PepsiCo and Potato Farmers Case

Why in news?

- PepsiCo India Holdings (PIH) announced it is withdrawing lawsuits against nine farmers in north Gujarat.
- It had earlier sued 11 farmers for “illegally growing and selling” a potato variety registered in the company’s name.

What is the case about?

- The patent is for the potato plant variety FL-2027 (commercial name FC-5).
- Pepsi’s North America subsidiary Frito-Lay has the patent until October 2023.
- For India, PIH has patented FC-5 until January 2031 under the Protection of Plant Varieties and Farmers’ Rights (PPV&FR) Act, 2001.
- The FC-5 variety, used to make Lay’s chips, is grown under a contract farming deal, by 12,000 farmers in Gujarat’s Sabarkantha district.
- PIH has a buyback agreement with some Gujarat farmers.
- It has now accused 11 farmers of illegally growing, producing and selling the variety “without permission of PIH”.
- The government reportedly held out-of-court settlement talks with the company, which eventually announced the withdrawal of cases.

What do the farmers say?

- Farmers say that the agreement was only that PIH would collect potatoes of diameter greater than 45 mm.
- Farmers would store the smaller potatoes for sowing next year.
- Some of the other accused farmers said they got registered seeds from known groups and farmer communities.
- They had been sowing these for the last four years or so, and had no contractual agreement with anyone.
- They said they learnt they were growing a registered variety only when they got a court notice.

Is PHI's claim valid?

- Rights on a patented seed differ from country to country.
- In the US, if someone has patented a seed, no other farmer can grow it.

- But the Section 39(1)(iv) of the PPV&FR Act of India has clauses in defence of the farmers in this case.
- Under this, farmers were allowed to continue to practise in the same manner as was entitled before the coming into force of this Act.
- In other words, they could save, use, sow, resow, exchange, share or sell farm produce including seed of a variety protected under this Act.
- It was only specified that the farmer shall not be entitled to sell branded seed of a variety protected under this Act.
- Certainly, in Pepsico's case, the seeds were not sold as branded seeds.

Why is the PPV&FR Act significant?

- India's choice in this regard is a conscious departure from UPOV (International Union for the Protection of New Varieties of Plants) 1991.
- The UPOV 1991 gives breeders the right to monitor all aspects of a farmer’s activity.
- It bars the scope for farmers to re-use seeds without their permission.
- But the PPV&FR Act was formulated to give farmers free access to seeds.
- Japan and Canada, besides other developing countries, have also voiced their reservations against UPOV.
- The argument that food should be kept out of rigid patent-like frameworks gains ground here.
- It is not clear whether enhanced breeders’ rights under UPOV have enhanced research and public welfare along expected lines.
- But monopoly concerns as well as those related to health and the environment have assumed centre-stage over time.
- To see in the Green Revolution context in India, indigenous varieties of rice have been rendered extinct by the propagation of hybrids.

What lies ahead?

- Plant diversity is crucial in a time of growing pest attacks, rising temperatures and climate change.
- UPOV does not appear to be in sync with these realities.
- However, breeder research should be promoted in drought resistant varieties of millets and pulses.
- There is no reason to believe that India’s legal framework does not allow this space, given the private participation in these areas.
- Government efforts should balance among the aspects of providing for new varieties, farmers rights, and environmental concerns in this regard.

Source: Indian Express, Business Line

