

(2003) 11 SC CK 0110
In the Supreme Court Of India
Case No : Civil Appeal No. 6301 of 2001

Krishi Utpadan Mandi Samiti and Others	APPELLANT
Vs	
Pillibhit Pantnagar Beej Ltd. and Another	RESPONDENT

Date of Decision : 28-11-2003

Acts Referred:

Constitution of India, 1950 — Article 136, 141
Essential Commodities Act, 1955 — Section 3, 4(2)
Seeds Act, 1966 — Section 3AAAA(4)
Seeds Rules, 1968 — Rule 14, 15, 17, 17A, 17II
Uttar Pradesh Kr

Citation : (2004) 1 AWC 605 Supp : (2003) 9 JT 548 : (2003) 10 SCALE 43 :
(2004) 1 SCC 391 : (2003) 6 SCR 344 Supp : (2004) 1 UPLBEC 855

Hon'ble Judges : V. N. Khare, C.J.;S. B. Sinha, J;AR. Lakshmanan, J

Bench : Full Bench

Advocate : Rakesh Dwivedi, Pradeep Misra, Indu Misra, Vimla Sinha and Abhishek Chaudhary, for the Appellant; Dushyant A. Dave Huzefa Ahmadi, Vibha Datta, Makhija Nakul Diwan, Priya Ahluwalia and Sanjay R. Hegde, for the Respondent

Final Decision : Dismissed

Judgement

A.C. Lakshmanan, J.—The unsuccessful respondents 2, 3 and 4 before the High Court of Allahabad are the appellants in this appeal. The writ petition was filed by the first respondent herein to quash the order dated 12.03.1999 (Annexure 17 to the writ petition) and for mandamus restraining the appellants herein from interfering in the business in certified seeds either before or after processing and further in restraining the appellants from demanding and realising market fee on the transaction of unprocessed or processed certified seeds.

2. A Division Bench of the Allahabad High Court allowed the writ petition following the decision of this Court in State of Rajasthan, etc. Vs. Rajasthan Agricultural Input Dealers Association, etc., which has also been followed by the Division Bench of the said Court in Writ Petition No. 7262 of 1993 dated

18.12.1996. The High Court quashed the Impugned order dated 12.03.1999 and also held that the respondents in the writ petition/appellants herein cannot charge mandi fee on the seeds in which the first respondent herein deals. Aggrieved by the judgment of the High Court in Civil (M) No. 17877 of 1999 dated 25.08.1999, a SLP was filed under Article 136 of the Constitution of India. When the SLP came up for hearing on 06.09.2001, leave was granted by this Court and considering the importance of the questions involved, the matter was placed before Hon'ble Chief Justice for referring to a larger Bench.

3. The facts giving rise to this appeal are stated below:-

The U.P. Krishi Utpadan Mandi Adhiniyam, 1964 (hereinafter referred to as "the Adhiniyam") was enacted to regulate sale and purchase of agricultural produce and for establishment, superintendence and control of market in U.P. Section 6 provides for declaration of market area and Sections 9 and 10 prohibit business of specified agricultural produce in such market areas without licence.

4. Specified Agricultural produce is defined u/s 2(a) of the Adhiniyam, as follows:

"2(a) 'agricultural produce' means such items of produce of agriculture, horticulture, viticulture, apiculture, sericulture, pisciculture, animal husbandry or forest as are specified in the Schedule, and includes admixture of two or more of such items, and also includes any such item in processed form, and further includes gur, rab, shakker, khandsari and jaggery."

5. The schedule appended to the Adhiniyam provides a list of agriculture produce. Section 17(iii) of the Adhiniyam provides for imposition of market fee on the transactions of such specified agricultural produce in the market area, on such rates notified by the State. Wheat is specified in the Schedule at Serial No. 1 under the heading of cereals. It was submitted that wherever seeds have been intended to be notified, it has been specifically mentioned as seeds. In case of wheat, however, it has not been notified for seed and thus the seeds of wheat are not covered in the Schedule and are thus not covered by the definition of Specified Agricultural Produce.

6. The first respondent-company is a private limited company, engaged in production of certified seeds since 1996-97 and holds valid registration certificate from the District Agriculture Officer, Pilibhit under the Seeds Control Order 10983 valid upto 25.5.2000 and holds a certificate of registration from the U.P. Seeds Certification Agency, Alam Bagh, Lucknow.

7. According to the first respondent the business of the company is to purchase 'breeder seeds' from Agricultural Research Institute and 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 (hereinafter referred to as "the Act"). The harvest is selected carefully under supervision of the Agency. The lots which do not conform to

specifications are rejected.

8. It was further submitted that 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 again supervised by the Agency. This crop is again germinated under strict supervision of the agency and once again the lots rejected are not taken back by farmers. After harvesting the approved standardised certified seeds, these lots are fumigated for preservation under the samples of each lot is tested in the laboratories of Seeds Certification Agency at Alam Bagh (Lucknow), Kanpur, Rudrapur (Udham Singh Nagar). 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 phose, Quick phose) and pesticides (thiram and barastin) at the time of packing.

9. It is the case of the first respondent that the bags are marked as poison and are thereafter marketed. The entire production, operation is supervised by the Seed Certification Agency. It was submitted that until the seeds are certified they continue to be the property of the farmer, who agrees to such agreement on the foundation seed distribution form. In the year 1988, the Market Committee issued notices to the companies engaged in certified seeds. The notices were challenged and that after contest, the High Court allowed the writ petition holding that certified seeds are not specified agricultural produce and the notices issued by the Mandi Samiti were quashed. The aforesaid judgment was challenged by the Mandi Samiti in Civil Appeal Nos. 106-110 of 1990. This Court relying upon the judgment in State of Rajasthan v. Rajasthan Agricultural Input Dealers Association, (supra) dismissed the civil appeals. Based on the aforesaid judgment, all the pending writ petitions were also decided in favour of the dealers in certified seeds. However, by notice dated 15.10.1997, the Mandi Samiti directed the 1st respondent to deposit the market fee on seeds. The first respondent submitted a detailed reply annexing certificates issued by the Seeds Certification Agency and the other relevant documents. The first respondent also submitted that they are not dealing in sale and purchase of food grains or wheat but deals only in certified seeds and that the stock stored by them were not of wheat but by the certified seeds of wheat under the supervision of the U.P. Seeds Certification Agency. The appellants rejected the representation of the first respondent and directed them to pay market fee. The first respondent challenged the aforesaid order by filing Writ Petition No. 1090 of 1997. Again by Notification dated 11.8.1998, the first respondent was required to submit information regarding sale and purchase of wheat for the year 1997-1998. A reply was submitted protesting the demands against law laid down by this Court. Aggrieved by the demands, the first respondent filed Writ Petition No. 32740 of 1998 against the order dated 22.9.1998. The writ petition was disposed of with a direction to the first respondent herein to file a fresh representation. In pursuance of the aforesaid order, the first respondent filed a detailed

representation dated 15.2.1999. The representation was rejected by the appellants on 12.3.1999 and a demand has been made for payment of market fee which was again challenged by the first respondent herein by filing the present Writ Petition No. 17877 of 1999 which was allowed by the High Court on 25.8.1999.

10. Against the said judgment of the High Court, the above appeal by way of SLP has been filed.

11. The instant appeal raises the following questions of law:

(i) What is the true scope and ambit of Section 2(a) and 17 iii (b) of the Krishi Utpadan Mandi Samiti Adhiniyam, 1964?

(ii) Whether the market fee can be levied on the purchases of wheat by the seed processing unit to process and convert the same into certified seed by treating it chemically?

(iii) Whether there is any difference in wheat and wheat seed before it is chemically treated and converted into certified seed and thus becomes unfit for human consumption?

(iv) Whether it is necessary, to notify seed of cereals which can itself be used as seed when the object of the legislature was to notify only those seeds which are different from produce itself?

12. On the above pleadings, we heard Mr. Rakesh Dwivedi, learned senior counsel appearing for the appellants and Mr. Dushyant A. Dave, learned senior counsel for the contesting respondent.

13. It was submitted by the appellants herein/respondent in the writ petition that after the first respondent purchased wheat, they convert it into seed by applying pesticides and other chemicals and the sale was effected as wheat seed and on this transaction, Mandi Samiti is not demanding market fee. It was also submitted that the decision of this Court in *State of Rajasthan v. Rajasthan Agricultural Input Dealers Association* (supra) are not applicable in the case of the first respondent and that what is purchased by the first respondent herein is nothing but wheat and the entire transaction of wheat is within the market area of Mandi Samiti, Pilibhit and hence subject to payment of market fee. It was also submitted that the first respondent - Company is engaged in producing certified seeds but for that purpose it purchases regularly wheat and other commodities for preparing seeds and on these transactions, the first respondent is liable the first respondent is liable to pay market fee. Before adverting to the respective arguments, it is beneficial to reproduce Sub-sections (a) & (b) of Section 17(iii) of the Adhiniyam, which reads as under:

"(iii) levy and collect:

(a) such fees as may be prescribed for the issue of renewal of licences; and

(b) market fee, which shall be payable on transactions of sale of specified agricultural produce in the market area at such rates, being not less than one percentum and not more than two and a half percentum of the price of the agricultural produce so sold as the State Government may specify by notification, and development cess which shall be payable on such transactions of sale at the rate of half percentum of the price of the agricultural produce so sold, and such fee or development cess shall be realised in the following manner:-

(1) if the produce is sold through a commission agent, the commission agent may realise the market fee and the development cess from the purchaser and shall be liable to pay the same to the Committee;

(2) if the produce is purchased directly by a trader from the producer, the trader shall be liable to pay the market fee and development cess to the Committee;

(3) if the produce is purchased by a trader from another trader, the trader selling the produce may realise it from the purchaser and shall be liable to pay the market fee and development cess to the Committee:

Provided that notwithstanding anything to the contrary contained in any judgment, decree or order of any court, the trader selling the produce shall be liable and be deemed always to have been liable with effect from June 12, 1973 to pay the market fee to the Committee and shall not be absolved from such liability on the ground that he has not realised it from the purchaser.

Provided further that the trader selling the produce shall not be absolved from the liability to pay the development cess on the ground that he has not realised it from the purchaser;

(4) in any other case of sale of such produce, the purchaser shall be liable to pay the market fee and development cess to the Committee:

Provided that no market fee or development cess shall be levied or collected on the retail sale of any specified agricultural produce where such sale is made to the consumer for his domestic consumption only:

Provided further that notwithstanding anything contained in this Act, the Committee may at the option of, as the case may be, the commission agent, trader or purchaser, who has obtained the licence, accept a lump sum in lieu of the amount of market fee or development cess that may be payable by him for an agricultural year in respect of such specified agricultural produce, for such period, or such terms and in such manner as the State Government may by notified order specify:

Provided also that no market fee or development cess shall be levied on transactions of sale of specified agricultural produce on which market fee or development cess has been levied in any market area if the trader furnishes in the form and manner prescribed, a declaration or certificate that on such specified agricultural produce market fee or development cess has already been

levied in any other market area."

14. It was submitted by Mr. Rakesh Dwivedi, learned senior counsel appearing for the appellants that the first respondent being the purchaser/trader is liable to pay market fee u/s 17(iii) of the Act and that the contention of the respondent that they sell wheat and the entire transaction is of wheat within the market area of Mandi Samiti cannot be accepted.

15. Mr. Rakesh Dwivedi, learned senior counsel for the appellants, submitted that at the time of hearing in the case of State of Rajasthan Vs. Mangilal Pindwal, by this Court, it could not be brought to the notice of this Court that the intention of the legislature was to notify only those seeds which are different from its produce and that the definition of agricultural produce being so wide that seeds of the cereals are included in that entry and hence there was no necessity to notify the same separately because there is no difference in Bazra or seed of Bazra. It was also submitted that in the aforesaid judgment, this Court has held that seeds which are manufactured after chemical treatment of Bazra by adding insecticides the market fee cannot be levied on the sale and purchase of the same because the same cannot be used for human consumption and ceases to be a cereal. Therefore, it is clear that before chemical treatment Bazra remains an agricultural produce and sale and purchase of the same attracts imposition of market fee. Arguing further, learned senior counsel for the appellants contended that the High Court failed to appreciate that the cereals are seeds itself and hence the same have not been notified separately because there is no difference between wheat and seed of wheat and that Wheat includes its seed. Otherwise also the appellant is imposing market fee on wheat and not its certified seed as manufactured by the first respondent. Concluding his arguments, learned senior counsel, submitted that since the Wheat purchased by the first respondent is neither chemically treated nor the same unfit for the human consumption and hence market fee was rightly imposed.

16. Per contra, Mr. Dushyant A. Dave, learned senior counsel appearing for the first respondent, submitted that the respondent is not dealing in sale and purchase of food grains or wheat but deals only in certified seeds and the stocks stored by them were not of wheat but the certified seeds of wheat. It was further submitted that the first respondent purchases breeder seeds from Agricultural Universities and that seeds of Wheat is not included in the Schedule to the Adhiniyam. It was further argued that the first respondent intakes only the standardised and certified seeds from the farmers and the undersize, oversize and seeds found unfit by Seed Certificate Agency are returned to the farmers and the certified seeds so purchased are thereafter chemically treated at the processing plant and, therefore, these certified seeds either before processing with chemical or thereafter do not fall within the definition of term "wheat" and its purchasers are not liable to market fee.

17. At the time of hearing, our attention was drawn to a note on method and process of seed production submitted by the first respondent. The principle and

method of production, as submitted in the note, is as under:-

"1. Reasons for Seed Production:

All high yielding seeds are made by scientists by changing the composition of genes in the seeds so that the seed gives high yields. However, nature's force has a tendency to change the seeds over a period of time and therefore, it is necessary to produce pure seed year after year.

2. Laws governing seeds business:

2.1 The seed industry for production and sale is regulated under the Seeds Act, 1966 and Rules and Seed Control Order, 1983. Under the seeds Act, the Government has made State Seed Certification Agencies who are responsible to certify seeds and monitor their production and sales.

2.2 "The Indian Minimum Seed Standards" lays down the minimum seed standards required for each crop which can be certified.

3. Method of Seeds Production:

3.1 The company purchases breeder seed from the Agricultural Universities and then produces the next stage i.e. foundation seeds. These foundation seeds are given to contract farmers for further production to certified seed. This certified seed is sold to trade and subsequently to farmers. Foundation Seed is the progeny of Breeder Seed and certified seed the progeny of Foundation Seed.

4. Procedure of production:

4.1 Purchase of breeder seeds from universities. (Rule 14(a))

4.2 Classification of foundation seed from breeder seed. (Rule 14(a))

4.3 Giving foundation seed to contract farmers. (Rule 14(c))

4.4 Registration of the contract farmers with the State Seed Certification Agency and payment of registration and inspection charges to the agency. (Rule 6(d) & Form I)

4.5 Sowing the foundation seed by the contract farmer in his field.

4.6 Inspection of the farmer's field by an inspector of all the State Seed Certification Agency, at least two times during the growth of the crop. (Rule 6(k))

4.7 Submission of final field report by the State Seed Certification Agency, inspector stating that the crop meets the standards or rejecting the crop if it does not meet the standards. The final filed report also states the estimated quantity of produce of every field and farmer which the Company can purchase (Rule 6(k) and 23(e))

4.8 If the farmers seed crop has been found satisfactory and indicated as such in the final field report prepared by the State Seed Certificate Agency inspector it is

purchased by the company and the seed stored in company godowns.

4.9 The seed is then processed under the supervision of an inspector of the State Seed Certification Agency who takes samples and sends them to the Government Seed Testing Laboratory. (Rule 6(g) & 6(e))

4.10 After testing the Government Seed Testing Laboratory gives a report which shows that either the seed meets the "Minimum Seed Standards" or it does not. (Rule 21(3))

4.11 If the seed meets the "Minimum Seed Standards", the chemical treatment and baging of the seeds is made under the supervision of an inspector of the State Seed Certification Agency. (Rule 17A)

4.12 After the seed is put in bag the inspector of the Seed Certification Agency will seal and tag each bag and this seed and bag is called certified seed which goes to the market. (Rule 17 II)

4.13 The seed inspector will also give a certificate to the company stating that the seed has been found above the "Minimum Seed Standards" and has been certified as such by the State Seed Certification Agency. (Rule 17)"

18. A letter under Reference No. 3374/12-5-2001-600(88)/93 dated 7th January, 2002 sent by the Secretary, U.P. Government to the Director, Mandi Parishad, U.P. Lucknow, was placed before us for our perusal with an English translation and Hindi version. The English translation of the letter reads thus:

"No. 3374/12-5-2001-600(88)/93 From : Dr. Naseem Jedi, Secretary, U.P. Government

To : Director Mandi Parishad U.P. Lucknow

Krishi Anubhag-5 Lucknow: Dated 07 January, 2002 Sub:-Exemption of certified seeds by Trade Tax Department and accordingly exemption of certified seeds by Mandi Parishad from Mandi Tax.

Sir,

Regarding your letter dated 13.08.2001, in relation to the above subject No. V.P/ M.SH/760/T.C.II Khand/86-2001-1220, I have been ordered to inform you that the production of certified seeds of various crops is taken through farmers and then this seed is procured by the corporation in uncertified form, after which it goes through the certification procedures and chemical treatment, and finally certified seed is produced. Therefore, please note that for production of certified seeds on the purchase of raw uncertified seeds there will be no Mandi Tax Liability. Please ensure immediately and appropriate action to enforce this decision. (Emphasis supplied)

Yours faithfully' Sd/- (Dr. Naseem Jedi) Secretary"

19. A reading of the said letter would also show that the production of certified

seeds, on the purchase of raw uncertified seeds there will be no Mandi Tax Liability.

20. Learned senior counsel appearing for the parties also drew our attention to the relevant provisions of the Seeds Act, 1966 (Act No. 54 of 1966) and the Seeds Rules, 1968 (hereinafter referred to as "the Rules"). We have also perused the Schedule (Sections 2(a) and 4-A) to the Adhiniyam in which under the Heading A-Agriculture, Wheat is included as Item No. 1 in the sub-heading Cereals. In the Statement of Objects and Reasons, it is stated that in the interest of increased agricultural production in the country, it is considered necessary to regulate the quality of certain seeds, such as seeds of food crops, cotton seeds, etc. to be sold for purpose of agriculture including horticulture.

21. Section 2 of the Act deals with definition of "Agricultural produce", "Certification Agency" and the "Seed" etc. Section 2(11) defines Seed which 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;
- (ii) cotton seeds;
- (iii) seeds of cattle fodder;
- (iv) jute seeds,

and includes seedlings, and tubers, bulbs, rhizomes, roots, cuttings, all types of grafts and other vegetatively propagated material, of food crops or cattle fodder;

22. u/s 3 of the Act, the Central Government has the authority to constitute a Committee called the Central Seed Committee to advise the Central Government and the State Governments on matters arising out of the administration of this Act and to carry out the other functions assigned to it by or under this 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 this Act. Section 5 of the Act deals with power to notify kinds or varieties of seeds by the Central Government. Section 6 of the Act deals with the power of the Central Government to specify minimum limits of germination and purity, etc. Section 8 of the Act deals with Certification Agency which authorises 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 this Act. Section 9 provides the procedure for grant of certificate by Certification Agency. Section 25 deals with power of the Central Government to make Rules.

23. Rule 2(e) of the Rules defines "certified seed". Under Rule 2(f) of the Rules "Certified seed producer" has been defined. Rule 2(j) defines "processing" and 2(m) defines "treated". The functions of the Central Seed Laboratory has been

dealt with under Rule 5 of the Rules. The functions of the Certification Agency has been specified under Rule 6 of the Rules. Rule 15 deals with the procedure for making application for the grant of certificate under Sub-section (1) of Rule 9. Form I is prescribed for application for Seed production under the Seeds Certification programme. We are not now concerned with the other Rules.

24. We have already reproduced Section 2(a) and Section 17(iii) of the Adhiniyam. Section 17(iii) of the Adhiniyam provides for imposition of market fee on the transactions of sale of specified agricultural produce in the market area at such rates notified by the State. As already noticed, 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. We have also referred to the Objects and Reasons for enacting the Seeds Act, 1966 and the Seeds Rules, 1968. As already seen, Seeds Rules, 1968 have made detailed provisions of production, processing and certification of seeds under the Seed Certification Agency. The Central Government in order to exempt the movement of seeds and in exercise of its powers under the Essential Commodities Act, has enacted Foodgrains Movement Restriction (Exemption of Seeds) Orders, 1970 and the Seeds Control Order, 1983. The seeds are also exempted from Sales Tax under an exemption Notification dated 19.8.1970 issued u/s 4(1)(a) of the Act (Annexure CA3).

25. We have already referred to the essential conditions incorporated in the Certificate of Registration. One of the essential conditions incorporated in the Certificate of Registration is that the certificate holder shall not carry on any business such as dealing in food grains, other than the business of sale of certified seeds. Under the terms and conditions of such certificate, the first respondent is not carrying any other business except the business of certified seeds and it is also not in dispute that the respondent does not hold any other licence for dealing in food grains including wheat.

26. It was also argued by Mr. Dushyant A. Dave that the Market Committee has completely failed to appreciate the declaration of law in the case of State of Rajasthan v. Rajasthan Agriculture Input Dealer Dealers Association (supra) affirmed by this Court on 21.8.1996. In these orders, two reasonings were adopted to hold that the transaction of seeds do not attract market fee namely (a) that the definition of agricultural produce includes items specified in Schedule and that wherever it was intended to separately serialized seeds, they have been distinctly found mentioned in the Schedule and that wherever the Schedule does not include seeds specifically in the serialized item such seeds are not specified agricultural produce and (b) on the process of coating and applying insecticides, other chemicals and poisonous substances the basic character i.e. its consumption as food by human being or animals is irretrievably lost and that

such commodity is distinct from food grains.

27. The decision of the State Government does not take into account the first reasoning and treats only that commodity as seeds which is treated with chemicals and that the action, in our view, is apparently and palpably wrong. It is to be noticed that the farmers are paid prices on the certified seed only after its certification and that the entire quantity of such seeds is chemically treated and is thus a distinct commodity as certified seeds. It was denied that the first respondent purchased wheat from farmers and the seeds purchased from the farmers are of very high quality specified standardised seeds each of which price is very high as compare to wheat. It is not sold in the market and cannot be so sold as wheat and the entire quantity is taken for processing with chemicals at processing plant. The High Court has, in our view, correctly appreciated and accepted the contention of the respondent-Company and has rightly relied upon the judgment of this Court in State of Rajasthan v. Agricultural Input Dealers Association (supra).

28. Learned senior counsel appearing for the first respondent drew our attention to Annexure CA 11 which is the representation in pursuance to the judgment of the High Court in Writ Petition No. 3274 of 1998. The relevant of the representation reads as under:

"Thus our business procedure makes it clear that by the time we purchase seeds from farmers it remain no longer simple unprocessed seed but it comes into the category of certified seed after chemical treatment. At the time of purchase, this wheat is necessary to be determined is the nature of commodity at the time of purchase. As per the specific view taken by Hon'ble Supreme Court in M/s. State of Rajasthan Agriculture Input Dealer Association AIR 1996 2179 seed undergone chemical and pesticide treatment is an entirely different commodity and the same is not subject to market fee on account of its non inclusion on the schedule of Mandi Act.

Under provisions of Section 17(iii)(b)(2) of the Mandi Act if agricultural produce is purchased directly by a trader from a producer, the trader shall be liable to pay the market fee but in the present circumstances it is clear that we have purchased only certified seeds from the farmers and certified seed not being scheduled produced the same is not liable to fee at our level.

In the same reference, the decision taken in the meeting dated 16.5.1998 presided by Secretary Agriculture is also important. In the abovesaid meeting it has been decided that if trader purchases unprocessed seed before chemical treatment in that case the trader is liable to pay market fee on such purchase of unprocessed seeds. However, in the present case, the trader has not purchased unprocessed seed before chemical treatment, therefore, trader is not liable to pay fee on such purchase. Thus direction issued by Secretary Agriculture in meeting dated 16.5.1998 also support trader's stand."

29. I.A.No. 3 of 2001 is filed by the first respondent for seeking permission to

place on record to letter dated 19.1.2000 annexed as Annexure A which is very important for the final adjudication of the case. The said I.A. be taken on record. By the said I.A., the first respondent sought to place on record a letter dated 19.1.2000 addressed by the Principal Secretary, Government of Uttar Pradesh to the Commissioner, Trade Tax Department, Government of Uttar Pradesh directing that instructions be issued to the taxation officers that when the growers or the distributors (SIC) certification machinery sell the seeds in sealed containers after producing themselves after certification along with the tag of the Uttar Pradesh Certification Agency affixed as under the Central Seed Act, 1966 then in such circumstances, no liability of purchase tax is attracted u/s 3 AAAA(4). We have perused the communication dated 19.01.2000 marked as Annexure A.

30. The judgment in the case of State of Rajasthan v. Rajasthan Agriculture input Dealers Association (supra) was heavily relied on by the learned senior appearing for the first respondent. In the said case, the respondent therein claimed themselves to be engaged in the business of purchasing and selling seeds and in particular, Bazra seeds. According to them, seeds can not be termed to be agricultural Produce for the purposes of the Rajasthan Agricultural Produce Market Act, 1961 and its Schedule, as amended from time to time by the State Government in exercise of powers u/s 40 enabling it to add, amend or cancel any of the items of agricultural produce specified in the Schedule. It is maintained that seeds are a processed item and coated by insecticides, chemicals and other poisonous substances whereby the grains employed lose their use and utility as foodgrains and become unfit for human or animal consumption or for extraction therefrom for such consumption. The challenge posed by the respondents before the High Court was answered by the appellants (State of Rajasthan) maintaining that foodgrains of all sorts, as mentioned in the Schedule, were seeds, per se, the only exception carved out from the items mentioned in the Schedule being those relating to blue tagged certified seeds and white tagged certified foundation seeds; such exceptions have been notified by way of amendment to the Schedule in exercise of the power of the State Government u/s 40 of the Act. 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". It was ordered that no licence under the Act was required for sale of such seeds. On appeal, this Court held as under:

"It is undoubtedly true that foodgrains per se could be 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 foodgrains 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."

31. The other decisions cited by the counsel for the appellants will not be of any assistance in deciding the factual disputes involved in the instant case.

32. In our view, the High Court has correctly applied the above judgment. This Court held that no market fee could be levied by the State of Rajasthan 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. In our opinion, that giving a wide interpretation is not possible and as Wheat Seed is not included in the Schedule, the Mandi Samiti is not allowed to levy a market fee on purchase. As the Mandi Samiti plays no role in the trade of the respondent's seeds, it may not be allowed to levy the market fee. It is also not in dispute that the Breeder Seeds are allocated by the Ministry of Agriculture or by the Universities to the various seed producing agencies and companies who multiply the breeder seeds into foundations seeds.

33. It is also very useful to refer hereunder the process by which the seed is manufactured under the Seeds Act and the Seeds Rules:

"(i) Seeds developed in laboratories are classified as Breeder Seeds and are sold through the Ministry of Agriculture or notified Agriculture Universities to producing agencies, Companies and framers. Foundation Seeds (Stage I and II) are developed as progenies of Breeder Seeds and are required to obtain a Certificate from the Seed Certification Agency.

(ii) The production of Foundation Seeds is supervised and approved by the Certification Agency to maintain specific genetic identity and genetic purity and are required to conform to certification standards specified for the crop/variety being certified.

(iii) The Foundation Seed is then grown by the farmer in a land earmarked specifically for the sowing of the Foundation Seed. The offsprings of these Seeds are terms as Certified Seeds, which too are required to meet the minimum standards of genetic purity and genetic identity.

(iv) It is only if the Seeds meet the minimum standards are they subsequently categorised as Certified Seeds and can be purchased by the respondent for further processing.

(v) The processing done by the respondent is done under the aegis of an Inspector of the State Seed Certification Agency and thereafter the samples are taken for testing to notified Government Seed Testing laboratories.

(vi) It is only after meeting the minimum standards of genetic purity and genetic identity that the Seed is put in a bag that is sealed and tagged by the Inspector of the Seed Certification Agency. It is this seed which is allowed to be sold in the market and a certificate is issued by the Agency stating the standards of the Seed and other particulars."

34. It was submitted by the first respondent that all the above mentioned stages of Certification are as per the provisions of the Rules and that right from the inception to the time when the Seed is sold in the market, it is done under regulation issued to govern each and every stage of seed production and certificates are only issued after the seed is found to achieve the minimum standards of genetic identity and genetic purity. It was also pointed out that no such certification standards exist for food grains sold by farmers to the Mandi Samiti. Thus the production of seeds is an integrated process and needs to be regulated at every stage, right from the inception, in order to maintain genetic identity and genetic purity.

35. 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.

36. 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.

37. 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.

Question No. I

38. Thus, the true scope and ambit of Section 2(a) and 17(iii)(b) of the Act has been explained in paras supra.

Question No. ii

39. The appellant has no authority to levy market fee on the purchase of wheat by the seed processing unit. This question is answered in the negative.

Question No. iii

40. Wheat seed converted into certified is unfit for human consumption and, therefore, market fee levy is impermissible.

Question No. iv

41. The object of legislature was to notify only those seeds which are different

from the produce itself.

42. Thus all the questions are answered as above.

43. The argument of the counsel for the first respondent is well merited and founded on sound legal principles and on practical and factual aspects of the matter.

44. For the foregoing reasons, we hold that the appeal has no merit and is liable to be rejected. Accordingly, we do so. However, there will be no order as to costs.

S.B. Sinha, J.

45. The core question involved in this appeal is as to whether 'seed' would come within the purview of the expression 'Wheat' within the meaning of the provisions of U.P. Krishi Utpadan Mandi Samiti Adhiniyam ('The Act'). The Act was enacted to curb the malpractices in the old markets. Mandi Samitis are established u/s 12 thereof. The Mandis are entitled to collect market fee on the sale and purchase of agricultural produce in terms of Section 17 of the Act.

46. Agricultural produce is defined in Section 2(a) of the Act to mean :

"2(a) Agricultural produce means such items of produce of agriculture, horticulture, viticulture, apiculture, sericulture, pisciculture, animal husbandry or forest as are specified in the schedule and includes admixture of two or more of such items and also includes any such item in processed form and further includes gur, rab, shakkar, khandsari and jaggary."

47. Section 2(y) defines trader to mean :

"'Trader' means a person who in the ordinary course of business is engaged in buying or selling agricultural produce as a principal or as a duly authorized agent of one or more principals and includes a person, engaged in processing of agricultural produce. "

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 :

"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; includes seedings, and tubers and bulbs, rhizomes, roots, cutting, all tops of grafts and other vegetatively propagated material, of food crops or cattle fodder".

50. The definition of 'seeds', therefore, is not exhaustive.

51. It is not in dispute that the entire process for procurement of 'breeder seeds' to sale of 'seeds' is governed under the provision of the Seeds Act as well as the rules framed thereunder.

52. Wheat is an agricultural produce within the meaning of Section 2(a) which together with thirteen other food products have been placed under the heading "cereals".

53. The Act contains both penal and fiscal provisions. A trader within the meaning of the said Act would be a person who carries on business inter alia in the agricultural produce. The question is as to whether in the aforementioned situation the respondent would be a trader of Agricultural produce within the meaning of the provisions of the said Act. It is not disputed that 'seed' as purchased and 'sold' is not meant to be used as a cereal. The respondent buys only certified seeds and sales the same as seeds after processing the same. 'Seeds' which are sold by the respondent admittedly are not consumable. It is furthermore not disputed that in terms of the licenses granted in their favour under the 1966 Act, they are not permitted to deal in the commodities for any other purpose.

54. In the State of Andhra Pradesh Vs. Abdul Bakhi and Bros., , the Supreme

Court held :-

"We are unable to agree with this view of the High Court. A person to be a dealer must be engaged in the business of buying or selling or supplying goods. The expression 'business' though extensively used is a word of indefinite import; in taxing statutes it is used in the sense of an occupation, or profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with profit motive, and not for sport or pleasure."

55. Yet again in Krishna Coconut Co. and Another Vs. East Godavari Coconut and Tobacco Market Committee, , this Court while considering interpretation of Section 11 of the Madras Commercial Crops Markets Act held :-

"The relevant provisions of the said Act and the rules which fell for consideration by the Supreme Court would be evident from paragraph 5 of the reported case which is in the following terms :

56. Section 11(1) with which we are concerned in these appeals reads :

"The Market committee shall, subject to such rules as may be made in this behalf, levy fees on the notified commercial crop or crops bought and sold in the notified area at such rates as it may determine" .

57. Although the dictionary meaning of business may be wide, in our opinion, for the purpose of considering the same in the context of regulatory and penal statute like the Act, the same must be read as carrying on a commercial venture in agricultural produce. The rule of strict construction should be applied in the instant case. The intention of the legislature in directing the trader to obtain licence is absolutely clear and unambiguous in so far as it seeks to regulate the trade for purchase and sale. Thus a person who is not buying an agricultural produce for the purpose of selling it whether in the same form or in the transformed form may not be a trader. Furthermore, it is well known that construction of a statute will depend upon the purport and object of the Act, as has been held in Sri Krishna Coconut's case (supra) itself. Therefore, different provisions of the statute which have the object of enforcing the provisions thereof, namely, levy of market fee, which was to be collected for the benefit of the producers, in our opinion, is to be interpreted differently from a provision where it requires a person to obtain a licence so as to regulate a trade. It is now well known that in case of doubt in construction of a penal statute, the same should be construed in favour of the subject and against the State.

58. In the case of London and North Eastern Railway Company and Berriman, 1946 AC 278 Lord Simonds quoted with approval the following observations of Lord Esher N.K. in the case of Tuck & Sons v. Priest, (1887) 19 QBD 629. "We must be very careful in construing that section, because it imposes a penalty. If there is a reasonable interpretation which will avoid the penalty in any particular

case, we must adopt that construction. If there are two reasonable construction we must give the more lenient one. That is the settled Rule for the construction of penal sections." It is trite that fiscal statute must not only be construed literally, but also strictly. It is further well known that if in terms of the provisions of a penal statute a person becomes liable to follow the provisions thereof it should be clear and unambiguous so as to let him know his legal obligations and liabilities thereunder.

59. The matter may be considered from another angle, "Expression unius (personae vel rei) est exclusio alterius", is a well known maxim which means the express intention of one person or thing is the exclusion of another. The said maxim is applicable in the instant case. [See *Khemka and Co. (Agencies) Pvt. Ltd. Vs. State of Maharashtra*,

60. Having regard to the fact that in the event it is held that buying of seeds which is a commodity governed by a Parliamentary Act would attract payment of market fee in terms of the said Act, a conflict would arise. In ordinary parlance at particular stages in which seeds are grown from breeder seeds may take the form of wheat but the said production which is bought by the respondents is also governed by the provisions of the Seeds Act and the Rules framed thereunder. The definition of 'seed' as noticed hereinbefore is of wide amplitude. It includes seedling of food crops. It is, thus, necessary to construe both the statutes harmoniously. Both, the Statutes must be given proper effect and allowed to work in their respective fields. Even if there is some over-lappings, the same should be ignored.

61. Taking into consideration the totality of the situation and upon giving harmonious construction to both the 1966 Act as well as the said Act, we are of the opinion that the respondent cannot be said to be a trader of agricultural produce as in the ordinary course of business, he is engaged in buying or selling agricultural produce. Once it is held that the respondent is not a trader, no market fee can be demanded from it by the appellant.

62. 'Seed' is also an essential commodity within the meaning of the provisions of the Essential Commodities Act 1955 which has been enacted by the Parliament in exercise of its power conferred under Entry 33 of List III of the 7th Schedule of the Constitution of India. Further more, if a Parliamentary Act governs the entire field, the 'seeds' which are bought and further seeds produced therefrom and processed upon being governed by the Parliamentary Acts and Statutory Rules must be held to have been excluded from the purview of the provisions of the said Act.

63. The Central Government, made Foodgrains Market Restrictions (Exemption of Seeds) Order, 1970 and Seeds Control Order, 1983 in exercise of its power u/s 3 of the Essential Commodities Act, 1955.) In terms of Sub-section (2) of Section 4 of the Act, the provisions of Section 3 of Essential Commodities Act, 1955 and the orders made thereunder shall have effect, notwithstanding anything

inconsistent therewith contained in the said Act or in any law made thereunder, thus, the seeds which are subject matter of not only a Parliamentary Act but also an order made u/s 3 of Essential Commodities Act would by necessary implication are not meant to be included within the definition of 'agricultural produce' under the said Act.

64. Furthermore the interpretation Clauses contained in Section 2 of the said Act is prefaced with the expressions "unless there is anything repugnant in the subject or context".

65. This Court in The State of Maharashtra Vs. Indian Medical Association and Others, , inter alia, held that the expression contained in one Statute may have to be read differently in a particular context.

66. Recently in S. Samuel, M.D., Harrison's Malayalam and Another Vs. Union of India (UOI) and Others, , this Court has held that 'tea' does not come within the purview of the expression 'food stuff' contained within the meaning of the provisions of Essential commodities Act, holding :-

"It is thus clear that in common parlance food is something that is eaten. In a wider sense 'food' may include not only solid substances but also a drink. Still the fact remains that whether a solid or a liquid, the substance called 'food' should possess the quality to maintain life and its growth; it must have nutritive or nourishing value so as to enable the growth, repair or maintenance of the body.

67. As the purpose for which the respondents purchase the 'seeds' is not meant to be used as a 'cereal' which is an agricultural produce within the meaning of the provisions of the said Act, the High Court, in our opinion, has rightly held that the respondents are not liable to pay any market fee.

68. I respectfully agree with the proposed judgment of Brother Dr. AR. Lakshmanan that the appeal be dismissed.