

(2023) 06 MP CK 0026

In the Madhya Pradesh High Court

Case No : Writ Petition No. 13416 Of 2010

Director Seed Association Of M.P. Other Organization

APPELLANT

Vs

Additional Chief Secrettary The State Of Madhya Pradesh And
2 Ors. Govt. And Others

RESPONDENT

Date of Decision : 12-06-2023

Acts Referred:

Seeds Act, 1966 — Section 2(11), 5

Citation : (2023) 06 MP CK 0026

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : Rohit Saboo, Mukesh Parwal

Final Decision : Allowed

Judgement

Vivek Rusia, J

1. The Petitioner has filed present petition seeking a declaration that the Seeds are distinct and different from the agricultural produce/food grain, hence the Mandi shall not be entitled to demand Mandi fees on the Seeds from the member of the association of the Petitioner.

2. The petitioner is an Association registered under the Society Registration Act, of 1860. The members of the Petitioner's Association are engaged in the business of production, processing, researching and marketing and sale of various types and kinds of Seeds notified under Section 5 of the Seeds Act, 1966. The Director of Madhya Pradesh State Agriculture Marketing Board is parent body having control on all the Krishi Upaj Mandi Samitis situated within the State of M.P. The members of the petitioner used to purchase the Breeders Seeds from various Agriculture Universities to produce the seeds. Thereafter, they used to sale these breeders' Seeds to the listed scheduled farmers who sow them in their fields and are grown under the strict supervision and inspection of the officials of the company. According to the petitioner, the standardized seeds so obtained are

called 'foundation seeds' and these foundation seeds are again supplied to these listed farmers through Agency. After harvesting the approved standardized certified seeds, these lots are tested in the laboratories of the Seeds Agency. Hence, the members of the petitioner's association are neither traders nor carrying on any business of any agricultural produce, therefore, the seeds are not an agricultural produce in the purview of the provisions of M.P. Krishi Upaj Mandi Adhiniyam, 1972.

3. Since, the various Mandis are treating the seeds as agricultural produce, therefore, starting demanding the Mandi fees which gave cause of action to the petitioner to approach this Court by way of writ petition.

4. The respondents have filed the reply raising an issue of maintainability of the writ petition as no cause of action has accrued in favour of the petitioner. It is further submitted that the members of the petitioner are not the licensee of any of the Mandi Committee and the petitioner being an Association has no locus standi to challenge the provisions of M.P. Krishi Upaj Mandi Adhiniyam, 1972. It is further submitted that after obtaining the produce from farms, grains are graded, and chemically treated and to get the approved standardized certified seeds the samples are tested in the laboratory of the certification agencies. It is also admitted on the part of the petitioner that the rejected lots of uncertified seeds are sold in the open market for other purposes as stated in Para 5.4 of the writ petition. Therefore the petition is liable to be dismissed.

5. Learned counsel for the respondents have placed reliance on the judgment passed by this Court in W.P.No.257/2008 (Nirmal Seeds Private Limited Vs. State of M.P. and Others) and others bunch of writ petitions decided by a common order dated 05.09.2011 whereby the seeds have been held liable for payment of a market fee.

6. Shri Saboo, learned counsel for the petitioner submitted that the aforesaid judgment came up for consideration before the Division Bench in W.A.No.1062/2011 in the case of Mahyco Seeds Ltd. Vs. The State of Madhya Pradesh and others bunch of writ appeal and vide judgment dated 13.03.2012 the order of Single Judge has been set aside with the direction to approach the Managing Director for decision afresh of their representation.

7. Shri Saboo has also relied on the judgment passed by the Coordinate Bench in W.P.No.8132/2018 (Eagle Seeds & Biotech Ltd Vs. Managing Directors & Ors.) dated 26.06.2020 in which it has held that the seeds produced by the petitioner are not included in the schedule of 'agriculture produce'. Learned counsel has also produced the judgment passed by the Apex Court in the case of State of Rajasthan and Others Vs. Rajasthan Agriculture Input Dealers' Association and Others (1996) 5 SCC 479 and Krishi Utpadan Mandi Samiti and Others Vs. Pilibhit Pantnagar Beej Ltd. And Another (2004) 1 SCC 391 in which it has been held that the Mandi fees cannot be levied on the seeds because seeds are not a grain and not for human consumption.

8. Since the issue involved in this Writ Petition is no more res integra as the Apex Court, as well as this Court, has held that the seeds do not come under the category of agricultural produce. The operative part of the judgment is reproduced below:-

48. It is not in dispute that the respondents are engaged in production and sale of 'seeds' which is governed by a Parliamentary Act known as the 'Seeds Act, 1966' (1966 Act). The entire process beginning from procurement of seeds breeder, further production thereof as well as sale is governed by 1966 Act and Rules framed thereunder and Seed Control Order 1983. The preamble of the 1966 Act suggests that the same was enacted with a view to monitor the production and sale of seeds. The purport and object of enacting the 1966 Act was to bring green revolution in the country as would appear from the following statement of objects and reasons thereof:-

"In the interest of increased agricultural production in the Country, it is considered necessary to regulate the quality of certain seed, such as seeds of food crops, cotton seeds etc., to be sold for purposes of agriculture (including horticulture).

The methods by which the Bill seeks to achieve this object are -

(a) Constitution of a Central Committee consisting of representatives of the Central Government and the State Government, the National Seeds Corporation and other interests to advise those Governments on all matters arising out of the proposed Legislation;

(b) fixing minimum standards of germination, purity and other quality factors;

(c) testing seeds for quality factors at the seed testing laboratories to be established by the Central Government and the State Government;

(d) Creating of seed inspection and certification service in each State and grant of licences and certificates to dealers in seeds;

(e) Compulsory labelling of seed containers to indicate the quality of seeds offered for sale, and

(f) restricting the export import and inter- State movement of non-descript seeds."

49. Section 2(11) of the Seeds Act defines seeds to mean : "2. "Seed means any of the following classes of seeds used for sowing or planting :

(i) seeds of food crops including edible oil- seeds and seeds of fruits and vegetables; and includes seedlings, and tubers and bulbs, rhizomes, roots, cutting, all types of grafts and other vegetatively propagated material, of food crops or cattle fodder".

9. Conclusion as per the majority is reproduced below:-

(i) Wheat is specified in the Schedule at Sl. No.1 under the heading "Cereals". A perusal of the Schedule would show that wherever seeds have been intended to be notified, it has been specifically mentioned as seeds. In case of wheat, however, the Schedule does not provide or notify seeds of wheat and thus the seeds of wheat are not specified in the Schedule and are thus not covered by the definition of agricultural produce. The Supreme Court in *State of Rajasthan v. Rajasthan Agriculture Input Dealers' Assn.*, (1996) 5 SCC 479 held that no market fee could be levied by the State on seeds on the ground that a seed was distinct from food grains inasmuch as they were not fit for human consumption. The ratio decided of the above decision is squarely applicable to this case. A wide connotation cannot be given to the words in the Schedule. As wheat seeds are not included in the Schedule, the Mandi Samiti is not allowed to levy a market fee on its sale/purchase. There is no nexus between 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 I of the Adhiniyam and as such no market fee is leviable over the sale and/or purchase of the same.

In view of the above, the writ petition stands allowed the respondents Krishi Upaj Mandis are restrained to charge Mandi fees from the members of the petitioner and the amount of the fee recovered so far is liable to be refunded to them.

No order as to cost.