Restoring Patent Rights – Bt Cotton

Why in news?

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The Supreme Court on Tuesday recently restored Monsanto Co.’s patent claim on genetically modified (GM) Bt cotton.

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How does the case evolve?

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- Mahyco Monsanto Biotech (India) (MMB) is a joint venture between Monsanto and India's Maharashtra Hybrid Seeds Co (Mahyco).
- It has sub-licensed Bt cotton technology to various domestic seed companies since 2002.
- Italso sells GM cotton seeds under license to more than 40 Indian seed companies, which in turn sell product to retailers.
- India has approved Monsanto's GM cotton seed trait in 2003.
- This has helped in transforming the country into the world's top producer and second-largest exporter of the fibre.
- Monsanto's GM cotton seed technology dominates 90% of India's cotton acreage.
- The problem started when MMB terminated its contract with Nuziveedu Seeds Ltd (NSL) in 2015 after a royalty payment dispute.
- A case filed in 2015 by MMB against NSL and its subsidiaries for selling Bt cotton seeds using its patented technology, despite termination of a licence agreement in November 2015.

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- The Delhi High Court on May 2018held that plant varieties and seeds cannot be patented under Indian law by companies such as Monsanto.
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- Also, royalties on GM technology would be decided by a specialized agency of the agriculture ministry.
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- This has made Monsanto unable to claim patents on GM cotton seeds.
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- The Supreme Court recently overturned this judgement saying that Monsantocan claim patents on its genetically modified (GM) cotton seeds.
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What will be the consequence?

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- Bollgard technology is about a genetic sequence from a microorganism called Bacillus thuringiensis (Bt).
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- This sequence, when modified and inserted into plant cell, produces a toxin that repels pests like bollworm.
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- Any attack on the ability of Monsanto to earn royalty from its IP would have resulted in Monsanto not introducing newer technologies in India.
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- This is critical as bollworms would, over time, become resistant to the current strain of the pest-repellent toxin, and would require further innovation.
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- With the ruling, the patent held by Monsanto over its Bollgard-II Bt cotton seed technology will be enforceable in India for now.
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- The outcome is positive for foreign agricultural companies which have been concerned that they could lose patents on GM crops in India.
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- Also, most international companies which have stopped releasing new technology in the Indian market due to the uncertainty over patent rule would re-think their strategies.
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- Access to advanced technology in cotton production was important to help Indian farmers to compete with rivals overseas.
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- Thus, the verdict validates that patents are integral to innovation.
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- However, SC has left the validity of Monstanto to claim royalty on Bt cotton to be finally decided by the Delhi high court.
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What is the other related case?

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- In **Divya Pharmacy vs Union of India** and Ors, the High Court of Uttarakhand passed an order against Divya Pharmacy that makes ayurvedic medicines and nutraceutical products.
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- Various companies manufacturing ayurveda-based cosmetics have been operating unregulated.
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- In that case, the High Court gave a purposive interpretation to the provisions of the Biological Diversity Act, 2002.
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- It adjudicated that an Indian entity also has to comply with the demand raised by a state biodiversity board towards fair and equitable benefit sharing (FEBS).
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- The High Court observed that indigenous and local communities, who either grow “biological resources” or have traditional knowledge of these resources, are the beneficiaries under the Biological Diversity Act.
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- Thus, in return for their parting with this traditional knowledge, they are liable to receive certain benefits as FEBS.
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- Hence, the above judgement has given impetus to the efforts of the National Biodiversity Authority as well as state biodiversity boards in a particular direction, which were struggling to implement provisions of the Act.
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What are the takeaways?

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- In one scenario, the Supreme Court has upheld the intellectual property

rights of an MNC in the Monsanto case.
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- On the other case, the High Court of Uttarakhand upheld the liability of another MNC, Divya Pharmacy, to share the benefits it was deriving from exploitation of local biological resources.
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- Thus, it is critical to adopt a balanced approach, when there emerges a question of rights of corporations versus the rights of the populace.
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Source: Financial Express

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