

CASE NO.:
Appeal (civil) 6301 of 2001

PETITIONER:
Krishi Utpadan Mandi Samiti Pilibhit & Ors.

RESPONDENT:
Pilibhit Pantnagar Beej Ltd. & Anr.

DATE OF JUDGMENT: 28/11/2003

BENCH:
S.B. Sinha

JUDGMENT:
J U D G M E N T

S.B. Sinha, J.

The core question involved in this appeal is as to whether 'seed' would come within the purview of the expression 'wheat' within the meaning of the provisions of U.P. Krishi Utpadan Mandi Samiti Adhiniyam ('The Act'). The Act was enacted to curb the malpractices in the old markets. Mandi Samitis are established under Section 12 thereof. The Mandis are entitled to collect market fee on the sale and purchase of agricultural produce in terms of Section 17 of the Act.

Agricultural produce is defined in Section 2(a) of the Act to mean :

"2(a) Agricultural produce means 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 jaggary."

Section 2(y) defines trader to mean :

"'Trader' means a person who in the ordinary course of business is engaged in buying or selling agricultural produce as a principal or as a duly authorized agent of one or more principals and includes a person, engaged in processing of agricultural produce."

It is not in dispute that the respondents are engaged in production and sale of 'seeds' which is governed by a Parliamentary Act known as the 'Seeds Act, 1966' (1966 Act). The entire process beginning from procurement of seeds breeder, further production thereof as well as sale is governed by 1966 Act and Rules framed thereunder and Seed Control Order 1983. The preamble of the 1966 Act suggests that the same was enacted with a view to monitor the production and sale of seeds. The purport and object of enacting the 1966 Act was to bring green revolution in the country as would appear from the following statement of objects and reasons thereof:-

"In the interest of increased agricultural production in the Country, it is considered necessary to regulate the quality of certain seed, such as seeds of food crops, cotton seeds etc., to be sold for purposes of agriculture (including horticulture).

The methods by which the Bill seeks to achieve this object are -

- (a) Constitution of a Central Committee consisting of representatives of the Central Government and the State Government, the National Seeds Corporation and other interests to advise those Governments on all matters arising out of the proposed Legislation;
- (b) fixing minimum standards of germination, purity and other quality factors;
- (c) testing seeds for quality factors at the seed testing laboratories to be established by the Central Government and the State Government;
- (d) Creating of seed inspection and certification service in each State and grant of licences and certificates to dealers in seeds;
- (e) Compulsory labelling of seed containers to indicate the quality of seeds offered for sale, and
- (f) restricting the export import and inter-State movement of non-descript seeds."

Section 2(11) of the Seeds Act defines seeds to mean :

"Seed means any of the following classes of seeds used for sowing or planting :

- (i) seeds of food crops including edible oil-seeds and seeds of fruits and vegetables; includes seedings, and tubers and bulbs, rhizomes, roots, cutting, all topes of grafts and other vegetatively propagated material, of food crops or cattle fodder".

The definition of 'seeds', therefore, is not exhaustive.

It is not in dispute that the entire process for procurement of 'breeder seeds' to sale of 'seeds' is governed under the provision of the Seeds Act as well as the rules framed thereunder.

Wheat is an agricultural produce within the meaning of Section 2(a) which together with thirteen other food products have been placed

under the heading "cereals".

The Act contains both penal and fiscal provisions. A trader within the meaning of the said Act would be a person who carries on business inter alia in the agricultural produce. The question is as to whether in the aforementioned situation the respondent would be a trader of Agricultural produce within the meaning of the provisions of the said Act. It is not disputed that 'seed' as purchased and 'sold' is not meant to be used as a cereal. The respondent buys only certified seeds and sales the same as seeds after processing the same. 'Seeds' which are sold by the respondent admittedly are not consumable. It is furthermore not disputed that in terms of the licenses granted in their favour under the 1966 Act, they are not permitted to deal in the commodities for any other purpose.

In the State of Andhra Pradesh Vs. M/s. H. Abdul Bakhi & Bros. (AIR 1965 SC 531), the Supreme Court held :-

"We are unable to agree with this view of the High Court. A person to be a dealer must be engaged in the business of buying or selling or supplying goods. The expression 'business' though extensively used is a word of indefinite import; in taxing statutes it is used in the sense of an occupation, or profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with profit motive, and not for sport or pleasure."

Yet again in Sri Krishna Coconut Co. Vs. East Godavari Coconut and Tobacco Market Committee (AIR 1967 SC 973), this Court while considering interpretation of Section 11 of the Madras Commercial Crops Markets Act held :-

"The relevant provisions of the said Act and the rules which fell for consideration by the Supreme Court would be evident from paragraph 5 of the reported case which is in the following terms :

Section 11(1) with which we are concerned in these appeals reads :

"The Market committee shall, subject to such rules as may be made in this behalf, levy fees on the notified commercial crop or crops bought and sold in the notified area at such rates as it may determine".

Although the dictionary meaning of business may be wide, in our opinion, for the purpose of considering the same in the context of regulatory and penal statute like the Act, the same must be read as carrying on a commercial venture in agricultural produce. The rule of strict construction should be applied in the instant case. The intention of the legislature in directing the trader to obtain licence is absolutely clear and unambiguous in so far as it seeks to regulate the trade for purchase and sale. Thus a person who is not buying an agricultural produce for the purpose of selling it whether in the same

form or in the transformed form may not be a trader. Furthermore, it is well known that construction of a statute will depend upon the purport and object of the Act, as has been held in Sri Krishna Coconut's case (supra) itself. Therefore, different provisions of the statute which have the object of enforcing the provisions thereof, namely, levy of market fee, which was to be collected for the benefit of the producers, in our opinion, is to be interpreted differently from a provision where it requires a person to obtain a licence so as to regulate a trade. It is now well known that in case of doubt in construction of a penal statute, the same should be construed in favour of the subject and against the State.

In the case of London and North Eastern Railway Company and Berriman, 1946 AC 278 Lord Simonds quoted with approval the following observations of Lord Esher N. K. in the case of Tuck & Sons Vs. Priestner, (1887) 19 QBD, 629, 638. "We must be very careful in construing that section, because it imposes a penalty. If there is a reasonable interpretation which will avoid the penalty in any particular case, we must adopt that construction. If there are two reasonable construction we must give the more lenient one. That is the settled Rule for the construction of penal sections." It is trite that fiscal statute must not only be construed literally, but also strictly. It is further well known that if in terms of the provisions of a penal statute a person becomes liable to follow the provisions thereof it should be clear and unambiguous so as to let him know his legal obligations and liabilities thereunder.

The matter may be considered from another angle, "Expressio unius (persone vel rei) est exclusio alterius", is a well known maxim which means the express intention of one person or thing is the exclusion of another. The said maxim is applicable in the instant case. [See M/s Khemka & Co. (Agencies) Pvt. Ltd. etc. vs. State of Maharashtra etc. - (1975) 2 SCC 22 paras 47 and 48]

Having regard to the fact that in the event it is held that buying of seeds which is a commodity governed by a Parliamentary Act would attract payment of market fee in terms of the said Act, a conflict would arise. In ordinary parlance at particular stages in which seeds are grown from breeder seeds may take the form of wheat but the said production which is bought by the respondents is also governed by the provisions of the Seeds Act and the Rules framed thereunder. The definition of 'seed' as noticed hereinbefore is of wide amplitude. It includes seedling of food crops. It is, thus, necessary to construe both the statutes harmoniously. Both, the Statutes must be given proper effect and allowed to work in their respective fields. Even if there is some over-lappings, the same should be ignored.

Taking into consideration the totality of the situation and upon giving harmonious construction to both the 1966 Act as well as the said Act, we are of the opinion that the respondent cannot be said to be a trader of agricultural produce as in the ordinary course of business, he is engaged in buying or selling agricultural produce. Once it is held that the respondent is not a trader, no market fee can be demanded from it by the appellant.

'Seed' is also an essential commodity within the meaning of the provisions of the Essential Commodities Act 1955 which has been enacted by the Parliament in exercise of its power conferred under Entry 33 of List III of the 7th Schedule of the Constitution of India. Further more, if a Parliamentary Act governs the entire field, the 'seeds' which are bought and further seeds produced therefrom and processed upon being governed by the Parliamentary Acts and Statutory Rules must be held to have been excluded from the purview of the provisions of the said Act.

The Central Government, made Foodgrains Market Restrictions (Exemption of Seeds) Order, 1970 and Seeds Control Order, 1983 in exercise of its power under Section 3 of the Essential Commodities Act, 1955. In terms of sub-section (2) of Section 4 of the Act, the provisions of Section 3 of Essential Commodities Act, 1955 and the orders made thereunder shall have effect, notwithstanding anything inconsistent therewith contained in the said Act or in any law made thereunder, thus, the seeds which are subject matter of not only a Parliamentary Act but also an order made under Section 3 of Essential Commodities Act would by necessary implication are not meant to be included within the definition of 'agricultural produce' under the said Act.

Furthermore the interpretation Clauses contained in Section 2 of the said Act is prefaced with the expressions "unless there is anything repugnant in the subject or context".

This Court in State of Maharashtra Vs. Indian Medical Association and Others [(2002 (1) SCC 589], inter alia, held that the expression contained in one Statute may have to be read differently in a particular context.

Recently in S. Samuel, M.D., Harrison's Malayalam & Anr. Vs. Union of India & Ors. [J.T. 2003(8) SC 413], this Court has held that 'tea' does not come within the purview of the expression 'food stuff' contained within the meaning of the provisions of Essential commodities Act, holding :-

"It is thus clear that in common parlance food is something that is eaten. In a wider sense 'food' may include not only solid substances but also a drink. Still the fact remains that whether a solid or a liquid, the substance called 'food' should possess the quality to maintain life and its growth; it must have nutritive or nourishing value so as to enable the growth, repair or maintenance of the body.

As the purpose for which the respondents purchase the 'seeds' is not meant to be used as a 'cereal' which is an agricultural produce within the meaning of the provisions of the said Act, the High Court, in our opinion, has rightly held that the respondents are not liable to pay any market fee.

I respectfully agree with the proposed judgment of Brother Dr. AR. Lakshmanan that the appeal be dismissed.

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JUDIS