
(1999) 01 PAT CK 0022

In the Patna High Court

Case No : C.W.J.C. No"s. 4704 of 1997 and 1045 and 1875 of 1998

Spic Phi Seeds Limited and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 29-01-1999

Acts Referred:

Bihar Agricultural Produce Markets Act, 1960 — Section 27, 3, 4

Citation : (1999) 1 BLJR 472 : (1999) 1 PLJR 812

Hon'ble Judges : R.M. Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In all the three Writ Petitions the challenge is with respect to levy of market fee on Hybrid seeds of maize, paddy and wheat etc. under the provisions of the Bihar Agricultural Produce Markets Act, 1960 (hereinafter referred to as the Act"). Since in all the three Writ Petitions the question involved is common, with consent of parties, they have been heard together and are being disposed of by this common judgment.

2. The petitioners are the Limited Companies producing Hybrid seeds which are developed, produced and distributed by them to Indian farmers. It is stated that these seeds are the reward of the well acclaimed pioneer's hi-tech research workers done within the country using termplasm supplied by PHI. It is further stated that the seeds are quoted by insecticides, chemicals and other poisonous substance and thereby the grain and other articles loose their use and utility as food-grains or vegetables and become unfit for human or animal consumption or for their extraction for such consumption. It has also been stated that the seeds marketed by the petitioner-Company are exclusively for the purpose of sowing only and not for consumption by human or animals and cannot be used for Oil extraction. The petitioners have also asserted that the seeds are not mentioned/ included in the Schedule appended to the Act.

3. A counter affidavit has been filed on behalf of Bihar Agricultural Produce Marketing Board and Agricultural Produce Market Committee (respondent Nos. 2 and 3 respectively). Learned Counsel appearing for the respondents fairly submitted that the aforementioned facts have not been disputed in the counter affidavit. Despite several opportunities granted to the respondent-State of Bihar, no counter affidavit has been filed on their behalf.

4. Mr. Pawan Kumar, learned Senior Counsel appearing for the petitioner in CWJC No. 1045 of 1998 has contended that since Hybrid seeds are not included in the Schedule of the Act and that there is no notification under Sections 3 and/or 4 of the Act with respect to it, the petitioner cannot be compelled to take licence for dealing in the said commodity and the respondents cannot legally levy any fee under the provisions of the Act. Thus, according to him, the action of the respondents in rejecting the claim of the petitioner that Hybrid seeds are not agricultural produce under the provisions of the Act and consequently requiring them to take licence and submit return and pay market fee under the provisions of the Act is wholly illegal, arbitrary, violative of their fundamental rights to carry on trade and business guaranteed under the provisions of the Constitution, besides being mala fide. Learned Counsel submits that in fact, the above question stands concluded by a decision of the Apex Court in the case of State of Rajasthan, etc. Vs. Rajasthan Agricultural Input Dealers Association, etc., , wherein on consideration of similar provisions in the Rajasthan Agricultural Produce Markets Act, 1961 (Central Provisions), it has been held that in consequence of process of applying insecticides, other chemicals and poisonous substances to such articles one of its basic character i.e., its consumption as food by human beings or animals or for extraction for like purpose is irretrievably lost and, thus, not covered by the provisions of the said Act. As such, according to him, unless the Hybrid seeds of such articles are duly included in the Schedule after completing all the necessary formalities as required under Sections 3, 4 and/or 39 of the Act, they cannot be said to be agricultural produce and subjected to levy of fee or any action under the Act.

5. Mr. Agrawal, learned Counsel appearing for the petitioners in CWJC No. 4704 of 1997 also submitted that in view of the law settled by the Apex Court in the case of State of Rajasthan (supra), the respondents are not justified in asking the petitioners to take licence, submit return and pay market fee.

6. Mr. Bajla, learned Counsel appearing for the respondent-Board has submitted that the definition of "agricultural produce" in Rajasthan case before the Apex Court was completely different from the definition of "agricultural produce" in the Bihar Act. As such, according to him. the present cases will not be governed by the principle decided by the Apex Court in Rajasthan case. According to Mr. Bajla, the question regarding the applicability of the Act to such agricultural produce in the light of the definition of "agricultural produce" in the Bihar Act stands concluded by various decisions of this Court in the cases of The Tata Oil Mills Co. Ltd. v. Director 1986 BLJR 172. Raptakos Brett & Company Ltd. v. Bihar State

Agricultural Marketing Board 1988 PLJR 830, Delhi Cloth and General Mills Co. Ltd. and Others Vs. The Agricultural Produce Market Committee and Others and Agriculture Produce Market Committee v. State of Bihar 1995(2) PLJR 64. It has been contended by Mr. Bajla that in fact, the definition of "agricultural produce" in the Bihar Act after the 1982 Amendment in Clause (a) of Sub-section (1) of Section 2 of the Bihar Act is much wider than the definition of it as provided in the Rajasthan Act. According to Mr. Bajla, in Rajasthan Act the expression used is that "agricultural produce" includes all produce whether of agriculture, horticulture, animal husbandry or otherwise specified in the Schedule whereas according to the Bihar Act, "agricultural produce" means all produce, whether processed or non-processed, manufactured or not, of agriculture horticulture, plantation, animal husbandry, forest, sericulture, pasciculture and includes livestock or poultry as specified in the Schedule. Thus, according to him, the processing of the articles in question though is called Hybrid seed, yet is covered by the definition of "agricultural produce" as they are included in the Schedule in their original form. It has been contended that in the Bihar Act the very word "means" used in the definition of "agricultural produce" shows that it includes all which are produced from the items mentioned in the Schedule. He also ventured to submit that according to the Division Bench judgment of this Court in the case of Tata Oil Mills Co., Ltd. v. Director 1986 PLJR 172, the definition of "agricultural produce" in the Bihar Act stands delinked from the Schedule i.e. even non-inclusion of any processed or manufactured items of those included in the Schedule will be covered by the definition of "agricultural produce".

7. I am unable to accept the submission of the learned Counsel appearing for the respondents after the law in this regard stands settled by the Apex Court in the Rajasthan case dealing with the Hybrid seeds. It is true that the definition of "agricultural produce" in the Rajasthan Act is not in pari material with the definition in the Bihar Act, but it has rightly been submitted by Mr. Pawan Kumar, learned Senior Counsel appearing for the petitioner in CWJC No. 1045 of 1998 that the expression "or otherwise" used in the Rajasthan Act is of wider scope than the definition in the Bihar Act. In this regard he placed reliance on the Constitution Bench decision of the Apex Court in the case of Lilavati Bai Vs. The State of Bombay, in which the Apex Court while dealing with the provisions of Bombay Land Requisition Act, 1948 held that the words "or otherwise" are not used ejusdem generis. According to the Apex Court, those words are not words of limitation but of extension so as to cover all possible ways in which a vacancy may occur. The Legislature, when it used the words "or otherwise" apparently intended to cover other cases which may not come within the meaning of the preceding clauses. Thus, it has been held that the Legislature intended to cover all possible cases of vacancy occurring due to any reason whatsoever, I consider it useful to quote the relevant portion from paragraphs 11 and 12 of the said judgment of the Apex Court-

The Legislature has been cautious and through going enough to bar all avenues of escape by using the words "or otherwise" in Explain, (a) to Section 6 of the

Bombay land Requisition Act, 1948. Those words are not words of limitation but of extension so as to cover all possible ways in which a vacancy may occur. The Legislature, when it used the words "or otherwise" apparently intended to cover other cases which may not come within the meaning of the preceding clauses. Thus, the legislature, intended to cover all possible cases of vacancy occurring due to any reasons whatsoever. Hence, far from using those words ejusdem generis with the preceding clauses of the explanation, the Legislature used those words in an all inclusive sense.

The rule of ejusdem generis is intended to be applied where general words have been used following particular and specific words of the same nature on the established rule of construction that the Legislature presumed to use the general words in a restricted sense; that is to say, as belonging to the same genus as the particular and specific words. Such a restricted meaning has to be given to words of general import only where the context of the whole scheme of legislation requires it. But where the context and the object and mischief of the enactment do not require such restricted meaning to be attached to words of general import, it becomes the duty of the Courts to give those words their plain and ordinary meaning.

8. The Apex Court in Rajasthan case where the definition clause contained the words "or otherwise" held that "it is thus evident that wherever any produce of agriculture, horticulture or animal husbandry or otherwise is sought to be inducted in the Schedule, other than what it is in the natural form, it is given a name and identity distinct from the corpus from which it came." In this regard the Apex Court while affirming the view of the High Court held as follows-

7. It is undoubtedly true that food-grains per se could be used as seeds for being sown and achieving germination, but in that form they retain the dual utility of being food-grains as well as seeds. By process of coating and applying Insecticides, other chemicals and poisonous substances to the food-grain 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 food-grains as commonly understood. That distinction was born in mind by the High Court in allowing the Writ Petition of the respondents, and in our view rightly.

9. After the above judgment of the Apex Court, the aforementioned judgments relied upon by Mr. Bajla, learned Counsel appearing for the respondent-Board are of no avail to him. In fact, in those cases the commodities involved were not among them which by process of coating and applying insecticides, other chemicals and poisonous substances irretrievably lost their basic character and became a commodity distinct from those mentioned in the Schedule as commonly understood. In Tata Oil Mills case, the commodity in question was coconut oil and this Court held it to be an agricultural produce because it is a vegetable oil specified in the Schedule. In the case of Raptakos, Brett and Co. (supra), it was held by this Court that "Lactogen" is nothing but milk in powder

form covered by "milk except In liquid form" mentioned in the Schedule. In Durga Oil Mills case reported in 1995 (1) PLJR 30. also the Court was considering as to whether "mustard oil" is an agricultural produce and it was held that it is covered by entry "all vegetable oils" In the Schedule. Again in similar case in the case of Agriculture Produce Market Committee v. State of Bihar (supra), relating to jute rope it was held that "jute rope" is jute fibre in twisted form and thus is covered by the items "jute" and "twine".

10. Mr. Bajla also relied upon the decision of the learned Single Judge of this Court in the case of Lipton India Limited v. Bihar Agricultural Marketing Board reported in 1997 (1) PLR 706, in support of his contention that the definition "agricultural produce" in the Bihar Act has to a great extent delinked agricultural produce from the Schedule of that Act.

11. I fail to appreciate as to how the said decision helps Mr. Bajla. In fact, in that decision the learned Single Judge after noticing the distinction between the food-grains and seeds found by the Apex Court stated that the seeds cannot be considered as an agricultural produce. I wish to mention here that the Apex Court in Rajasthan case was not dealing with the simple "seeds" retaining dual utility of being food-grains as well as seeds. In the said case the question was that by process of coating and applying insecticides, other chemicals and poisonous substances to the food-grain meant to be utilized as seeds, one of its basic character, gets irretrievably lost and such processed seeds became a commodity distinct from food-grains as commonly understood.

12. Under the aforementioned circumstances, I find it difficult to accept the submission of Mr. Bajla, learned Counsel appearing for the respondent-Board that in the light of the definition of "agricultural produce" in the Bihar Act and the inclusion of the commodity in question in its natural form in the Schedule makes the Hybrid seeds produced therefrom "agricultural produce" and consequently the petitioners are liable to take licence, submit their return and pay market fee under the Act.

13. After the judgment of the Apex Court in Rajasthan case, the question raised in the present case is no more open to be considered by this Court as the law stands settled by the highest Court of the land. In fact, in paragraphs 33 of Sasa Musa Sugar Works etc. etc. Vs. State of Bihar and others etc., , the Supreme Court while noticing the submission of Mr. Sen, learned Senior Counsel then appearing on behalf of the State Agricultural Marketing Board approved his contention that when the field of control is circumstances by the items in the Schedule, the actual control part of it including the goods to be controlled, the market area where the control will operate and where the controlled products will have to be sold are left to the judgment of the State Government subject to the statutory conditions imposed by Section 3(1) and Section 4(1) of the Markets Act. In this context it was held that once the notification under Sections 3 and 4 are Issued specifying the goods to be controlled and the areas where the control will operate, the other provisions of control contained in Section 5 onwards

including the levy of fee u/s 27 of the Markets Act spring into action. But where the item is not included in the Schedule, there cannot be any question of issuing the notification on under Sections 3 and 4 specifying the goods to be controlled and the areas where the control will operate and or applying the provisions of Section 5 onwards including the levy of fee u/s 27 of the Markets Act would not apply.

14. Under the aforementioned circumstances, in my opinion, the Hybrid seeds produced by the petitioners are not covered by the definition of "agricultural produce" in the Bihar Act and thus the petitioners are not liable to take licence, submit return with respect to it and the Board is not entitled to levy any market fee under the Act and/or take any action under the Act so long it is not included in the Schedule and necessary notifications are issued.

15. In the result, the Writ Petitions are allowed and the impugned memos/ notices are quashed.

16. It seems that in CWJC No. 4704 of 1997 this Court while admitting the Writ Petition on 3.9.1997 directed that the petitioner shall carry out the provisions of the Act and the Rules framed thereunder and pay market fee upon Hybrid maize seeds in accordance with the provisions of the Act and also recorded the undertaking of the learned Counsel appearing for the Market Committee to refund the market fee paid by the petitioner henceforth together with interest thereon at the rate of 15% per annum from the date of payment of market fee till the date the same is refunded, in case of their success in the Writ Petition. As such, the respondents are directed to abide by their undertaking.