

# Pepsico v/s Potato Farmers: RSTV – The Big Picture

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## Larger Background:

- A variety of potatoes developed by FMCG giant Pepsico's India division has triggered a patent-infringement battle in the country.
- The snacks and beverages major has sued a few farmers in Gujarat for growing potatoes which the company uses to make its Lay's chips.
- The MNC has sought Rs 1 crore each from four farmers for cultivating the FC5 potato variety.
- In an Ahmedabad commercial court, the company claimed it is the registered breeder of FC5 under **India's Protection of Plant Varieties and Farmers' Rights Act**.
- PepsiCo has been developing and registering a variety of potatoes in India since the production of Lay's took a hit in 2008.
- The overall supply of potatoes was hit that year due to crop failure in the states of Maharashtra, Karnataka, and Punjab.
- The company currently works with 24,000 farmers across the country in states like West Bengal, Maharashtra, Punjab, Gujarat, Uttar Pradesh, Karnataka, Bihar, Haryana, and Chhattisgarh.
- On this edition of the big picture we will take a closer look at the potato conundrum.

## Analysis by the Experts:

**Let's look at this particular issue and talk about why Pepsico has taken this particular step? Is it to intimidate the farmers? Is it really to safeguard its FC5 category of potatoes- what is the background here?**

Vijaykant Mishra, Chairman, Committee on Agri Business & Foods, PHD Chamber of Commerce, weighed in here with his arguments:

- Look, there is a very important aspect to be understood here by everyone, and that it is a relationship between the supply lines of raw material, and a consumer company which is consuming it for food processing. If we take it in this aspect, then PepsiCo, as a consumer company, is assuring the raw material supply in a stabilized manner by involving farmers, giving them the input of seeds, and giving them inputs of other pre-harvest items which are needed towards making good quality potato. This is one aspect. Another aspect is the farmer who is getting the assured return on his investment by investing on a particular seed.
- This dispute is a normal phenomenon in the Indian scenario when farmers use the seeds from the previous crops.
- In this case, a particular group of farmers who have joined the supplier group of PepsiCo, are defined

and are using a particular seed. This can happen with any company. And any food processing company who want to have an assured quality of product from the farmer, would need to arrive at an understanding regarding the input qualities.

- This particular case is a little harsh on the farmers because unknowingly, they have ignored a kind of law (although the ignorance of law is not something which is wise in any society), however, in India, we know very well that farmers are poor. They are ill-informed. They are not properly trained. They are not educated. This is a common phenomenon in India.
- Thus, companies should take an initiative towards educating the farmers. We as a society would need to take the initiative to educate farmers such that they are able to take care of their interests as well as the interest of the company. Thus, in my view, this opens up a very big debate in the Indian food processing scenario, where companies need to take more responsibility towards training and educating the farmers, alongside the government. The government cannot sit idle- the government would need to participate in this.
- Education and training of farmers needs to be taken up as seriously as any other initiative aimed towards skill development.

**Where does the onus lie? Does the government educate the farmer? Would the company need to educate the farmer? What about the companies rights itself?, i.e. the intellectual property rights of the company?**

Tajamul Haque, Former Chairman, Commission for Agricultural Cost & Prices, weighed in here with his arguments.

The problem is with the intellectual property rights regime. Truly speaking, for the past several years, we have seen such kinds of conflicts between the farmers and the companies. In this particular case, when we look at a food processing company like PepsiCo, they started their business with tomatoes in Hoshiarpur, Punjab. They gave farmers the best technology back then. The company also gave them an assured price. The farmers thought that they would benefit from it, and soon subscribed to their model. There was some kind of contract farming arrangement. However, once it was seen that when the market prices were good, the farmers did not honour the contract and they did not sell it to the company at the assured price. They were instead trying to sell the same in the market. In the next year when the market prices were low, the companies said, that they would buy the produce from the market- and thus, from both the sides, there was a dishonouring of the contract which was being done. The contract system failed, and as a matter of fact, PepsiCo gave the project to Hindustan Lever. Post this, even Hindustan Lever as well had some problems. Thus, we have had quite a few such examples where the contract farming arrangements between farmers and companies haven't quite worked out in the manner in which one would have liked them to. In some cases, there are success stories, but there have been many cases of failure as well.

The recent instance where PepsiCo feels disturbed about the fact that farmers are growing their patented variety of potatoes, is something which in my opinion has little substance. This is because, in my opinion, as long as the terms of the contract are fulfilled, there shouldn't be any cause for friction. If clauses of patent are invoked by companies, then farmers in general in India would lose miserably. I am also personally not in favour of giving such kind of rights that affect the interest of the farmers. We should perhaps enact a law that protects the interests of farmers in these cases as well. If we don't do so, in my opinion, our national interest will be compromised.

**What does the Protection of Plant Varieties and Farmers' Rights Act, 2001 say?**

Jayesh K. Unnikrishnan, Legal Advisor, Council of Scientific and Industrial Research, weighed in here with his arguments.

We have to understand two things. The first one is the legislative intent of the act. The act was part of the international legal regime which came in the wake of the TRIPS (Trade and Intellectual Property Rights), of

which India is also a signatory. Thus, after the onset of TRIPS, India had two options: a) Either to have a patent protection Act which is in consonance with Article 27 (b) of the TRIPS or b) To have a sui generis Act, which has its own legal provisions. We did not opt for the first option; we opted for the second option. The Act that we adopted was the **Protection of Plant Varieties and Farmers' Rights Act, 2001**. This Act is a balanced act. It protects the farmers only. There is a provision in the Act for "innocent usage." Thus, if the farmers can prove that it was a case of "innocent usage", then this provision will not be applicable. Today, we are discussing only an interim order of the Court. It is not a final order. The City Civil Court at Ahmedabad has only issued an interim order, restraining the farmers towards indulging in further cultivation. Only an interim injunction has been given so far. Thus, if the farmers are able to establish that the infringement was an "innocent" one, as per the Act, and that they did not mean to enter into something which would have meant a violation of commercial rights, they would stand to be exonerated.

**Given that the potatoes in question are used specifically for Lay's Chips and this is a patented product of PepsiCo. Isn't PepsiCo then in all its right, well advised towards going again and taking the matter to Court?**

Vijaykant Mishra, Chairman, Committee on Agri Business & Foods, PHD Chamber of Commerce, weighed in with his arguments:

- A company needs to maintain its quality. It is a renowned product and its tastes are improving. This applies to any food processing company. In my opinion, food processing companies need to ensure the quality of the raw material. This is however, only one aspect.
- One has learnt from Punjab, U.P., issues concerning the leasing of land.
- One must have a defined relationship with the farmer and take responsibilities in terms of training and educating the farmer.
- If we look at milk products (which are also coming from farmers), companies are taking the responsibility of educating the farmers so that they can maintain a degree of quality; in this case also, it is very important for the company to make their raw material supplies adhere to a particular quality and for that, the farmers need to cooperate.
- For this, it is very important that companies take the initiative to bring more and more farmers who are agreeing to supply a particular variety of seed or raw material. This is more of a responsibility on the company side to ensure a good and sustainable supply of raw material.
- As far as the government is concerned, the government is also taking responsibility for the implementation of various laws. If companies are not able to honour the fine print of their contract-farming contracts, then the government has to have some kind of a consideration for the companies also to strike a balance. There would be disputes in the execution of farming contracts. However, some kind of a solution/resolution would need to be made.

**The bigger question: What is the crux of the problem? We also spoke about as to how this is not the first time in which something like this has happened- so what is the way out? What are the short term measures and long-term measures.**

Tajamul Haque, Former Chairman, Commission for Agricultural Cost & Prices, weighed in here with his arguments.

- The most important thing is that there must be a building of trust and a good relationship between the farmers and the companies. Only then can quality production take place which can help the farmer get a better price. There have been some bad experiences in the past- but there are also some good experiences, in many cases. Thus, in learning from those good practices, both the companies as well as the farmers organizations, would be benefitted. This is the reason why, farmers must be organized into some kind of farm producers groups- this would enable farmers to be empowered as a group, to enter into a contractual arrangement with the company on equal terms. There should also be some kind of a local level, participatory dispute settlement mechanism. In these forums, representatives

from farmer groups, government representatives, and representatives from the company would be there.

- Also in my view, litigation should be avoided. In the wake of constant litigation, trust would be lost. Further, if the trust is lost, then in future it would be difficult to again imagine the farmers getting into contracts with companies.

**We've been discussing about the issue concerning the farmers in Gujarat. However, my question to you is: why have the farmers resorted to growing this variety i.e. the FC5 variety of potatoes? Is it because of low yielding indigenous varieties of potatoes?**

Vinay Bhardwaj, Head, Division of Crop Improvement, Central Potato Research Institute, weighed in with his arguments here.

The Central Potato Research Institute has given out 6 potato varieties for processing purposes and if we see the yield potential of those varieties, we realize that they are either equal or they are even better than the varieties such as the FC5. If we look at the question on productivity, and in particular the situation in Gujarat, we realize that the productivity is nearing around 40 tonnes per hectare. And if we see the productivity of the country, it is almost 24 tonnes per hectare. Thus, this is not less in any terms. If we compare the productivity of both the varieties such as the exotic and the indigenous varieties, they are also almost at par.

**Should seeds be considered an intellectual property in the first place?**

Jayesh K. Unnikrishnan, Legal Advisor, Council of Scientific and Industrial Research, weighed in here with his arguments.

We have a seeds act which was passed in 1996. So, in the Protection of Plant Varieties and Farmers' Rights Act, seeds are not considered as a patent. However, it is considered as a sui generis right for the farmers. However, there are certain standards which the seed should follow for being considered in that sense. Thus, it is a moral issue, and it is a legal issue as well. In India, we do not allow these kind of bio-materials to be patented. In the U.S. it is allowed, but in India, it is not. Thus, seeds are not exactly considered as a patent. However, this Act is to protect the farmers rights. It is an international reality of trade as well. If you want people to invest in India, then there should be a strong legal regime. There should be a strong legal regime which protects the intellectual property rights. The first initiative towards building a robust IPR (Intellectual Property Rights) system was with TRIPS. India is a party to the TRIPS regime; India has also ratified the same. Thus, there are certain obligations which India has to fulfill by making municipal legislations. However, when we make these legislations, we are allowed to protect our own indigenous things. This leeway is used by countries in a different manner.

Going through a process of litigation is always discouraged by the MNC's. They also don't want to follow this path because of our system of litigation. However, what is the other assurance they have?

**Concluding Remarks:**

- We have already experienced that in the case of Basmati Rice, milk or sugarcane- the government has a good harmony with the farmers on these areas. Industries are also educating the farmers regularly. Thus, we cannot say that there is no harmonized system in India, between farmers and companies.
- Also, the model contract farming act is having a lot of hopes, and every state should implement it fast.
- We need to have a proper institutional mechanism to address this issue. Next, if the entire process is participatory; i.e. something in which the farmers also participate, then the same would augur well.

There wouldn't be a need to resolve litigations in court.

