
(2005) 02 AP CK 0082

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13527 of 2004

Advanta India Ltd.

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 08-02-2005

Acts Referred:

Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 — Section 12, 2(1), 3(2), 4, 6
Constitution of India, 1950 — Article 141
Essential Commodities Act, 1955 — Section 3, 3(2)

Citation : (2005) 3 ALD 245 : (2005) 3 ALT 604

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : C.R. Sridharan and M. Rama Narasimhulu, Government Pleader for Agriculture, V.V.N. Narayana Rao, P. Bhanu Prakash, D. Krishna Murthy, K. Madhava Reddy, SC for Agricultural Market Committees M. Sivananda Kumar, P. Harinath Gupta, M.V. Durga Prasad, M. Kavitha, Goli Rama Krishna, K. Rajanna, B. Vijaya Bhasker, C.M.R. Velu, B. Devanand and P. Pankaj Reddy, for the Appellant;

Judgement

L. Narasimha Reddy, J.—In this batch of writ petitions, a common question, namely, whether market fee, under the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (for short "the Markets Act"), is leviable on the seeds, manufactured by the petitioners, arises for consideration.

2. The petitioners are manufacturers and producers of seeds, of different varieties, within the State of Andhra Pradesh. Petitioners state that they undertake extensive research in bringing about hybrid varieties, and once a variety is successfully evolved, the foundation seed is given to selected farmers for multiplication, and the seeds so produced are procured by them. Thereafter, seeds are further processed, packaged and sold as certified seeds. All the petitioners got themselves registered under the relevant provisions of the Seeds Act, 1966, and some of them have obtained registration under the Seeds Control

Order 1983 (for short "the Control Order"), issued under the Essential Commodities Act.

3. Petitioners contend that though the seeds produced and dealt with by them are meant to be supplied to the farmers for growing crops, the respondents are treating the seeds as a mere agricultural produce and levying market fee thereon. It is contended that the matters, in relation to seeds, are governed by the provisions of the Seeds Act and the Control Order, and the provisions of the Markets Act have no application, in relation thereto. A further contention is advanced to the effect that certified or branded seeds cannot be treated as an agricultural produce, within the meaning of Section 2(1) of the Markets Act, and that there is no transaction of sale and purchase of agricultural produce, in the matter of growing and manufacturing of the seeds. One of the writ petitioners deals exclusively, with vegetable seeds, and it is contended that their product is not notified either directly or indirectly under the Markets Act.

4. Common counter-affidavits are filed by the respondents. It is their case that once a particular product is an agricultural produce, it is liable to be levied market fee, irrespective of the use to which it is put. It is contended that the commodities dealt with by the petitioners fall within the definition of agricultural produce, under one item or the other of the relevant Schedule, and as such the provisions of the Markets Act are applicable to the transactions, in relation to such produce. The respondents endeavour to distinguish the judgments relied upon by the petitioners, and insist that the market fee is leviable.

5. Arguments on behalf of the petitioners were addressed by Sri D, Prakash Reddy, learned Senior Counsel, Sri C.R. Sridharan, K. Rajanna, Sri P. Pankaj Reddy and Sri Bengal Reddy, Advocates.

6. Learned Senior Counsel made copious reference to the various provisions of the Seeds Act; the Control Order, and the Markets Act. He submits that the manufacture and processing of seeds is a complex process, involving the production of breeder seeds, foundation seeds, and certified seeds. According to him, the entire activity of production and supply of seeds is governed by the provisions of the Seeds Act and the Control Order, which are Central Legislations, and the Markets Act, being a State Legislation, cannot govern that very activity. He contends that seeds can be sold either on certification u/s 7 of the Seeds Act, or by labelling it, and in that view of the matter, it is impermissible to treat seeds as an agricultural produce. He urges that the respondents cannot treat the seeds as agricultural produce, even at an intermediary stage, before certification.

7. Another contention advanced on behalf of the petitioners is that, Rule 54 of the Market Rules mandates that the sale of an agricultural produce is to be by way of auction under the guidance and supervision of the concerned authorities of the market committee, and since no such activity takes place, in relation to seeds, the respondents cannot levy market fee based on the turnover of the petitioners. A subsidiary contention was raised to the effect that, unless the

seeds, as such are notified in the Schedule, the respondents cannot levy market fee thereon, simply because the corresponding species is already notified. Petitioners place reliance upon the recent judgment of the Supreme Court in *Krishi Utpadan Mandi Samiti and Others Vs. Pillibhit Pantnagar Beej Ltd. and Another*, and the judgment in *State of Rajasthan, etc. Vs. Rajasthan Agricultural Input Dealers Association, etc.*, .

8. Learned Government Pleader for Agriculture and learned Standing Counsel for the respective Market Committees submit that even if a product is used as seed, basically it is an agricultural produce and the transaction of sale and purchase takes place between the petitioners, on the one hand, and the producers of the seed, on the other hand, and thereby the petitioners are liable to be treated as traders. They contend that, in most of the cases, the petitioners have obtained the licences u/s 7 of the Markets Act. It is also urged that the use, to which the agricultural produce is put to, become insignificant, in the context of levy of market fee. They urge that once the product dealt with by the petitioners is notified in the Schedule under the Markets Act, the market fee is leviable. According to the learned Counsel, the Seeds Act and the Control Order deal with a totally different aspect, from the one under the Markets Act, and there is no overlapping among them. Placing reliance upon a judgment of the Supreme Court in *Seedsman Association v. Principal Secretary to Government*, (2004) 19 ILD 188 (SC), the judgment in *ITC Zeneca Limited, Sec"bad Vs. Govt. of A.P. and others*, and certain other judgments, they plead that the action of the respondents is legal and valid. An attempt is made to distinguish the judgment of the Supreme Court in *Krishi Utpadan Mandi Samiti v. P.P.B. Ltd.* (supra).

9. As observed earlier, the petitioners are manufacturers and producers of seeds of different varieties. The respondents sought to levy market fee on the seeds on the premise that it is basically an agricultural produce, and the fact that it is being used as seed, is of no consequence. While the petitioners plead that their activities are controlled exclusively by the Seeds Act and the Control Order, the respondents insist that the operation of the provisions of the Markets Act, is not at all effected by the said Legislations.

10. The Seeds Act was enacted in the year 1966, with an object of regulating the quality of certain seeds for sale and for the matters connected therewith. Central Seed Committee is constituted u/s 3; and Central and State Seed Laboratories are provided for u/s 4. The Central Government is conferred with the power to notify the kind of varieties of seeds, to be regulated under the Act. The sale of seeds of notified kinds and varieties is prohibited u/s 7, except where the seed conforms to the standard stipulated u/s 6, and the container of such seed bears in the prescribed mark or label. The procedure for certification is also stipulated. The Rules framed under the Act, furnish the further details. The emphasis is upon ensuring the minimum percentage of germination and genetic purity of the seeds. Rule 14 defines the classes of seeds, namely, foundation seed, registered and certified seed. It is not necessary to refer to the other details. The Central

Government issued the Seeds (Control) Order 1983, in exercise of the power u/s 3 of the Essential Commodities Act, 1955. While the object under the Seeds Act is to regulate the manufacture and to provide for certification of the seeds, the purpose of the Seeds (Control) Order, is to ensure proper distribution thereof, by granting licences to dealers.

11. So far as the Markets Act is concerned, its object is to consolidate and amend the law relating to the regulation of "purchase and sale" of agricultural produce, livestock and products of livestock, and establishment of markets. Agricultural produce is defined under Sub-section (2)(i) of this Act. Section 3 provides for declaration of notified market areas as well as the notification of items of agricultural produce, to be brought under the purview of the Act. Section 7 provides for grant of licences for undertaking business in the notified areas. Section 12 is the charging provision.

12. In a typical system of Indian agriculture, part of the agricultural produce, used to be kept aside, for the purpose of being used as seed, for the next crop, by the farmer. The manufacture of hybrid and other advanced varieties is relatively a recent phenomenon. So is the concept of levy of market fee on the agricultural produce. Seed, of whatever variety, is basically an agricultural produce. The reason is that, it is produced through agriculture, may be with an amount of sophistication. The controversy turned, much around the fact that the seeds partake the character of agricultural produce. However, the use to which it is put, is different from the one to which an agricultural produce is put to, in the normal parlance. It is this vexed question, that gave rise to several disputes, in the matter of levy of market fee on the seeds.

13. Though it is not necessary to go into the details of the manufacturing process of seeds, the basic ingredients thereof, need to be noted, with an object of ascertaining whether grain used for seed is nothing but an agricultural produce, or it is different in any context. An aspect, which needs to be borne in mind, is that the dispute is exclusively in relation to the certified or labelled seeds, and not about an agricultural produce, which an improvised farmer uses as seed.

14. From the provisions of the Seeds Act and Rules as well as the procedure adopted by the various petitioners, it is evident that in the process of manufacturing seeds, the initial stage begins with the procurement of "breeder seed", either from their own laboratories, or from other specialized agencies, such as Universities. After the superior qualities of the same, from the points of view, such as adjustment to climate, resistance to diseases, improved productivity, are firmly established, foundation seeds are grown from breed seeds, under controlled conditions and strict supervision. Thereafter, the foundation seed is given to selected farmers for multiplication of the same. Here again, strict supervision is undertaken to ensure genetic purity etc. The seeds so produced by the farmer is taken back by the manufacturer. It is graded and sent for certification by the competent certifying agency, as to the genetic purity and percentage of germination. On certification, by the competent authority, the seed

becomes certified seed. In certain cases, the manufacturer may himself vouch for such factors. The package or container of such seed is required to bear the necessary particulars, provided for, in the Seeds Rules.

15. It is true that the expression of "agricultural produce" is too wide and it takes in its fold, anything which is produced through agriculture. On that premise, it includes the seeds also. This question fell for consideration before the Supreme Court in *State of Rajasthan v. Rajasthan Agriculture Input Dealers' Assn.* (supra), in the context of levy of market fee on seeds. After referring to the provisions of the Seeds Act, on the one hand, and the Rajasthan Agricultural Produce Markets Act, 1961, which is almost in pari materia with the corresponding Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966, the Supreme Court held as under:

"Para-7: 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 substances to the foodgrain meant to be utilized 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."

16. In *ITC Zeneca Limited, Sec'bad v. Govt. of A.P.* (supra), a Division Bench of this Court considered the levability of market fee on seeds. The Division Bench took the view that as long as a particular commodity is an agricultural produce, the use to which it is put, becomes irrelevant, from the point of view of levy of market fee. The judgment of the Supreme Court in *State of Rajasthan v. Rajasthan Agriculture Input Dealers' Assn.* (supra), was sought to be distinguished on the strength of the difference as to entries in the corresponding Acts of Rajasthan and Andhra Pradesh, in relation to levy of market fee, and it was held 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 Schedule-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 eligible to the levy of market fee.

(2) That such seeds like Tomato and castor seeds, 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 to-day, 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 Para 16(1) above, within the market areas/market yards and failure to do so will render them liable for the consequences under the said Act,"

17. So far as the seeds of vegetables are concerned, the Division Bench took the view that they cannot be made liable for levy of collection of market fee.

18. Recently, the Supreme Court considered this very matter in *Krishi Utpadan Mandi Samiti v. P.P.B. Ltd.* (supra). Their Lordships referred to the provisions of the Seeds Act and the Ordinances, on the one hand, and the corresponding Markets Act of the State of U.P., on the other. Much discussion was devoted to the interpretation of the judgment in *State of Rajasthan v. Rajasthan Agriculture Input Dealers' Assn* (supra). Their Lordships followed the said judgment, in all its respects, and went a step further, and held that, unless the seed, as an independent item from the agricultural produce, is notified under the relevant Schedule, market fee cannot be levied. The subject-matter of that case was wheat. It was held that since wheat seed was separately notified, it cannot be subjected to levy of market fee. For the present purpose, it would be sufficient, if the ratio in *State of Rajasthan v. Rajasthan Agriculture Input Dealers' Assn* (supra), is applied to the facts of the present case. The conclusions are evident from the following paragraphs:

"Para 36: There is no nexus whether the seed has been chemically treated or not and the levy of market fees. Since the seed is a separate commodity from grain, the same is not covered under Schedule 1 of the Adhiniyam and as such no market fee is leviable over the sale and/or purchase of the same.

Para 37: We are, therefore, of the view that the seeds are not specified agricultural produce under the provisions of the Act and, therefore, the business of purchase and sale of seeds under the supervision of Seed Certification Agency established under the Act is not a business of sale and purchase of specified agricultural produce and as such the first respondent is not required to pay the market fee or to take out a licence.

Para 38: We are also of the view that the respondents have grossly erred in ignoring the law settled by this Court in the case of *State of Rajasthan v.*

Rajasthan Agricultural Input Dealers Association (supra) under Article 141 of the Constitution in demanding market fee on seeds. Since the processing of wheat resulting in loss of its basic characteristics of being cereal, it cannot be subjected to levy as agricultural produce since the purchase by the respondent is for the purpose of growing seeds, no levy is permissible and, therefore, market fee cannot be imposed on seeds which are unfit for human consumption."

The judgment of this Court in *ITC Zeneca Limited, Secbad v. Govt. of A.P.* (supra), was the subject-matter of an appeal before the Supreme Court in *Seedsman Association v. Principal Secretary to Government* (supra). In that, the judgments in *State of Rajasthan v. Rajasthan Agriculture Input Dealers' Assn* (supra) and *Krishi Utpadan Mandi Samiti v. P.P.B. Ltd* (supra), were referred extensively. Relief was denied to the appellants therein on the ground that the affidavit filed in support of the writ petition was conspicuously silent as to the nature and variety of the seeds produced by the appellants therein. In the present batch of cases, the petitioners have furnished, in detail, the various steps involved in the manufacture of seeds in their plants, laboratories, etc. The judgment of the Supreme Court in *State of Rajasthan v. Rajasthan Agriculture Input Dealers' Assn* (supra) and *Krishi Utpadan Mandi Samiti v. P.P.B. Ltd* (supra), squarely apply to the facts of these cases. Therefore, the demand notices issued to the petitioners, cannot be sustained.

19. One aspect which, however, needs to be noted is that it is quite possible that, if the entire product of a foundation seed grown by a farmer, on a contract with a seed company, is used as seed, no problem as such arises. However, where any part of it was not used as seed, it deserves to be treated as agricultural produce and thereby, would be liable for levy of market fee. For this purpose, the concerned Market Committee can require the manufacturer of the seed to furnish the relevant particulars, to satisfy itself as to whether any agricultural produce is left unused as seed.

20. For the foregoing reasons, the writ petitions are ordered, with the following directions:

(a) Seeds developed and manufactured by the petitioners and sold as certified or labelled seeds, are not subject to levy of market fee, and the demand notices issued therefore are set aside.

(b) Vegetable seeds are not covered by the provisions of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966, and are not subject to levy of market fee.

(c) Such part of the product, grown out of foundation seed, by a farmer, chosen by the seed manufacturers, as is not sold and used as seed, shall be liable to be levied the market fee. For this purpose, the Executive Heads of the Market Committees, shall be entitled to require the Seed Manufacturers, operating within the notified area, to furnish the relevant particulars and take consequential steps.

There shall be no order as to costs.