

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. 64 OF 2004

RESEARCH FOUNDATION, SCI., TECH. & ECO. & ANR. Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

O R D E R

Heard.

In Research Foundation for Science, Technology & Ecology and Others v. Ministry of Agriculture and Others - (1999) 1 SCC 655, the petitioners had approached this Court in public interest for a writ of mandamus directing the respondent to take action to protect the biodiversity our country in conformity with the Convention on Biological Diversity (CBD) and such other Conventions for protection of the biodiversity and for a direction to the Government to challenge the patenting of Basmati rice, if required, in the United States Patent and Trademark Office (USPTO) and/or before the Dispute Settlement Body (DSB) created under the World Trade Organisation (WTO).

This Court had after notice to the respondent-Government of India and after hearing learned Attorney General noted that two legislations, namely, "the Biodiversity Act" and "the

Geographical Indicators Act" were in the process of finalisation for being introduced in Parliament. This Court also noted that "Plant Varieties and Farmers' Right Protection Bill" had already been finalised and was likely to be introduced in Parliament during the winter session. This Court also noted the submission of learned Attorney General that various steps required for the amendment of the Patents Act were also under consideration of the Government and that the Government of India was fully alive to the situation and its gravity and was taking all necessary steps to protect the national interest. Having said that this Court agreed with learned Attorney General that the concerns expressed by the petitioners had been served and the Government had been duly sensitized to the need for taking appropriate action to protect the country's interest so far as the preservation of bio diversity was concerned. The writ petition was with those observations disposed off as settled.

The present petition has been filed by the very same petitioners in which they have prayed for the following reliefs:

"A] Issue a writ of mandamus or directions of like nature directing the respondents to take appropriate action to challenge the patenting of wheat before the European Patent Office at Erhardtstrasse 27, D-80331, Munich, Germany in patent No. EPO 445929 B1 filed vide application No. 9130127.

B] Direct the respondents to set up a permanent department/Committee/Board which shall be competent/responsible to take appropriate actions to protect our biodiversity and file necessary claims/objections relating thereto before various forums all over the world;

C] Direct the respondents to take appropriate action to identify the traditional Indian wheat variety referred to as NAPHAL in western databases and in Monsanto's patent specification before EPO and take steps to rectify/correct the records, if necessary.

D] Any other order/orders which this Hon'ble Court deems fit and proper in the facts and circumstances of the case."

Mr. K. Radhakrishnan, learned senior counsel appearing for the Union of India, points out that insofar as prayer (A) above is concerned the same has become infructuous as the patent in-question has since been revoked by the European Patent Office. That position is not disputed by Mr. D.N. Goburdhan, learned counsel for the petitioners. In that view nothing further survives for consideration so far as prayer (A) is concerned.

As regards prayer (B), we see no real reason to direct the constitution of any department, committee or board at this stage especially when the Government does appear to us to be taking all necessary steps required for preservation of the bio diversity of this country.

Coming then to prayer (C), we are of the view that even the said prayer is redundant in view of the admitted position that the patent in-question has expired with lapse of time. A statement to that effect has been made by Mr. Radhakrishnan supported by an an additional affidavit filed on 10th December, 2013 which fact is not disputed by Mr. Goburdhan.

Mr. Goburdhan all the same insisted that this Court could permit the petitioners to amend the writ petition in terms of I.A. No.4 of 2014 to add the following additional prayer (E):

"(E) Direct the respondent to set up Committee, Board etc. with participation of civil society engaged in preventing biopiracy to take appropriate action for identification of traditional Indian varieties of plants and products and for correction of records in data-base."

A somewhat similar prayer has already been made in the writ petition, in the form of prayer (B), referred to above. In any case it is for the petitioners to make a suitable representation to the Government suggesting suitable measures, should any further steps be required in the direction of protecting bio diversity and preventing biopiracy, as alleged by the petitioners. We hope and trust that any such suggestions will engage the attention of the Government for such action as it may in its wisdom consider appropriate.

In the result, this writ petition no longer survives for consideration and is hereby dismissed as infructuous.

.....CJI.
(T.S. THAKUR)

.....J.
(R. BANUMATHI)

.....J.
(UDAY UMESH LALIT)

NEW DELHI
DATED 16th FEBRUARY, 2016.

ITEM NO.11

COURT NO.1

SECTION PIL(W)

S U P R E M E C O U R T O F I N D I A
 RECORD OF PROCEEDINGS
Writ Petition(s) (Civil) No(s). 64/2004

RESEARCH FOUNDATION, SCI., TECH. & ECO. & ANR.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(with appln. (s) for interim directions and permission and permission to submit additional document(s) and raising additional grounds and office report) (For Final Disposal)

Date : 16/02/2016 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
 HON'BLE MRS. JUSTICE R. BANUMATHI
 HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Petitioner(s) Mr. D. N. Goburdhan, Adv.
 Ms. Pallavi Chopra, Adv.
 Mr. Abhishek Agrawal, Adv.
 Mr. Lal Ramtiamma, Adv.

For Respondent(s) Mr. K. Radhakrishnan, Sr. Adv.
 Ms. Asha Gopalan Nair, Adv.
 Mr. S.S. Rawat, Adv.
 Ms. N. Nivedita Nair, Adv.

Ms. Kiran Suri, Sr. Adv.
 Ms. Kiran Bhardwaj, Adv.
 Mr. Amit Sharma, Adv.
 Mr. Harish Khinchi, Adv.
 Mr. S.N. Terdal, Adv.
 Mr. D. S. Mahra, Adv.

UPON hearing the counsel the Court made the following

O R D E R

In terms of the signed order, this writ petition is dismissed as infructuous:

"...In any case it is for the petitioners to make a suitable representation to the Government suggesting suitable measures, should any further steps be required in the direction of protecting bio diversity and preventing biopiracy, as alleged by the petitioners. We hope and trust that any such suggestions will engage the attention of the

Government for such action as it may in its wisdom consider appropriate.

In the result, this writ petition no longer survives for consideration and is hereby dismissed as infructuous."

(MAHABIR SINGH)
COURT MASTER

(VEENA KHERA)
COURT MASTER

(Signed order is placed on the file)