

(2010) 09 BOM CK 0012
In the Bombay High Court
Case No : Writ Petition No. 1747 of 2008

Vijay Wani

APPELLANT

Vs

National Seeds Corporation Ltd.

RESPONDENT

Date of Decision : 30-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226
National Seeds Corporation Conduct, Discipline and Appeal Rules, 1992 — Rule 29(A),
30, 31, 33
Seeds Act, 1966 — Section 1(3), 2, 2(11), 2(16), 2(3)

Citation : (2011) 1 ALLMR 362 : (2011) 2 MhLj 309

Hon'ble Judges : Shrihari P. Davare, J; S.B. Deshmukh, J

Bench : Division Bench

Advocate : S.Y. Mahajan, for the Appellant; P.B. Paithankar, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Deshmukh, J.—We heard Learned Counsel for the parties.

2. Rule. Rule made returnable forthwith. Heard finally with the consent of the Learned Counsel for the parties.

3. The petitioner seeks quashment of the punishment imposed upon him by the respondents by order passed on April 7, 2006, by the Regional Manager, Pune and which has been confirmed by the Managing Director (Appellate Authority) by the order dated July 27, 2007.

4. The petitioner was working as the Area Manager with the respondents from July, 1991 uptill June 1, 1999 at Akola (Vidarbha Region of the State). According to the petitioner, in the month of February, 1998, there was a meeting of Area Managers of National Seeds Corporation held at Regional Office, Pune. Some discussion was there and oral directions were given in respect of procurement of raw seeds of Soyabean. A situation was considered in that meeting that normal procedure of identification of seed plots with reference to source of seeds,

screening of plot at field stage through inspection, for confirmation of tenability of the variety of seeds was not possible. According to the petitioner, therefore, oral directions were given go-bye to regular procedure laid down by the Corporation. According to the petitioner, petitioner has followed the oral directions while working at Akola. The respondents have enticed the petitioner with false charges. The order passed by respondent No. 1, at the first instance, according to the petitioner, is wrong and illegal.

5. We have also drawn our attention to paragraph No. 2 of the petition, wherein pleading is raised regarding meeting of the Area Managers allegedly held at Regional Office, Pune and the petitioner's case is that oral directions were given for procurement of raw seeds of Soyabean without following normal procedure laid down by the Corporation.

6. Learned Counsel for the petitioner took us through the order passed by respondent No. 1 and subsequent order of confirmation by the Appellate Authority.

7. On behalf of respondents, affidavit in reply is filed, which has been affirmed by one Mr. Radhyesham Motilal, Regional Manager, National Seeds Corporation, Regional Office, Pune. Learned Counsel for the respondents took us to paragraph No. 7 of the affidavit in reply. It has been averred that the petitioner has not followed the instructions contained in Quality Control Circular (269) dated 14.7.1997 in respect of procurement of raw seeds of Soyabean. In paragraph 10, statement is made that the action on the part of petitioner of obtaining signatures of seed growers on the applications for advance payment by the petitioner in absence of satisfactory Quality Control Laboratory report, is sufficient to prove the involvement of the petitioner in causing loss to the respondent/Corporation. Further statement is made in paragraph No. 13 of the reply affidavit that minor penalty has been imposed upon the petitioner and personal hearing of such minor penalty has not been made available under the N.S.C. Conduct, Discipline and Appeal Rules, 1992 (hereinafter referred to as, "the Rules of 1992").

8. Annexure "C" (page 42) is the order dated 7.4.2006. This order has been issued by the Regional Manager, one of the respondents. From this order, it reveals that specific enticement was made against the petitioner for alleged misconduct. It appears that quality of 225 quintals of Soyabean JS 335 raw seed was obtained and in this process, present petitioner had been informed. Because of misconduct on the part of the petitioner, it is stated in this order that the Corporation has been put to a loss of Rs. 4,93,248/-.

9. In response to the enticement, petitioner has addressed reply dated 6.3.1998. It was the contention of the petitioner in reply that seeds (parent material) will be given in proof of variety and seed supplier will give undertaking about confirming Soyabean variety. The authority found that though the petitioner had promised to complete the requirement in his letter dated 6.3.1998, he did not

furnish proof pertaining to genuineness of the variety concerned. It further appears from this order that the petitioner did not comply with the requirements as stated in paragraph No. 3 as per Quality Control Circular No. 269 dated 14.7.1997. The authority has also referred in communication of the petitioner dated 23.12.2004 addressed to the Regional Manager, Pune. In that communication, it was informed by the petitioner that he had contacted prominent reliable growers, who were in possession of raw Soyabean seed and had asked them to despatch the same to N.S.C., Aurangabad for process. The authority has observed that in this reply to the charge sheet dated 23.2.2004, the petitioner did not inspect the identified plots and procured the seed from the concerned parties. The contention of the petitioner, that he had collected the growers' consent and sent to the Regional Office, Pune with source of seed, has not been accepted by the Regional Manager in the absence of documentary evidence in support of his contention.

10. Seeds plot was not meeting the basic requirement. Resultantly, the Corporation had received complaints later on and was required to make payment i.e. seed costs to the farmers.

11. The order passed by the Regional Manager was challenged before the Appellate Authority. We have seen the finding of the Appellate Authority. The Appellate Authority did apply its mind and recorded a finding that appellant did not send the documents as claimed by him on 6.3.1998.

12. "Seeds" is an essential commodity within the meaning of the provisions of the Essential Commodities Act, 1955 (hereinafter referred to as, "Act of 1955"). It is a piece of Central Legislation. The Seeds Act, 1966 (hereinafter referred to as, "the Act of 1966") is also Central Act, which extends to whole of India. Sub-section 3 of Section 1 of the Act of 1966 empowers the Central Government, by notification in the Official Gazette, to appoint, and to appoint different dates for different provisions of this Act, and for different States or for different areas thereof. Agrarian community being largest community in the country, it was thought fit by the Parliament to make an enactment in the interest of the increased agricultural production in the country. It was thought necessary to regulate the quality of certain seeds, such as seeds of food crops, cotton seeds, etc. to be sown for the purpose of agriculture (including horticulture). "Central Seed Laboratory" is defined u/s 2 of the Act of 1966. "Certification Agency" is also defined under Sub-section 3 of Section 2 of the Act of 1966. "Seed" itself has been defined u/s 2 (Sub-section 11 of the Act) meaning thereby the classes of seeds used for sowing or planting (i) Seeds of food crops including edible oil seeds of fruits and vegetables; (ii) cotton seeds; (iii) seeds of cattle fodder; and (iv) jute seeds. Word "variety" is defined under Sub-section 16 of Section 2 of the Act of 1966, meaning thereby a sub-division of a kind identifiable by growth, yield, plant, fruit, seed or other characteristic.

13. Apart from the Act of 1966, Seeds (Control) Order, 1983 is relevant and important.

14. The National Seeds Corporation is party respondent in this Writ Petition. The petitioner's role at the relevant time was significant. Source of the seed has got its own importance. The Corporation undisputably has issued a Quality Control Circular somewhere in the year 1997, with which we are concerned.

15. The submission of the Learned Counsel for the petitioner pertains to alleged oral directions given by the authorities of the Corporation in a meeting of February, 1998 at Pune. The activities of the Corporation cannot be expected to be governed by the oral directions in view of the provisions of the Essential Commodities Act, 1955, the Seeds Act, 1966, Seeds (Control) Order, 1983, Various other Notifications and Orders, issued by the appropriate Government from time to time and the Executive Fiat/Circulars, issued by the Corporation from time to time.

16. The Regional Manager has considered the reply to the charge sheet submitted by the present petitioner. Counsel for the petitioner points out copy of the said reply, dated 23.12.2004, which is on record annexed at Exh. "B" at Page 39. In this reply, there is no reference to the alleged meeting held in the month of February, 1998. However, Counsel for the petitioner points out paragraph 3 of Exh. "B" (Page 39) pertaining to the samples. Only one statement is available in this paragraph, which reads, "Whatever the conditions mentioned in my letter were decided in the A.M.C. held at R.O., Pune." According to the Learned Counsel for the petitioner Mr. Mahajan, this sentence refers to the alleged meeting held in the Regional Office, Pune, in the month of February, 1998. It is not possible for us to accept this submission. The petitioner, who is writer of this reply dated 23.12.2004, cannot be said to be an illiterate person to skip such important aspect that it was an oral direction given in this meeting. However, Mr. Mahajan, Learned Counsel appearing on behalf of the petitioner, took us to the copy of the appeal, which was filed before the Appellate Authority. It is annexure "D" to the petition. After grounds of appeal, facts of the case were mentioned. Therefore, statement is made in February, 1998 in the meeting of Area Managers of N.S.C. held at Regional Office, Pune deciding to assess the possibility of procurement of Soyabean from identified growers to meet "short falls".

17. In our opinion, case of the petitioner that in the meeting held in the month of February, 1998, oral directions were given besides the Quality Control Circular of 1997 has been justifiably rejected by the Authorities. The reply, which was submitted by the present petitioner, could not be substantiated by appropriate material on record. This finding has been recorded by both the Authorities that despite the promise given by the petitioner, no material was made available. That is the reason, the Authorities rejected the explanation and/or reply and imposed minor penalty.

18. Copy of the Rules of 1992 has been made available by Mr. Mahajan, Learned Counsel for the petitioner. With the assistance of the Learned Counsel for the parties, we have seen the Rules of 1992. We are concerned with minor penalty under Rule 29(A)(d). Rule 30 is regarding Disciplinary Authority. Procedure for

imposing major penalties is laid down under Rule 31; whereas the procedure for imposing minor penalties is prescribed under Rule 33. From these Rules it is manifest that generally inquiry/personal hearing while imposing minor penalty has not been contemplated and in case of major penalty, procedure of inquiry is made available. From the Rules, which are made available and the material on record, in our opinion, the order passed by respondent No. 1, at the first instance, cannot be said to be perverse. The Appellate Authority did apply its mind and dismissed the appeal justifiably.

19. This petition invokes extra ordinary jurisdiction under Article 226 of the Constitution of India. This Court really is concerned with the procedure gone into by the Authorities concerned. In our opinion, the Authorities have considered the reply filed on behalf of the petitioner and the material on record and justifiably imposed the punishment. Imposition of penalty is a matter within the domain of the Employer. Punishment imposed in the case at hand is neither disproportionate with the proved misconduct nor shockingly disproportionate. We do not find substance in the petition.

20. Writ Petition stands dismissed. Rule is discharged. No costs.