State of Rajasthan

Vs.

Rajasthan Agricultural Input Dealers Association

Civil Appeals Nos. 4064-67 of 1995

(M. M. Punchhi, Sujata V. Manohar JJ)

09.07.1996

JUDGEMENT

PUNCHHI, J.:-

1.In Civil Appeals Nos. 4064 and 4065 of 1995, the common appellant is the State of RAJASTHAN and in Civil Appeals Nos. 4066 and 4067 of 1995, its ally, the Krishi Upaj Mandi Samiti, Jaipur is the common appellant. The grievance voiced herein by them is common and hence disposal of these appeals by a common order.

2. These appeals are directed against order dated 3-7-1990 passed by a Division Bench of the Rajasthan High Court, Jaipur Bench, allowing two writ petitions preferred by the respective respondents herein. Facts giving rise thereto would require no elaboration, except reference to the barest minimal. The respondents claim themselves to be engaged in the business of purchasing and selling seeds. One of them, M/s. Hindustan Lever Limited, in particular raises and sells Bajra seeds, as claimed. According to the respondents, seeds cannot be termed to be agricultural produce for the purposes of the Rajasthan Agricultural Product Markets Act, 1961 and its Schedule, as amended from time to time by the state Government in exercise of powers under Section 40 enabling it to add, amend or cancel any of the items of agricultural produce specified in the Schedule. It is maintained that seeds are a processed item and coated by insecticides, chemicals and other poisonous substances whereby the grains employed lose their use and utility as foodgrains and become unfit for human or animal consumption or for extraction therefrom for such consumption. Since, as claimed, these were outside the ambit of the expression "agricultural produce" as defined in Section 2(1)(i) of the Act; a definition inclusive in nature applying to produce whether of agriculture, horticulture, animal husbandry or otherwise (emphasis supplied) as specified in the schedule, the demand of the appellants in requiring the respondents to obtain licences for engaging in the trade of purchase and sale of seeds was uncalled for, as well as the threatened prosecutions, in the event of failure. The challenge posed by the respondents before the High Court was answered by the appellants maintaining that foodgrains of all sorts, as mentioned in the Schedule, were seeds per se, the only exception carved out from the items mentioned in the schedule being those relating to blue tagged certified seeds and white tagged certified foundation seeds; such exceptions having been notified on May 16, 1980 by way of amendment to the Schedule, in exercise of the State Government's power under Section 40 of the Act.

3. The High Court on consideration of the entire matter, took the view that when foodgrains of particular varieties were treated and subjected to chemical process for preservation, those grains become commercially known as "seeds". Reservation was kept however by the High Court to its statement afore-referred that in case a dealer was found dealing in foodgrains under the garb of

seeds, the appellants, were not precluded from prosecuting the offender in a Criminal Court. In sum, it was ordered that the appellants stand precluded from requiring the respondents to take licences under the provisions of the Act in relation to their business of dealing in seeds of Bajra or any other foodgrains, as well as restrained from realising or recovering market fees in respect thereof. Sequelly, it was ordered that no licence under the Act was required for sale of such seeds. This is how these appeals are before us.

4. Strong reliance was placed by Mr. Aruneshwar Gupta, learned counsel for the appellants on Kishan Lal v. State of Rajasthan, 1990 (Suppl) SCC 742 : (AIR 1990 SC 2269), to contend that for the purposes of Section 2 (1) (i) and the Schedule of the Act, the expression "agricultural produce" is an inclusive definition which could even include processed items from foodgrains. Thus processed foodgrains on becoming seeds, as alleged by the respondents, would all the same remain foodgrains requiring the respondents to take licence under the Act. Secondly, it was urged that by virtue of Notification dated 16th May, 1980, certified seeds and foundation seeds of a description alone were excluded from the purview of the Schedule and no other seed.

5. We are one with Mr. Gupta, learned counsel for the appellants, so far as the definition of the expression "agricultural produce" being wide and inclusive goes. But, then the real difficulty comes in interpreting the items mentioned in the schedule as to whether mention of a particular item would ipso facto mean inclusion of all its forms and derivatives achieved by manufacture or processing or by some other method. On reading the schedule as it stood at the relevant time, we come to the view that such a wide interpretation to the items in the schedule can in no event be given. In Kishan Lal's case Khandsari, Shakkar, Gur and Sugar were brought in the Schedule as "agricultural produce" and the argument that these items were not agricultural produce per se, and thus incapable of being brought in the Schedule, was repelled because when a particular item finds way in the Schedule in that form, it stays there for all purposes as long as it is in some way referable to the purpose for which the Schedule is set up.

6. The Schedule applicable on the relevant dates discloses that Item 2 is titled as "Dhanya" (foodgrains). Serial No.1 thereunder is Gehun (wheat). Serial No.11 is Aata (wheat flour). Serial No.12 is Maida (refined wheat flour). Serial No. 13 is Suji and Serial No.14 is Rava (both semilona). Similarly, Serial No.2 is Jau Ghat Sahit (barley as also in the dehusked form). Serial No.6 is Dhan (paddy) and Serial No.7 is Chawal (rice). The scheme of serialising processed items in this manner is reflective of a positive application of mind that not only the original foodgrains which are foodgrains per se included, but their products and derivatives too are mentioned specifically as "agricultural produce" due to its wide definition. Noticeably, Serial Nos. 3 to 5 are Jawahar, Makka and Bajra but only in their natural form and not in any other form. Going further down in the Schedule Item No.6 is Phal (fruit). At Serial No.7 thereof is Kharbuja (Musk Melon) and Serial No. 9 is Tarbuj (Water Melon). Going to Item No.11 Vividh (Miscellaneous), one finds at Serial No. 14 Tarbuj Ke Beej (Seeds of Water Melon) and at Serial No.16 Kharbuje Ke Beej (Seeds of Musk Melon). It is thus evident that where 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. Mr. Gupta, learned counsel, could not point out to us anywhere if seeds of foodgrains, inclusive of Bajra seed, per Item No.II were specifically mentioned as such in the Schedule. Wherever seeds were intended to be separately serialised, like seeds of musk melon and water melon, they distinctly found mentioned in contrast to the fruits, from which they came but as distinct products.

7. It is undoubtedly true that foodgrains per se could be used as seeds for being sown and achieving

germination, but in that form they retain the dual utility of being foodgrains as well as seeds. By process of coating and applying insecticides, other chemicals and poisonous substances to the foodgrain 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 foodgrains as commonly understood. That distinction was borne in mind by the High Court in allowing the writ petition of the respondents, and in our view rightly.

8. The next argument of Mr. Gupta, learned counsel, based on the Notification dated May 16, 1980 must also fail because by excepting from the purview of the Schedule, certified and foundation seeds, bearing tags of particular colours, it cannot be spelt out that words relating to foodgrains would automatically include seeds also. The Schedule is not meant to be filled by inference. What is meant to contain therein shall be explicit and categoric. Nothing stops the State Government to add suitable words therein to convey that foodgrains, as processed for seeds, would also be agricultural produce within the meaning of the expression "or otherwise" occurring in Section 2 (1)(i) of the Act. Since no such exercise has been taken, the State Government cannot be permitted to achieve indirectly which it could have achieved directly, by being specific in that regard. The High Court rightly rejected such contention raised before it by the appellants.

9. For the foregoing reasons, we find no merit in these appeals. The same are accordingly dismissed, but without any order as to costs. Appeals dismissed.