

PETITIONER:
SHRI VIJAY KUMAR & ORS.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 29/04/1998

BENCH:
K.T. THOMAS, M. SRINIVASAN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

SRINIVASAN, J.

By the first two prayers in this petition, the petitioners are challenging the validity of Notification dated 28.2.83 issued by the Central Government under Section 2 (a)(xi) of the Essential Commodities Act 1955 declaring seeds specified therein as essential commodities for the purpose of the said Act and the Seeds (Control) Order 1983 issued by the Central Government under Section 3 of the said Act on the ground that they are unconstitutional, ultra vires and illegal. There is a third prayer for declaring that Entry 33 of the List III to the Seventh Schedule of the Constitution of India does not empower either the Union Legislature or the State Legislature or make laws in respect of "seeds". In fact, the third prayer is the crux of the argument of the petitioner.

2. The very same prayers and the contentions were raised by some persons in writ petitions filed in this court in 1984 and in some High Courts. The cases filed in the High Courts were transferred to this Court and heard along with the writ petitions filed in this Court. By judgment dated 28.10.93, a bench of Two Judges upheld the validity of the Notification and the order dismissing the petitions and transferred cases, vide Raghu Seeds & Fars & Ors. Versus Union of India & Ors. (1994) 1 S.C. 278. The petitioners who were probably waiting for over ten years for the result in the said cases filed this writ petition in May 1994. In fact, the petitioners filed Writ Petition(Civil) No. 303 of 1994 containing a prayer to declare the judgment of this Court to be invalid. However, they withdrew it on 25.4.94 stating that they would file a properly drafted writ petition.

3. The Notification of Central Government dated 24.2.83 reads thus:

" In exercise of the powers conferred by sub-clause (xi) of clause (a) of Section 2 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby declares the following seeds

used for sowing or planting (including seedling and tubers, bulbs, rhizomes, and other vegetatively propagated material of food crops or cattle fodder) to be essential commodities for the purpose of the said Act, namely,
(i) Seeds of food-crops and seeds of fruits and vegetable.
(ii) Seeds of Cattle fodder and
(iii) Jute seeds.

Sd/

(I. M. Sahai)

Joint Secretary to the
Govt of India

(F.No. 26(7)/82- ECR)"

4. Sub-clauses (xi) of clause (a) of Section 2 of the Essential Commodities Act, 1955 empowers the Central Government to declare any class of commodity other than those mentioned in Section 2(a) clauses (i) to (x) to be an essential commodity for the purposes of the Act being a commodity with respect to Entry 33 of the List III to the Seventh Schedule of the Constitution. The said Entry in the Constitution. The said Entry in the Constitution refers to foodstuffs, including edible oil, oil seeds and oil". According to the petitioners the seeds dealt with in the Notification will not fall within the scope of Entry 33. It is argued that in order to bring seeds "within the fold of Entry 33" it should be either foodstuff or edible as such seeds. According to the petitioners the seeds with which they are dealing are not edible as such and they are not "foodstuff" in any sense of the term.

4. In support of the aforesaid arguments, reliance is placed on the judgment of the Constitution Bench in Firm Girdhar Kapur Chand Versus Firm Dev Raj Madan Gopal 1964 (1) S.C.R. 995. In that case the Court held that forward contracts in cotton seeds were not prohibited by law as cotton and cotton seeds were not included in the definition of 'essential commodity'. In the course of the discussion, the Bench observed as follows:

" It is clear that before the order made under rule 81 of the Defence of India Rules continues in force notwithstanding the expiration of the Defence of India Rules, it is necessary that the order must be in respect of any matter specified in S.3. Section 3 empowers the Central Government to make various orders but only in connection with essential commodities. No order can therefore be considered to be "in respect of any matter specified in S.3" unless it is in respect of an essential commodity.

" Essential commodity" is defined in S.2 to mean any of the following classes of commodities"

(i) foodstuffs, (ii) cotton and woolen textiles, (iii) paper, (iv) petroleum and petroleum products, (v) spare parts of mechanically propelled vehicles, (vi) coal, (vii) iron and steel (viii) mica, "Foodstuffs" was also defined thus:

"Foodstuffs" shall include edible oil seeds and oils". Cotton seeds is an oilseed but it cannot be for a moment be suggested that it is fit for human consumption, So, clearly, it is not an oilseed which is edible. Mr. Aggarwala as a last resort argued that what "edible oil-seed" means is a seed from which edible oil can be prepared. Such an argument has only to be mentioned to deserve rejection. The phrase "edible oil-seed" can never mean what the learned counsel suggests and can and does mean only and oilseed which is edible as oilseed. Cotton seed, not being edible, falls outside the class of "edible oilseed" and so is not foodstuff within the meaning of S.2 of the Ordinance or the Act of 1946."

5. The aforesaid observations of the Constitution Bench cannot be torn out of the context and used by the petitioners. The Court had no occasion in that case to deal with Entry 33 in List III which expressly refers to cotton seed and also Section 2(a) (ix) of the Essential Commodities Act which also refers to cotton seed. The question which has arisen before us in this case did not arise before that Bench. In the circumstances the contention that the ruling of the Division Bench in Raghu Seeds & Farms & Ors. Versus Union of India & Ors. (1994) 1 S.C.C. 278 runs counter to the judgment of the Constitution Bench in Firm Girdhar Lal Kapur Chand Versus Firm Dev Raj Madan Gopal 1964 (1) S.C.R. 995 cannot be accepted.

6. In such a situation, there is no circumstance whatever warranting the exercise of jurisdiction under Article 32 of the Constitution of India by the Court in a matter which has already been decided in batch of case including a writ petition under Article 32 of the Constitution. Those cases were initiated by associations of farmers, seed-growers and merchants. As pointed out earlier, these petitioners had not chosen to challenge the validity of the Notification issued in 1983 for over 10 years.

7. Hence we are of the opinion that the petitioners have not made out a case for re-considering the question which has been decided by this Court in Raghu Seeds & Farms & Ors. Versus Union of India & Ors. (supra). In that view of the matter nothing survives in this writ petition and it has to fail. Consequently the writ petition is dismissed. There will be no order as to costs.