

SUPREME COURT OF INDIA

Union of India

Vs.

M/s Exim Rajathi India Pvt. Ltd.

C.A.Nos.....of 2008

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

26.11.2008

JUDGMENT

Dr.Arijit Pasayat, J.

1 .Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Bombay High Court in Writ Petition No.642/2006. The respondents had imported 56 metric tons of garlic from China which was found to be infected with *Embellisia alli* (fungus) and traces of *Urocystis Capulae*. The appellants withheld the permit for import of consignment until further orders. Respondent nos.1 and 2 filed a writ petition in the Bombay High Court which was directed as follows:

“The third respondent is directed to carry out fumigation treatment by using Methyl Bromide as prescribed in the Plant Quarantine (regulation of Import into India) Order 2003 on the 56 metric tones of Chinese garlic imported by the petitioners and lying in the bonded warehouse at the Petitioner's costs. After fumigation is complete which generally takes 48 hours, the Respondent no.3 and 4 are directed to forthwith permit the Petitioners to clear the 56 metric tones of Chines garlic imported by the Petitioners and lying in the bonded warehouse upon payment of necessary duties on the actual weight of the garlic (since the weight of the garlic has reduced since it landed on the JNPT port) and completion of formalities, without any further orders. The order dated 6th October, 2005 passed by the Third respondent and the order dated 28th December, 2005 are hereby set aside.”

3. Review petition was filed which was dismissed. According to learned counsel for the appellants there is strong risk of this fungus (at present totality absent in India) affecting the future cultivation in India for the reason that the scales of such infected garlic are peeled off for its use, thrown into dust bins as garbage and used manure. This is one of the ways by which some of the fungus got introduced in countries including India and elsewhere and caused permanent damage to the crops which the agricultural experts found difficult to solve.

4. In the instant case, before the garlic was loaded in China for import into India by the respondents, it was treated with methyl bromide fumigation. But this is a treatment for killing insects and pests and not for killing fungi. Fungi can be killed by fungicides and if earlier treated with fungicides it becomes harmful for human consumption. The methyl bromide fumigation treatment is not found to be effective against fungi as found on testing by IARI, New Delhi. Methyl bromide treatment is generally not recommended for perishable goods/commodities like garlic as it has phyto-toxic effects and may deteriorate the quality by absorption of bromide gas in the commodity. Methyl bromide fumigation treatment is given for propagative material and not for consumption. Thus, such treated garlic is dangerous for human consumption and also for Indian Agriculture.

5. Learned counsel for the respondent disputes the aforesaid stand of the appellant.

6. With reference to the order dated 2.9.2008, learned counsel for the respondent stated that the garlic which is the subject matter of dispute may be destroyed by firing it in an acceptable manner in an open space.

7. In view of the peculiar circumstances of the case, we direct that the articles shall be taken from the Customs Warehouse to a place where destruction is to be made. The date, time and place shall be indicated by the respondent nos.1 and 2 to the appellants. The articles shall be destroyed by fire in the presence of an authorized officer of appellant no.1. The cost of the transportation from the Customs Warehouse to the place of destruction shall be borne by respondent nos.1 and 2.

8. The appeal is accordingly disposed of.