***THE HONOURABLE SRI JUSTICE A.RAMALINGESWARA RAO**

**+ W.P.Nos.14356 to 14367, 18321, 18323, 18327, 18341, 18365, 18624, 18632, 18636, 18638, 18640, 18643, 18647, 18657 & 18661 OF 2017**

% 11-10-2017

#Venkateswara Seeds & Pesticides and others

….petitioners

Vs.

$ State of A.P. rep. by its Principal Secretary, Department of Agriculture, Secretariat, Hyderabad and others.

…. Respondents

!Counsel for the petitioner : Sri Vedula Srinivas

Counsel for the Respondents: G.P. for Agriculture

<Gist :

>Head Note:

? Cases referred:

**HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

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**COMMON ORDER**

All the petitioners are distributors of seeds in the States of Telangana and Andhra Pradesh and as all these writ petitions arise out of cancellation of their licences, the same are being disposed of by this common order.

The petitioners are carrying on their respective businesses in seeds under the licences issued by the competent authorities under the provisions of the Seeds Act, 1966 (for short 'the Act') and the Rules framed thereunder and the Seeds Control Order, 1983. While so, on a complaint made by the farmers, show cause notices were issued stating that Chilli Seeds of variety JCH-802 of M/s.Jeeva Agri Genetics, Hyderabad, sold by the petitioners, were found to be substandard.

It appears that the District Level Committee inspected the fields of the farmers and has given the report stating that the standing crop is not uniform, in fruit bearing, orientation of fruits, fruit length, fruit shape and colour of the fruit and it may be a

different mixture of other seeds in the original lots. Based on the said complaint and report, show cause notices were issued to the petitioners for cancellation of their licences, for which, they have submitted their reply. But the 3rd respondent, who is the licencing authority, having not satisfied with the reply submitted by the petitioners, cancelled the licences by a cryptic order dated 13.10.2016. Challenging the same, 14 distributors preferred appeals before the 2nd respondent, who in turn, dismissed the same by confirming the order passed by the 3rd respondent. The relevant portion of the order passed by the appellate authority in respect of Andhra Pradesh area, reads as follows.

> "1.Distributors agreed that there are off-types in the complainants fields due supply of sub standard chilly seed and further agreed that there are other OP varieties mixed as per their field observations.
>
> 2.Some of the distributors have not paid even the seed cost to the aggrieved farmers stating that seed was sold on a credit basis, where as others have paid to the extent of seed cost as stated by them and certified by concerned seed inspectors on random verification.
>
> 3.The District Level Committee has awarded to pay compensation to the aggrieved farmers @ Rs.36,000/- per acre. But the companies have not paid any compensation and approached Hon'ble High

Court challenging the proceedings of District Level Committee.

4.Further the criminal cases were filed against the concerned seed companies and compensation cases are pending in Honourable High Court.

5.As submitted by JDA, Guntur, when compared to other hybrids cultivated by the farmers of adjacent fields the decrease in yield ranges from 4-8 quintal and about 140 farmers uprooted the crop in an extent of 337 acres. The yield loss will be 2-3 QTLs/acre in case of standard chilly fields and 8-10 QTLs when compared to other hybrids.

6.It is evident from the field diagnostic team report and DNA lab analysis report that the company (Substandard seed produced), distributors and dealers have distributed and sold the substandard seed in contravention of provisions of seed legislations.

7.Hence the distributors cannot absolve from their responsibility and simply cannot shift the responsibility on producers only for the production of substandard seed besides distribution, sale and storage by them without ensuring the standards in respect of seeds as per Clause 8-A of SCO, 1983 and Section 7 of the Seeds Act, 1966.

In view of the above and in the interest of rendering justice to hapless farmers, the appeal filed by the above referred fourteen distributes of M/s.Jeeva Agri Genetics Pvt Ltd and M/s.Brahmaputra Seeds is hereby rejected."

In respect of Telangana area, no appeals were preferred. But writ petitions were filed challenging the cancellation of licences by the Licencing Authority. Since the point involved in the said writ petitions and the cases arising from AP area are same, they are being disposed of together without relegating the parties to the appellate remedy.

Learned counsel appearing for the petitioners submits that Rule 23-A of the Seeds Act is applicable to the present case, but there was no reference to the said Rule in the show cause notices and no finding was recorded with regard to the same either by licencing authority or the appellate authority in the impugned orders.

As stated above, on receiving complaints from farmers against Chilli Seeds of Variety JCH-802 produced by M/s.Jeeva Agri Genetics, Hyderabad, the District Level Committee inspected and submitted its report. After considering the said report, an order of suspension was initially passed and simultaneously, the petitioners were asked to show cause as to why their licences should not be cancelled. In the show cause notices, it is stated that

spurious seeds were supplied by the petitioners and inspection report also revealed the same. The petitioners submitted reply stating that they are not aware of the quality of the seeds as they procured seeds from the manufacturer-M/s.Jeeva Agri Genetics, Hyderabad, and therefore, they are not responsible for quality of those seeds.

Being not satisfied with the said reply, the licencing authority cancelled the licences under the provisions of Clause 15 of Seeds (Control) Order, 1983 for contravention of Sections 6, 7 of Seeds Act, 1966 read with Clause 8(a) of Seeds (Control) Order, 1983.

No doubt, Clause 15 of the Seeds Control Order provides for cancellation of the licence on the following grounds:

> (a) that the licence had been obtained by misrepresentation as to a material particulars; or
> (b) that any of the provisions of this Order or any condition of lincence has been contravened."

In the instant case (a) is not applicable and only (b) is applicable.

Learned Government Pleader submits that Section 6 (a) of the Act provides for the Central Government to notify the minimum limits of germination and purity with respect to any seed of any notified kind or variety and Section 6 (b) provides that the mark or label shall indicate that such seed conforms to the minimum limits of germination and purity specified under Clause (a) and the particulars which such mark or label may contain and Section 7 prohibits carrying on the business of selling, keeping for sale, offering to sell, bartering or otherwise supplying any seed of any notified kind or variety unless such seed is identifiable as to its kind or variety and it confirms to the minimum limits of germination. For clarification, it is necessary to re-produce Sections 6 and 7 of the Seeds Act, 1956, hereunder:

> 6.Power to specify minimum limits of germination and purity, etc: The Central Government may, after consultation with the Committee and by notification in the Official Gazette, specify,
>
> (a) the minimum limits of germination and purity with respect to any seed of any notified kind or variety;
>
> (b) the mark or label to indicate that such seed conforms to the minimum limits of germination and purity specified under clause (a) and the particulars which such mark or label may contain.

7.Regulation of sale of seeds of notified kinds or varieties:
No person shall, himself or by any other person on his behalf, carry on the business of selling, keeping for sale, offering to sell, bartering or otherwise supplying any seed of any notified kind or variety, unless,-
(a) such seed is identifiable as to its kind or variety;
(b) such seed conforms to the minimum limits of germination and purity specified under clause (a) of Section 6;
(c) the container of such seed bears in the prescribed manner, the mark or label containing the correct particulars thereof, specified under Clause (b) of Section 6; and
(d) he complies with such other requirements as may be prescribed.

A combined reading of the above provision makes it clear that the Central Government is empowered to notify the quality of seed and the sale can be regulated under Section 6. It is an admitted case that all the petitioners obtained licences. It is also brought to the notice of this Court that Clause 8-A obligates the dealer to sell only standard quality of seeds and it reads as under:

"8-A The Central Seed Certification Board: (1) The Central Government shall, by notification in the Official Gazette, establish a Central Seed Certification Board (hereinafter referred to as the Board) to advise the Central Government and the State Governments

> on all matters relating to certification, and to co-ordinate the functioning of the agencies established under Section 8.

In a case where the dealer sells sub-standard quality of seeds, appropriate action can be taken by the departments at the initial stage itself, but if the authorities are not in a position to decide whether the seed sold is of sub-standard variety or not, appropriate provision for taking action on a complaint lodged by the farmers, who utilized the seeds, is Rule 23-A of the Rules. Rule 23-A reads as under:

> "23-A Action to be taken by the Seed Inspector if a complaint is lodged with him:
>
> (1) If farmer has lodged a complaint in writing that the failure of the crop is due to the defective quality of seeds of any notified kind or variety supplied to him, the Seed Inspector shall take in his possession the marks or labels, the seed containers and a sample of unused seeds to the extent possible from the complaint for establishing the source of supply of seeds and shall investigate the causes of the failure of his crop by sending samples of the lot to the seed Analyst for detailed analysis at the State Seed Testing Laboratory. He shall thereupon submit the report of his findings as soon as possible to the competent authority.

> (2)In case, the Seed Inspector comes to the conclusion that the failure of the crop is due to the quality of seeds supplied to the farmer being less than the minimum standards notified by the Central Government, he shall launch proceedings against the supplier for contravention of the provisions of the Act or these Rules.

A perusal of the above Rule makes it clear that after lodging the complaint, the Seed Inspector shall take possession of the marks or labels, the seed containers and sample of unused seeds for establishing the source of supply and shall investigate the causes of the failure of the crop by sending samples of the lot to the Seed Analyst for detailed analysis.

It appears that though the committee, after inspection, noticed the cause of failure and expressed doubts with regard to the quality of seeds, no finding was recorded with regard to sale of such seeds by the petitioners individually and an omnibus allegation was levelled against the manufacturer.

It is well settled in law that in the absence of a clear finding as to violation in respect of a penal provision, no action can be taken against the petitioners.

A reading of the orders of the licencing authority and the appellate authority clearly shows that no such clear finding was recorded and in the absence of any evidence on record, it is not possible to remand the matter to the appellate authority for fresh consideration.

In the circumstances, all the writ petitions are allowed by setting aside the impugned orders of cancellation of licences. However, the authorities under the Seeds Act and the Seeds Control Order shall take appropriate steps for educating the farmers with regard to the future losses in case of spurious seeds. They shall also inspect the shops of the dealers periodically in order to prevent utilization of such spurious seeds by the farmers, resulting in huge loss to them. However, this order will not prevent the farmers from claiming compensation against the manufacturers and distributors, if any, in separate proceedings.

Miscellaneous petitions, if any, pending shall stand closed.

**JUSTICE A.RAMALINGESWARA RAO**

***11th October, 2017***
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HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
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