

THE MONSANTO SUPREME COURT JUDGMENT – A FRESH LEASE OF LIFE FOR BIOTECH INNOVATIONS IN THE COUNTRY

The Supreme Court of India pronounced the most anticipated judgment on patent law issue in recent times on January 8, 2019 restoring the patent of Monsanto for Bt technology, which is now back in force and on the register of patents.

The present issue in dispute having been wrongly touted as a Farmer-David v Monsanto - a foreign Goliath fight, was a controversial one which the Supreme Court appeared to have rightly considered as one involving the future of innovation in the field of biotechnology in particularly agro-biotechnology in India.

BACKGROUND OF THE DISPUTE: Monsanto has a patent over a novel artificial DNA construct which when inserted into a plant, makes the plant boll-worm resistant. Monsanto had licensed this technology to seed companies in India, including Nuziveedu (NSL) by sale of 50 donor seeds that incorporated the patented Bt technology of Monsanto.

Monsanto initiated a patent infringement action of their Bt patent against NSL pursuant to the termination of the license agreement. Post termination, Nuziveedu continued to use the Bt patented technology and refused to pay the license fees to Monsanto on the basis of the Government issued seed control order.

The Hon'ble Single Judge, after hearing interim arguments, ruled in favour of the patentee Monsanto as regard the *prima facie* validity of the patent granted to it and its infringement by Nuziveedu but held the termination of the license agreements by Monsanto unlawful and reinstated the same. The Judge directed Nuziveedu to pay Monsanto as per the Government fixed tariff.

Aggrieved with the interim order, both Nuziveedu and Monsanto preferred cross-appeals to the Division Bench. The Division Bench after hearing both parties summarily held that the patent of Monsanto was invalid on the ground of it being non-patentable subject matter under Section 3(j) of the Indian Patent Act, which is a provision which prevents patents on plants, animals, parts thereof, seeds, or essentially biological processes for producing them. The Division Bench also held that the innovation of Monsanto was more suited to being protected under the Protection of Plant Varieties and Farmers' Rights Act. Monsanto appealed this decision before the Hon'ble Supreme Court.

The importance of this matter to the agro-biotech industry in India is evident by the number of other petitioners/intervenors, who either filed fresh petitions of their own or intervened in the matter. While associations like Federation of Seed Industries of India and Shetkari Sangathan supported the stand of Monsanto, All India Kisan Sabha, National Seed Association of India, Research Foundation for Science Technology and Ecology and Swadeshi Jagaran Foundation supported the stand of Nuziveedu.

ORDER AS PASSED: After hearing the parties for more than 40 hours, the Supreme Court passed a verdict in favour of Monsanto. The Supreme Court agreed that the Petitioner's patent had been summarily adjudicated upon. It held that summary adjudication of a technically complex suit without expert evidence, was neither desirable nor permissible in law. It further held that the suit involved complicated mixed questions of law and facts with regard to patentability, which could not be examined at the preliminary stage with the evidence before the Court. The Supreme Court set aside the order of the Division Bench and restored the order of the Single Judge, leaving open all questions of facts and law. Importantly for the Petitioner Monsanto, while passing the said order, the Hon'ble Supreme Court observed that it was satisfied that the nature of the injunctive relief granted by the Single Judge was in order and merited no interference during the pendency of the suit.

IMPORTANT RAMIFICATIONS OF THE ORDER: The judgment passed by the Supreme Court is extremely significant for many reasons, most important of which are:

- i. It is for the first time that the Supreme Court heard a complex patent dispute involving patent eligibility under Section 3 (j) of the Patents Act;

- ii. By holding that the suit involved complicated mixed questions of law and facts with regard to patentability and leaving the same open for trial, the Hon'ble Supreme Court agreed in principle with the arguments of the Monsanto that issues involving Section 3(j) were mixed questions of law and fact and could not be summarily decided without evidence being led in the matter;

- iii. Lastly, the decision came as a huge boost to the Indian agro-biotech industry, which had been adversely affected by the findings in the Division Bench judgment, especially as there is ongoing research and development regarding "novel genes" that help deal with biotic and abiotic stresses, enhance productivity and nutritional quality. This was a very positive development as the fate of around 23 Biotech Crops; 67 biotech traits (39 of which are by public sector) had been put on the balance because of the Division Bench decision.

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