

(2020) 06 MP CK 0087
In the Madhya Pradesh High Court
Case No : Writ Petition No. 8132 Of 2018

Eagle Seeds And Biotech Ltd.

APPELLANT

Vs

Managing Directors & Ors. @RESPONDEN

RESPONDENT

Date of Decision : 26-06-2020

Acts Referred:

Essential Commodities Act, 1955 — Section 3

Seed Act, 1966 — Section 2(11), 4, 5, 6, 7, 8, 9

Madhya Pradesh Krishi Upaj Mandi Samiti Adhiniyam, 1972 — Section 2(11)(a), 19(1)(a), 31, 61, 69

Madhya Pradesh Land Revenue Code 1959 — Section 146

Citation : (2020) 06 MP CK 0087

Hon'ble Judges : Vandana Kasrekar, J

Bench : Single Bench

Advocate : S. C. Bagadiya, Rohit Saboo, Kamal Airen

Final Decision : Allowed

Judgement

1. The petitioner has filed the present writ petition challenging the orders dated 26/02/2018 and 8/10/2012, passed by the respondent Nos.2 and 3.

2. Brief facts of the case are that, the petitioner is a Limited Company engaged in the business of production of Certified Seeds since 1982 and holds valid registration certificate from the Dy. Director of Agriculture, Indore under the Seeds Control Order, 1983 and also holds a certificate of registration from Madhya Pradesh State Seeds Certification Agency, Bhopal.

3. That, during the course of its business, the petitioner purchased Breeder Seeds from various State / Central Agriculture Universities and produce Certified Seeds under the supervision of M.P. State Seed Certification agency and "Truthfully Labelled Seeds" having equivalent certification standards of certified seeds. The first step of production is to distribute these breeder seeds to the listed scheduled farmers.

The breeder seeds are sown and germinated under strict supervision of

Statutory State Seed Certification Agency, set up under the Seeds Act, 1966(hereinafter referred to as"the Act"). The standardized seeds so obtained are called 'foundation seeds'. These foundation seeds are again supplied to the listed farmers variety-wise. The farmers sow these foundation seeds and after germination and harvesting, the lots are prepared. The lots of seeds which meet the minimum requirement of physical purity and germination percentage as per Section 6 of the Act are fumigated for preservation and the samples of each lot are tested in the State Seed laboratories. The approved lots are subject to the treatment with insecticides and pesticides at the time of packing. These seeds are called "Truthfully Labelled Seeds" having the same standard as those of Certified Seed.

4. That, on 24/11/2004, the respondent No.3 issued Demand Notice to the petitioner calling upon the petitioner to make the payment of a sum of Rs.3,84,83,130/- being the amount of Mandi fees and a sum of Rs.5,96,651/- an amount of Nirashrit Shulk within a period of 15 days. After receipt of notice, the petitioner vide its letter dated 13/12/2004 informed the respondent No.3 that the petitioner is not liable to pay the Mandi fee because the petitioner is not a licensee and that the seed is not an Agricultural produce as notified under the Mandi Adhiniyam and the provisions of the Adhiniyam are not applicable to the petitioner Company. The petitioner further requested the respondent to give the basis of demand notice.

5. After receipt of the said reply, the respondent No.3 vide its letter dated 20/12/2004 informed the petitioner that Section 69 of the Adhiniyam only exempt to the Certified seeds and the petitioner can get the benefit of exemption only after submitting the statement before the respondent No.3. Thereafter, without deciding the controversy, the respondent No.3 referred the matter to Tehsiladar Sanwer for issuance of RRC. The Tehsildar, Sanwer on 19/07/2005 issued RRC under Section 146 of Land Revenue Code calling upon the petitioner to deposit a sum of Rs.3,90,79,791/- in respect of Mandi fee.

6. Against this RRC, the petitioner has approached to this Court by filing W.P. No.3913/2005. The said writ petition was disposed of vide order dated 7/04/2006 directing the respondent No.3 to do the assessment before using any demand notice. In pursuance of the order passed by this Court, the respondent No.3 had passed the Assessment Order on 8/12/2006, by which the earlier demand of Mandi fees reduced from Rs.3,90,79,791/- to Rs.90,74,186/-. Thus, by impugned notice, the petitioner was called upon to pay a sum of Rs.90,74,186/-. Towards Mandi fees alongwith Nirashrit amount of Rs.1,81,483/-.

7. Against the assessment order dated 8/12/2006, on 10/01/2007, the petitioner preferred an appeal under Section 61 of the Adhiniyam before the respondent No.1. The said appeal has been filed firstly on the ground that no Mandi fees can be demanded from the petitioner on 'Truthfully Labelled Seed' as the same is not an agricultural produce. Secondly, that the rejected seed \which has been sold by the petitioner to the traders against payment of Mandi fees. Thus, the petitioner

is not liable to pay Mandi Fees on such sale. The respondent No.1 vide order dated 30/03/2007 rejected the first ground of the petitioner and accepted the second contention/ground and in pursuant to that order on 18/06/2007, the respondent No.3 issued demand notice for a sum of Rs.43,27,620/- with five times penalty towards Mandi fees and Rs.86,552/- towards Nirashrit Shulk.

8. Against the said order dated 30/03/2007, and the demand notice dated 18/06/2007, the petitioner has preferred writ petition bearing No.4187/2007 before this Court. After hearing the parties, this Court was pleased to quash the order dated 30/03/2007 with a liberty to the respondent no.1 to initiate fresh assessment proceedings in accordance with law. In pursuance to the said order passed by this Court, respondent No.3 reassessed the Mandi fee. As per the proceedings dated 27/05/2011, the respondent No.3 assessed Rs.86,66,061/- Mandi fee on 'Truthfully Labelled Seed' and under sized seed. However, later on, the respondent No.3 had passed the order of assessment dated 8/10/2012 directing the petitioner to pay a sum of Rs.2,28,81,045/- alongwith Nirashrit Shulk of Rs.4,57,621/-.

9. Against the said assessment order dated 8/10/2012, the petitioner preferred an appeal under Section 61 of the Adhiniyam before respondent No.1 and the said appeal was dismissed by the respondent No.2 vide order dated 26/02/2018.

10. During the pendency of the writ petition, the respondent No.3 has issued a notice dated 5/10/2019 thereby, calling upon the petitioner to deposit a sum of Rs.90,74,188/- as Mandi fee and Rs.1,81,483/- as Nirashrit Shulk in pursuance to the order of assessment passed on 8/10/2012. On 7/11/2019, the respondent No.3 has issued a demand notice to the petitioner calling upon the petitioner to deposit a sum of Rs.2,24,57,356/- as Mandi fee and Rs.4,18,183/- as Nirashrit Shulk in pursuance to the order of assessment passed on 8/10/2012. Being aggrieved by these orders, the petitioner has filed the present writ petition.

11. Learned Senior Counsel appearing on behalf of the petitioner argues that the impugned action of the respondents in demanding Mandi fees from the petitioner is illegal and contrary to law. He submits that the petitioner is not carrying on any business of a notified agricultural produce. It only deals in Certified Seeds and Truthfully Labelled Seeds. These seeds are not an agricultural produce; it is sealed and packed in bags containing not more than 50kgs and the said bags also contain a declaration on the label stitched to the bags that it is treated with poison and not fit for human consumption. This issue was raised before the Secretary at the time of assessment and also before the Appellate Authority, but both the authorities have failed to adjudicate upon this issue. He further relied on various judgments passed by the Apex Courts in the case of *Krishi Utpadan Mandi Samiti and Others v. Pilibhit Pantnagar Beej Limited and Another* reported in [(2004) 1 SCC 391], *State of Rajasthan and Ors. v. Rajasthan Agriculture Input Dealers' Association & Ors.* reported in [(1996) 5 SCC 479] and also of Madhya Pradesh High Court Judgment in the case of *Satyapal Anand v. The State of M.P. & Ors.* reported in AIR 1979 MP 6, as also in the case of *Mahyco Seeds*

Limited v. State of M.P. registered as W.A. No.1062/2011(Jabalpur). He submits that these judgments deal with the process of manufacture of seeds. He further argues that in exercise of the powers conferred under Section 3 of the Essential Commodities Act, 1955 and in suppression of the Food grains Movement Restrictions (Exemption of Certified Seeds) Order, 1966, the Central Government has issued an order namely the Food grains Movement restrictions (Exemption of Seeds) Order, 1970. As per Clause 3 and 4 of the said order, the person can only move any seeds of notified kinds or varieties certified or truthfully labelled in a sealed packed, containers or bags duly labeled in accordance with the provisions of the Seed Act, and the rules made there-under, each containing not more than 50 Kgs of seeds. On perusal of Clause - 3 of the Order clearly demonstrates that the Certified Seeds and Truthfully Labelled Seeds are treated similarly as distinguished from other seeds and this issue was also not considered by both the Assessing as well as the Appellate Authority. He further submits that the assessment and demand notices issued by the respondents from time to time made for varying amounts for the same period clearly demonstrate the arbitrary nature of assessment on the part of respondents, which appears to have been done without due application of mind.

12. The respondents have filed their reply and in the reply the respondents have stated that the petitioner has not produced any documents regarding the averments that the products sold by the petitioner Company are seeds and it does not come under the definition of agriculture produce. The petitioner has also not demonstrated that the products sold by the petitioner are not fit for human consumption. The petitioner has also failed to demonstrate that whether the Mandi fee has been paid by any way of the subsequent purchaser/consumer, thus, claiming exemption of the Market fee and penalty. That, both the authorities had given categorical findings that the petitioner by showing seeds is evading the liability of Mandi fee and has not even taken the license of the Mandi which is an utter violation of Section 19 and 31 of the Adhiniyam of 1972. He further submits that the petitioner Company has sold huge quantity of Soya bean; wheat in quintals which nowhere comes in the definition of Seed and, therefore, the entire argument raised by the petitioner is misconceived. The trading activities of the petitioner cannot be ignored in the light of the Seeds Act, 1966 and Circular dated 4/04/2001, as the agricultural produce are not covered by the definitions of the Seeds under Section 2(11) of the Seeds Act. Thus, in the light of the aforesaid, he submits that the petition deserves to be dismissed.

13. Heard learned counsel for the parties at length and perused the record.

14. Section 19 (1) (a) of Madhya Pradesh Krishi Upaj Mandi Samiti Adhiniyam, 1972(hereinafter referred to as "Adhiniyam, 1972") provides that every market committee shall levy market fee on the sale of notified agricultural produce whether brought from within the State or from outside the State into the market area; and on the notified agricultural produce whether brought from within the State or from outside the State into the market areas and used for processing.

Section 2(1) (a) of the said Adhiniyam, 1972 defines 'agricultural produce' which means all produce of agriculture, horticulture, animal husbandry, apiculture, pisciculture or forest as specified in the schedule.

15. In the present case, the petitioner Company is a Limited Company engaged in the business of production of Certified Seeds since 1982 and holds valid Registration Certificate from the Dy. Director of Agriculture, Indore. During the course of its business, the petitioner purchased Breeder Seeds from various State/Central agriculture universities and produce Certified Seeds under the supervision of M.P. State Seed Certification agency and "Truthfully Labelled Seeds" having equivalent certification standards of certified seeds. Thus, steps have been taken for production, processing and marketing of seeds of seeds under various procedures and also the same has been chemically treated at the time of packing and, thereafter, they are labelled as "Truthfully Labelled Seeds" which is having the same standard as those of Certified Seed. Thereafter, it is sealed and packed in bags containing not more than 50kgs and the said bags also contain a declaration on the label stitched to the bags that it is treated with poison and not fit for human consumption and the 'Truthfully Labelled Seeds' it does not come under the definition of agriculture produce and, therefore, the petitioner is not entitled for depositing any market fee.

16. The respondent has issued demand notice to the petitioner on 24/11/2004, calling upon the petitioner to make the payment of a sum of Rs.3,84,83,130/-. For the said purpose, learned Senior Counsel for the petitioner further submits that in the year 1966, the Central Government promulgated Seeds Act and the Rules made there under. As per Section 3 of the Seeds Act, 1966(for short ... '1966 Act'), the Central Government has the authority to constitute a Committee called "Central Seeds Committee" to advise the Central Government and the State Government on matters arising out of the administration of the Seeds Act and to carry out the other functions assigned through it under the Act. Section 4 deals with the authority of the Central Government to establish a Central Seed Laboratory or declare any Seed Laboratory as the Central Seed Laboratory to carry out the functions entrusted to the Central Seed Laboratory by or under the Act. Section 5 of the Act deals with the power to notify kinds or varieties of seeds by the Central Government. Section 6 of the Seeds Act deals with the power of the Central Government to specify the minimum limits of germination and purity etc. Section 7 of the 1966 Act deals with regulation of sale of seeds of notified kinds or varieties. Section 8 of the Act deals with the Certification Agency, which authorizes the State Government or the Central Government to establish a Certification Agency for the State to carry out the functions entrusted to the Certification Agency by or under the Act. Section 9 of the Act, 1966 provides the procedure for grant of certificate by Certification Agency. The petitioner submits that the seeds so produced and sold by the petitioner include highly productive seeds of major crops, which are developed in its research station, Indore. The seeds received by the petitioner are having conformity with the Indian Minimum Seed Certification Standards. The seeds are treated with chemicals and,

thereafter, packed in a cloth/bag with label as per the Indian Minimum Seed Certification Standards. It is stated by the petitioner that the seeds sold by the petitioner are Truthfully Labelled Seeds and, thus, it can only be used as an input in agriculture and cannot be used elsewhere as food, feed or for oil extraction. It has further been stated by the petitioner that the Government of India with a view to regulate the quality of seeds for sale and the matters connected therewith, has enacted the Seeds Act, which specifies the quality of seeds for sale for the purpose of agriculture and prescribes, inter alia an overall machinery to control the business of selling, keeping for sale, offering to sell, bartering or otherwise supplying any seed of any notified kind or variety in the country in the larger interests of the agriculturists in the country.

17. In addition to the Seeds Act, the Central Government promulgated the Seeds (Control) Order, 1983, in exercise of the powers under Section 3 of the Essential Commodities Act, 1955, inter alia providing for licensing of dealers in seeds. For carrying on its activities, the petitioner has obtained a License under Clause 3 of the said order.

18. Section 5 of the Seeds Act empowers the Central Government to notify the various kinds and varieties of seeds, in consultation with the Committee, if it is of the opinion that it is necessary and expedient to regulate the quality of seeds of any kind or variety to be sold for the purpose of agriculture.

19. The Rules framed under the Seeds Act and the Seed (Control) Order, 1983, also regulates the certification standards, administrative requirements of seeds, sourcing, development, production, purchase, storage and all the allied functions. Under Clause - 8 of the Seed (Control) Order, 1983, every dealer of seeds shall display in his place of business the stocks and their rates and prices stocked by them.

20. In the present case, the seeds produced by the petitioner are not included in the schedule of 'agriculture produce'. Then Apex Court in the case of *Krishi Utpadan Mandi Samiti & Ors. Vs. Pilibhit Pantnagar Beej Ltd. & Anr.* Reported in (2004) 1 SCC 391 has held as under:-

Wheat is specified in the Schedule at S.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, Schedule does not provide or notify seed 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 foodgrains inasmuch as they were not fit for human consumption. The ratio decidendi of the above decision is squarely applicable to this case wherein the appellant seeks to give a wide connotation to the words in the Schedule. As wheat Seed is not included in the Schedule, the Mandi Samiti is not

allowed to levy a market fee on sale/purchase. 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 I of the Adhiniyam and as such no market fee is leviable over the sale and/or purchase of the same.

21. So far as demand notice issued to the petitioner is concerned, it shows the varying amounts for the same period, which clearly demonstrate the non-application of mind by the authorities in issuing such demand notice.

22. In the light of the aforesaid, I allow this writ petition. The impugned orders dated 26/02/2018 and 8/10/2012 are hereby set aside.