IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

Writ Petition Nos.23678, 23832, 23833 and 23834 of 2004, 4992, 5764, 9067, 12280, 12430, 12439 and 12460 of 2005, 17387, 21938 and 27278 of 2006

W.P. No.23678 of 2004

Between:

Maharashtra Hybrid Seeds Company Limited (Mahyco)
3-6-666, Mahyco House, Street No.10, Himayatnagar,
Hyderabad.

....Petitioner

And

The Government of Andhra Pradesh
Rep. by the Secretary, Agriculture Department,
Secretariat Buildings, Hyderabad and others.

....Respondents

JUDGMENT PRONOUNCED ON : 29.12.2016

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes

2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : No

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : No

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition Nos.23678, 23832, 23833 and 23834 of 2004, 4992, 5764, 9067, 12280, 12430, 12439 and 12460 of 2005, 17387, 21938 and 27278 of 2006

Common Order:

All these Writ Petitions are being disposed of by this common order as they relate to the challenge made by the seed manufacturers against the orders passed by the authorities in the purported exercise of power conferred on them by virtue of an agreement executed by the petitioners with the Government.

The above Writ Petitions are filed for the following reliefs.

Sl. No.	Writ Petition No.	Name of the petitioner	Relief/ Prayer
1.	23678 of 2004	Maharashtra Hybrid Seeds Company Ltd. (Mahyco)	a) To pass a writ, order or direction in the nature of Certiorari quashing the orders dated 02.11.2004 passed by respondent No.2 confirming the order dated 09.04.2002 passed by respondent No.3 and quash the consequential show cause notice dated 09.12.2004 issued by the Office of the Commissioner & Director of Agriculture, Andhra Pradesh; b) pass an order quashing clause 6 of the MoU whereby power is given to the licensing authority to cancel/suspend the licence.
2.	23832 of 2004	Maharashtra Hybrid Seeds Company Ltd. (Mahyco)	a) To pass an order/writ in the nature of Certiorari quashing the orders dated 14.10.2004 and 08.12.2004 passed by respondent No.2 confirming the order dated 17.08.2002 passed by respondent No.3 and quash the consequential show cause notice dated 09.12.2004 issued by the Office of the Commissioner & Director of Agriculture, Andhra Pradesh; b) pass an order quashing clause 6 of the MoU whereby power is given to the licensing authority to cancel/suspend the licence.
3.	23833 of 2004	Maharashtra Hybrid Seeds Company Ltd. (Mahyco)	a) To pass an order/writ in the nature of Certiorari quashing the orders dated 14.10.2004 and 08.12.2004 passed by respondent No.2 confirming the order dated 17.06.2002 passed by respondent No.3 and consequently quash the show cause notice 09.12.2004 issued by the Office of the Commissioner & Director of Agriculture, Andhra Pradesh; b) pass an order quashing clause 6 of the MoU whereby power is given to the licensing authority to cancel/suspend the licence.
4.	23834 of 2004	Maharashtra Hybrid Seeds Company Ltd.	a) To pass an order/writ in the nature of Certiorari quashing the orders dated 14.10.2004 and 08.12.2004 passed by

		(Mahyco)	respondent No.2 confirming the order dated 29.04.2002 passed by respondent No.3 and quash the show cause notice dated 09.12.2004 issued by the Office of the Commissioner & Director of Agriculture, Andhra Pradesh; b) pass an order quashing clause 6 of the MoU whereby power is given to the licensing authority to cancel/suspend the licence.
5.	4992 of 2005	M/s.Leadbeter Seeds Private Limited.	To declare the action of the Commissioner & Director of Agriculture, Hyderabad – cum – Chairman, State Level MOU Committee, Hyderabad, in directing the petitioner company to pay compensation of Rs.1,58,280/- under its Proceedings No.S&HVP(1) 453/Appeals/2004 dated 14.02.2005, confirming the Proceedings of the Joint Director of Agriculture, Guntur-cum-Chairman, District Level MOU Committee, Guntur in Roc.No.Plg.VII/2860/2004 dated 27.07.2004, as illegal.
6.	5764 of 2005	M/s.Seed Works India Private Limited.	To declare the action of the Commissioner & Director of Agriculture, Hyderabad – cum – Chairman, State Level MOU Committee, Hyderabad in directing the petitioner company to pay compensation of Rs.1,16,490/- under its Proceedings No.S&HVP(1) 453/Appeals/2004 dated 14.02.2005 confirming the proceedings of the Joint Director of Agriculture, Guntur-cum-Chairman, District Level MOU Committee, Guntur in Roc.No.Plg.VII/2860/2004 dated 27.07.2004 as illegal.
7.	9067 of 2005	Mahyco Seeds Limited	i) To call for the records pertaining to the proceedings of the Chairman, District Level Committee-cum-Joint Director of Agriculture, Krishna District in Rc.No.C3/1041/2004 dated 04.09.2004 and the proceedings of the Chairman of the State Level Committee on MoU-cum-Commissioner and Director of Agriculture, Andhra Pradesh, Hyderabad in Proceedings No.S&HVP(1)453/Appeals/2004 dated 14.02.2005 directing the petitioner company to pay compensation quantified at Rs.2,44,400/- and quash the same, holding them to be illegal. ii) To call for the records pertaining to the Memorandum of Understanding executed by the petitioner and the Government of Andhra Pradesh and quash Clause No.9 of the said MoU, whereby power is given to the licensing authority to cancel/suspend the licence for non-payment of the compensation awarded under the MoU, holding the same to be illegal and contrary to the statute.
8.	12280 of 2005	Mahyco Vegetable Seeds Ltd.	a) To pass an order/writ in the nature of certiorari quashing the orders dated 27.07.2004 in Roc.No.TLG.VII/2860/2004 and 09.05.2005 in No.S&HVP(1) 453/Appeals/2004-10 passed by respondent NOs.3 and 2 respectively; b) pass an order quashing clause 8 of the MoU whereby power is given to the licensing authority to cancel/suspend the licence.

9.	12430 of 2005	Mahyco Seeds Limited	a) To pass an order/writ in the nature of certiorari quashing the orders passed by the respondent No.2 in proceedings No.S&HVP(1) 453/Appeals/2004-6, dated 09.05.2005 confirming the orders passed by the 3rd respondent in proceedings No.C1/796/04 dated 31.12.2004; b) pass an order quashing clause 8 of the MoU whereby power is given to the licensing authority to cancel/suspend the licence.
10.	12439 of 2005	Mahyco Seeds Limited	a) To pass an order/writ in the nature of certiorari quashing the orders passed by the 2nd respondent in proceedings No.S&HVP(1) 453/Appeals/2004-7 dated 09.05.2005, confirming the orders of the 3rd respondent in proceedings Nos.Rc.No. T2/2879/2004, Rc.No.T2/2880/2004, Rc.No.T2/2967/2004, Rc.No.T2/2907/2004, Rc.No.T2/2905/2004, Rc.No.T2/3091/2004, Rc.No.T2/3089/2004, Rc.No.T2/2906/2004, Rc.No.T2/2876/2004 and Rc.No.T2/2908/2004, dated 27.12.2004; b) pass an order quashing clause 8 of the MoU whereby power is given to the licensing authority to cancel/suspend the licence.
11.	12460 of 2005	Mahyco Seeds Limited	a) To pass an order/writ in the nature of certiorari quashing the orders passed by the 2nd respondent in proceedings No.S&HVP(1) 453/Appeals/2004-8 dated 09.05.2005, confirming the orders of the 3rd respondent in No. Rc.No.T2/2907/2004, and Rc.No.T2/3091/2004 dated 27.12.2004; b) pass an order quashing clause 8 of the MoU whereby power is given to the licensing authority to cancel/suspend the licence.
12.	17387 of 2006	Mahyco Seeds Ltd.	a) To pass order/writ in the nature of Certiorari quashing the orders dated 25.02.2005 and 06.07.2006 passed by respondent Nos.3 and 2 respectively; b) pass an order quashing clause 8 of the MoU whereby power is given to the licensing authority to cancel/suspend the licence.
13.	21938 of 2006	Mahyco Seeds Ltd.	a) To pass order/writ in the nature of Certiorari calling for the records pertaining to the order in proceedings No.SR Cell (1) 453/Appeals/2004 dated 06.07.2006 passed by the respondent No.2; b) declare clause 8 of the MoU whereby power is given to the licensing authority to cancel/suspend the licence as illegal and void.
14.	27278 of 2006	M/s,.Ankur Seeds P.Ltd.	To issue a writ, order or direction in the nature of Certiorari or mandamus declaring the impugned proceedings of the 3rd respondent dated 13.02.2002 (annexure IV) and the proceedings of the second respondent dated 29.11.2006 (annexure XXVIII TO XXX) be declared as illegal, arbitrary and without jurisdiction and consequently declare the same as unenforceable.

The facts leading to the present batch of cases are as follows: It was noticed that quality seed of improved varieties of Hybrids was required for the farmers and the certification of seed is not compulsory under the provisions of the Seeds Act, 1966 and Seeds (Control) Order 1983. The Government wanted to make available the quality seed from seed producers, both private and public and protect the interest of farmers from sub-standard quality of seeds. In order to ensure the above objects, the Government entered into a Memorandum of Understanding for self certification with the seed companies thereby creating a mechanism for its regulation. The Memorandum provides for study of genetic purity with reference to morphological characters of private research bred varieties for the purpose of release to market, the extent of areas to be released for test marketing, to have processing facilities of the producers of their own, to procure breeder or foundation seed by the producers from the Universities or any other source as per the policy of the Government, testing the sample by producers in the State Government Seed Testing Laboratories, appointment of District Level Committee and State Level Monitoring Committees in estimating crop loss. Corresponding obligations were imposed on the Producer/Marketeer of seed. The Memorandum also provides for insurance coverage and production of bank guarantee. The memorandum provided payment of compensation in case of germination failure due to poor quality of seeds but not due to soil condition, moisture stress etc. Separate compensation was provided for genetic impurity and crop failure. The District Level Committee was empowered to pass an order for compensation subject to the appeal to the State Level Committee within thirty days. In case of non-payment of compensation, the licensing authority was given power to

suspend/cancel the license granted for sale of seed apart from lodging a complaint in a Consumer Forum for violating the terms and conditions of the memorandum of understanding. It was also provided that the Producers shall ensure that the dealers comply with the provisions of Clauses 8, 9 and 18 of the Seeds (Control) Order, 1983. The consumers or farmers were obligated to purchase seed from licensed dealers and authorised producers.

After entering into the agreements, the seed was purchased by the farmers. The seed was sowed and it was observed after 50% of flowering stage of the crop that the crop was genetically impure on account of sub-standard quality of seed. Complaints were lodged by the farmers before the District Level Committee and after calling for a report from the field inspection team, the compensation was awarded to the farmers in December 2014. Challenging the said orders of the District Level Committee, appeals were preferred before the Commissioner and Director of Agriculture and Chairman of the State Level MOU Implementation Committee. The orders passed by the District Level Committee were upheld by holding that the grounds raised by the petitioners were held to be not convincing. Challenging the said appellate orders, the petitioners Companies filed the present Writ Petitions and also challenged Clause 8 of the MOU empowering the licensing authority to suspend/cancel the licenses.

In W.P.No.12439 of 2005 this Court granted interim suspension of the orders subject to condition of the petitioner therein depositing 20% of the amount ordered to the credit of the account of the first respondent, and it was further directed that the first respondent shall not disburse the amount and the amount so deposited would be subject to further orders

in the Writ Petition. The said order was complied with and seeking vacation of the said order a counter affidavit was filed. It was stated that the crop loss occurred due to genetic impurity and the same was established by thorough inspection of affected cotton crop. The loss was not attributed due to failure to adopt proper crop management practices by the farmers nor environmental/climatic factors. The compensation was awarded by the District Level Committee consequent to the inspection of the cotton field of all complaining farmers. The averment that the farmers should mix other varieties of crop to avoid risk due to natural calamities was denied and it was stated that especially in case of cotton, bird damage does not arise because birds do not eat cotton flower or boll. It was also stated that the agreement can be enforced for compensation amount and also to suspend license in case of non-compliance. It was stated that the normal procedure is that the complaining farmers should first approach the local dealer who sold the seed and seek remedy from the producer. When there was no solution, they shall approach the District Level Committee and the District Level Committee shall fix a date for the field inspection by the committee members which include the complaining farmers and the representatives of the seed producer. The preparation of field inspection report was transparent. It was also stated that the seeds are genetically impure because the cotton hybrid seeds produced by the other seed producers and raised on the fields by the farmers near the fields of the complaining farmers did not suffer any loss. The normal yield of the disputed variety has been arrived at based on the field data furnished by the seed producer. The actual yield said to have been obtained by the complaining farmers was accordingly assessed scientifically by the field inspection team. It was also stated that there

was no provision in the MOU to draw the seed samples from the same lot and send them to the lab for testing for genuineness of the seed in respect of genetic purity and it is a lengthy procedure and time consuming process.

In the light of the above pleadings, it was urged on behalf of the petitioners by the learned Senior Counsel, Sri C.V. Mohan Reddy, that proper procedure was not followed while assessing the compensation and in fact there was no finding with regard to genetic impurity. He further submitted that no reasoning was given by the District Level Committee for arriving at the compensation amount and in the absence of a conclusive finding with regard to cause of loss, no compensation should have been awarded.

Learned Government Pleader on the other hand submitted that the Government is empowered to enter into memorandum of understanding in order to protect the interest of the farmers and assess the compensation in case of crop loss.

Since this Court noticed that the procedure adopted in the instant cases found to be contrary to law, directed the parties to address on that issue and accordingly the counsel addressed on the issue with regard to the procedure adopted from the stage of entering into memorandum of understanding to the stage of issuing show cause notices for cancellation of licenses.

The cause of action arose during the year 2004-05. It is clear from the above facts that at the relevant point of time there was no enactment regulating the sale of quality seeds till the 'Andhra Pradesh Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act,

2007 (Act 29 of 2007)' was enacted and the rules were made. The Seeds Act, 1966 and Seeds (Control) Order, 1983 issued under the provisions of Essential Commodities Act, 1955 was in vogue at that time. The Seeds Act, 1966 provides for regulating the quality of certain seeds for sale and for matters connected therewith. Section 5 empowers the Central Government to declare such kind of seed or variety to be a notified kind or variety for the purposes of the Act and different kinds or varieties may be notified for different States or for different areas thereof after consultation with the committee in order to regulate the quality of seed of any kind or variety to be sold for the purpose of agriculture. Section 7 regulates the power of sale of seeds of notified kind or varieties. A certification agency can be established under Section 8. Section 10 enables the revocation of a certificate if it was obtained by misrepresentation or conditions of the certificate are violated. Section 14 provides for the powers of the Seed Inspector and Section 15 deals with the procedure to be followed by him. Section 17 places restriction on export and import of seeds of notified kinds or varieties. Penalties are also provided under Sections 19 and 20 of the Act. Separate Rules called 'The Seeds Rules, 1968' were made under the Act.

When this Court asked the learned Senior Counsel as to the need for a separate memorandum of understanding when there are provisions for regulating the sale of seeds, learned Senior Counsel submitted that the seeds involved in the present batch of cases are not notified varieties of seeds and the officers took the initiative on their own by devising a novel method of entering into a memorandum of understanding for its regulation.

A Division of Bench of this Court in Sai Seed Agricultural Farms v. State of AP[1], held that the Essential Commodities Act, 1955 and the Seeds (Control) Order, 1983 deal with seeds which are fit for human consumption and the authorities under the Seeds Act are entitled to interfere and examine only in the case of seeds sold for agricultural purposes and not for edible purposes.

The preamble to the 'Andhra Pradesh Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act, 2007 (Act 29 of 2007)' clearly states that cotton seeds of certain varieties are not notified under Section 5 and consequently no sale of such seeds are regulated under Section 7 of the Seeds Act, 1966. It is further stated that the cotton seed is found to be not an essential commodity and the provisions of Seeds (Control) Order, 1983 are not made applicable in so far as they relate to the cotton seeds with effect from 12.02.2007. The rules under the said enactment were made under G.O.Rt.No.947, Agriculture and Co-operation (FP-II), dated 26.07.2007. It is not known why such a legislative method was not adopted, but a system of entering into MOU was adopted in the instant cases. Though the MOU was stated to have been entered on behalf of the Government, due procedure in accordance with Article 299 of the Constitution of India was not followed and hence it cannot be called as an agreement between the Government and the seed producers.

This method of executive rule in the field of legislation came up for consideration before the Hon'ble Supreme Court in Secretary, A.P.D. Jain Pathshala v. Shivaji Bhagwat More[2]. In the said case the Government of Maharashtra, by way of a resolution accorded sanction for

[1] 1997(5) ALD 809 (DB) = 1997(6) ALT 32 (DB)
[2] (2011) 13 SCC 99

implementation of Shikshan Sevak Scheme in all recognised private secondary/higher secondary schools/junior colleges/BEd colleges in the State. It provided for appointment and absorption of them into the service as teachers on completion of the specified years of service. A three-member Grievance Redressal Committee was constituted to decide the grievances relating to selection, appointment, reappointment or mid-year cancellation of appointment. When the matters came up before the Bombay High Court, the Government agreed to implement the suggestions made by the Court for reconstituting the Grievance Redressal Committee by including a retired District Judge as Chairman of the Committee. Another resolution was passed modifying the earlier scheme. The Hon'ble Supreme Court noticed that the initial Grievance Redressal Committee was converted as a quasi-judicial adjudicatory tribunal by virtue of suggestions made by the High Court. It was urged before the Supreme Court that the constitution of such a quasi-judicial tribunal by a judicial fiat to the State Government was without the authority of law and invalid and consequently the decisions by such a forum are void and unenforceable. The Supreme Court considered the provisions of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 wherein the term "employee" was defined. The Supreme Court observed that in State of Karnataka v. Vishwabharathi House Building Cooperative Society[3], it was held that the legislature is not prevented from establishing Tribunals not covered by Articles 323-A and 323-B of the Constitution enabling the setting up of Tribunals, but any Tribunal with adjudicatory power can be created only by statutes. The Supreme Court also noticed Article 162 of

[3] (2003) 2 SCC 412

the Constitution and observed that though the State has got the power to issue administrative instructions or directions subject to the provisions of the Constitution, in view of the provisions of the Constitution in Articles 233, 234 and 247 for constituting subordinate courts and Articles 323-A and 323-B for constituting tribunals they shall be created only by statutes or rules framed under authority granted by the Constitution. Accordingly, it held that the constitution of Grievance Committee as a public adjudicatory forum, whose decisions are binding on the parties to the disputes, by an executive order of the Government is impermissible. It was held that the opinion of the Grievance Committee can only be recommendatory in nature but cannot be held to be binding and enforceable or executable order.

In the instant cases also the aggrieved farmers were allowed to lodge complaints before the District Level Committees which awarded compensation to the farmers and appeals preferred against the said orders were dismissed by the State Level Committee. The source of such an authority was only a 'memorandum of understanding' alleged to have been entered on behalf of the Government. Such a procedure making a party liable to pay compensation under a memorandum of understanding is unknown to law and the ratio laid down by the Hon'ble Supreme Court in the above decision is applicable to the facts of the present cases. Though the learned counsel for the petitioners concentrated on the procedure adopted by the District Level Committee and the Appellate Committee, in view of the basic illegality in the procedure, the orders passed against the petitioners cannot stand and consequently no action can be taken for cancellation of the licenses. As stated above, the

licenses of seed dealers or producers can be cancelled only in accordance with the conditions of license and the provisions of the Seeds Act.

Consequently, all the Writ Petitions are liable to be allowed. However, at this stage it is noticed that the amounts already deposited by the petitioners are in deposit with the appellate authorities subject to the result of the present Writ Petitions. In view of the loss sustained by the farmers it was suggested to the learned counsel for the petitioners that the said amount can be utilised for compensating the farmers whoever can be identified though there is little possibility of identifying such farmers at this length of time of 12 years. Learned counsel for the petitioners and the learned Senior Counsel for the respondents fairly agreed for not claiming the refund of the amount already deposited and in such a situation it is left open to the Government either to compensate on pro-rata basis to the farmers who sustained loss or utilise the said amount for the welfare of the farmers in any manner it deems fit.

All the Writ Petitions are, accordingly, allowed. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in these Writ Petitions shall stand closed.

_____

A. RAMALINGESWARA RAO, J

Date: 29th December, 2016
Nsr