
(2012) 03 MP CK 0105

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 1062 of 2011

Mahyco Seeds Ltd.

APPELLANT

Vs

State of MP and Others

RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Constitution of India, 1950 — Article 141

Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 — Section 19, 59

Citation : (2012) 03 MP CK 0105

Hon'ble Judges : Tarun Kumar Kaushal, J;Sushil Harkauli, J

Bench : Division Bench

Judgement

Hon"ble T.K. Kaushal, J.—Since these appeals have been preferred against a common judgment dated 5th May, 1991 of learned Single Judge dismissing W.Ps. No. 1434/2006, No. 5257/2008 and No. 4779/2009 wherein action of respondent No. 4 of levying mandi fees etc. was affirmed. They have therefore been clubbed, heard together and are being decided by this common order.

2. Facts giving rise to these appeals are almost similar with the exception of Bajra in the first case and soyabean in the other two cases. We therefore refer to the facts of the first case. The facts in short are that appellants are registered Companies based at district Khandwa in Madhya Pradesh. They are dealing in research, production, processing and marketing of seeds. On 28.3.2006, trucks allegedly carrying seeds of bajra were stopped by employees of Mandi Samiti (respondent No. 4). After preparing panchnama Annexure R-4/1 and Annexure R-4/2 and recording statement of driver, the officers of the Mandi came to the conclusion that what was being carried by the trucks was grain and not seed. No receipts of payment of Mandi fee was produced. Therefore the fee was levied alongwith penalty and fine etc. on transportation of bajra/soybean saying leviable u/s 19 of Madhya Pradesh Krishi Upaj Mandi Samiti Adhiniyam, 1972 (hereinafter referred to as "Adhiniyam, 1972").

3. Representations/appeals of appellants filed before the Managing Director were

rejected vide order dated 16.6.2006 as not maintainable.

4. Learned Single Judge considering the Entry No. 6 of Schedule II relating to Cereals and Entry No. 5 of Schedule IV relating to seeds in Adhiniyam, 1972, observing that since bajra was transported in the truck and it is not necessary to examine whether "bajra seeds" is included in schedule. In view of the evidence of panchnama Annexure R-4/A and the statement of driver of the appellant, observing that Bajra/soybean was included in the schedule of the Adhiniyam 1972, and thus affirming the levy of market fees on the produces the learned single Judge dismissed the writ petitions.

5. Learned counsel for the appellants placing reliance on State of Rajasthan, etc. Vs. Rajasthan Agricultural Input Dealers Association, etc., and Krishi Utpadan Mandi Samiti and Others Vs. Pillibhit Pantnagar Beej Ltd. and Another, and another, submitted that definition of "specified agricultural produce" in the Adhiniyam 1972 and has a limited scope and it does not cover the grain which not fit for consumption by human beings or animals. Though bajra/soybean are included in respective Schedules of the Adhiniyam, 1972 but it does not include "Bajra seed" and "soybean seed". Inclusion of seed of aforesaid food grains i.e. cereal and oil seed cannot be inferred automatically. No such wider interpretation to the items referred in schedule should be and can be given.

6. It is further submitted that learned Single Judge failed to appreciate the evidence of the panchnama and statement of driver in right perspective. The circumstances that Bajra seized was found in the packets of 1.5 kg each, bearing self certification and tags as required under Seeds Act, is indicative of the fact that no food grain, as mentioned in the Adhiniyam, 1972, was transported. Invoices of bajra (produced in the appeal as additional documents) were wrongly ignored by the authorities of respondent No. 4. There had been no reason for authorities of respondent No. 4 to believe or suspect that such packing/tagging by seed processing unit is a design or device of levy/fees evasion because appellants not at all dealing in the trade of grains. It is pertinent to note that seed is also an essential commodity under the provisions of Essential Commodities Act, 1955. In compliance with Rule 8-A of the relevant Control Order, aforesaid packets were duly packed and labelled by the appellants as seed, not as a food grain.

7. Main object of Seeds Act seems to ensure the availability of quality seeds in terms of germination or genetic purity to the consumer. It regulates affairs between the producer/manufacturer and the consumers, whereas scope of the Adhiniyam 1972 is to regulate sale and purchase of agricultural produce in the market of that particular local area in the interest of farmers and accordingly to charge/levy fees etc. on possession and movement of food grains and specified agricultural produce. Lapse of appellants, if any, in compliance of provisions of the Seeds Act is not going to make the respondents entitled to impose levy/fees on the commodity deeming that to be grain or specified agricultural produce. Grains are meant for oral consumption by human beings/animals and seeds are

meant for sowing.

8. To differentiate the grain from seed, observation of Apex Court in Pillibhit's case (supra) in following paragraphs is relevant to mention:

35. 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.

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 the Seeds 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 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 vs. Rajasthan Agriculture Input Dealers Association under Article 141 of the Constitution in demanding market fee on seeds. Since the processing of wheat results 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.

9. Admittedly, certified seeds cannot be termed as "food grain" or "agricultural produce" for the purpose of the Adhiniyam 1972. As soon as a produce loses its identity and potential for oral consumption by living beings, it would be out of the cover of the Adhiniyam. Effect and impact of non-compliance of provisions of the Seeds Act cannot be presumed in favour of the respondents. There should some "reason to believe" or "reason to suspect" on part of the officers of respondent No. 4 to presume that packing/tagging is nothing but a device and design for levy/fees evasion by the appellants. Not only that but there should some antecedents of activities of appellants to show that they are dealing in trade of grains also.

10. In addition to some certified seeds and notified seeds, those grains which have dual utility as grain and as seed both, will cease to be treated as "grain", the moment these are processed and treated with chemicals, poisons etc. in such manner that they became irrevocably unfit for human consumption. In such case, they will not remain liable to be levied any fees by Mandi Committee. This needs to be accompanied by a caveat namely that at the point of purchase of grain for such treatment, mandi fee would be payable. Mandi fee would not be payable only if what has been purchased is seed which is capable of being made certifiable seed.

11. It is true that in writ jurisdiction it is not possible to adjudicate controversies

of complicated facts but u/s 59 of the Adhiniyam, 1972, Managing Director is required to examine entire record and proceedings to see the illegality and propriety of any action of the authorities after hearing the parties affected, hence, he is required to adjudicate facts also. Whether the seized items were bajra/soybean capable of oral consumption by human beings/animals or were unfit for the same, and were left with the only potential for use as seeds was a question which could and should have been adjudicated in the appeal by the Board/M.D. The fact that the items were packed in 1.5 Kg bags as mentioned in the driver's statement, the mention of the words "poison"/"unfit for food", etc. are some of the relevant circumstances to be weighed and examined along with other circumstances for deciding the above question of fact. The fact that the petitioners had paid the mandi fee allegedly under duress to get the allegedly perishable goods released quickly also should be considered for deciding the maintainability of the appeals.

12. As discussed above, in our considered opinion, orders of learned Single Judge as well as that of the Director deserve to be set aside and are hereby set aside. Parties are directed to approach Managing Director, M.P. Agriculture Marketing Board, Bhopal for decision afresh of their representations/appeals. The aforesaid representations/ appeals will be decided by a reasoned order after affording opportunity of hearing to both the parties, preferably within a period of three months from the date of communication of this order.

The writ appeals are, accordingly, disposed of.