

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

WRIT PETITION No.18237 of 2017

Between:

Nirmal Seeds Private Limited and another

.....Petitioners

And

The State of Andhra Pradesh rep. by its Principal Secretary,
Agriculture Department and two others

.....Respondents

Date of Judgment pronounced on : 22-06-2017

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

*** HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**

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< GIST:

> HEAD NOTE:

! Counsel for the petitioners : Sri K.V. Bhanu Prasad

^ Counsel for the respondents : learned Government Pleader
for Agriculture

? Cases referred



HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**WRIT PETITION No.18237 of 2017****ORDER:**

Heard learned counsel for the petitioners and also the learned Government Pleader for Agriculture representing the respondents and perused the prayer in the writ petition with the supporting affidavit and other material on record and also the impugned seizure panchanama with acknowledgment in Form-IV of the details of the stock seized.

2. The prayer in the writ petition reads as follows:

“To issue any appropriate writ, order or direction preferably a writ in the nature of writ of mandamus, declaring the action of the 3rd respondent seizing the socks in Form-IV on 03.05.2017 as illegal, arbitrary, malafide, intentional, contrary to the Seeds Act, 1966 and without authority and consequently set aside the same as illegal in the interest of justice and to pass such other order or orders.”

3. The grievance of the petitioners is that the authorities could not have been seized the stock in question for there is no any statutory violation of either Section 3 or 6 or 7 or 14 or 15 or 17 of the Seeds Act as the case may be, much less any of the Rules covered by the Seeds Control Order, 1983, particularly Rules 8, 8-A, 13 and 14 or Form-A or Form-C covered by the prescribed form thereunder.

4. Whereas it is the submission of the learned Government Pleader that the authorities got the power to seize as contemplated by Rule 13 of the Seeds Control Order 1983 which is to be read at best with Section 14 of the Act and Form-A and Form-C under the Control Order prescribes the requirement of the specific brand to deal with as a variety of the seed and the

licence obtained mentioned in detail what are the seeds to be dealt with and admittedly the seeds seized not included in those varieties, which he cannot deal with that is one of the violations apart from expired stock available. Thereby the seizure is as per the procedure established by law and there is nothing to impugn, hence the writ petition impugning the same is liable to be dismissed.

5. Sections 6, 7, 14 & 15 of the Seeds Act read as follows:

“6.Power to specify minimum limits of germination and purity

etc.:- The Central Government may, after consultation of 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 marks 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.

14. Powers of Seed Inspector:- (1) The Seed Inspector may-

- (a) take samples of any seed of any notified kind or variety from-
 - (i) any person selling such seed; or
 - (ii) any person who is in the course of conveying, delivering or preparing to deliver such seed to a purchaser or a consignee; or
 - (iii) a purchaser or a consignee after delivery of such seed to him;

- (b) send such sample for analysis to the Seed Analyst for the area within which such sample has been taken;
- (c) enter and search at all reasonable times, with such assistance, if any, as he considers necessary, any place in which he has reason to believe that an offence under this Act has been or is being committed and order in writing the person in possession of any seed in respect of which the offence has been or is being committed, not to dispose of any stock of such seed for a specific period not exceeding thirty days or, unless the alleged offence is such that the defect may be removed by the possessor of the seed, seize the stock of such seed;
- (d) examine any record, register, document or any other material object found in any place mentioned in clause (c) and seize the same if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act; and
- (e) exercise such other powers as may be necessary for carrying out the purposes of this Act or any rule made thereunder.

(2) Where any sample of any seed of any notified kind or variety is taken under clause (a) of sub-section (1), its cost, calculated at the rate at which such seed is usually sold to the public, shall be paid on demand to the person from whom it is taken.

(3) The power conferred by this section includes power to break-open any container in which any seed of any notified kind or variety may be contained or to break-open the door of any premises where any such seed may be kept for sale:

Provided that the power to break-open the door shall be exercised only after the owner or any other person in occupation of the premises, if he is present therein, refuses to open the door on being called upon to do so.

(4) Where the Seed Inspector takes any action under clause (a) of sub-section (1), he shall, as far as possible, call not less than two persons to be present at the time when such action is taken and take their signatures on a memorandum to be prepared in the prescribed form and manner.

(5) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898), shall, so far as may be, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under section 98 of the said Code.

15. Procedure to be followed by Seed Inspectors:- (1) Whenever a Seed Inspector intends to take sample of any seed of any notified kind or variety for analysis, he shall-

- (a) give notice in writing, then and there, of such intention to the person from whom he intends to take sample;
- (b) except in special cases provided by rules made under this Act, take three representative samples in the prescribed manner and mark and seal or fasten up each sample in such manner as its nature permits.

(2) When samples of any seed of any notified kind or variety are taken under sub-section (1), the Seed Inspector shall-

- (a) deliver one sample to the person from whom it has been taken;
- (b) send in the prescribed manner another sample for analysis to the Seed Analyst for the area within which such sample has been taken; and
- (c) retain the remaining sample in the prescribed manner for production in case any legal proceedings are taken or for analysis by the Central Seed Laboratory under sub-section (2) of section 16, as the case may be.

(3) If the person from whom the samples have been taken refuses to accept one of the samples, the Seed Inspector shall send intimation to the Seed Analyst of such refusal and thereupon the Seed Analyst receiving the sample for analysis shall divide it into two parts and shall seal or fasten up one of those parts and shall cause it, either upon receipt of the sample or when he delivers his report, to be delivered to the Seed Inspector who shall retain it for production in case legal proceedings are taken.

(4) Where a Seed Inspector takes any action under clause (c) of sub-section (1) of section 14:

- (a) he shall use all despatch in ascertaining whether or not the seed contravenes any of the provisions of section 7 and if it is ascertained that the seed does not so contravene, forthwith revoke the order passed under the said clause or, as the case may be, take such action as may be necessary for the return of the stock of the seed seized;
- (b) if he seizes the stock of the seed, he shall, as soon as may be, inform a magistrate and take his orders as to the custody thereof;
- (c) without prejudice to the institution of any prosecution, if the alleged offence is such that the defect may be removed by the possessor of the seed, he shall, on being satisfied that the defect

has been so removed, forthwith revoke the order passed under the said clause.

(5) Where as Seed Inspector seizes any record, register, document or any other material object under clause (d) of sub-section (1) of section 14, he shall, as soon as may be, inform a magistrate and take his orders as to the custody thereof.”

6. Coming to the Rules 3, 4, 8, 8(A), 13 & 17 of the Seeds Control Order 1983 reads as follows:

“3. Dealer to Obtain Licence:

1. No person shall carry on the business of selling exporting or importing seeds at any place except under and in accordance with the terms and conditions of licence granted him under this order.
2. Notwithstanding anything contained in sub-clause (1) the state Government may by notification in the Official Gazette, exempt from the provisions of that sub-clause such class of dealers in such areas and subject to such conditions may be specified in the notification.

4. Application for Licence:

Every person desiring to obtain a licence for selling, exporting or importing seeds shall make an application in duplicate in form A together with a fee of rupees fifty for licence to the licensing Authority.

8. Dealers to Displays Stock and Price List:

Every dealer of seeds shall display in his place of business.

- a. The opening and closing stocks, on daily basis of different seeds held by him.
- b. A list indicating prices of rate of different seeds.

8-A. Dealers to ensure certain Standards in respect of seeds:

Every dealer of seeds in notified kind or variety or other than notified kind or variety of seeds shall ensure that the standards of quality of seeds claimed by him shall conform to the standards prescribed for the notified kind or variety of seeds under Section 6 of the Seeds Act, 1966 (54 of 1966) and any other additional standards, relating to size, colour and content of the label as may be specified.

13. Inspection and Punishment:

1. An inspector may with a view to securing compliance with this order-
 - a). Require any dealer to give any information in his possession with respect to purchase storage and sale of seeds by him.
 - b). Enter upon and search any premise where any seed is stored or exhibited for sale to ensure compliance with the provisions of this order.
 - c). Draw samples of seeds meant for sale, export and seeds imported and send the same in accordance with the procedure laid down in Schedule I to a laboratory notified under the Seeds Act. 1966 (54 of 1966) to ensure that the sample conforms to standard of quality claimed.

d). Seize or detain any seed in respect of which he has reason to believe that a contravention of this order has been committed or is being committed.

e). Seize books of accounts or document relating to any seed in respect of which he has to believe that a contravention of this order has been committed or is being committed.

Provided that the inspector shall give a receipt in respect of the books of accounts or document seized to the person from whom they have been seized.

Provided further that the seized books of accounts or documents shall be returned to the persons from which the same had been seized after copies there of extracts there from as certified by such person have been taken.

2. Subject to the provision of paragraph of sub-clause (1) the provision of section 100 of the code of Criminal procedure 1973 (2 of 1974) relating to search and seized shall so far as may be apply to searches and seizures under this clause.

3. Where any seed is seized by an inspect under this clause, he shall forthwith report the fact of such seizure to a Magistrate where upon the provisions of sections 457 and 458 of the code of criminal procedure 1973 (2 of 1974) shall so far as may be applied to the custody and disposal of such seed.

4. Every person, if so required by an inspector shall be bound to offer all necessary facilities to him for the purpose of enabling him to exercise power under this clause.

17. Amendment of Licence:

The licensing authority may on receipt of a request in writing together with a fee of rupees ten from a dealer amend the licence of such dealer.”

Form-A with 7 Clauses mainly Clause (5) speaks to give the details to be handled with serial number and name of seed.

7. From the above so far as Section 14 of the Act concerned, which deals with the power of the Seed Inspector if at all to seize, that Seed Inspector may take samples from any person selling or in the course of conveying, delivering etc., or from a purchaser or consignee and send samples for analysis to the Analyst of the area and to collect samples, enter and search at all reasonable times with assistance necessary from reason to believe an offence under the Act has been or is being committed and give order in writing the person in possession of any seed in respect of which alleged offence has been or to be committed, not to dispose of such stock for a period not exceeding 15 days or

unless alleged offence is such that defect may be removed by the possessor of the seed, seize the stock of such seed.

8. At the cost of the repetition, the above Section reproduced already, seizure is not automatic, first he must have reason to believe, then draw samples and give an order to detain the stock, not to sell or dispose of within 30 days. The maximum limit is of 30 days, beyond that he cannot even ask not to sell or to detain and that too if the stock where defect can be removed, the question of passing detention order much less seizure does not arise. Once it is the mandate of the Section, Rule 13 cannot over ride the said Section. What Rule 13 Seeds Control Order from what is reproduced supra of the powers of the Inspector for compliance of this order to enter and search any premises where seed is stored or exhibited for sale etc., draw samples etc., seize or detain any seed which is subject matter of any contravention of the Control order committed or to be committed leave about also seizure of books of accounts. Here there is duty caste upon the authorities in so far as compliance of Section 14 concerned. Once such is the case, it cannot be pretended of Rule 13 enables when it is not conferred wider powers than the Section 14 of the Act. Leave it as it is, even what Rule 8-A speaks of kind or variety to be notified by the dealer which shall confirm to the standards of Section 6 and other standards being fixed or specified from time to time that to be read with Clause (5) of Form-A of the licence application under the Control order to grant, it no way speaks leave about the petitioner submitted that is incorporated of the mandatory requirement of giving different company brands of each variety, but for at best hybrid and ordinary and the like. The

variety means type of seed like soyabean, wheat etc., that does not mean to give different company's manufacturing brands of each of soyabean etc., that is in fact the purport of the clarification given by the Central Government in its memo No.13-49/2014/SD-IV(Pt), dated 29.04.2016 of Ministry of Agriculture and Farmers Welfare, DAC, FW, GoI, New Delhi, which speaks clearly of no separate licence is required and no specific mention in the order granting licence under the Control Order about SAUs trial in the State and registration of varieties being not a pre-requisite for marketing of seeds in a State. In fact is it only referring to that memo of Central Government referring to the interim order in W.P.No.18385 of 2016 dated 14.06.2016 given by another Bench of this Court apart from other interim orders in W.P.Nos.17880, 17894 and 18365 of 2016, the Commissioner of Agriculture for the State of Telangana by SRC(2)01/2017 dated 09.05.2017 also clarified not to insist for inclusion of different varieties in the seed licence to grant pursuant to the Control Order 1983 for there is no specific mention of registration of varieties being a pre-requisite as per the Central Government Memo.

9. Having regard to the above, the mention of the different company brands irrespective of what is given in the application and mentioned, that is not a bar to deal with other company varieties of the variety once mentioned and it cannot be said that it is beyond the licence product in dealing with to say as if without licence. Apart from it, so far as the seizure as referred supra, the procedure contemplated is not followed from the mandate of Section 14 of the Act read with Rule 13 of the Seeds

Control Order 1983, nothing more again to repeat. Having regard to the above, the seizure order is liable to be set aside.

10. Accordingly and in the result, the Writ Petition is disposed of and the seizure order is set aside and the seeds are to be returned and so far as expired seeds, if not liable to be reprocessed, to be destroyed rather than return and the stock seized and handed over for safe custody to a third party can be handover back to the petitioner subject to requirement of keeping some of the stock for drawing necessary samples if not drawn and to return the remaining.

Consequently, miscellaneous petitions, if any, shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 22.06.2017
Note: L.R. Copy to be marked
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