

CASE NO.:
Appeal (civil) 904 of 2004

PETITIONER:
Seedsman Association, Hyderabad & Ors.

RESPONDENT:
Principal Secretary to Govt., A.P.& Ors.

DATE OF JUDGMENT: 10/02/2004

BENCH:
S. Rajendra Babu & G.P. Mathur.

JUDGMENT:
JUDGMENT

(Arising out of SLP (C) No. 20787 of 2000)

With Civil Appeal Nos.905,906,907-908,909 of 2004 (Arising out of SLP (C) Nos.10024/2001, 1107/2001, 4252-4253/2001 and 7685/2001)
Civil Appeal Nos.8499/2001

G.P. MATHUR, J.

Leave granted.

These appeals by special leave have been preferred against the common judgment and order dated 27.9.2000 of a Division Bench of Andhra Pradesh High Court by which a batch of writ petitions were disposed of with certain directions.

2. We will state the facts of Special Leave Petition (Civil) No.20787 of 2000. Seed sman Association, Hyderabad and two other seed companies filed writ petition under Article 226 of the Constitution impleading the Principal Secretary to Government, Agricultural Department, Director-cum-Commissioner of Agriculture Marketing Committee, Hyderabad and 16 Agricultural Market Committees of some Districts in the State of Andhra Pradesh as respondents. The main prayer made in the writ petition is that the action of the respondents especially those of respondent nos.3 to 18 in compelling petitioner nos.2 and 3 to pay market fee under Section 7 of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 be declared as illegal and arbitrary and the same may be set aside.

3. In the affidavit filed in support of the writ petition, it is averred that Seedsman Association, Hyderabad is an Association registered under the Societies Act for looking after the interest and welfare of the members who are organizing seed production, processing and marketing seeds under the provisions of Seeds Act, 1966 and the Seeds (Control) Order, 1983. From the date of sowing the Breeder/Foundation seeds, the petitioners' responsibility is to procure the seeds produced according to the procedure laid down in the Indian Minimum Seed Certification Standards, 1988, which are not meant for human consumption but for the exclusive purpose of sowing only. It is further averred that the members of the petitioner association procure the special kind of seeds though they are produced from agricultural land. Since the seeds are not meant for direct human consumption, they do not fall within the definition of the "consumer seeds" as notified under the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (hereinafter referred to as "the Act"). After exchange of affidavits, the High Court disposed of a bunch of writ petitions by the common judgment and order dated 27.9.2000 and the operative portion of the order reads as under :

(1) That all such items like paddy, wheat, maize, bajra, cotton seed, sunflower, safflower, jowar, etc., covered by this batch of writ

petitions, which are specified in the Scheduled-II appended to the A.P. (Agricultural Produce and Livestock) Markets Act, 1966 whether sold in original form i.e. edible or converted form i.e. chemically processed into non-edible form (seeds for germination purposes), within the precincts of notified market area/market yard, are exigible to the levy of market fee.

(2) That such seeds like Tomato and castorseeds, which are derivatives of the main produce, but are sold separately and which are not specified in the Schedule-II annexed to A.P. (Agricultural Produce and Livestock) Markets Act, 1966, cannot be made liable to the levy and collection of market fee.

(3) That such items specified in Schedule II referred to above which suffered the payment of market fee in an Agricultural Market Committee, shall not again be subjected to payment of market fee in any other Agricultural Market Committee, within the State of Andhra Pradesh, if the proof of such payment is furnished to the authority concerned.

(4) That the petitioners shall now submit the accounts to the respective committees within a period of one month from today, whereupon the respective Agricultural Market Committees shall make assessment of the market fee payable and within one month of the service of the said assessment orders, the petitioners shall pay off the said amounts; and

(5) That henceforth, the petitioners shall be liable to comply the provisions of A.P. (Agricultural Produce and Livestock) Markets Act, 1966 in their dealings in items covered by paragraph (1) above, within the market areas/market yards and failure to do so will render them liable for the consequences under the said Act.

4. Learned counsel for the appellants has submitted that the Parliament has enacted the Seeds Act, 1966 to provide for regulating the quality of certain seeds for sale and for matters connected therewith and this Act makes detailed provisions for regulating sale of seeds of notified kinds and varieties. Besides the aforesaid enactment, the Central Government has in exercise of power conferred by Section 3 of the Essential Commodities Act made the Seeds (Control) Order, 1983, which provides for licensing of dealers in seeds, besides appointment of Inspectors and taking of samples and analysis of seeds meant for sale or export. These statutory provisions and Control Order, it is submitted, deal with every aspect of the sale and purchase of seeds and, therefore, the vary same activity cannot come within the purview of Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966. Learned counsel for the respondents has submitted that the aforesaid Act has been enacted to consolidate and amend the law relating to the regulation of purchase and sale of agricultural produce, livestock and products of livestock and the establishment of markets in connection therewith. The Act has been enacted with reference to Entry 28 of State List of Seventh Schedule of the Constitution, namely, "Markets and Fairs". The purpose and object of Seeds Act, 1966 enacted by the Parliament and the Seeds (Control) Order, 1983 made by the Central Government is entirely different, namely, to maintain the quality of seeds meant for sale. The Act, on the other hand, regulates the actual trade in seeds so that the producer gets the proper price and the grower may get the proper quality of seed having regard to the price paid by him. Learned counsel has submitted that Section 2(i) defines "agricultural produce" and it means anything produced from land in the course of agriculture or horticulture and includes forest produce or any produce of like nature either processed or unprocessed and declared by the Government by notification to be agricultural produce for the purposes of the Act and therefore seeds will be fully covered by the provisions of the Act. It is urged that seeds are

produced from land in the course of agriculture or horticulture and, therefore, the State Government is fully competent to issue a notification under Section 3 of the Act and the appellants are liable to pay market fee.

5. The Preamble of the Seeds Act, 1966 shows that it has been enacted to provide for regulating the quality of certain seeds for sale and for matters connected therewith. The provisions of the Act show that the Central Government has to constitute a Central Seed Committee and establish a Central Seed Laboratory. It can, by notification in the official gazette, declare notified kinds or varieties of seeds, specify the minimum limits of germination and purity with respect to any seed of any notified kind or variety and also the mark or label to indicate that such seed conforms to the minimum limits of germination and purity specified. This Act enjoins establishment of a Seed Certification Agency for the State to carry out the functions entrusted to the certification agency and any person selling, keeping for sale or offering to sell or otherwise supplying any seed of any notified kind or variety may apply to the certification agency for the grant of certificate for the purpose. This Act further provides for appointment of Seed Analysts and Seed Inspectors. Section 7 of this Act enjoins that no person shall carry on the business of sale, keeping for sale, offering to sell or otherwise supplying seed of any notified kind or variety unless the same is identifiable as to its kind or variety, conforms to the minimum limit of germination and period specified under Section 6 and the container of such seeds bears, in the prescribed manner, the mark or label containing the correct price thereof and complies with such other requirements as may be prescribed. The Seeds (Control) Order, 1983 lays down that no person shall carry on the business of selling, exporting or importing seeds, except and in accordance with the terms and conditions of licence granted to him under the Order. The dealer of seeds has to display in his place of business details of opening and closing stock of different varieties of seeds held by him and also a list indicating the prices thereof. The Seeds (Control) Order also empowers the State Government to appoint Inspectors who are authorised to draw samples of seeds meant for sale or export or seeds imported and send the same to laboratory to ensure that the sample conforms to the standards of quality claimed.

6. In the counter-affidavit filed on behalf of the respondents, it is asserted that the plea of the writ petitioners that the seeds produced by them is not an agricultural produce since it is not fit for human consumption, is not correct and is specifically denied. It is averred that the seeds purchased or sold by the writ petitioners do not change their productivity, originality and characteristics and as they are grown from land in the course of agriculture or horticulture, they are fully covered by the provisions of the Act.

7. We have given our careful consideration to the submissions made by learned counsel for the parties. There are two decisions of this Court touching upon the controversy in hand. The first one is State of Rajasthan v. Rajasthan Agricultural Input Dealers Association AIR 1996 SC 2179. In this case, the High Court took the view that when foodgrains of particular varieties were treated and subjected to chemical process for preservation, those grains become commercially known as "seeds". If, however, a dealer was found dealing in foodgrains under the garb of seeds, the authorities were not precluded from prosecuting the offender in a criminal Court. The judgment of the High Court was upheld on the following premise : "It is undoubtedly true that foodgrains per se could be used as seeds for being sown and achieving germination, but in that form they retain the dual utility of being foodgrains as well as seeds. By process of coating and applying insecticides, other chemicals and poisonous substance to the foodgrain meant to be utilised as seeds, one of its basic character, i.e. its consumption as food by human beings or animals or for extraction for the like purpose, gets irretrievably lost and such processed seeds become a commodity distinct from foodgrains as commonly understood. That distinction was borne in mind by the High Court in allowing the writ petition of the respondents, and in

our view rightly."

8. A similar controversy has recently been examined again by this Court in *Krishni Utpadan Mandi Samiti v. Pilibhit Pantnagar Beej Ltd.* JT 2003(9) SC 548. The High Court allowed the writ petition of the respondent company, namely, Pilibhit Pantnagar Beej Ltd. and issued a writ of mandamus restraining the Agriculture Market Committee from interfering in the business of the Company in certified seeds and from demanding and realizing market fee on the transaction of unprocessed or processed certified seeds. The case set up by the company was that the business of the company is to purchase 'breeder seeds' from Agricultural Research Institute and thereafter to produce 'certified seeds'. The first step of production is to distribute this breeder seeds to the listed and scheduled farmers. The breeder seeds are sown and are germinated under strict supervision of the statutory Seeds Certification Agency, set up under the Seeds Act, 1966. The harvest is selected carefully under supervision of the Agency. The lots which do not conform to specifications are rejected. The standardized seeds so obtained are called 'Foundation Seeds'. These foundation seeds are thereafter again supplied to the listed farmers variety-wise with intimation to the Agency. The farmers sow these foundation seeds which are also supervised by the Agency. This crop is thus germinated under strict supervision of the Agency and the lots rejected are not taken back by farmers. After harvesting the approved standardized certified seeds, the lots are fumigated for preservation and the samples of each lot is tested in the laboratories of Seeds Certification Agency. The rejected lots and losses at processing are returned to farmers only after the foundation seeds are certified as conforming to specifications, the lots are subjected to treatment with insecticides (Cell phase, Quick phase) and pesticides (thiram and barastin) at the time of packing. The company had filed certificates issued by the Seeds Certification Agency and other relevant documents to show that they are not dealing in sale and purchase of foodgrains or wheat but only in certified seeds and that the stock stored by them were not of wheat but of certified seeds of wheat under the supervision of the U.P. Seeds Certification Agency. Having regard to the material produced by the company it was held that as the wheat seed converted into certified seed is unfit for human consumption, the levy of market fee is not permissible.

9. The writ petitioner no.1 in the writ petition filed before the High Court (Appellant no.1 in this Civil Appeal) is Seedsman Association, Hyderabad. No details regarding the members of the Association have been given. The only fact stated in the affidavit is that the petitioner association is a society registered under the Societies Act formed for looking after the interests and welfare of the members who are organizing seed production and processing and marketing the seeds. No details of the activity being carried on by the members of the association have been given. The writ petition and the affidavit filed in support thereof is conspicuously silent about the nature and variety of the seeds allegedly being produced by them and the method or process being adopted in production of seeds. There is no averment that the seeds in which the members of the petitioner association are dealing have been certified by the Seeds Certification Agency of the State Government. The averment in the affidavit filed in support of the writ petition that "it is from the date of sowing, the Breeder/Foundation seeds, the petitioner's responsibility is to procure the seeds produced according to the procedure laid down in the Indian Minimum Seed Certification Standards, 1988, \005\005.." is not only vague but also shows that the petitioners themselves do not produce seeds but they in fact procure seeds produced by someone else. Who is the producer of seeds and what steps have been taken by such producer to ensure the quality of the seeds is not disclosed. Similarly, there is no clear averment that on account of application of insecticides or chemicals and poisonous substances, the basic character of the article, namely, its consumption as food by human beings or animals is irretrievably lost and that such commodity is distinct from foodgrains.

10. In view of the fact that the writ petition is very vague and necessary details of the commodity and the manner of its production in which the members of the writ petitioner no. 1 (Association) claim to be dealing have not been given, it is not possible to arrive at the necessary factual finding that the foodgrains meant to be utilised as seeds has irretrievably lost its basic character i.e. its consumption as food by human beings or animals or for extraction for the like purpose and that such processed seeds have become a commodity distinct from foodgrains as commonly understood.

Similar is the case of the other connected appeals. It is, therefore, not possible to give any relief to the appellants in the present appeals.

11. For the reasons mentioned above, the appeals are dismissed. It is, however, made clear that this order will not preclude the members of the appellant no.1 (Association) or other appellants from seeking appropriate relief in fresh proceedings, which may be instituted in accordance with law.

JUDIS