

(2011) 11 DEL CK 0317

In the Delhi High Court

Case No : Writ Petition (C) 8431 of 2011 and C.M. No's. 19048-49 of 2011

Maharashtra Hybrid Seeds Co. Ltd.

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 30-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Protection of Plant Varieties and Farmers Rights Act, 2001 — Section 18, 21, 24(3), 24(5), 24(6)
Protection of Plant Varieties and Farmers Rights Rules, 2003 — Rule 30, 30(3), 76
Right to Information Act, 2005 — Section 8(1)

Citation : AIR 2012 Delhi 87 : (2012) 191 DLT 129

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : Sanjay Jain, along with Mr. Anil Dutt, Ms. Ruchi Jain, Ms. Namisha Gupta and Mr. Sudarshan Singh, for the Appellant; Jatan Singh, CGSC, along with Mr. Prashant Ghai, Advocate, for the respondent No. 1/UOI, Mr. Ram Niwas, Advocate for the respondent No. 2, Mr. Abhishek Saket and Mr. Amarjeet Kumar, Advocates for the respondent No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—This writ petition under Article 226 of the Constitution of India has been preferred to assail the order dated 17.11.2011 passed by Mr. Manoj Srivastava, Registrar of Plant Varieties Registry, New Delhi.

2. The background facts are that the petitioner made several applications for registration of its plant varieties under the Protection of Plant Varieties and Farmers' Rights Act, 2001 (the Act), in April 2008. According to the petitioner, these applications were accepted by respondent No. 2, i.e. the Protection of Plant Varieties & Farmers' Rights Authority and advertised by him on 01.12.2008 to invite objections. Respondent No. 3, i.e. Nuziveedu Seeds Pvt. Ltd., filed its notice of objections to a couple of these applications on 26.02.2009. Some of these applications were advertised on 01.06.2009, and thereafter respondent No.

3 filed objections to these applications also on 12.08.2008 & 31.08.2009.

3. It appears that between 2009 and September 2010, the pleadings were completed and evidence by way of affidavit were filed by the parties. The respondent No. 2 fixed the hearing of the objections of respondent No. 3 in respect of all the applications on 17.11.2011.

4. On the said date, respondent No. 3 stated before respondent No. 2 authority that despite its application in form PV-33 being pending for a long time, respondent No. 3 had not been provided certified copies of the applications and the proceedings. The said application in form PV-33 had been made for obtaining copies of the entire applications form including photographs and correspondence.

5. The petitioner opposed the grant of the entire information, as aforesaid, by contending that Rule 76 of the Protection of Plant Varieties and Farmers' Rights Rules, 2003 (the Rules), provides for providing of extracts of plant variety application and, therefore, the entire application containing plant details, could not be provided. The Registrar, by the impugned order, brushed aside the aforesaid objection of the petitioner and directed the Registry to furnish the certified copies of the petitioners applications in pursuance of PV 33 in the matters before him, within ten days. The matters are now posted for hearing on 17.02.2012 by the Registrar.

6. The submission of Mr. Sanjay Jain, learned senior counsel for the petitioner, is that along with the applications, the petitioner had entrusted confidential information to respondent No. 2. The grievance of the petitioner is that without looking into the petitioner's objections to the release of the entire information furnished by the petitioner along with its registration applications, the Registrar has directed the provision of the registration applications with all the information and correspondence to respondent No. 3, who is a competitor. The petitioner's apprehension is that by obtaining the said information, which is claimed to be of confidential nature, respondent No. 3 could put further defences by resorting to reverse engineering and by falsely claiming prior user. It is argued by Mr. Jain that the objections of the petitioner to the release of the entire application and information submitted with it and the correspondence exchanged with the registrar, should have been considered and a reasoned order passed by respondent No. 2, which has not been done.

7. Mr. Jain submits that the advertisement of the registration application is made in terms of Section 21 of the aforesaid Act read with Rule 30 of the aforesaid Rules. The requirement of disclosure of information contained in the registration application, by advertisement, is limited only to the information mentioned in Rule 30(3), which reads as follows:

30. Advertising of application for registration u/s 21.-

x x x x x x x x x

(3) The contents of such advertisement shall include-

- (a) name, passport data and source of parental line or initial variety used to develop the variety in respect of which an application for registration has been made;
- (b) description of the variety bringing out its character profile as specified under the DUS test Schedule;
- (c) essential characteristics conferring distinctiveness to the variety;
- (d) important agronomic and commercial attributes of the variety;
- (e) photographs or drawings, if any, of the variety submitted by the applicant; and
- (f) claim, if any, on the variety.

8. Mr. Jain submits that the entire information is not published as there could be confidential information filed by the applicant with the Registrar, along with the registration application. Mr. Jain submits that even under the Right to Information Act (RTI Act), the information including commercial confidence, trade secrets or intellectual property, the disclosure of which would hurt the competitive position of a third party, need not be disclosed by the public authority, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information. Respondent No. 2 has not addressed the issue whether the disclosure of the information, which is claimed to be confidential information by the petitioner, was in larger public interest. It is submitted that the impugned order has been passed mindlessly by respondent No. 2. In support of his submissions, he relies upon the Supreme Court judgment in *Nagarjuna Construction Co. Ltd. Vs. Govt. of Andhra Pradesh and Others*, .

9. Respondents have put in appearance on advance notice. Copies of the petition have been supplied in Court to the learned counsel for the respondents. They have made their respective submissions to oppose the petition. Learned counsel for the respondents have drawn my attention to Section 84 of the Act and Rule 76 of the Rules. These provisions being relevant are reproduced herein below:

Section 84

84. Document open to public inspection.- Any person may, on an application to the Authority or the Registrar, as the case may be, and on payment of such fees as may be prescribed, obtain a certified copy of any entry in the Register or any other document in any proceedings under this Act pending before such Authority or Registrar or may inspect such entry or document.

Rule 76

76. Manner of issuing certified copy u/s 84.- Any interested person may, u/s 84, make an application in Form PV-33 of the First Schedule, along with fee specified in the Second Schedule, to the Authority or Registrar for obtaining certified copies of any entry in the Register, certificates or extracts of plant variety

application or other records maintained by the Authority and any document required in any proceedings under this Act and pending before such Authority or Registrar; and he may make a request in similar manner and for similar purpose to inspect such entry or document.

10. The submission of the learned counsel for the respondents is that Section 84 vests an absolute right on any person to obtain from the Authority or the Registrar, on payment of such fees as may be prescribed, certified copy of any entry in the Register or any other document in any proceedings under this Act pending before such Authority or Registrar or may inspect such entry or document. It is argued that Rule 76 similarly provides that an application may be made in Form PV-33 of the First Schedule to the said Rules for obtaining certified copies of any entry in the Register, certificates or extracts of plant variety application or other documents maintained by the Authority and any document required in any proceedings under this Act and pending before such Authority or Registrar. It is argued that the registrar was bound to supply the said information in discharge of his statutory obligation and in pursuance of the respondents statutory rights.

11. Having heard learned counsel for the parties, I am of the view that there is no merit in this petition. The same is liable to be dismissed. In my view, there is a fundamental flaw in the submission of the petitioner that while making an application under the Act to seek registration of a plant variety, the applicant furnishes to the Registrar any confidential information, i.e. any information which the Registrar can hold in confidence. The whole concept of the law of patents, as also of the Act, is that the registration applicant, who claims to have developed a new invention or a new plant variety, may get the same registered so as to claim statutory protection for the period provided under the law. Under the Act, this protection is granted for the period prescribed by section 24(6) read with section 28 of the Act. However, this right/protection is coupled with the obligation that the applicant should make a complete disclosure of his claimed invention/development of plant variety in all its detail, so that at the end of the period of statutory protection the invention/developed plant variety may be produced by any person. In this regard, reference may be made to section 18, which prescribes the form of application for registration of a plant variety. The information required to be furnished by the applicant includes, inter alia,:

(e) contain a complete passport data of the parental lines from which the variety has been derived along with the geographical location in India from where the genetic material has been taken and all such information relating to the contribution, if any, of any farmer, village community, institution or organization in breeding, evolving or developing the variety;

(f) be accompanied by a statement containing a brief description of the variety bringing out its characteristics of novelty, distinctiveness, uniformity and stability as required for registration.

12. Reference may also be made to section 34 of the Act, which lays down the grounds on which a registration may be revoked. The grounds for revocation include:

(a) that the grant of the certificate of registration has been based on incorrect information furnished by the applicant;

x x x x x x x x

(c) that the breeder did not provide the Registrar with such information, documents or material as required for registration under this Act;

13. The complete disclosure has to be made by the registration seeker/applicant alongwith the application, and any person wishing to raise an objection is entitled to receive complete information, so that he may raise one or more of the available objections to the registration of the claimed plant variety.

14. The disclosure is made to the Registrar, who then publishes the same and invites objections. The objections are made to the claims of development/invention made in the application, and not merely to the information which may be published. The advertisement, in most cases, possibly cannot be with respect to the entire application and all the information furnished along with it, for it may run into hundreds of pages. Therefore, Rule 30 provides the salient features that need be published. However, any person from the public is entitled to scrutinize the application and all the information furnished by the applicant, and to challenge the claim made by the applicant on the grounds available in law to oppose the grant of registration. For this purpose, and to empower the interested person to effectively raise any objection, it is obvious that the complete information is required to be provided by the Registrar. There is no scope for any secrecy or confidentiality in the entire process, and it has to be transparent so as to defeat any false claim of invention or new development of a plant variety. As aforesaid, a complete disclosure is mandated also for the reason that, at the expiry of the statutory protection period, any person should be able to exploit the invention/plant variety developed by the registration applicant, without having to turn to the said applicant for any other information.

15. The argument of Mr. Jain that because the advertisement is not required to be published of the entire application and the information furnished with it, the Registrar gets vested with discretion to decide, whether, or not to part with the complete information on an application being made in form PV-33 is misplaced. Firstly, the words used in Rule 30 is "shall include". Therefore, the list of information that may be published is not exhaustive. Rule 30 merely lays down the minimum information that should be published. Secondly, this submission is not supported by the plain language of Section 84 and Rule 76. As extracted above, Section 84 is absolute in its terms and the authority or the Registrar are bound to provide certified copies and inspection of any entry in the Register or any document or any proceedings under the Act pending before the such authority or Registrar. The objections raised to an application for registration are

certainly "proceedings" under the Act. The only exception found in the Act is contained in section 78 of the Act, which entitles the Authority or the Registrar not to disclose information relating to registration of a variety which is considered prejudicial to the interest of the security of India. Even this provision, it appears, comes into play post registration, and not during the consideration of an application for registration or during the consideration of the objections to a registration application. It is not the petitioners case that the present case is covered by section 78 of the Act.

16. The submission of Mr. Jain that if the complete information is disclosed to the respondent competitor, it may resort to misuse of that information by undertaking reverse engineering process to put up a false claim of prior user is also misplaced. u/s 24(5) of the Act, the Registrar is empowered to issue such directions to protect the interests of a breeder against any abusive act committed by any third party during the period between filing of registration application and decision taken by the authority on such application. Moreover, the application is required to be disposed of in a time bound manner. Reference may be made to section 24(3) in this regard.

17. Reliance placed on Section 8(1)(d) of the RTI Act, 2005 is also misplaced for the couple of reasons. Firstly, the Protection of Plant Varieties and Farmers' Rights Act, 2001 and the Rules framed there under are a complete code in themselves and reference to the provisions of the RTI Act to determine what information can be disclosed with regard to an application for registration of a plant variety is, therefore, misplaced. Secondly, even u/s 8(1)(d) the competent authority is obliged to disclose information which is of commercial confidence or a trade secret or intellectual property, if he is satisfied that larger public interest warrants the disclosure of such information. The scheme of the Protection of Plant Varieties and Farmers' Rights Act, 2001, and particularly, Section 84 clearly shows that public interest lies in disclosure of the applications, all information contained therewith and the proceedings undertaken under the aforesaid Act.

18. Reliance placed on Nagarjuna Construction Co. Ltd. (supra) is also misplaced for the reason that there is no right vested in the petitioner to oppose the application made in Form PV-33. Consequently, there is no obligation to give any notice to, or grant any hearing to the registration applicant before providing the information/documents sought u/s 84, read with Rule 76, read with Form PV-33. There is no right vested in the petitioner to be heard on the issue whether or not the said application should be allowed and, if so, to what extent.

19. For all the aforesaid reasons, I find no merit in this petition. The same is, accordingly, dismissed.