
(2009) 08 AHC CK 0086
In the Allahabad High Court

Pragati Seeds

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-08-2009

Acts Referred:

Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 2(a)

Citation : (2010) 1 AWC 126

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard Shri Ashok Khare, the learned senior counsel for the petitioner and Shri B.D. Mandhyan, the learned senior counsel for the Mandi Parishad.

2. The question which arises for consideration in the present petition is, whether the certified seeds is an agricultural produce or not? The facts giving rise to this petition is, that the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 (hereinafter referred to as the Adhiniyam) was enacted to regulate the sale and purchase of agricultural produce and for establishment of a market in Uttar Pradesh. Section 2(a) of the Adhiniyam defines "agricultural produce" as under:

2 (a) "agricultural produce" means such items of produce of agriculture, horticulture, viticulture, apiculture, sericulture, pisciculture, animals husbandary, 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.

3. The Schedule appended to the Adhiniyam provides a list of agricultural produce, which includes wheat, gram and peas. These agricultural produce are involved in the present controversy. The petitioner is a partnership firm registered under the Partnership Act and is engaged in the business of production, processing and distribution of certified seeds of wheat, gram and vegetable peas,

namely, Arkel, Azad P-1 and Azad P-3. The firm is registered with the U.P. State Seeds Certification Agency, Alambagh, Lucknow under the Seeds Act, 1966 (hereinafter referred to as the Seeds Act).

4. The modus operandi for the purpose of production of certified seeds, as given by the petitioner, is that it purchases breeder seeds from agricultural research institutes in order to produce certified seeds. The petitioner enters into an arrangement with the agriculturists and supply breeder seeds to these agriculturists for production of certified seeds. The breeder seeds are sown and germinated in the fields, of the agriculturists under the supervision of the seeds certification agency which has been set up under the Seeds Act, 1966. Upon the full growth of the breeder seeds, the same is taken back by the petitioner and subjected to processing, which involves the use of chemicals, and thereafter, the same is inspected by the seeds certification agency, and thereafter, certified to be sold as certified seeds. It is stated that only such quantity of seeds which are found fit for certification by the seed certification agency is retained by the petitioner and those which are found unfit for certification by the agency is returned to the agriculturists. In this manner, the petitioner submits that the produce obtained from the agriculturists are not agricultural produce, but are certified seeds, which does not come under the purview of the Mandi Adhiniyam.

5. This controversy has been subjected to several litigations, and in spite of the decisions of this Court in Continental Seeds and Chemicals Ltd. v. Director, Mandi Parishad, U.P., Lucknow and Ors. 1998 All LJ 1321 : 1998 (2) AWC 1312 and the Supreme Court, in the case of State of Rajasthan, etc. Vs. Rajasthan Agricultural Input Dealers Association, etc., the Mandi Samiti insisted that the foundation seeds procured by the petitioner from the agriculturists was an agricultural produce and mandi fees was leviable since there was a sale in the market area and that the petitioner was liable to pay the mandi fees.

6. The record suggests that a notice dated 4.6.2000 was issued by the Secretary of the Mandi Samiti raising demand of market fee and development cess for the period 1998-1999 and 1999-2000 on the foundation seeds. The Mandi Samiti by an order dated 16.3.2001, raised a demand of Rs. 2.02 lacs towards market fee and Rs. 43,159.43 towards development cess. The petitioner, being aggrieved by the aforesaid order, filed a revision u/s 32 of the Act which was also dismissed. The petitioner thereafter, has filed the present writ petition.

7. The learned Counsel for the petitioner submitted that the matter is squarely covered by various judgments of this Court as well as of the Supreme Court, namely, in the matter of Continental Seeds and Chemicals Ltd. (supra) and in the matter of State of Rajasthan etc. (supra) of the Supreme Court, and a judgment of this Court in Pilibhit Pant Nagar Beej Limited Vs. State of U. P. and others, wherein the Court held that seeds of wheat was not included in the Schedule, and consequently, market fee could not be levied. This judgment has been affirmed by the Supreme Court in Krishi Utpadan Mandi Samiti and Others Vs. Pilibhit Pantnagar Beej Ltd. and Another, which still holds the field and squarely

covers the case of the petitioner.

8. From a perusal of the record, the Court finds that the procedure adopted by the petitioner which was placed before the authorities, has not been refuted. In fact, the mandi fees was assessed by the Mandi Samiti, on the basis of the information supplied by the Certified Seed Agency, Alambagh, Lucknow to the Mandi Samiti. The revisional authority framed an issue, namely, whether the "certified seeds" comes within the definition of "agricultural produce" or not? The Mandi authorities have accepted the fact that the breeder seeds are given to the agriculturists by the petitioner and that foundation seeds are obtained by them upon harvesting of the breeder seeds. The Mandi authorities have held that the foundation seeds obtained by the petitioner from the agriculturists is an "agricultural produce" and remains an agricultural produce till such time the said foundation seeds are subjected to treatment with insecticides and pesticides, and on that basis, imposed mandi fees upon the petitioner. In similar circumstances, the Supreme Court in *Pilibhit Pant Nagar Beej Ltd. (supra)* framed the following questions of law, namely:

(ii) Whether the market fee can be levied on the purchase 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 ?

9. The Supreme Court, after analysing the provisions of the Seeds Act, the Rules and the Control Order as well as the provisions of the Mandi Adhiniyam, held that process of the production of the certified seeds was done under the Seeds Act, and that at every stage of production, the seeds was certified by the agency and that there was no nexus between whether the seeds had been chemically treated or not and on the levy of market fee. The Supreme Court held that the production of seeds under the Seeds Act was a separate commodity from grain and that the same was not covered under Schedule 1 of the Mandi Adhiniyam and that no market fee was leviable on the sale or purchase of the seeds. The Supreme Court also held that the seeds which are not specified as agricultural produce under the Schedule was outside the purview of the Mandi Adhiniyam. The Supreme Court held that:

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 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 1 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, etc. Vs. Rajasthan Agricultural Input Dealers Association, etc., 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.

10. The Supreme Court consequently answered the aforesaid two issues holding that the Mandi Samiti had no authority to levy market fee on the purchase of wheat by the seed processing unit and seed converted into certified seed was unfit for human consumption, upon which, no market fee was leviable.

11. In my view, the aforesaid judgment of the Supreme Court squarely settles the issue involved in the present case. The Mandi authority misdirected itself in holding that the foundation seeds procured by the petitioner from the agriculturists from the breeder seeds was an agricultural produce. The said finding cannot be sustained.

12. Shri B.D. Mandhyan has placed reliance upon a decision of the Supreme Court in Seeds man Association, Hyderabad and Others Vs. Principal Secretary to Govt., A.P. and Others, A similar controversy was raised, namely, that the produce grown from the certified seeds which was not meant for human consumption was not leviable to market fee. The Supreme Court found that the writ petition filed by the Association before the High Court was vague and that necessary details were lacking, and therefore, held that it was not possible to arrive at a finding as to whether the seeds grown by the farmers had lost their basic character, that is, whether the produce was fit for human consumption or not, and upon this ground, the petition was rejected leaving it open to the Association and its individual members to seek appropriate relief in a fresh proceedings before the authority concerned after supplying the necessary details. In my opinion, the said judgment has no application to the present facts and

circumstances of the case.

13. In view of the aforesaid, the impugned orders cannot be sustained and is quashed. The writ petition is allowed. The Court, by an interim order, had directed the petitioner to deposit 50% of the amount demanded. Since this Court has quashed the impugned order and has allowed the writ petition, the Mandi authorities are directed to refund the amount within four weeks from the date of the production of a certified copy of this order.