

MONSANTO V. NUZIVEEDU (2019)¹ – A CASE STUDY

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Abstract

This is an analysis of the recent Judgement passed by the Supreme Court of India in the case of Monsanto versus Nuziveedu , regarding the patentability of Genetically Modified Crops and its impact to the farmers and consumers as a whole. The paper aims to invoke thoughtfulness regarding the core underlying issues in giving patents to few subjects and the consequences that follow the same.

Introduction

Genetically Modified Crops are those crops whose genetic characteristics have been altered by the introduction of a modified gene or a gene from another organism using the techniques of genetic engineering. A gene is the basic physical and functional unit of heredity. Genes are made up of DNA. Genes can be obtained from a natural process or it can be made in a laboratory setting artificially whereby it is termed as artificial gene synthesis. The issue in question in the current case pertains to whether genes and genetically modified organisms or crops can be patented in India. As India is a signatory to the WTO (World Trade Organization), it is also bound by the TRIPS (Trade Related Aspects of Intellectual Property Rights) agreement under it, being a signatory to the same. As per the TRIPS Agreement², the member nations can exclude plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes from Patentability. However, a proviso to the Article 27 clearly states that the Members shall provide for the protection of plant varieties either:

- by patents or
- by an effective sui generis system or
- by any combination thereof.

India being a country which is infinitely reliant on Agriculture as an occupation as well as source of food should be well aware of the consequences of letting agricultural products to be patented as it would lead to a

¹ January 8 2019 in the Supreme Court of India

² Article 27 (3) of TRIPS Agreement- Exceptions under Patentable Subject Matter

situation where farmers who feed the nation will have to beg before the giant seed companies for the unaffordable and exorbitantly priced seeds. Thus keeping this Provision under the TRIPS Agreement in mind, India has under section 3(j) of the Indian Patents Act, 1970 excluded “plants and animals in whole or any part thereof other than micro-organisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals” from the purview of Patentable Subject matter. However an equal importance is given to the researchers and breeders who put their time, effort, money and labour in coming up with new plant varieties or seeds through genetic engineering or any such advances in science, through the legislation- Protection of plant Varieties and Farmers’ Rights Act 2001 – a sui generis system of law unique to India to recognize the rights of both farmers and plant breeders and researchers in India.

Brief of the case:

Monsanto – a U.S company which was acquired by a German Firm Bayer A.G. holds a patent³ in India for its invention titled: “Method for transforming plants to express bacillus thuringiensis (bt) delta-endotoxins.” The company entered into licensing arrangements with Nuziveedu seeds- an Indian agribusiness company which notably markets seeds and many other seed companies in India that wished to use Monsanto’s patented Bt Technology. The Bt technology in simple words can be explained as a technology where a genetic fragment has been derived from Bacillus thuringiensis- a bacterium, and inserted into a plant. The main usage of this technology is in the cotton plants which is most prone to pest attack by the ball worms. This technology would make the crops pest resistant resulting in better productivity. So the general practice was that, Monsanto delivered the Bt cotton seeds to the licenced Seed Companies and the Seed Companies sold the same to the farmers. It is in 2015, a dispute broke between Monsanto and Nuziveedu as Nuziveedu failed to pay royalties as a result of which Monsanto terminated the license of Nuziveedu and sued the company in the Delhi High Court asking for restraining orders against the continues use of their patented technology. It was then that Nuziveedu shot back at Monsanto claiming that the patent itself was invalid as per Section 3(j) of the Indian Patents Act.⁴ The Single Judge Bench refused to rule on the validity of the patent. However it found that the termination of Nuziveedu’s licence by Monsanto as unlawful and restored the licences provided that royalties should be paid to Monsanto as per the rates prescribed by the Government. Monsanto appealed to this decision and it was heard by the Division bench of the Delhi High Court where it was held that the Monsanto’s patent itself was invalid as per the Indian Patents Act, 1970 –

³ Patent Number:214436 titled: Methods for transforming plants to express Bacillus Thuringiensis Delta- Endotoxins granted on 2 February 2008

⁴ Section 3(j) of Indian Patents Act, 1970-excludes “plants and animals in whole or any part thereof other than micro-organisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals” from the purview of Patentability

Section 3(j) which excludes plants and plant varieties including seeds from patentability. Aggrieved by the order, a second appeal was filed to the Supreme Court of India where it was finally held that the Division Bench should not have invalidated the patent without proper trial. The Supreme Court also felt that the previous court was in a haste to pass the order and that the order lacked assessment of elaborate evidence or witnesses regarding the scope of the validity of the invention. Thus, as of 8th January 2019, the suit is remanded back to the learned Single Judge of the Delhi High Court for proper perusal and disposal of the case in accordance with law.

Case comment:

In this case, Monsanto claimed that the patented subject matter was a man-made DNA that does not exist in nature and does not otherwise form a part of the plant as existing in nature and therefore it is not an exception as per Section 3(j) of the Indian Patents Act and that their patent is valid. Nuziveedu on the other hand raised the issue that the utilisation of the impugned Bt trait is only when it is introduced in to the seed (which is covered under Section 3(j)) and that it is inert and inanimate otherwise. The function of the patented subject matter is considered a part of the seed. Though the Indian Legislature is cautious and up to date in excluding plant varieties and seeds from patentable inventions and protecting the same under a sui generis legislation, it is not up to date and clear so far as the technological advancement is concerned. The case is the best proof for the same. Even after the enactment of the Protection of Plant Varieties and Farmers' Rights Act in 2001, Monsanto managed to obtain a patent for its Bt. technology in the year 2008 under the Indian Patents Act rather than obtaining protection under the former. The ambiguity in law has paved way for all these perplexities. As far as a nation like India is concerned, this is not a mere issue of mercantile law that can be sat down and discussed in a leisurely manner. It is a matter of life and death for the Indian farmers since at the end of the day the disputed royalties, trait fees and licence etc. are being snatched away from the poor farmers and not from the toffs like Monsanto or Nuziveedu. In the end the seed companies get all the advantages at the expense of the poor farmers. In the year 2015 the Bt Cotton technology which was supposed to be resistant to pests failed in Punjab and over 95% of the crops were affected in the area which resulted in suicide of over a dozen farmers in the area who relied solely on the crops for their income. Though Genetically Modified Crops like these give better yields, the few disadvantages attributed to these crops are to be thought about for a better future as it seems to outweigh the advantages in the coming days. The seeds of the genetically modified crops cannot be re-used unlike the normal seeds and farmers have to buy new seeds every time. In the past, when crops failed farmers could have their seeds replanted. With the advancement of science and technology, farmers who were once the backbone of India who fed the entire country and the world with the surplus have knelt down for alms

before the Multinational profit making Companies. Thus with this recent Supreme Court Order, it has become the responsibility of every single individual to think wisely over the issue and a greater responsibility lies on the legislature of the country to make necessary amendments and provisions in law in par with the advancements in science and technology keeping in mind the welfare of the nation. There should be clearer provisions with respect to patentability of DNA sequences and genes. Another aspect of this particular case that deserves a comment is the Press and Media which cheered the Company for its victory over the patent matter in the Supreme Court of India, misguiding the public. When the truth is that the Supreme Court denied to pronounce on the validity of the patent and rather reverted back the case to the Delhi High Court to decide upon the case after proper expert evidence and trial, the media claimed it to be a patent victory. To that extent Monsanto's patent rights can be assumed to be restored. However it is inappropriate to say that the Supreme Court has decided that the patent is valid. It is not that a company like Monsanto should not be given patent in India for its invention that obviously requires a lot of effort, but it is about the better good of the public and clarity and compliance of law that is looked up to.

