that itself is predominantly derived from such initial variety, while retaining the expression of the essential characteristics that results from the genotype or combination of genotype of such initial variety;
> (ii) is clearly distinguishable from such initial variety; and
> (iii) conforms (except for the differences which result from the act of derivation) to such initial variety in the expression of the essential characteristics that result from the genotype or combination of genotype of such initial variety;

23. In this context, the mandate and jurisdiction for according approvals under the BD Act and Plant Varieties Act are different. Section 6(3) of BD Act which relates to applications for intellectual property "shall not apply to any person making an application for any right under any law relating to protection of plant varieties enacted by Parliament". Even though the BD Act is harmoniously

applied in respect of Plant Variety Act, all activities pertaining to access to biological resources for research, bio-survey and bio-utilisation leading to commercial utilisation are governed only under the BD Act. The rights provided under Protection of Plant Varieties and Farmers Rights Act, 2001 are limited only in according breeder rights to farmers and breeders who have legally accessed such biological resources enunciated under the BD Act.

24. As the purpose of any type of breeding is to develop plant varieties, even a farmer may be interested in developing a plant variety that has a higher yield. Even an individual farmer would go for improved characteristics which ultimately supports only a commercial gain. Therefore, be it an individual farmer or a company like the appellant, the ultimate goal is only for commercial motive because of the improved variety leads to the better gains. It is argued that every activity that involves a commercial motive automatically does not come within the scope of commercial utilisation under Section 2(f). Reliance was placed on Para-9 of **Union of India Vs. Hansoli Devi and Ors, (2002) 7 SCC 273**. Based on the above principle, it was contended further that Section 2(f) excludes conventional breeding and that the said exemption is neutral to anybody who is performing such conventional breeding dehors the fact that whether it is done with commercial motive or without a commercial motive. It was also demonstrated by the Learned Counsel that plant breeding process involves human intervention to develop/breed new plant varieties with improved characteristics. The plant breeding can be done in conventional and non-conventional methods. Conventional breeding has been employed in various ways by people all over the

globe for hundreds and thousands of years. The conventional breeding has two fundamental steps i.e. (i) to generate a breeding population that is highly variable for traits, (ii) involving selection among the segregating progeny. Thus, conventional breeding is essentially the normal sexual process but it is manipulated through human choice towards production of crops with characteristics closely suitable to human needs. These specialised crops are fully domesticated having diverged from their ancestors.

25. Whereas genetic engineering on the other hand employs a very different method to produce improved crops. Instead of relying on the several recombination genetic engineering preserves the integrity of the parental genotype inserting only a small piece of information that controls a specific trait.

26. Conventional method involves sexual crossing and selection of plants to develop/breed new plant varieties with improved characteristics without introducing an alien gene. Non-conventional process involves the interaction of an alien gene in order to develop/improve plant varieties through intervention in the genetic level. This is done in the lab. Hence the dividing line between the conventional breeding and the non-conventional breeding is the introduction of an alien gene in the plant. The appellant makes it clear that it is not accessing material to introduce any alien gene. It is only for conventional breeding. When the term conventional breeding is accepted in scientific term and it is completely agnostic to who performs the activity, it would be completely artificial to restrict the meaning of the term conventional breeding only to farmers/cultivators and not to companies.

27. In Section 2(f), commercial utilisation is defined as "*end users of a biological resource for commercial utilisation*". It is submitted that it is not any commercial utilisation of the biological resource but only an "*end user*" of a biological resource that gets covered. The end user is only the consumer or the user of the given product. An attempt was made to distinguish the term end use. It is pointed that the list of examples given in the affirmative part of the definition i.e., drugs, industrial enzymes, food flavours, fragrance, cosmetics, emulsifiers, oleoresins, colours, extracts and the genes used for improving crops and livestock through genetic intervention. These examples are non-living artificial products that are intended for end use by a consumer and signify a point of no return from the perspective of the biological resource in question i.e., a biological resource is being converted into an artificial product. Thus, it is argued that there is a clear difference between what is intended to be covered in commercial utilisation and what is not i.e., not all activities involving commerce are covered in the affirmative part of the definition. Similarly, the affirmative part of the definition is also totally agnostic to who is undertaking the activity. Hence, it is argued that the conventional breeding which is understood in the science of plant breeding is exempt irrespective of whether there is a commercial motive or whether it is a company or an individual farmer.

28. The Learned Counsel appearing for the appellant placed reliance on **2002 (7) SCC 273, Union of India vs. Hansoli Devi and Ors**., a case arising out of the Land Acquisition Act, 1984.

> "9. Before we embark upon an inquiry as to what would be the correct interpretation of Section 28-A, we think it appropriate to

bear in mind certain basic principles of interpretation of statute. The rule stated by Tindal, CJ in Sussex Peerage case, still holds the field. The aforesaid rule is to the effect:

> "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the lawgiver."

It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In Kirkness v. John Hudson & Co. Ltd, Lord Reid pointed out as to what is the meaning of "ambiguous' and held that:

> "provision is not ambiguous merely because it contains a word which in different context is capable of different meanings and it would be hard to find anywhere a sentence of any length which does not contain such a word. A provision is, in my judgment, ambiguous only if it contains a word or phrase which in that particular context is capable of having more than one meaning."

It is no doubt true that if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the court may look into the purpose for which the statute has been brought and would try to give a meaning, which would adhere to the purpose of the statute. Patanjali Sastri, CJ in the case of Aswini Kumar Ghose v. Arabinda Bose had held that it is not a sound principle of construction to brush aside words in a statute as being inapposite surplus age, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In Quebec Railway, Light Heat and Power Co. v. Vandray, it had been observed that the Legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. Similarly, it is not permissible to add words to a statute which are not there unless on a literal construction being given a part of the statute becomes meaningless. But before any words are read to repair an omission in the Act, it should be possible to state with certainty that these words would have been inserted by the draftsman and approved by the legislature had their attention been drawn to the omission before the Bill had passed into a law. At times, the intention of the legislature is found to be clear but the unskilfulness of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language and in such a situation, it may be permissible for the court to reject the surplus words, so as to make the statute effective. Bearing in mind the aforesaid principle, let us now examine the provisions of the Section 28-A of the Act, to answer the questions referred to us by the Bench of the two learned Judges. It is no doubt true that the object of Section 28-A of the Act was to confer a right of making a reference, who might have not made a reference earlier under Section 18 and, therefore, ordinarily when a person makes a reference under Section 18 but that was dismissed on the ground of delay, he would not get the right of Section 28-A of the Land Acquisition Act when some other person makes a reference and the reference is answered. But the Parliament having enacted Section 28-A, as a beneficial provision, it would cause great injustice if a literal interpretation is given to the expression "had not made an application to the Collector under Section 18" in Section 28-A of the Act. The aforesaid expression would mean that if the land-owner has made an application for reference under Section 18 and that reference is entertained and answered. In other words, it may not be permissible for a land owner to make a reference and get it answered and then subsequently make another application when some other person gets the reference answered and obtains a

higher amount. In fact in Pradeep Kumari's case the three learned Judges, while enumerating the conditions to be satisfied, whereafter an application under Section 28-A can be moved, had categorically stated -"the person moving the application did not make an application to the Collector under Section 18". The expression "did not make an application", as observed by this Court, would mean, did not make an effective application which had been entertained by making the reference and the reference was answered. When an application under Section 18 is not entertained on the ground of limitation, the same not fructifying into any reference, then that would not tantamount to an effective application and consequently the rights of such applicant emanating from some other reference being answered to move an application under Section 28-A cannot be denied. We, accordingly answer question No. l(a) by holding that the dismissal of an application seeking reference under Section 18 on the ground of delay would tantamount to not filing an application within the meaning of Section 28-A of the Land Acquisition Act, 1894."

29. Strengthened by the above quote, the Learned Counsel for the appellant contended that the exemption of 'Conventional Breeding' is adding words to the statute such as non commercial motive and individual farmer. In this regard it was pointedly argued that:

(1) the term "Conventional Breeding" is neutral to all who perform such conventional breeding irrespective of the fact that it is for a commercial or non-commercial motive.

(2) the dividing line between conventional breeding and non-conventional breeding is the introduction of alien gene into a plant. As the applications of the appellants are only for conventional breeding, it is agnostic to who perform the activity. Thus it is urged that it's artificial to now restrict the meaning of the terms "Conventional Breeding" only to farmer/cultivator.

(3) The Learned Counsel also drew a distinction of the term "end user" who is the ultimate consumer of any given product. The examples given in the definition are non-living artificial products that are intended for end users. The intended use may be in a living thing but what is covered in the last illustration are extracts and genes which are non-living things obtained through industrial means. Hence it is submitted that there is a distinction between

what is intended to be covered in "Commercial Utilisation" and what is not.

30. Man's manipulation of plants and animals is neither new nor unique in the world of biology and these process cannot be called as unnatural. In fact, the creatures that the man has modified to suit his need by enlisting the natural processes are distinctly changed in genetics, appearance and behaviour from their ancestors. The bottom line is that essentially all agricultural organisms in the world are only man-made and in this context the term 'natural' ceases to have its biological meaning while genetically engineering food crops are thoughtfully developed and carefully tested, the question that stands out is, why is it necessary for breeders to use the new technology when conventional methods have been so successful. The conventional methods are relatively inexpensive, technically simple and free of government regulations.

31. In this regard, it is worthwhile to advert to Form-I (Rule14) for access to biological resources and associated traditional knowledge submitted by the appellant dated 10.12.2018. It is admitted by the appellant that the access is requested including the type of extent of research commercial use being derived and expected to be derived from it that, some seed material for use as a check for in-house trails, some used material for plant breeding and some seed material for use as a check for in-house trials and for plant breeding and that research and development of the accessed biological resources are conducted at R&D Farms of Bioseed Research India, Mokila, Telengana, India.

32. Section 7 and its proviso was also emphasised to drive the point that conventional breeding is not limited only to farmers and it is exempt as an activity per se. The appellant was only reiterating that even farmers have commercial motive in selling their produce and earn income and therefore the appellant's company also should be exempted. The appellant, who is a trading business conglomerate indulging in agricultural business including development of hybrid seeds and packaging and supply of the seeds of the hybrid in domestic and international market cannot equate itself with a farmer whose livelihood is farming.

33. The appellant is admittedly a Section 3(2) company. The main objective of imposing restrictions t Section 3(2) entities and activities under Section 6 is to check activities relating to bio-piracy. The BD Act, 2002 is enacted to protect traditional knowledge and biological resources and to regularise the unethical or unlawful appropriation of biological or genetic materials. The company like the appellant are accessing countless biological resources for conducting research and allied activities which are regulated by the respondent to conserve the valuable biological diversity. The BDA itself exempts conventional breeding from the purview of the Act as per Section 2(f) and Regulation 17(d) of the 2014 guidelines. The above two provisions make it abundantly clear that the exemption is only for conventional breeding or traditional practices to the extent the accessed biological resources are used in agriculture, horticulture, poultry, dairy farming, animal husbandry or beekeeping in India. The companies like that of the appellant who produce seeds through conventional breeding

methods with a commercial intent cannot claim this exemption and certainly cannot be entitled for exemption.

34. Next, the appellant referred to the Nagoya protocol. Both CBD and Nagoya protocol referred to n paragraphs 6 and 7 which did not intend the concept of fair and equitable benefit sharing applicable to conventional breeding. The objective of the Nagoya Protocol is the fair and equitable sharing of the benefit arising from the utilisation of genetic resources. Article 2(c) defines, "utilisation of genetic resources to conduct research means to conduct research and development on the genetic and/or biochemical composition of genetic resources, including through the application of biotechnology as defined in Article 2 of the convention."

Referring to the above, it was argued that the international conventions are concerned with examining/isolating/extracting the internal composition of a biological resource.

35. Article 15 of the Nagoya Protocol refers to the compliance with domestic legislation or regulatory requirements on access and benefit sharing. Article 15 states that "parties shall, as far as possible and as appropriate, cooperate in cases of alleged violation of domestic access and benefit sharing legislation or regulatory requirements referred to in Para-1".

36. It was argued on behalf of the appellant that (i) as conventional breeding only contributes to increase in bio-diversity and not reducing it. Therefore, imposing a prior approval on conventional breeding done by seed companies even for commercial gain would

defeat the objectives of the Act, (ii) it was also submitted that is illogical to regulate the access of traded commodities to develop new varieties, (iii) as the end goal of the appellant for conventional breeding is the delivery of new/improved varieties of seeds for the farmers to cultivate. As the objective itself is to deliver a benefit in the form of new and improved plant varieties for farmers, prior approval should not be imposed.

37. Food and Agriculture Organization (FAO) while emphasizing the need for biological diversity has expressed concern that *"The Plant Genetic Diversity used in agriculture - the crops that feed us and their wild relatives - is being lost at an alarming rate. Just nine crops (wheat, rice, maize, barley, sorghum/millet, potato, sweet potato/yam, sugarcane and soybean) account for over 75 percent of the plant kingdom's contribution to human dietary energy."* It is also observed that though none of the world's staple crops is likely to disappear, yet they, too, are threatened - not by the loss of a single crop species such as wheat or rice, but by the loss of diversity within species. Primary reason attributed for the agriculture vanishing heritage is that commercial, uniform varieties are replacing traditional ones. When farmers abandon native land races to plant new varieties, the traditional ones die out. The introduction, beginning in the 1950s, of high-yielding grains developed by international crop breeding institutions led to the Green Revolution, which though have resulted in large increase in yields but also resulted in decrease in crop diversity. Therefore, there is a need for us to protect the native and natural

biodiversity, even while taking advantages of the plant breeding techniques for food security. [1]

38. The appellant is a seed company and seeds are of immense biological and economical importance. Seeds play a critical role in keeping our environment healthy by providing a safe haven for birds, bees, butterflies and bugs. Admittedly, humans have developed thousands of different varieties of food crops. The seed diversity allows farmers control over their food system, builds resilience against climate change besides protecting the biodiversity. Maintaining a diversity of plant varieties helps a large range of genetic traits in the food. Open pollinated seeds are locally adopted and access to them is generally free from corporate control. These seeds help farmers to save, develop and sell through the local market and in informal trade system. Farmers can also get good income from breeding and selling seeds. Whereas commercial seeds may make farmers crop vulnerable to diseases and tends to encourage only mono-cropping. Besides, growing diverse number of plants enables the farmers to harvest food at different times throughout the year.

39. Another reason for imposing the prior approval is the dependency of the farmers on the seed companies that sell them. However, the seed companies are protected by the patent laws at the expense of the farmers. The patent laws are a threat to farmers if the seeds are used without their permission, as they would be liable for prosecution. The originality of the individual farmer is

[1] "Biodiversity to nurture people" – FAO (https://www.fao.org/3/v1430e/V1430E04.htm)

taken away once the commercial seeds are used and they are forced to be committed to the seed companies from buying seeds till marketing the produce. In other words, the seed companies decrease the bio-diversity of crops which the farmers have access to. The farmers would then dread to do their farming in their own way as breeding crops according to changing needs becomes impossible.

40. The arguments of the appellants therefore amount to challenging the vires of the Act which cannot be done in these appeals. Having accepted the provisions and submitted applications under the Act, the appellant would be estopped from making such an argument after the adverse orders were passed.

PPVFR Act, 2001

41. Finally, our attention was invited to Section 216 of the Protection of Plant Varieties and Farmers Rights Act, 2001 (Plant Varieties Act) which also provides for a parallel benefit sharing system under Section 26. The appellant as breeder can register the plant variety under Section 14 and 15. Further, explaining the Plant Varieties Act, it was submitted that the said Act already created a fully self contained system. The same concept of sharing benefit of the variety developed is applied by the NBA which would be a double jeopardy. This aspect was made clear by the Learned Additional Solicitor General that Section 6(3) of the BD Act makes it clear that the provisions of this section relating to application for intellectual property shall not apply to any person making an application for any rights under any law relating to the protection of the plant varieties enacted by the Parliament. The BD Act is

harmoniously applied in respect of Plant Varieties Act though all activities pertaining to access to biological resources for research bio-survey and bio-utilisation leading to commercial utilisation are governed only under the BD Act. Section 18(4) defines the power of NBA on behalf of the Central Government to take any measure necessary to oppose grant of IPR in any Country outside India on any biological resource or associated knowledge obtained from India.

42. To be noted is that it is not the case of the appellant that it registered under the Protection of Plant Varieties and Farmers Rights Act, 2001 to claim such exemption and also has not produced any such document or certificate as proof of the same.

43. Section 7 requires prior intimation to the State Biodiversity Board for commercial utilisation. However, the proviso to Section 7 exempts the farmers from providing such prior intimation. Section 7 reads as follows:

> *"7. Prior intimation to State Biodiversity Board for obtaining biological resource for certain purposes.- No person, who is a citizen of India or a body corporate, association or organisation which is registered in India, shall obtain any biological resource for commercial utilisation, or bio-survey and bio-utilisation for commercial utilisation except after giving prior intimation to the State Biodiversity Board concerned.*
> *Provided that the provisions of this Section shall not apply to the local people and communities of the area, including growers and cultivators of biodiversity and vaids and hakims, who have been practicing indigenous medicine."*

44. Section 7 speaks of prior intimation to be given not to the NBA but to the State Biodiversity Board for obtaining biological resource for certain purposes. It is pointed out that if the conventional breeding exemption is limited only to farmers and the cultivators, they will be exempted from the concept of commercial utilisation which

would make Section 7 redundant. According to the appellant, it is incorrect to create an exemption for the farmers and local cultivators in Section 7 if such farmers are already exempted under Section 2(f). This argument in our view cannot be sustained here when he makes a challenge to the provision of law.

45. The next point is regarding the Regulation 17 of the ABS Regulations which reads as follows:

> *"17. Certain activities or persons exempted from approval of NBA or SBB. —*
> *The following activities or persons shall not require approval of the NBA or SBB, namely:--*
> *(a) Indian citizens or entities accessing biological resources and/ or associated knowledge, occurring in or obtained from India, for the purposes of research or bio-survey and bio-utilization for research in India;*
> *(b) collaborative research projects, involving the transfer or exchange of biological resources or related information, if such collaborative research projects have been approved by the concerned Ministry Department of the State or Central Government and conform to the policy guidelines issued by the Central Government for such collaborative research projects;*
> *(c) local people and communities of the area, including growers and cultivators of biological resources, and vaids and hakims, practising indigenous medicine, except for obtaining intellectual property rights;*
> *(d) accessing biological resources for conventional breeding or traditional practices in use in any agriculture, horticulture, poultry, dairy farming, animal husbandry or bee keeping, in India;*
> *(e) publication of research papers or dissemination of knowledge, in any seminar or workshop, if such publication is in conformity with the guidelines issued by the Central Government from time to time;*
> *(f) accessing value added products, which are products containing portions or extracts of plants and animals in unrecognizable and physically inseparable form; and*
> *(g) biological resources, normally traded as commodities notified by the Central Government under section 40 of the Act.*

46. The reading of the above regulation goes to show that Regulation 17 (a) and (c) are person specific applicable to only certain persons. Whereas, Regulation (b), (d) and (e) are activity specific but neutral to all. The appellant claims to be coming under Regulation 17(d).

47. In fine, the appellant was making an attempt to state that conventional breeding is exempt as an activity *per se* and this is agnostic to the person undertaking such activity, whether it is motivated by commercial gains or not.

48. Comparative trials being undertaken by the appellant would amount to research as per Section 2 (m) of the Biological Diversity Act, 2002, as comparative trials involve the study or systematic investigation of biological resources. Conventional breeding is the art and science of changing and improving plants genetically to the interest of human being. Conventional plant breeding involves improvement of cultivars using conservative tools for manipulating plant genome within the natural genetic boundaries of the species. Mendel's work in genetics ushered in the scientific age of plant breeding. Admittedly, the appellant is doing research activities which is confirmed by their communication dated 28.07.2020, 02.09.2020 and 13.01.2021. The appellant who is involved in research leading to commercial utilization and also creation of market at the global level cannot claim exemption from the purview of the Act, as such a claim cannot be sustained as per the provisions of the Act.

49. The communication dated 28.07.2020 refers to the Form-I application- NBA/Tech Appl/9/3090/19/20-21/965 which was filed for obtaining biological resource (BR) Momordica spp for research purposes and not for commercial utilisation. Therefore, according to our understanding the ABS agreement for commercial utilisation of the said BR is not applicable to the said Form-I application. Similar communications dated 02.09.2020 and 13.01.2021 are

also pressed into service to state that the appellants are involved in research on the said biological resources to find out whether any useful product or technology of high economic value could be developed from these biological resources. Hence, the contention of the appellant that it is not for conventional breeding is unsustainable.

50. The respondent also relied on two guidelines notification under Section 40 vide S.O 1352 (E) dated 07.04.2016 and S.O 3533 (E) dated 07.11.2018 covering 421 plant species biological resources as National Technical Advisory Committee (NTAC) exempting them from the ABS provisions of BD Act when traded as commodity. The relevant portion of the notification reads as follows:

> *"**Note-1** of the notification dated 7th April, 2016 makes it clear that this notification of biological resources as NTACs is only to facilitate trade of items and if any of these items is intended to be used for any other purpose (i.e. for research, bio-survey and bio- utilisation or patenting) the relevant provisions of the aforesaid Act (i.e. BD Act, 2002) shall apply.*
> ***Note-2** provides that "the products that are derived from the items listed and traded as a matter of common practice shall also be treated as normally traded as commodities and in such cases, the onus of substantiation that the said products fall within common practice, shall lie on the claimant."*

Penal Statute:

51. The appellant, herein, had voluntarily submitted applications seeking approvals for different varieties of biological resources accessed since 2004. The approvals for accessing more than 200 varieties are for research purpose. Since, the applications were filed for past access the same was placed before the Expert Committee. The Expert Committee taking note of the office memorandum of MoEF&CC recommended to consider the applications for approval for research study already conducted

subject to the upfront payment. Based on the recommendations NBA had sent the draft agreement to the appellant granting 03 (three) years time from the date of signing the agreement. The Expert Committee also recommended that in case of commercialization the appellant shall pay higher benefit sharing of 0.5% under Regulation 4 of ABS Regulations.

52. Therefore, the apprehension of the appellant that BDA is a penal statute and breach of Section 3(1) is a criminal offence under Section 5 is misplaced. In this regard, the Learned Counsel appearing for appellant submitted that the term "commercial utilisation" is the deciding factor for defining the offence as per Section 3(1) of the BD Act, 2002. According to him while constraining a term when there is more than one view possible, the provisions is to be interpreted in favour of the appellant and placed his reliance in **G. N. Verma Vs. State of Jharkhand and Ors., (2014) 4 SCC 282** which reads as follows:

> *24. The law is well settled by a series of decisions beginning with the Constitution Bench decision in W.H. King v. Republic of India that when a statute creates an offence and imposes a penalty of fine and imprisonment, the words of the section must be strictly construed in favour of the subject. This view has been consistently adopted by this Court over the last more than sixty years.*

53. It was submitted that Section 2(f) is capable of having two views i.e.(i) exempt all conventional breeding whether commercial or otherwise (ii) to exempt only conventional breeding alone by farmers. This aspect is already dealt with in the foregoing paragraphs and there is no ambiguity that the appellant is doing the conventional breeding for commercial utilisation. Therefore, this argument is also liable to be rejected.

Unilateral imposition of benefit sharing:

54. The appellant assailed the impugned order as unilateral imposition instead of mutual agreement. As already discussed supra, the applications for approvals were filed voluntarily under violation category which were considered based on the office memorandum issued by MoEF&CC. It is after negotiation with the appellant, company the order was passed. It was argued that the NBA did not give any room for negotiation on the terms of benefit sharing. Being a regulatory body to regulate the access to biological resources, the benefit sharing should be on mutually agreed terms. The dispute here is regarding the past violations i.e., the appellant had accessed the biological resources while the BD Act, 2002 was in force. As such an action is in violation of the Act, an opportunity was given to regularise the unauthorised access of the biological resource since the applications were made under office memorandum fixing of upfront payment is in accordance with the decision of the authority which is in accordance with Regulation 4 of the ABS guidelines 2014.

Impugned order is passed without jurisdiction:

55. An objection was raised by the appellant that the impugned order was passed by the Secretary, NAA, who has no adjudicatory powers. The power to determine benefit sharing is vested only in the NBA under Section 21 of BD Act. In this regard, once again the appellant is reminded that it did not apply for approvals in the regular course but under the office memorandum issued by the Ministry for regularising the past violations. There were hundreds of applications received by NBA. Therefore, an Expert Committee was constituted exclusively to scrutinise these applications on

scientific basis and on merits. Accordingly, the appellant's applications were also scrutinised and ABS fixed based on the quantity of access, period of access, purpose, nature of entity etc. the appellant's applications were already placed before the Expert Committee and before the Authority. The appellant did not accept the decision and was resisting and avoiding the payment of ABS.

56. In this regard the Learned ASG placed reliance in **Federation of Railway Officers Association and Ors. Vs. UOI, (2003) 4 SCC 289** as follows:

> "...on matters affecting policy and requiring technical expertise Court could leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of the power, the Court will not interfere with such matters."

57. In **Tata Iron & Steel Co. Ltd. Vs. Union of India and Anr, (1996) 9 SCC 709**, the Hon'ble Supreme Court held that:

> ".....From the scheme of the Act it is clear that the Central Government is vested with discretion to determine the policy regarding the grant or renewal of leases. On matters affecting policy and those that require technical expertise, we have shown deference to, and followed the recommendations of, the Committee which is more qualified to address these issues".

58. In **Akhil Bharat Goseva Sangh Vs. State of A.P & others, (2006) 4 SCC 162**, the Supreme Court held that:

> "....it is now well-settled by various decisions of this Court that the findings of expert bodies in technical and scientific matters would not ordinarily be interfered with by courts in the exercise of their power under Article 226 of the Constitution or by this Court under Article 136 or 32 of the Constitution".

59. The appellant also had requested a hearing by the NBA which was heeded to and no objection was raised objecting the authority of the Secretary. Therefore, the Secretary, NBA has powers to conduct meetings/hearings with the applicants.

60. In the above conspectus of the case, the appellant being a seed company under Section 3(2) is liable to pay the ABS. **In 2018 SCC OnLine Utt 1035, Divya Pharmacy vs. Union of India and Ors**, the same subject is being discussed. It would be appropriated to advert to the relevant Paras from the said judgement which are as follows:

> "100. Primarily what has been challenged is Regulation 2, 3 & 4 of the 2014 Regulations, which read as under:
> "2.Procedure for access to biological resources, for commercial utilization
> or for bio-survey and bio-utilization for commercial utilization. -
> (1) Any person who intends to have access to biological resources including access to biological resources harvested by Joint Forest Management Committee (JFMC)/Forest dweller/Tribal cultivator/Gram Sabha, shall apply to the NBA in Form -I of the Biological Diversity Rules, 2004 or to the State Biodiversity Board (SBB), in such form as may be prescribed by the SBB, as the case may be, along with Form 'A' annexed to these regulations.
> (2) The NBA or the SBB, as the case may be, shall, on being satisfied with the application under sub-regulation (1), enter into a benefit sharing agreement with the applicant which shall be deemed as grant of approval for access to biological resources, for commercial utilization or for bio-survey and bio-utilization for Commercial utilization referred to in that sub-regulation.
> **3. Mode of benefit sharing for access to biological resources, for commercial utilization or for bio-survey and bio-utilization for commercial utilization**.—(1) Where the applicant/trader/manufacturer has not entered into any prior benefit sharing negotiation with persons such as the Joint Forest Management Committee (JFMC)/Forest dweller/Tribal cultivator/Gram Sabha, and purchases any biological resources directly from these persons, the benefit sharing obligations on the trader shall be in the range of 1.0 to 3.0% of the purchase price of the biological resources and the benefit sharing obligations on the manufacturer shall be in the range of 3.0 to 5.0% of the purchase price of the biological resources:
> Provided that where the trader sells the biological resource purchased by him to another trader or manufacturer, the benefit sharing obligation on the buyer, if he is a trader, shall range between 1.0 to 3.0% of the purchase price and between 3.0 to 5.0%, if he is a manufacturer: Provided further that where a buyer submits proof of benefit sharing by the immediate seller in the supply chain, the benefit sharing obligation on the buyer shall be applicable only on that portion of the purchase
> price for which the benefit has not been shared in the supply chain.
> (2) Where the applicant/trader/manufacturer has entered into any prior benefit sharing negotiation with persons such as the Joint Forest Management Committee (JFMC)/Forest dweller/Tribal cultivator/Gram Sabha, and purchases any biological resources directly from these persons, the benefit sharing obligations on the applicant shall be not less than 3.0% of the purchase price of the biological resources in case the buyer is a trader and not less than 5.0% in case the buyer is a manufacturer:
> (3) In cases of biological resources having high economic value such as sandalwood, red sanders, etc. and their derivatives, the benefit sharing may include an upfront payment of not less than 5.0%, on the proceeds of the auction or sale

amount, as decided by the NBA or SBB, as the case may be, and the successful bidder or the purchaser shall pay the amount to the designated fund, before accessing the biological resource."

4. Option of benefit sharing on sale price of the biological resources accessed for commercial utilization under regulation 2.— When the biological resources are accessed for commercial utilization or the bio-survey and bioutilization leads to commercial utilization, the applicant shall have the option to pay the benefit sharing ranging from 0.1 to 0.5 % at the following graded percentages of the annual gross ex-factory sale of the product which shall be worked out based on the annual gross ex-factory sale minus government taxes as given below:—

Annual Gross ex-factory sale of product Benefit Sharing Component

Up to Rupees 1,00,00,000 0.1%

Rupees 1,00,00,001 up to 3,00,00,000 0.2%

Above Rupees 3,00,00,000 0.5%

101. The above provisions in the Regulations, provide for a benefit sharing obligation, for any person, who wants to have access to "biological resources", which is a certain percentage of the purchase price. The petitioner which is an Indian entity is also obliged to pay an amount as FEBS to the SBB. Therefore the challenge to Regulations 3, 4 & 5.

102. As per Section 7 of the Act of 2002, no person, who is a citizen of India or a body corporate, association or organization which is registered in India, can obtain any biological resources for commercial utilization, etc. without giving a prior intimation to the SBB concerned. Only local communities, vaids and hakims are exempted from this provision.

103. Thereafter sub-section (b) of Section 23 of the 2002 Act is relevant for our purposes, which reads as under:

"23. Functions of State Biodiversity Board. - The functions of the State Biodiversity Board shall be to -(a)….

(b) regulate by granting of approvals or otherwise requests for commercial utilization or bio-survey and bio-utilisation of any biological resource by Indians."

104. At this juncture, it must be stated that regulating an activity in form of demand of a fee is an accepted practice recognised in law. Therefore, in case the SBB as a regulator, demands a fee in the form of FEBS from the petitioner when the petitioner is admittedly using the biological resources for commercial purposes, it cannot be said that it has no powers to do so. As far as vesting of this power through a Regulation by NBA is concerned, we must take resort to Section 21(2)(f) and subsection (4) of Section 21, already referred above. Under sub-section (2) of Section 21, NBA, has powers, subject to any regulation, to "determine the benefit sharing".

105. What is Fair and Equitable Benefit Sharing cannot be looked through the narrow confines of the definition clause alone. The concept of FEBS has to be appreciated from the broad parameters of the scheme of the Act and the long history of the movement for conservation, together with our international commitments in the form of international treaties to which India is a signatory. Once we do that, we find that Under Section 2(f) and sub-section (4) of Section 21, the NBA has got powers to frame regulations in order to give payment of monetary compensation and other nonmonetary benefits to the benefit claimers as the National Biodiversity Authority may deem fit, in form of Regulations and the State Biodiversity Board in turn has powers and duties to collect FEBS under the regulatory power it has under Section 7 read with Section 23 (b) of the Act.

106. In view of the above, this Court is of the opinion that SBB has got powers to demand Fair and Equitable Benefit Sharing from the petitioner, in view of its statutory function given under Section 7 read with Section 23 of the Act and the NBA has got powers to frame necessary regulations in view of Section 21 of the Act. The challenge of the petitioner to the validity of the Regulations fails. This Court holds that the Regulations 2, 3 and 4

of the Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations, 2014 only clarifies and follows what is there in the Act and it is intra vires the Act.

61. In the light of the above discussions, the appeals are dismissed.

.....J.M.
(Smt. Justice Pushpa Sathyanarayana)

.....E.M.
(Dr. Satyagopal Korlapati)

Internet – Yes/No
All India NGT Reporter – Yes/No

Appeal Nos.61 to 63 of 2022(SZ)
30th May, 2023, (AM)

Before the National Green Tribunal
Southern Zone (Chennai)

Appeal. Nos. 61 to 63 of 2021

DCM Shriram Limited

Vs.

The National Biodiversity Authority and Ors.

Appeal Nos. 61 to 63/2021(SZ)
30th May, 2023. (AM)