

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12459 OF 2018

MAHARASHTRA STATE SEEDS CORPORATION LTD
VERSUS
NIRMAL SEEDS PVT LTD AND ANOTHER

...
Advocate for Petitioner : Smt Dube Anjali (Bajpai)
Advocate for Respondent 1 : Shri Bhide Vinod Y.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 06, 2019

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PER COURT :-

1. Leave to add prayer clause. Addition to be carried out forthwith.
2. The litigating sides are before this Court in these proceedings, which is said to be the seventh round of litigation between the parties.
3. Learned Advocate for the petitioner places on record the communication to respondent No.2 sent by Speed Post A.D. on 28.1.2019, by which, the second respondent was sought to be served. Copy of the tracking report placed on record indicates that the second respondent is served on 30.1.2019 at 16.17 hours. Yet, an appearance is not entered on behalf of respondent No.2. Nevertheless, the second respondent does not appear to be contesting

the issue raised in this petition, which is primarily opposed by respondent No.1 / plaintiff.

4. Considering the order that I intend to pass, I am not required to advert to the entire contentions of the litigating sides.

5. The grievance of the petitioner is that the sample packet of 'Utkarsh Green Gram (Mung)' seeds preserved by defendant No.1 Company, which is the petitioner herein, be subjected to a DUS test, which is performed by the Protection of Large Varieties Farmers Rights Authorities, New Delhi. The litigation between the parties had reached this Court in an earlier round in Writ Petition No. 11792 of 2017. This Court, while issuing notice, has observed in its order on 11.10.2017 as under:-

" 1. Issue notice before admission, in both the petitions, to the respondents, returnable on 22.11.2017.

2. In the first petition, Smt. Dubey, learned Advocate waives service for respondent Nos.1 to 4. In the second petition, Shri Bhide, learned Advocate waives service for respondent No.1.

3. The petitioners in these two petitions shall supply copies of the petition paper book for issuance of notice on/or before 24.10.2017, failing which, the petition in which copies are not supplied, will stand dismissed without reference to the Court on

25.10.2017.

4. *In the first petition, respondent No.5, which is respondent No.2 in the second petition, namely, Adarsh Agro Agencies is directed to preserve two seed packets of Utkarsh Seeds, pertaining to Green Gram Seeds (Mung), whose expiry date printed on the packet is 17.10.2017. Similarly, the Maharashtra State Seeds Corporation, the petitioner in the second petition, is at liberty to preserve the same product of the seeds with the same expiry period as is available with them.*

5. *Needless to state, the above order would be subject to the result in these two petitions."*

6. When Writ Petition No.11792 of 2017 was heard finally by this Court, an order dated 30.1.2018 was passed, by which, the said petition filed by this petitioner was dismissed. However, this Court (Coram : V.K. Jadhav, J.), recorded in paragraph No.9 of the order as under:-

"9. *In terms of order passed by this Court on 11th October, 2017, particularly para 4, the plaintiff is at liberty to bring this order to the notice of the trial Court and the trial Court may pass appropriate orders with regard to the sample as directed by this Court to be preserved."*

7. When the instant petition was heard on 21.1.2019, the following order was passed:-

"1. At the request of respondent No.1, S.O. to 6.2.2019 for passing orders.

2. Respondent No.2 being a formal party, a notice is not being issued.

3. It is informed that the seeds sample surrendered by respondent No.2 in the Court and which is said to be manufactured by the petitioner, has been referred for the purpose of DUS Test analysis to the Registrar General, Protection of Plant Variety and Farmers' Rights authority. The report is awaited and would reach the trial Court at any moment.

4. Grievance of the petitioner is that as respondent No.2 is a relative of respondent No.1, the petitioner is apprehensive about the sample surrendered by respondent No.2 in the Court. If the report of that seeds sample is disclosed, it would affect the case of the petitioner since the petitioner has preserved the same batch sample and that needs to be forwarded to the same authority for analysis.

5. Learned Advocate for respondent No.1 submits that no loss would be caused if the report is divulged to the parties by the trial Court after it is delivered.

6. I find it appropriate to direct the trial Court to preserve the said report pertaining to the sample 'Utkarsh Green Gram Seed Variety' in a sealed cover and the details of the said report would not be divulged to the litigating sides until further orders in this petition.

7. *Liberty to the petitioner to serve the second respondent by Speed Post A.D. along with the copy of this order."*

8. Considering the above and keeping in view the order of this Court dated 30.1.2018, I do not find that the impugned order in this petition dated 27.4.2018, passed by the trial Court referring the samples, preserved by the defendant No.5 / Shop Keeper for undergoing the DUS test, could be faulted. This petition, therefore, need not be entertained to this extent.

9. The petitioner has, however, made a grievance that the direction of this Court set out in paragraph No.9 in the order dated 30.1.2018, was not considered by the trial Court. I find that this Court had considered the earlier order passed on 11.10.2017 and had granted liberty to the plaintiff to bring this order to the notice of the trial Court and the trial Court was expected to pass appropriate orders with regard to the sample preserved under the directions of this Court. Respondent No.1 / plaintiff submits that he has brought this order to the notice of the trial Court. Learned Advocate for the petitioner / original defendant No.1 submits that the trial Court is conspicuously keeping aside the sample preserved by this petitioner, without appreciating that the second part of paragraph 4 of the order of this Court dated 11.10.2017 was meant to preserve two seed

packets of 'Utkarsh Seed' pertaining to Green Gram seeds with the same expiry date 17.10.2017.

10. Learned Advocate for respondent No.1 / plaintiff submits that the petitioner herein has not applied to the trial Court for sending a sample packet of 'Utkarsh Seeds' pertaining to Green Gram seeds of the same batch having the same expiry date 17.10.2017, for the DUS test.

11. The learned Advocate for the petitioner points out that the second part under paragraph No.4 of the order dated 11.10.2017 would indicate that this petitioner would also preserve the same product of the seed which is within the same expiry period. Consequently, the said product has been preserved and was brought to the notice of the trial Court, which selectively has sent the sample of the plaintiff for the DUS test.

12. Learned Advocate for the plaintiff vehemently contends that proper submissions were not made on behalf of these petitioners before the trial Court praying for parity in so far as sending samples of both the sides for the DUS test.

13. I find the contentions of the petitioner on this count to be

sustainable for the reason that the trial Court is aware about the controversy between the parties, whereby, the plaintiff has blamed the manufacturers with regard to the infringement of the rights of the plaintiff and the petitioner / manufacturer contends that the seeds of the petitioner / manufacturer found in the shop operated by respondent No.2 would be under suspicion as respondent No.2 is related to the plaintiff.

14. In the above peculiar dispute between the parties and in view of the litigation not pertaining to the Trade Marks or Copyrights violation, it would have been appropriate for the trial Court to forward the seeds preserved by the petitioner / defendant No.1 for the DUS test, in order to ensure that the manufacturer / petitioner does not raise the ground of unequal treatment in litigation.

15. In view of the above, this petition will have to be entertained to the extent of prayer clause (C-1). As such, this petition is partly allowed in terms of the prayer (C-1) seeking forwarding of the seeds preserved by the petitioner, in view of paragraph No.4 of the order dated 11.10.2017 in Writ Petition No.11792 of 2017.

16. Hence, the petitioner shall move an application before the trial Court to place this order on record and the trial Court shall,

accordingly, issue directions for referring the seeds preserved by the petitioner / Corporation, for the DUS test to New Delhi. The petitioner shall deposit the requisite charges for the test, in accordance with the procedure.

17. It is made clear that after the concerned Laboratory submits the analysis / test report to the trial Court, the test report of the seeds pertaining to the seed sample surrendered by respondent No.2 herein, shall be divulged, along with the test report so received subsequently, to the litigating sides. In short, both the test results shall be disclosed to the litigating sides at the same time. Needless to state, the pending suit shall be decided by the trial Court on its own merits and observations in this order shall not influence the trial Court.

(RAVINDRA V. GHUGE, J.)

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