



Contempt Jurisdiction for a Humanitarian Cause

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Merck Sharp and Dohme Corp and Another vs. Abhaya Kumar Deepak and Another, CONT (CAS) (C) 846/2018

The Petitioner, Merck Sharp & Dohme Corp., owner of the patent for Sitagliptin initiated contempt proceedings against the Respondent, M/s Nutra Specialities Private Limited, who had been found violating the said patent. The lawsuit filed by the Petitioner alleging the said violation had been disposed of vide order dated 05.05.2016, pursuant to a settlement containing undertakings furnished by the Respondent. The Respondents were found by the Petitioner to be in breach of the undertakings recorded as a part of the settlement which formed a part of the order dated 05.05.2016. It was contended that the Respondents had wilfully breached the Court's order for their economic benefit and the dilution of the brand value in the products manufactured by them, calling for the cancellation of the Respondent's licence. Team Anand and Anand, appearing for the Petitioner submitted that exemplary punitive costs should be imposed on the Respondents. The learned Counsel for the Respondent admitted to having been in breach of its undertakings as recorded in order dated 05.05.2016. Team Anand and Anand, for the Petitioners, contended that the act of the Respondents was to be considered a wilful breach of the order. He further submitted that the Petitioners are engaged in the manufacture of medical preparations aimed at curing ailments of people and to contribute towards better health of people in the world. In the extension of the same philosophy, the Petitioners were ready to forgo any damages or monetary compensation imposed to the Respondents for the public good. The Court took judicial note of the fact that the air quality in the capital city has decreased and had been categorised as "severe" many times in the past four years and passed an Order on 11.03.2019. In view of the gravity of the contumacious act of the Respondent entity, the Court was pleased to grant costs of Rs. 80 lakhs to be paid by the Defendant entity and directed that the same amount is used for planting 1,40,000 trees on the Central Ridge in Delhi. The Order dated 11.03.2019 also spoke on the Fundamental Duty of Indian citizens vide Article 51A of the Constitution of India. "The city is virtually grasping for fresh air and such fresh air would be created by photosynthesis i.e. by planting more trees..." the court also elucidated the following in its Order:

- Keeping in mind the turnover of the Respondents owners of M/s Nutra Specialities Private Limited now rechristened M/s Venkata Narayana Active Ingredients Private Limited are directed to plant 1,40,000 trees on the Central Ridge in Delhi.
- The plants shall be of deciduous indigenous variety and they shall be of nursery age of three and a half years old and have a height of at least 6 feet.
- The Respondents are directed to care for the trees at least until the rainy season.
- Development of small water reserves or culverts too shall be the responsibility of the Respondents.
- Aerial pictures of the plantation to be furnished both by the Respondents as well as the DCF concerned by 15.04.2019.
- Further, some compliances were also issued for the DCF and the Respondents to be followed jointly,

such as numbering the trees, identifying the source of water for the trees, ensuring strict compliance of the age and height of the trees, earmarking the area for the plantation on a map and plan of action for building of culverts and reserves.

- The Court was also pleased to appoint M.A. Niyazi (Advocate) and Sumeet Pushkarna (Advocate) as Court Commissioners for regular inspection of the plantation area.
- The case is listed for compliance on 30.04.2019.

Our View: This Order holds utmost importance as the patentees are joining the social cause of taking steps, in the larger public interest, towards addressing the poor air quality which is rendering breathing in Delhi a poisonous affair. This Order should be heralded as one of the greatest needs of the hour and we hope that many more such orders come to the fore before the condition of air that we breathe dips from severe to irreversible. Anand and Anand team comprised of Pravin Anand, Tusha Malhotra, Udita M. Patro and Pankhuri Malik.

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