
(1999) 08 AHC CK 0057
In the Allahabad High Court
Case No : C.M.W.P. No. 17877 of 1999

Pilibhit Pant Nagar Beej Limited

APPELLANT

Vs

State of U. P. and others

RESPONDENT

Date of Decision : 25-08-1999

Acts Referred:

Seeds Act, 1966 — Section 2(11), 8

Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 17, 2

Citation : (1999) 4 AWC 3081 : (1999) AWC 3081

Hon'ble Judges : M. Katju, J; Krishna Kumar, J

Bench : Division Bench

Advocate : Sunil Ambwani, for the Appellant; S.C. and B.D. Mandhyan, for the Respondent

Judgement

M. Katju & Krishna Kumar, JJ.—This writ petition has been filed for quashing the impugned order dated 12.3.99 (Annexure-17 to the writ petition) and for a mandamus restraining the respondents from interfering in the business of the petitioner in certified seeds either before or after processing and further in restraining the respondents from demanding and realising market fee on the transaction of unprocessed or processed certified seeds.

2. We have heard learned counsel for the petitioner and Sri B. D. Mandhyan, learned counsel for the respondents.

3. In the year 1997-98 market fee was demanded from the petitioner on seeds of wheat by order dated 22.9.98 which was challenged by the petitioner in writ petition No. 32740 of 1998 which was disposed of by this Court on 15.1.99 (vide Annexure-15 to the writ petition) directing the petitioner to make a fresh representation, which should be decided in the light of the judgment of the Supreme Court in State of Rajasthan, etc. Vs. Rajasthan Agricultural Input Dealers Association, etc., The petitioner made the representation, which was rejected by the impugned order dated 12.3.99. Hence this petition.

4. Section 17 (iii) (b) of the U. P. Krishi Utpadan Adhiniyam provides for imposition of market fee on the transactions of sale of specified agricultural produce in the market area at such rates as is notified by the State Government. The expression "agricultural produce" has been defined in Section 2 (a) as follows :

"(a) agricultural produce" mean 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 Jaggery."

5. Wheat is specified in the Schedule to the Adhiniyam at serial No. 1 under the heading of Cereals. It is submitted that whatever seeds have been intended to be notified have been specifically mentioned as seeds. In the case of wheat, however, it has not been notified for seeds, and hence it is alleged that seeds of wheat are not covered in the Schedule. A true copy of the Schedule to the Adhiniyam has been annexed as Annexure-1 to the writ petition.

6. The Seeds Act, 1966 was enacted and the Seeds Rules, 1968 were made thereafter. Section 2(11) defines seeds and Section 8 provides for a Seed Certification Agency. The Seeds Rules, 1968 made detailed provisions regarding production, processing and certification by the Seed Certification Agency.

7. The petitioner Company is engaged in the production of certified seeds since the year 1996-97 and holds a valid registration certificate from the District Agriculture Officer, Pilibhit under the Seed Control Order valid upto 25.5.2000 and also holds a certificate of registration from the U. P. Seeds Certification Agency, Alambagh, Lucknow. True copies of the Certificates have been enclosed as Annexures-4 and 5 to the writ petition.

8. In paragraph 9 of the petition. It is alleged that the business of the Company is to purchase Breeder seeds from the Agricultural Research Institute and to produce certified seeds. The first step of production is to distribute Breeder seeds to the listed and scheduled farmers. The Breeder seeds are sown and are germinated under strict supervision of the statutory Seed Certification Agency, set up under the Seeds Act. The standardized seeds so obtained are called Foundation seeds and these foundation seeds thereafter are again supplied to 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 the lots rejected are not taken back by farmers. After harvesting the approved standard certified seed the lots are fumigated for preservation, and the samples of each lot is tested in the laboratories of the Seeds Certification Agency, Alambagh, Lucknow and also at Kanpur and Rudrapur. The rejected lots and losses at processing are returned to the farmers only after the foundation seeds are certified as conforming to the specifications. The lots are subjected to the treatment with insecticides and

pesticides at the time of the packing. The bag of 40 kg, and 100 kg, each are given lot and code numbers and the bags are marked as Poison and thereafter marketed. The Seed Certification Agency supervises this entire production operation. In paragraph 11 of the petition it is submitted that until the seeds are certified they continue to be the property of the farmers who agrees to such arrangement on the Foundation Seeds Distribution Forms. The farmers pay inspection charges and registration fee to the Agency. The certified seeds so obtained are purchased from the farmers at an agreed rate.

9. From the above facts, it is evident that the petitioner purchases seeds not for consumption as foodgrains but for processing and then sale to farmers.

10. In the year 1997-98, the petitioner purchased Breeder seeds from Agriculture Universities of certain varieties and distributed it to the farmers under contract by depositing the required amount to Seed Certification Agency for sowing and cultivation of Breeder seed.

11. In paragraph 13 of the petition, it is alleged that the certified seeds purchased from the cultivators, are meant to be utilized as seeds only as the basic character of foodgrains, i.e., its consumption as food by human being or animals, get irretrievably lost and such processed seeds become commodity distinct from foodgrains.

12. In the year 1988, the market committee, Kashipur Issued notices to the Companies engaged in certified seeds. The notices were challenged by means of Writ Petition No. 13799 of 1988 which was allowed on 31.8.88 by this Court which held that the certified seeds are not specified agricultural produce and hence the notices were Invalid. True copy of the Judgment dated 31.8.88 is enclosed as Annexure-6 to the petition. Against this judgment Civil Appeal Nos. 106-110 of 1990 were filed in the Supreme Court which were dismissed on the basis of the decision of the Supreme Court in State of Rajasthan, etc. Vs. Rajasthan Agricultural Input Dealers Association, etc., .

13. On the basis of the aforesaid judgment of the Supreme Court, the petitioner's earlier writ petition No. 7262 of 1993 was allowed in favour of the petitioner vide judgment dated 10.12.96. True copy of the judgment is Annexure-7 to the petition. However, despite these Judgments by notice dated 15.10.97, the Mandi Samiti. Pilibhit directed the petitioner to deposit the market fee on seeds.

14. In paragraph 19 of the petition, it is stated that petitioner submitted a detailed reply to the notice. The petitioner has alleged that it is not dealing in sale and purchase of foodgrains or wheat but deals only in certified seeds. The stocks stored by the petitioner were not of wheat but the certified seeds of wheat under the supervision of the U. P. Seeds Certification Agency. However, the Mandi Samiti, Pilibhit by order dated 18.11.97 rejected the petitioner's representation and directed it to pay market fee of Rs. 1,29,551.50.

15. In paragraph 22 of the petition, it has been alleged that the show cause notice dated 15.10.97 and order dated 18.11.97 wrongly state that the stored stocks were wheat. In fact the stored items were seeds of wheat and not wheat. The petitioner challenged the order in writ petition No. 40090 of 1997 in which an interim order dated 19.12.97 was passed which has been quoted in paragraph 23 of the petition.

16. In paragraph 25 of the petition, it is stated that by order dated 11.8.98, the petitioner was required to submit information regarding sale and purchase of wheat in the year 1997-98. True copy of the said order is enclosed as Annexure-10 to the petition. The petitioner submitted a reply dated 19.8.98 stating that the wheat seeds are taken only after processing and examination of seeds. True copy of the reply is Annexure-11 to the petition. However, the Market Committee has imposed market fee of Rs. 2,14,516.20 by order dated 22.9.98. True copy of the order is Annexure-12 to the petition. On receiving this order the petitioner gave a detailed reply on 25.9.98 vide Annexure-13 to the petition. Thereafter the petitioner filed a writ petition which was disposed of by order dated 15.1.99 directing the petitioner to make a fresh representation to the Mandi Samiti which would be decided in six weeks. True copy of the said order is Annexure-15 to the petition. The petitioner made such a representation vide Annexure-16 to the petition but it has been rejected by order dated 12.3.99 vide Annexure-17 to the petition. Aggrieved, this petition has been filed in this Court.

17. A counter-affidavit has been filed and we have carefully perused the same.

18. In paragraph 3 of the same it is alleged that petitioner being purchaser/trader is liable to pay market fee u/s 17 (iii) of the Mandi Adhiniyam. It is alleged that the petitioner did not disclose the name of the producers from whom wheat has been purchased within the market area of Pilibhit. It is further alleged in paragraph 3 that after purchasing the wheat the petitioner converts it into seed by applying pesticides and other chemicals. It is also alleged that petitioner sells wheat and the entire transaction is of wheat within the market area of Mandi Samiti, Pilibhit and hence is subject to the payment of market fee. It is also alleged that the petitioner has a right of appeal u/s 32 of the Adhiniyam. In paragraph 10 of the counter-affidavit it is alleged that the petitioner is engaged in purchasing certified seeds but for that purpose it purchases wheat and other commodities and on this transaction the petitioner is liable to pay market fee. In paragraph 11 of the counter-affidavit it is stated that the petitioner is purchasing wheat and there is nothing like Breeder seed. In paragraph 12 of the counter-affidavit it is stated that wheat can be used for both consumption and seed purposes and therefore it is subject to payment of market fee. In paragraph 14 of the petition it is stated that on the certified seeds no market fee is being charged by the Mandi Samiti after poisonous Insecticides are applied. In paragraph 15 of the counter-affidavit it is stated that the demand is on the transaction of wheat purchased for the purpose of seeds. In paragraph 17 of the counter-affidavit it is stated that the petitioner is purchasing wheat within the

market area and they even sell the wheat but even if they did not sell it and convert it into seed market fee will be payable on the purchases of wheat. The petitioners are traders and hence are liable to pay market fee.

19. In rejoinder affidavit, the allegations in the writ petition have been reiterated. In paragraph 9 of the same. It is denied that the petitioner purchases regular wheat or other commodities for preparing seeds. Seeds are a distinct commodity and the petitioner purchases breeder seeds from Agricultural Universities. In paragraph 10 it is stated that seed of wheat is not included in the Schedule to the Adhiniyam. It is denied that only when Chemicals are utilised seeds become exempt from the Adhiniyam. In fact production of seeds is one integrated process. The entire transactions are regulated under the Seeds Act and Seeds Rules. In paragraph 11 it is stated that production of seed from purchase of breeder seed to sale of certified seed is one integrated process. In paragraph 12 it has been denied that the demand is on the wheat whereas in fact it is on the foundation seeds. In paragraph 13 of the same it is stated that the Mandi Samiti is not applying the Supreme Court judgment. In paragraph 14 it is stated that there is no sale at the intermediate stage. The petitioner does not purchase wheat but deals only in seeds.

20. In our opinion, the facts of the case are squarely covered by the decision of the Supreme Court in State of Rajasthan, etc. Vs. Rajasthan Agricultural Input Dealers Association, etc., which has been followed by the Division Bench of this Court in Writ Petition No. 7262 of 1993, decided on 10.12.96 copy of which is Annexure-8 to the petition.

21. It is evident from the facts of the case that the petitioner only deals with seeds and not wheat. The allegation in paragraphs 3, 10 and 11 of the counter-affidavit that the petitioner purchases wheat is without any basis, and is only a bald averment without any material in its support.

22. A perusal of the Schedule to the U. P. Krishi Utpadan Mandi Adhiniyam shows that wherever certain seeds were intended to be included in the Schedule, they were specifically mentioned therein. For example, under the heading "Oil Seeds" there is a mention of castor seed, consequently seed, mahuwa seed, cotton seed, etc. Similarly, in some other items in the Schedule, the word "seed" has been used in brackets. This shows that wherever a particular kind of seed was intended to be brought under the purview of the Act, it was specifically provided to that effect. There is no mention of seed of wheat in the Schedule. Hence, it is evident that the same was not intended to be Included in the Schedule, and consequently no Mandi Fee can be levied on seeds of wheat.

23. Following the said decision, this petition is allowed. The Impugned order dated 12.3.99 Annexure-17 to the writ petition is quashed and it is held that respondents cannot charge Mandi Fee on the seeds in which the petitioner deals. The petition is allowed. No order as to costs.