

Monsanto Holdings Private Limited & Ors vs Competition Commission Of India & Ors on 3 June, 2020

Author: Rajiv Sahai Endlaw

Bench: Rajiv Sahai Endlaw, Asha Menon

\$~1

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI
LPA 150/2020, C.M. Nos.11724-11731/2020
MONSANTO HOLDINGS PRIVATE LIMITED & ORS

.....Appellants

Through: Dr. Abhishek Singhvi, Senior
Advocate, Mr. Chander Lall,
Senior Advocate, Mr. Rajshekhar
Rao, Ms. Bitika Sharma, Mr.
Adarsh Ramanujan, Ms. Anusuya
Nigam, Mr. Anandh
Venkatramani, Ms. Nancy Roy,
Mr. Azeem Samuel, Mr. Lakshay
Kaushik, Advocates

versus

COMPETITION COMMISSION OF INDIA & ORS

.....Respondents

Through: Mr. Pallav Saxena, Advocate for
CCI.
Mr. Vaibhav Choukse, Ms. Ela
Bali and Mr. Parth Sehan,
Advocates for respondent No. 2 to
4.
Mr. Nishant Rai, Mr. Vivek Chib,
Advocates for respondent No.8
Amar Biotech
Mr. Ruchir Mishra, Advocate for
respondent No. 13 UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MS. JUSTICE ASHA MENON

LPA 150/2020

ORDER

Page 1 of 5

%

03.06.2020

[VIA VIDEO CONFERENCING]

C.M. Appl. Nos.11725/2020, 11726/2020, 11727/2020, 11728/2020, 11729/2020 and 11731/2020 (Exemption from filing original documents, typed copies of dim and illegible documents, for filing lengthy synopsis and list of dates and from filing duly attested affidavits and from filing court fees)

1. Allowed, subject to just exceptions and as per extant rules.

2. The applications are disposed of.

LPA 150/2020 & C.M. Appl. Nos.11724/2020 (for Interim relief) and 11730/2020 (for summoning records of WP(C) Nos. 11776/2016 and 3556/2017)

3. The appeal impugns the judgment dated 20 th May, 2020 of the Single Judge of this court dismissing the W.P. (C) No.1776/2016 and W.P. (C) No. 3556/2017 filed by the appellants. The challenge by the appellants in the two writ petitions was to the initiation of proceedings against the appellants under the Competition Act, 2002. It was the contention of the appellants that applicability of the Competition Act was excluded inasmuch as the appellants were governed by the regime of the Patents Act, 1970. The Single Judge in the impugned judgment has held that the appellants would be governed by both the statutes.

4. We have inquired from the senior counsels for the appellants, whether the patents held by the appellants are still alive.

5. The senior counsels for the appellants inform that of the two patents subject matters of the writ petitions aforesaid, one has lapsed in 2019 and the other is alive till 2022.

6. We have next inquired from the senior counsels for the appellants, what would be the position after the patent lapses i.e. whether the Competition Act would be applicable thereafter or not.

7. The senior counsels for the appellants state that the proceedings before the Competition Commission are with respect to the period when the patents were valid and lapsing of the patents would thus be irrelevant for the purposes of this appeal. It is also contended that the license agreements entered into by the appellants with the private respondents were for 10 years and whereafter the restrictions thereunder are no longer applicable.

8. It was the contention of the appellants before the Single Judge that the dicta of a coordinate Bench of the court in judgment dated 30th March, 2016 passed in W.P. (C) No. 464/2014 titled Telefonaktiebolaget LM Ericsson (PUBL) vs. Competition Commission of India stood overruled by the decision of the Supreme Court in Competition Commission of India vs. Bharti Airtel Ltd. (2019) 2 SCC 521 but the Single Judge has not agreed therewith and thus held Telefonaktiebolaget LM Ericsson (PUBL) supra to be applicable.

9. It is stated in the memorandum of appeal that the appeal to the Division Bench against the dicta

in Telefonaktiebolaget LM Ericsson (PUBL) supra being LPA No. 246/2016 is pending and the counsels, on inquiry inform that the same is listed next on 27th August, 2020.

10. Issue Notice.

11. Notice is accepted by the counsel for the respondent No. 1 Competition Commission of India, counsel for respondent Nos. 2-4 Nuziveedu Seeds Limited, Prabhat Agri Biotech Limited and Pravardhan Seeds Private Limited as well as by counsel for respondent No. 13 Union of India.

12. Issue notice to the remaining respondents, at the electronic addresses to be furnished by the appellants within one week.

13. We have also heard the counsels on the application for interim stay.

14. During the pendency of the petitions aforesaid, there was an interim order restraining the Director General (DG) of the Competition Commission of India from submitting a final report. We are informed that now the DG has submitted the report and further proceedings are underway but another petition in that respect is also pending in this court and in which it is the understanding that no further proceedings will take place before the DG.

15. In the aforesaid facts, without prejudice to the aforesaid understanding, till the hearing of this petition the Competition Commission of India is restrained from returning any final findings.

16. We may record that the question of patentability of such seeds is also under consideration before this court in CS (Comm.) 132/2016 and in accordance with dicta of the Supreme Court in Monsanto Technology LLC vs. Nuziveedu Seeds Limited (2019) 3 SCC 381.

17. CM Appl. No.11724/2020 is disposed of.

18. List the appeal for hearing on 27th August, 2020 alongwith LPA No. 246/2016, which is also stated to be listed on the same date. However, it is made clear that irrespective of whether LPA No. 246/2016 is heard on that day or not, this appeal shall be heard.

19. Written submissions if any required to be submitted, be submitted at least one day before 27th August, 2020.

20. The senior counsels for the appellants to take not more than one and half hours and the counsels for the Competition Commission of India and private respondents to take not more than 30 minutes and 45 minutes respectively, of time during the hearing.

21. The record of the writ petitions from which this appeal arises be also forwarded on 27th August, 2020 and be tagged to this appeal.

22. CM 11724/2020 and 11730/2020 are disposed of.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

JUNE 03, 2020 pkb