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# Nuziveedu Seeds Ltd. vs. Monsanto Technology LLC (3SCC 381)

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## ABSTRACT

*The court decision to support GM cotton patent will uplift the cotton industry. It will also give boost to researcher of cotton industry. The Supreme Court overruled the lower court order in favor of Monsanto of a long legal battle. The high court of Delhi quashed the patent of Monsanto but Supreme Court reestablished the patent rights of Monsanto and says that it is not that easy to quash patent. It is not just about revoking patent as it would amount to scuffle of returning amount of price paid by Indian companies to Monsanto. According to me this decision would help the agro tech companies to more innovate and make patents that are for the benefit of complete sector. If this patent would have been quashed then it would have demotivated other foreign companies from innovating in India. Supreme Court broke the precedent of former decision which restricted the foreign companies from filing patent. But it should also be taken into account that companies should charge price in accordance with price set by government.*

## I. INTRODUCTION

The current progress in the field of agriculture field has further assisted in the development of agro biotech industry. The latest study in field of functional and structural genetics has produced endurable variety of crops and plants. In the late 19th century genetically modified crops were not much recognized. From 2001 onwards there was a paradigm shift in sector of genetically modified crops and the affected the agriculture practice's in India. Till today only GM crop to have a remarkable enclosure is BT cotton. Specially genetically modified crops has affected the cotton producing sector. The commencement of genetically GM crops was linked with intellectual protection property. In this crop of GM cotton, a gene was introduced from common bacterium soil which was named the "Cry gene" or the "Bt gene" hence the cotton crop was named "BT cotton". This helps other plant to make a protein that is deadly for insects, thus killing them. This would reduce the amount of insecticide spraying used by farmers thus it will reduce the production cost. Basically it will protect them the attack of

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ball-warm attack. This could be easily proved through archetype shift in field of agro-tech which is due to increasing number of patents filled. However, enactments of these rights of patents are still a challenge. In recent times the violation of patent rights of GM crops has increased. With the growing privatization in agriculture sector, it makes a notable issue for researcher in agro-tech area. So, they need patents, intellectual property protection. However, it was taken into account that giving excessive rights or a patent on GM crops might bar it from the people who need it most. It was seen that the use of this patent was not effective and also it was not reaching to farmer's field. A group of several farmers' organization, international NGO and action group of Indian society have protested against GM crops as well as giving excessive rights of GM crops. The case of *Monsanto vs. Nuziveedu*, is also related to BT cotton. Monsanto licensed its technology related to BT cotton to several Indian companies, which they to utilize to develop cotton seeds. It was asked from the said company to reduce the fees of rights, to which the company denied. Since, companies started terminating their contract so, it lead to decline in number of customers. Monsanto filled case for injunction of royalty. One of these companies were Nuziveedu against whom case was filled to recovery of due amount. The outcome came as positive for foreign companies which were bothered that they could have lost the GM crops patent in India.

## II. EXPLANATION OF CASE

Nuziveedu seeds, an Indian based company which deals in agriculture business. Also Nuziveedu is one of the largest hybrid seeds dealer in India. Monsanto, a multimillion dollar agriculture biotechnology and agro chemical company of America. Monsanto licensed its technology related to BT cotton to several Indian companies, which they to utilize to develop cotton seeds. They gave this subscription for lifetime usage for Rs. 50 Lakhs, plus they have to give trait value as compensation. This was utilized by the Indian companies to develop cotton seeds. State government passed new rules in order to control trait fees. Due to this companies demanded Monsanto to reduce its trait fees, to which it denied. This discourse started when the companies stopped royalty from October, 2015 and dispute arose over license on technology – BOLLGARD II. Monsanto sent a letter of contract to Nuziveedu. It was pleaded before Competition Commission of India by Nuziveedu that Monsanto abusing its dominant position and thus leading to anti-competition practices. It was questioned in the disputed patent which was titled as "Methods for transforming plants to express bacillus thuringiensis" that whether new inventions related to biotechnological which has invigorate of Bt gene into cotton genome. The law posed before court in this case by Nuziveedu was section 3(j) ***"(j) plants and animals in whole or any part thereof other than microorganisms***

***but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals"***[2]

According to Section 3(j), ***plants and animals per se or any part thereof are not patentable. Moreover, 'essentially biological processes' to produce plants and animals are also not patentable.***[3]

1. **IN FRONT OF SINGLE JUDGE OF THE DELHI HIGH COURT**

   The Single bench of the Delhi High Court gave the judgment to restore the license which was ended by Monsanto. The arguments of defendant about validity of patent were declined. It was ordered that all companies including Nuziveedu that took subscription to be allowed to use the patent technology till the suit was dispersed. The trait fess should be paid according to state government set rates.

2. **APPEAL MADE BEFORE DIVISION BENCH OF DELHI HIGH COURT**

   There was an appeal made before Division Bench of Delhi High Court by both the parties against the previous order given by Single Judge. It was challenged by the defendants that on what basis were their arguments about the validity of plaintiff's patent rejected. While the appellant challenged the restoration of license which was terminated by them. [4]

   **DECISION GIVEN BY DIVISION BENCH OF THE DELHI HIGH COURT**

   The Division Bench gave the judgment that the patent in question falls under the provisions of Section 3(j) of the Patent Act. It was held that the claims of the patent are un-patentable. The decision of Single Judge was verified by Division Bench regarding the trait fee payable to Monsanto by the Indian companies. A limitation period of three months was given by the District Court to Monsanto to pursue protection for its invention under "The Protection of Plant Variety and Farmers Right Act, 2001".

3. **ANALYSIS OF THE JUDGMENT**

   The decisiongiven by Bench to refute the patent under Section 3(j) was not much supported. It was said that the court reached at the decision without adequate expert witnessand materialized claim construction. The claim construction is the key

[2] *The Patents Act, 1970*.section 3(j).
[3] *The Patents Act, 1970*.section 3(j).
[4] Section 64 (1)(j), The Patents Act, 1970

ingredient in judging the validation of a patent that in current case, seems to be insufficient. The lack of knowledge that lead to misinterpretation of Section 3(j) has caused a major setback to research and innovation field of plant biotech.[5]

4. According to Section 3(j), plants and animals partly or wholly cannot be granted as an invention.

5. In the current case, the court made a statement that *amphibious plants with the non-segregated Bt. Trait, developed by hybridization that qualifies for eligible biological process are not included in patentability within the range of section 3(j). Monsanto cannot contend for exclusive rights of the gene thus were integrated into the generations of transgenic plants.*

6. It is to be stated that, Monsanto with the help of human involvement got a patent into the cotton gene through the admission of specific Bt. bacteria genes. Essentially this cannot be considered as biological processes. So, the court's remark seems to be inappropriateby taking into consideration the contentions of the Monsanto's patent as essentially biological processes.[6]

7. The claim deals with the extraction of a specific nucleic acid sequence from (BT bacterium) Bacillus thuringiensis and inject into a plant cell and thus it modifies nucleic acid sequence which develops toxins that are resistant to insect and worm attacks.

8. Better understanding and help from expert would have prevented the court from Section 3(j) misinterpretation.

9. Through an appeal the decision of division bench was challenged before Supreme Court by Monsanto. It was expected that Supreme Court would give a judgment with utmost reasoning. The decision would support the companies in such a manner that they can continue to take protection within the laws of the Patents Act and can also innovate more.[7]

## III. Discursive Arguments

### 1. Argument on Application of Plant variety act.

In Plant variety act the word microorganism has not been defined. Due to the TRIPS agreement the plant variety act was enacted was validated to protect the right of

[5]Section 64 (1)(m), The Patents Act, 1970
[6]Section 64 (1)(b), The Patents Act, 1970
[7]Section 64 (1)(g), The Patents Act, 1970

procreators and the plant varieties. This would encourage companies to make new varieties of plants. The Indian company contended that the patent in question came under the ambit of micro scoping thing and are thus under the umbrella of plant variety. This will be not be covered under the patent act but instead, it will be covered under plant variety act. On the other hand, Monsanto disapproved of the contention of Nuziveedu by saying that DNA or trait cannot be covered under the definition of the plant variety. So, it cannot be covered under plant variety act.[8] A patent should be granted for innovation made through skill but it should be subjected that it is for a process or product. When the hybrid variety was created through the injection of patent into the cotton then the new invention will be covered under the Indian patent act and the new hybrid variety will be covered under the plant variety act.

### 2. ARGUMENT ON HOW SECTION 3(J) OF PATENT ACT, 1970 SHOULD BE INTERPRETED.

It was contented on the part of Monsanto that the word 'Plant' should be there ad as 'living organism' under section 3(j) of the Patent act. It further stated that inventions in this category completely fit under the definition of 'micro organism'. If we see per se then biological entities should be excluded and not inventions. They further explained that for all the process in living being DNA is the substance which is responsible but it is not a living thing. Since it is not a living thing it cannot be considered as an organ or part of the plant. Through this method new transgenic varieties and inventive transgenes of microorganisms can be created. Therefore they can be patented under the Indian patent act. While the Indian company took a claim that it is written in section 3(j)***"(j) plants and animals in whole or any part thereof other than microorganisms but including seeds, varieties, and species and essentially biological processes for production or propagation of plants and animals"***[9]

According to Section 3(j), ***plants and animals per se or any part thereof are not patentable. Moreover, 'essentially biological processes' to produce plants and animals are also not patentable.***[10] They also argued that the patent did not have any industrial application as a nucleic acid sequence which has only the application of seed or a plant cell.

### 3. ARGUMENT ON ISSUE OF SUBLICENSING AND TRADEMARK VIOLATION.

[8] *Harvard College v Canada (Commissioner of Patents),[ 2002] 4 SCR 45*
[9] *The Patents Act, 1970*.section 3(j).
[10] *The Patents Act, 1970*.section 3(j).

Monsanto claimed that Nuziveedu did not pay the price for usage of their technology hence it's decision to end the agreement of sub-licensing was correct in eyes of law. According to section 14(1) of Special Relief Act, 1963 a terminated agreement cannot be restored and no party thereof can be compared to follow any obligations. The Essential Commodity Act, 1955 empowers the central government to ordain true value of seeds. If a company is charging price more than the trait value fixed by government then under this act that one cannot break any contract for non payment of license fees. Nuziveedu argued that only central government has the power to fix prices so, it is not bound by any prices set by Monsanto. The decision of ending the agreement of sub licensing was also considered autocratic in nature. It also contented that the technology of Monsanto can only be protected under Plant Variety Act to which it failed to apply. When the allegations of trade mark violation are made against Nuziveedu then it defends itself by claiming that they had no intention of using the mark on their product. They had just used Monsanto's abbreviation to show the product they have used for manufacturing.

## IV. CONCLUSION

The patents which have a relation with GM technology and also patents which are associated to tissues, cells, process, genes etc. have played a vital part in transforming Indian cotton. In this case it was held that the patent in question falls under the provisions of Section 3(j) of the Patent Act. It was held that the claims of the patent are un-patentable. The decision of Single Judge was verified by Division Bench regarding the trait fee payable to Monsanto by the Indian companies. A limitation period of three months was given by the District Court to Monsanto to pursue protection for its invention under "The Protection of Plant Variety and Farmers Right Act, 2001". Some companies use these patents while some companies do not use it as they directly sell their seeds to farmers. This is can happen because companies get benefitted because of technological barrier. With the growing privatization in agriculture sector, it makes a notable issue for researcher in agro-tech area. So, they need patents, intellectual property protection. However, it was taken into account that giving excessive rights or a patent on GM crops might bar it from the people who need it most. There is a need to improve legal certitude and to adjust to Indian plant patent rules to get the correct economic value of seed industry. It would be very helpful if we clarify that that plants are not on the list of product claims related to genes. This could be proved through social and legal argument. Also some claims mentioned in above are not mentioned in Indian Patent Act. It is the responsibility of Indian higher court to restrict the scopes. Specially Supreme Court and High court have the power and should to take cognizance for proper interpretation of patent

act as previously Indian courts have interpreted the act in restrictive manner. It would bring back the companies confidence in Indian patent system. If there would be a restriction then it would make Indian patent act more comprehensible. The decision of court could raise the cotton industry.

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