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Monsanto Holdings Pvt. Ltd. & Ors. v. Competition Commission of India & Ors.

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Level of Bench/Court	HIGH COURT OF DELHI AT NEW DELHI
Name of Judges	HON'BLE MR JUSTICE VIBHU BAKHRU
Citation	W.P.(C) 1776/2016 and CM Nos. 7606/2016, 12396/2016 & 16685/2016 W.P.(C) 3556/2017 and CM Nos. 15578/2017, 15579/2017 & 35943/2017

Facts of the case:

This case is about Monsanto Holdings Pvt. Ltd. (MHPL), a subsidiary of Monsanto Company, and its joint venture in India, Mahyco Monsanto Biotech (India) Pvt. Ltd. (MMBL). Monsanto is an international company engaged in the business of agricultural biotechnology products and services that primarily focus on genetically modified seeds. Specifically, it has developed Bt. Cotton seeds, incorporating resistance to bollworms-the primary pest of cotton-under its proprietary Bollgard-I and Bollgard-II technologies.

The matter before us deals with Monsanto's business practices and more particularly, the terms of licensing and pricing for its Bt. Cotton technology. Monsanto had sublicensed its Bollgard technology to several seed companies in India through MMBL, such as NSL, Prabhat Agri Biotech Ltd. etc. There were two elements to the license agreements offered: an upfront non-refundable amount and a recurring "trait value," which was pegged at the maximum retail price (MRP) of Bt. Cotton seeds sold by sublicensees.

These are just some of the grievances raised by NSL and other seed companies in 2015 related to very high trait fees charged by Monsanto and the restrictive clauses in its sublicensing agreements. These are said to be justified given the very high fees demanded by Monsanto and the exploitation of its dominant market position in India. Some of the terms in the agreement are also deemed unconscionable and anti-competitive for seed companies since they bar or otherwise restrict them from negotiating with competitors or using substitute technologies.

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For the same, MoA&FW filed a reference to the CCI alleging that Monsanto's business practices caused damage to the cotton seed industry and farmers by limiting competition and price inflation. As such, under the Competition Act, 2002, the CCI investigated whether Monsanto's pricing and licensing practices constituted anti-competitive agreements under Sections 3 and abuse of dominance, respectively, under Sections 4 of the Act.

Monsanto tried to overcome the jurisdiction of CCI by arguing that the Patents Act solely governed it, and the patentees were accorded the right to license technologies along with collecting fee for its usage. Monsanto urged that CCI had no jurisdiction to regulate patent-related issues and disputes related to fee collection practices should be resolved under the Patents Act, not under the Competition Act. The case was taken to the Delhi High Court, and it was assigned to decide the extent of CCI's jurisdiction in matters related to intellectual property rights as well as whether Monsanto's practices formed an abuse of its dominant position in the relevant market.

Issues of the case:

The main legal issue before this case is on the cross-over area between intellectual property rights and competition law. Specifically, the court was of the opinion to be called upon to adjudicate on whether the Competition Commission of India, in short CCI had jurisdiction over investigations by it on Monsanto's activities concerning its Bt. Cotton technology, which happened to be covered under the Patents Act. This also raises questions that lie more broadly within the relationship of competition law to intellectual property law: whether one can be superseded by the other under certain circumstances.

QUESTIONS BEFORE THE COURT CENTRAL ISSUES

Jurisdiction of the CCI: Is the inquiry by the CCI under the Competition Act into the licensing and pricing practices adopted by Monsanto or is the subject matter outside the purview of the Competition Act as it is governed by the Patents Act? According to Monsanto, the Patents Act provides the umbrella legal framework for matters related to patents, including licensing and royalty payments, while the jurisdiction to decide upon such issues lies elsewhere.

Abuse of Dominance: Was Monsanto using its dominant market position in the Bt. Cotton technology by charging undue and excessive Trait fees, and imposing unfair conditions of license on seed manufacturers? The seed companies and the Ministry of Agriculture accused that Monsanto's higher fees and exclusive licensing arrangement were prejudicial to

competition in the cotton seed market and, therefore, raised the cost of seeds for the farmers who bought them.

Anti-Competitive Agreements: Do the contracts having sublicensing provisions between Monsanto and the seed companies violate Section 3 of the Competition Act, specifically those provisions that have an anti-competitive effect? In this case, the seed companies claimed that the conditions of Monsanto on them for their obligation to notify Monsanto in case they intended to discuss agreement with competitors as well as the obstructions to the destruction of the parent seed lines once the sublicense agreement is cancelled were means of restricting competition in the cotton seed market.

Conflicting Relationship Between the Patents Act and the Competition Act: The case further raises questions over whether the Patents Act and the Competition Act inherently conflict with each other. Monsanto argued that the two acts operate in different spheres: one that looks to the protection rights of patentees, including charging royalties for use of patented technologies, and another merely concerned with preventing anti-competitive practices in the market. This would bring in the question whether the CCI could regulate the economic behaviour of a patent holder in the market without infringing upon the rights granted under the Patents Act.

Arguments from the petitioner side:

The case of Appellant Monsanto is based on the fact that the CCI had no jurisdiction to inquire into its business conduct under the Competition Act. The applicant has submitted that since its rights and activities in India are governed by the Patents Act, 1970, which grants patent holders the exclusive rights of their inventions, including the right to license such invention and collect royalties. In turn, Monsanto said that the Patents Act prescribes a comprehensive scheme of regulation for licensing of patented technologies and has provisions to redress all allegations of abuse of rights under the patent concerning unreasonably high fees or restrictive licensing practices.

The CCI cannot regulate the issues of patents as it is a market competition regulator, Monsanto argued. That was for the Controller of Patents to decide whether the terms of Monsanto's sublicensing agreements, including the trait fees charged on Bt. Cotton technology, were discriminatory as alleged by Natco or otherwise. Monsanto submitted that for the CCI to order an investigation, they would have had to consider whether the trait fees were reasonable or not and this Monsanto argued was not a question for the CCI to.

This was the argument on one of the other important issues Monsanto raised; Section 3(5) of the Competition Act specifically excluded agreements whose purpose was to be capable of protecting intellectual rights, such as patents. Monsanto had argued that sublicensing agreements-stating clauses intended at protecting patented Bt. Cotton technology-had to be excluded from the scrutiny of the Competition Act as they aim to protect Monsanto's patent rights. The CCI has to be beyond its ambit, Monsanto said, because those agreements are actually formed to protect its intellectual property from infringement.

It also based its judgment on the judgment pronounced by the Supreme Court in Bharti Airtel Ltd. v. Competition Commission of India, where it had held that any matter subject to regulation by a specialized authority should be allowed for exclusive regulation by such an authority before the CCI could regulate the same. Monsanto contended that the same maxim had to apply to the instant case, that is, in determining whether Monsanto's acts were violative of the Patents Act, the Controller of Patents was the proper authority to first consider.

Monsanto lastly argued that its license fees were not exorbitant and met international standards for licensing biotechnology. It further submitted that the license fees represented the cost of developing Bt. This comprised cotton technology and the major benefits that seed developers and farmers enjoy through the technology. Monsanto also pointed to the fact that its technology had altered the face of cotton production in India, where productivity had improved and pesticides had decreased, and argued that license agreements were necessary to ensure proper use of the technology.

Arguments from the respondent side:

This case involved a considerable number of respondents against Monsanto, comprising of CCI, seed manufacturers and the Ministry of Agriculture. All these respondents pleaded that Monsanto had been abusing its dominant market position through imposing exorbitant and unfair 'trait fees' for its Bt. Cotton technology as well as through imposing unfair conditions in its sublicensing agreements. According to the respondents, it was imposing financial pressure on seed manufacturers and farmers, and also was shifting into the competition in the cotton seed market.

The respondents have also pleaded that Monsanto Bollgard technology was the only one that was available for cotton farmers in India, and more than 99% of cotton cultivation is dependent upon Bt. Cotton seeds. The respondents submitted that this gave Monsanto a dominant position

in the market for cotton seed technology and that its action falls within the ambit of Section 4 of the Competition Act.

The most convincing case for seed producers is that Monsanto's technology fees neither seem fair nor even remotely comparable to the worth of the technology and what Monsanto incurs. Here, the argument seems to revolve around the position Monsanto enjoys and milks through outrageous royalty extortions from seed manufacturers-a charge which these seed manufacturers in turn pass on to farmers. This, they further contended harmed the farmers as they were made to pay more for seeds resultant upon Monsanto's pricing. Other conditions in Monsanto's sublicensing agreements proved thorny for the respondents who asserted that such conditions are anti-competitive and run afoul of Section 3 of the Competition Act.

One such conditions required seed companies to notify Monsanto in case they opened negotiations with a competitor to use alternative cotton seed technology. The other terms required seed firms to destroy all parent seed lines produced under Monsanto's technology in the event of revocation of its sublicensing agreement. The interviewees also agreed that these provisions kill competition since they cut off seed manufacturers from diversifying their technologies to other alternatives; they are only limited to Monsanto technology. The Ministry of Agriculture defended its reference to the CCI and actively supported the case of the seed producers further pleading that the practices of Monsanto were detrimental to the farmers and the farm sector in general. The Ministry further pleaded that the high trait fees and the restrictive licensing agreements of Monsanto choked the innovation in seed production and prevented alternative technologies for cotton seed development.

The respondents disagreed with the submissions of Monsanto that this case fell beyond the jurisdiction of CCI.

Under the Competition Act, the respondents averred that it well came within the mandate of CCI to regulate marketplace behaviour and prevent acts which led to anti-competitive practice regardless of whether such an aspect involved any intellectual property rights. They argued that it was well within the domain of CCI to determine whether the licensing practices adopted by Monsanto were likely to have an appreciable adverse effect on competition, even if licensing agreements had a relation to patented technology. The last of the respondents' arguments was that the invocation of Section 3(5) of the Competition Act by Monsanto was misplaced.

According to them, whereas the Competition Act exempts granting exemption on agreements that protect intellectual property rights, such exemption is not granted to agreements containing

unreasonable conditions or restricting competition. They contended that Monsanto's sublicensing agreements, by the imposition of unfair and restrictive conditions, exceeded that which was necessary to protect its patent rights and therefore were not entitled to the exclusion under Section 3(5).

Judgement:

Delhi High Court in its judgement ruled in favour of CCI and dismissed Monsanto's petitions. In its judgment, court clarified that the CCI had had a jurisdiction to investigate Monsanto's practices under the Competition Act irrespective of the fact that case involved patented technology. The court emphasized on the point that the Competition Act and Patents Act operate in different spheres and that there would not be an inherent conflict between the two acts.

In the instant case, the learned court has rightly rejected the argument that the jurisdiction of the CCI was excluded by the Patents Act. The Patents Act has granted certain exclusive rights to patentees which include among other things right to license their inventions, collection of royalties, etc. Such rights have to be exercised only in a manner consistent with the principles of competition law. It is for this reason that the court pointed out that whereas the Patents Act focuses its attention on the grant of intellectual property rights and their protection, the Competition Act centres its focus on the control of market conduct and abolition of anti-competitive practices. The two are thus complementary rather than mutually contradictory, the court submitted.

Moving further, the court referred to Monsanto's reliance on Bharti Airtel Ltd. v. Competition Commission of India where it was held that the CCI is duty-bound to yield to a sectoral regulator-TRAI-on issues concerning telecommunication, which touches upon issues of technical nature. In distinction, this court, while deciding the case, had referred to the role of the Telecom Regulatory Authority of India and that of the Controller of Patents. The court ruled that even as the TRAI was vested with a role as a regulator in the telecommunication sector, no such role was available for the Controller of Patents to regulate the market behaviour of patent holders. It held that there was no cause for the CCI to relinquish jurisdiction in this case over the Controller of Patents, wherein the issues being investigated by CCI were purely on aspects of anti-competitive conduct as distinguished from the validity or enforcement of Monsanto's patents.

Since held that Section 3(5) of the Competition Act could not salvage Monsanto's sublicensing agreements from the clutches of the CCI, this judgment further develops the principle enunciated that though Section 3(5) excludes agreements purporting to protect intellectual property rights, those excluded are exercisable only where the conditions are reasonable and necessary to protect such rights. In the case, the provisions of Monsanto's sublicensing agreements with a seed manufacturer regarding his inability to enter into negotiations with competitors and his obligation to destroy the parent seed lines were reasonably justified, not to protect the Monsanto patents but to eliminate competition and retain market dominance for Monsanto.

Conclusion

The appeals filed by Monsanto were rejected by the court, and CCI's order of investigation on Monsanto's practices was confirmed by it. The judgment of the court upheld the authority of CCI in regulating the market conduct under the scheme of the intellectual property rights so long as the conduct under question has an appreciable adverse effect on competition. Petition dismissed. Indeed, in doing so, it clarified that the immunity/protection provided to the patentees under the Patents Act would not result in an immunity shield for them so that they would be shielded from scrutiny under the Competition Act insofar as their market behavior was deemed anti-competitive.

Analysis:

This is an extremely important judgment given by the Delhi High Court because in the relationship of intellectual property rights and competition law, complexity has been increasing. It has responded at the heart of the case: the extent to which a patent holder can exercise his exclusive rights so that, by exercising those rights, do not prompt competition at a marketplace. This has been one of the most recurring topics in many industries, especially those of high technological innovation and much intellectual property protection.

The judgment supports this principle-whilst patent holders have a right to protect and monetize inventions, they do so in ways not fundamentally harmful to competition and under fair conditions in the markets. This balance is important, particularly in such industries as biotechnology, where a few key players often control very important technologies that other people depend on.

A second implication of this case is that there might well be a complementary role competition law can play vis-à-vis intellectual property law. The court seemed to take pains to point out that the purpose of the Patents Act was distinguishable from that of the Competition Act and could find no bar to an application of the competition law to the market conduct by the patent holder, though that involves the exercise of patent rights under the Patents Act. In essence, the order from the court goes hand-in-hand so that now market power can be regulated through patent-related agreements to deter the unfolding of abuse of such market strength and consequently check anti-competitive conduct.

The judicial interpretation of Section 3(5) of the Competition Act is also quite interesting. Exemption -Section 3(5) of the Act has excluded from prohibition agreements considered necessary to take measures for the protection of intellectual property rights. However, the court made clear the point that such a proviso should not ipso facto classify all patent-related agreements exempted from the concept. Such agreements would be exempted from scrutiny of the competition law only if such reasonable conditions could be imposed as would be considered necessary to protect rights of the patent holder. This will set an important precedent for cases in the future where intellectual property converges with competition law, as it determines where a line may or may not be crossed from agreements by a patent holder and true anti-competitive agreements.

All the agreed conditions, sublicensed by Monsanto, had no intention other than to defend patents but on the contrary aimed to curb competition. For example, the fact that seed producers had to report to Monsanto once they concluded an agreement with competitors indicated how Monsanto strangled competition rather than protecting its intellectual property in any way. Compelling seed producers to destroy parent lines was an unduly oppressive requirement, especially with the long time it takes to develop such lines.

In brief, this judgment shows that competition in a market-even if intellectual property is dominant-is necessary. It is a judgment reminding patent owners and competition law as a check on how rights could be misused responsibly.

Conclusion:

This is the first judgment in Monsanto Holdings Pvt. Ltd. & Ors. v. Competition Commission of India & Ors. It analyses the interface between intellectual property rights and competition law in India. In the present case, the Delhi High Court upheld the jurisdiction of Competition Commission of India concerning investigation into Monsanto's practices and quashed the

argument that Patents Act debarred the application of competition law to such patent-related matters.

This case is an example of an easy tendency of such balance being disturbed between the protection of intellectual property and fair competition in the market. While holders of a patent have a right to appropriate the invention, they have to do so in such a way that it does not harm competition or abuse the dominant position it has in a market. This judgment hereby clearly establishes that competition law is sure to remain a regulator of the economic behaviour of patent holders even when those holders are exercising their rights under the Patents Act.

This judgment will give the CCI a landmark case precedence concerning the extent of its powers to investigate suspected abuses of dominance and anti-competitive practices even if those anti-competitive practices involved patented technologies. Judgment obviously sets up crystal-clear guidelines on when agreements between patent holders may be violative of competition law so that innovation and competition can well co-exist in the marketplace.