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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 9428/2019

MAHYCO MONSANTO BIOTECH (INDIA) PRIVATE LIMITED

..... Petitioner

Through Mr.Sandeep Sethi, Sr. Adv. with
Mr.Ajit Warriar, Mr.Naval Chopra,
Mr.Harman Singh Sandhu, Mr.Angad
Kochhar, Mr.Aman Singh Sethi,
Ms.Nitika Dwivedi, Ms.Tanvi Dubey,
Mr.Devansh Agarwal, Advs.

versus

COMPETITION COMMISSION OF INDIA AND ORS.

..... Respondents

Through Mr.Tushar Mehta, SG with Mr.Samar
Bansal, Ms. Devahuti Pathak & Mr.
Sachin Mishra, Advs. for R-1 & R-2.
Mr.Nishant Rai, Adv. for R-13.
Mr.Vaibhav Choukse, Ms.Ela Bali,
Advs. for R-4 to R-6.
Mr.Vivek Chib, Ms.Pracheta Kar,
Advs. for R-7.
Ms.Nimisha Menon, Adv. for R-9.
Mr.Sunil J.Mathews, Mr.Tasmin
Singh, Mr.Ashim Dua, Advs. for R-3.
Mr. Anshumaan Sahni, Adv. for R-8

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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04.08.2020

1. This hearing has been held by video conferencing.
2. This petition has been filed by the petitioner challenging the

orders dated 06.08.2019 and 07.08.2019 passed by the respondent no.1, rejecting the prayer of the petitioner to grant an opportunity to cross-examine 40 individuals who had deposed before the Director General of the Competition Commission of India, as also to grant further opportunity to the petitioner to file its response to the report of the Director General.

3. During the course of hearing, the learned counsel for the respondent no.1, on instructions, submitted that in the peculiar facts of the case, the statements of the 40 witnesses whose cross-examination has been prayed for by the petitioner, would not be relied upon by the respondent no.1 for any purpose and their statements shall be treated as expunged from the record. In fact, the respondent no.1 in its application, being CM No.13575/2020, reiterated its stand in the following words:

"In light of the above background, it would be clear that the sole grievance of Petitioners was that the Investigation Report is based, in part, on oral testimony or information derived from personal knowledge, in respect of which it claimed a right to cross examine 40 witnesses. While the submission was already made on 07.02.2020, as it was not recorded in the order, the Commission categorically again submits the following undertaking:

"In the present matter, Competition Commission of India will not rely upon oral testimony of 40 witnesses whose cross examination is sought by petitioners, contained in the Investigation Report, and will only place reliance on oral testimonies of other witnesses, where required and the documentary evidence collected by the Director General, forming part of the Investigation Report, while reaching a final

conclusion in the matter."

4. The learned counsels for the other respondents, who are the complainants / informants, do not object to this mode being followed.

5. In view of the above, the respondents shall remain bound by their statement and the statements of the 40 witnesses whose cross-examination was sought would not be relied upon by the respondent no.1, and other respondents, for any purpose and shall be treated as expunged from the record.

6. The learned senior counsel for the petitioner further submits that the cross-examination of these 40 witnesses was required also to confront the statements made by the other 23 witnesses and therefore, the petitioner's grievance would still subsist. He submits that as far as this grievance is concerned, the same be kept open to be agitated before the respondent no.1. It is ordered accordingly.

7. The learned senior counsel for the petitioner, however, submits that in view of the above statement of the respondent no.1, the report of the Director General, wherever it makes the reference to the statement made by these 40 individuals, should be struck off the record and therefore, the report be re-drafted in a manner excluding reference to such statements.

8. I am afraid that such submission cannot be accepted. The effect of the denial of an opportunity of cross examining the witnesses is only to the effect that the statements given by such witnesses cannot be relied upon. The respondent no.1 has also conceded to this legal position and therefore, has submitted that it shall not rely upon the

statements made by any of these 40 individuals. What effect it has on the report of the DG is for the respondent no.1 to consider when it proceeds to consider the report in terms of Sections 26 and 27 of the Competition Act, 2002 (“Act”). It would always be open to the petitioner to raise a grievance before the respondent no.1 regarding the procedure to be followed by the respondent no.1 in such decision making process and this shall be considered by the respondent no.1 while proceeding to consider the report of the Director General and thereafter passing any order(s) whether under Section 26 or 27 of the Act, as the case may be.

9. The petitioner shall be entitled to make all submissions in this regard before the respondent no.1 in such proceedings.

10. As far as the prayer of the petitioner seeking extension of time to file the reply before the respondent no. 1, the petitioner may file its reply/objection to the DG report, keeping in view the statement made by the learned counsels for the respondents recorded hereinabove, within six weeks from today. The petitioner shall also co-operate with the respondent no.1 for ensuring early disposal of the proceedings before the respondent no.1.

11. The petition is disposed of in the above terms.

NAVIN CHAWLA, J

AUGUST 04, 2020
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