THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Present:
Mr. Justice Adnan Iqbal Chaudhry
Mr. Justice Riazat Ali Sahar.

C.P. No. D – 395 of 2021
[Tassco Seed Corporation v. Province of Sindh & others]

Petitioner	:	TASSCO Seed Corporation through Mr. Aayatullah Khuwaja, Advocate.
Respondents 1 to 4	:	Province of Sindh & others through Mr. Rafique Ahmed Dahri, Additional Advocate General, Sindh.
Respondent No. 5	:	Nemo.
Respondent No. 6	:	The Secretary, Market Committee, Tando Allahyar, through Mr. Nabi Bux Laghari, Advocate along with Mr. Rashid Hussain Chachar, Secretary, Market Committee, Tando Allahyar.
Dates of hearing	:	12-05-2026 & 13-05-2026

JUDGMENT

Adnan Iqbal Chaudhry J. – The Petitioner prays for a *writ* that in carrying on sale and purchase of crop-seeds as a person registered under the Seed Act, 1976, it is not required to obtain a license or pay market fee under the Agricultural Produce Markets Act, 1939 **[APM Act]**. The precise submission is, that in terms of Article 143 of the Constitution of Pakistan, the Seed Act as Federal law will prevail over the APM Act which is Provincial law. It is therefore, also prayed that all proceedings taken against the Petitioner under the APM Act be declared void and of no legal effect.

2. The petition is made in the following facts. On 13.03.2020, the Market Committee Tando Allahyar (Respondent No.6), acting through its Secretary, made a direct complaint to the Judicial Magistrate, Tando Allahyar, alleging that the Chief Executive [CEO]

of the Petitioner has committed an offence punishable under section 26 of the APM Act, *i.e.* it was dealing in agricultural produce within the notified market area without the requisite license and without paying the requisite market fee under the APM Act.

3. By order dated 02.09.2020, the Judicial Magistrate convicted the Petitioner's CEO and imposed a penalty of Rs. 500/- under section 26 of the APM Act while directing him to obtain the requisite license and to pay the requisite market fee under the APM Act. For enforcing the latter part of the Magistrate's order, that required the Petitioner to comply with the APM Act, the local authorities continue to pursue the Petitioner with coercive process, hence this petition.

4. Before the Judicial Magistrate it was submitted by the Petitioner's CEO that since the Petitioner was registered under the Seed Act, its business was regulated under that Act, therefore, the APM Act was not applicable to it. However, the Magistrate concluded that since the Petitioner was in the business of buying and selling *'cotton seeds and wheat seeds'* which are agricultural produce, it was a "dealer" as defined in section 2(aa) of the APM Act, thus it was required to obtain a license under said Act.

5. Learned counsel for Respondent No.6 (Market Committee) informed that the Judicial Magistrate's order dated 02.09.2020 was appealed by the Petitioner's CEO to the Deputy Commissioner, Tando Allahyar, which appeal was dismissed, and then a criminal revision application was filed by him before the District & Sessions Judge Tando Allahyar, which too was dismissed as not pressed. Learned counsel submitted that since the Petitioner has not assailed the appellate order before this Court and it had also withdrawn the criminal revision, a constitution petition is not maintainable. Learned AAG Sindh supported that submission.

6. In rebuttal, Petitioner's counsel submitted that the appeal before the Deputy Commissioner Tando Allahyar, and the criminal

revision before the District & Sessions Judge, were filed erroneously as neither had jurisdiction in the matter, and therefore, nothing turns on those proceedings. He submitted that in any case, prayer clause (d) of the petition seeks a declaration that all proceedings taken against the Petitioner under the APM Act are void.

7. As regards the Sindh Wholesale Agricultural Produce Markets (Development and Regulation) Act, 2010, which had repealed the APM Act, learned counsel for Respondent No.6 and the AAG Sindh submitted that the transition provision of section 21 therein has yet to be given effect by the Government, and therefore market affairs continue to be governed under the APM Act. This issue of course has not been raised by the Petitioner who claims to be governed by a different regime i.e. the Seed Act. Since the underlying proceedings took place under the APM Act, we do not for the present examine the effect of section 21 of the 2010 Act.

8. Heard learned counsel and perused the record.

9. The order dated 02.09.2020 passed by the Judicial Magistrate to convict and penalize the Petitioner's CEO under section 26 of the APM Act, reflects that it was passed in a summary trial under the provisions of section 260 Cr.P.C. Since the sentence was only a fine of Rs. 500/-, no appeal lies against such order in view of section 414 Cr.P.C. which bars an appeal from a sentence not exceeding a fine of Rs. 2000/-. It is apparent that the Petitioner was misguided in filing an appeal before the Deputy Commissioner, who, in any case, could not sit in appeal over the Judicial Magistrate's order. Therefore, we agree with the Petitioner's counsel that for maintaining a constitution petition, nothing turns on the dismissal of said appeal. Since the Petitioner has raised a constitutional point as to the applicability of the APM Act to a person registered under the Seed Act, we are inclined to examine that question in the exercise of writ jurisdiction instead of examining whether a criminal revision application was the correct remedy or not from the order of the Judicial Magistrate.

10. As recorded in the Judicial Magistrate's order, the business of the Petitioner to which the APM Act was applied, was the buying and selling of *'cotton seeds and wheat seeds'* within the notified market area. That much is not disputed by the Petitioner. The items *"cotton seed"* (along with its oil) and *"wheat and the seed"* then find mention in the Schedule to the APM Act and fall within the definition of "agricultural produce" in section 2(a) of said Act. Consequently, the Petitioner cannot escape the definition of "dealer" in section 2(aa) of the APM Act (as applicable to Sindh), and then, the requirement of obtaining a license under section 6 of said Act is attracted. As held by a learned Division Bench of this Court in *Ahmed Oil Mills (Pvt.) Ltd. v. Secretary, Market Committee* (PLD 2005 Karachi 281):

> "In any event section 6 requires that any person who works as a dealer in a notified market area must obtain a license and the definition of the expression "dealer" is not confined merely to a person who both purchases and sells, but to any one who is engaged in either of the two activities as has been held in *Noon Sugar Mills v. Market Committee* (PLD 1989 SC 449) and *Mirpurkhas Sugar Mills v. Government of Sindh* (1993 SCMR 920)".

11. The case of *Ahmed Oil Mills* had also gone on to note that section 19 of the APM Act, as applicable to Sindh, which is the charging section for the levy of market fee, does not restrict the levy to a 'dealer' or 'licensee', and therefore the question whether a petitioner is a dealer or not, becomes irrelevant to the levy.[1]

12. It is contended by the Petitioner that it is registered by the Federal Seed Certification & Registration Department, Government of Pakistan under section 22B of the Seed Act, 1976 to do "seed business", which is defined in section 2(xxv) thereof to mean "any commercial operation of seed involving production, processing, conditioning, packaging, distribution, import and export of seeds". Section 22E of the Seed Act restricts a person from conducting seed business unless registered under the Act. On the strength of such registration, it is argued by the Petitioner that by virtue of Article 143

[1] Per Justice Sabihuddin Ahmed.

of the Constitution of Pakistan,[2] the Seed Act as Federal law will prevail over the APM Act which is Provincial law.

13. The first misconception of the Petitioner is that the Seed Act is Federal Law, the submission of course being that legislative competence lies exclusively with the Parliament as a Federal subject. In fact, the recital to the Seed Act denotes that it was enacted by Parliament in furtherance of resolutions passed by all Provincial Assemblies under Article 144 of the Constitution of Pakistan, authorizing the Parliament to make such law on behalf of the Provinces. Article 144 of the Constitution itself provides that "any act so passed may, as respects any Province to which it applies, be amended or repealed by Act of the Assembly of that Province".[3] It was thus held by a learned Division Bench of this Court in *Azfar Laboratories (Pvt.) Ltd. v. Federation of Pakistan* (PLD 2018 Sindh 448) "that even when Parliament makes a law under Article 144, the constitutional nature of the competence does not change: it remains exclusively within the Provincial domain. It is, in other words, provincial legislation that has been made by the Federation"; and then, if there is a conflict between an existing Provincial law and the one made by Parliament pursuant to Article 144, at least the principle of federal law overriding provincial law will not apply, as the constitutional nature of both laws is provincial.[4]

14. Therefore, reliance by the Petitioner on Article 143 of the Constitution of Pakistan to give primacy to the Seed Act over the

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[2] Article 143.- If any provision of an Act of a Provincial Assembly is repugnant to any provision of an Act of Majlis-e-Shoora (Parliament) which Majlis-e-Shoora (Parliament) is competent to enact, then the Act of Majlis-e-Shoora (Parliament), whether passed before or after the Act of the Provincial Assembly, shall prevail and the Act of the Provincial Assembly shall, to the extent of the repugnancy, be void.

[3] Article 144.-- (1) If one or more Provincial Assemblies pass resolutions to the effect that Majlis-e-Shoora (Parliament) may by law regulate any matter not enumerated in the Federal Legislation List in the Fourth Schedule, it shall be lawful for Majlis-e-Shoora (Parliament) to pass an Act for regulating that matter accordingly, but any act so passed may, as respects any Province to which it applies, be amended or repealed by Act of the Assembly of that Province.

[4] Per Justice Munib Akhtar.

APM Act, is misplaced. Even where that Article is invoked, Federal law prevails over Provincial law only if the latter is repugnant to the former.

15. But even as Provincial laws, learned counsel for the Petitioner made no attempt to draw a conflict between the Seed Act and the APM Act. The Seed Act also does not contain a *non-obstante* clause to argue that it overrides the APM Act.

16. To quote the Supreme Court in *Mirpurkhas Sugar Mills Limited v. Government of Sindh* (1993 SCMR 920): "Scheme of the APM Act 1939 shows very clearly that it has been enacted for better regulation for purchase and sale of agricultural produce and establishment of markets for that purpose mainly to give protection to the growers from unscrupulous businessmen and to afford facilities to them so that they can obtain a fair price for their produce". On the other hand, the object of the Seed Act, as per its preamble, is "to provide for controlling and regulating the quality of seeds of various varieties of crops". Therefore, even if the sale and purchase of certain 'seeds' is an activity that is dealt under both Acts, the object of both statutes is entirely separate and distinct. Resultantly, the fact that the Petitioner is registered to do seed business under the Seed Act, cannot be construed to exempt it from the provisions of the APM Act.

17. For the foregoing reasons, the petition is dismissed.

JUDGE

JUDGE

*PS/SADAM