

A THE STATE OF MAHARASHTRA AND OTHERS

v.

MAHARASHTRA HYBRID SEEDS CO. PVT. LTD.

(Civil Appeal No.6564 of 2019)

B AUGUST 22, 2019

[R. BANUMATHI AND A.S. BOPANNA, JJ.]

- Seeds Act, 1966 – Seeds Rules, 1968 – Seeds (Control) Order, 1983 – Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of sale price) Act, 2009 – Respondent-Company was processing cotton and non-cotton seeds of different varieties in its unit – According to respondent, all such processed seeds were stored in the storage/godown attached to the processing unit for transportation to different places – Case of the appellant was that the respondent not having a valid licence for storage or sale of seeds in the said processing unit had committed gross violation of the law – Consequent to which the seed inspector had sealed the godowns of the respondent-company – Writ petition was filed by the respondent – High Court ordered to de-seal all the godowns of the respondent Company and held that the packed and labelled seeds were kept in the unit only for further transportation and no separate licence was required to be obtained for storage of seeds in the godown attached to unit for such transportation – Further, High Court held that the power of sealing was not available to the appellant-authorities – On appeal, held: During the inspection of the unit, it was found that packaging and labelling machines were kept and respondent was carrying out the operations of “packaging and labelling” in the said unit – As per r. 2(j) of seeds Rules, 1968, “processing” does not include operations such as “packaging” and “labelling” – For any activity of labelling and packaging of the seeds and storing the same, the respondent was required to obtain separate licence under the Seeds Rules, 1968 and the Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Rules, 2010 – Admittedly, respondent had no licence for its godown either as “storage of seeds” or “sale of seeds” – In the absence of such, the activity of labelling and packaging of seeds at godown was illegal*

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– Insofar as power of sealing of the appellant authorities are concerned, s.14(1)(e) of the Seeds Act confers vide powers upon the seed inspector – Since the seed inspector has to ensure that the provisions of the Act are complied by the person who has obtained the licence, in case of non-compliance, in rare and exceptional cases, the seed inspector has power to seal the premises – However, in such a case he has to record grounds for his belief that how mere search and seizure may not be sufficient to prevent further contraventions – In the facts and circumstances of the case, the action of the seed inspector and the authorities cannot be said to be arbitrary – Therefore, judgment of the High Court set aside.

Allowing the appeal, the Court

HELD: 1. Respondent has obtained licence only under the Factories Act for its unit. Admittedly, the respondent does not have licence in Form ‘B’ of Seeds (Control) Order, 1983 to carry on the business of “dealer in seeds”. The only activity legally permissible to be conducted by the respondent at its processing plant is “processing of seed”. During inspection, it was noticed that packaging and labelling machines were kept and respondent was carrying out the operations of “packaging and labelling” in the unit. For any activity of labelling and packaging of the seeds and storing the same, the respondent is required to obtain separate licence under the Seeds Rules, 1968 and the Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Rules, 2010. In the absence of such licence, the activity of labelling and packaging qua the seeds and the cotton seeds carried out at its godown attached with unit by the respondent is illegal. [Para 24] [939-A-C]

2. From the search of the godown and also from the statement of the authorized signatory of the respondent, it was found that the respondent was not only carrying out the activity of seed processing in godown; but also carrying on operations of “packing” and “labelling” etc. As per Rule 2(j) of Seeds Rules, 1968, “processing” does not include operations such as “packaging” and “labelling”. The activities of the respondent like packaging, pricing and labelling of various seeds in plant therefore cannot be said to be falling within the meaning of

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- A “processing” under Rule 2(j) of the Seeds Rules, 1968. The High Court erred in brushing aside the materials produced before the High Court and the huge quantity of seeds of various kinds found to have been stocked in random stake in various godowns of the unit. When the authorised signatory present in the plant is said to have submitted the signed document dated 10.12.2017 stating that packed seeds stocked at the unit were ready for dispatch and the seeds are packed for sale, the High Court, erred in saying that the seeds packed and labelled are meant for transportation for which no licence was required. [Para 25] [939-D-F]
- B 3. By a conjoint reading of Sections 14 and 15 of the Seeds Act and Rule 23 of the Seeds Rules, 1968 and various other provisions, it is clear that the Seed Inspector is conferred with wide powers coupled with duties. In terms of Section 14(1)(c) of the Seeds Act, 1966, Clause 13(d) of the Seeds (Control) Order, 1983 and Section 7(2) of the Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act, 2009, the Seed Inspector is empowered to enter and search any premises, draw samples, seize or detain the stock of the seeds in respect of which he has reason to believe that a contravention of the provisions of the Act has been committed or is being committed. Under Rule 23 of the Seeds Rules, 1968, Seed Inspector can issue and stop sale order in case the seed in question contravenes the provision of the relevant Act and Rules (Form III). The Seed Inspector is empowered to enter and search any premises or break-open the door or any container, to examine any records, register, documents of the seed dealer and also to seize the seeds stock(s) and/or records.[Para 32] [943-A-C]
- C 4. There is, of course, no express provision empowering the Seed Inspector to seal any place, where there is contravention of the provisions of the Act. But, such power to seal the place is deemed to be vested with the Seed Inspector in terms of Section 14(1)(e) of the Seeds Act which empowers the Seed Inspector *to exercise such other powers as may be necessary for carrying out the purposes of the Act or any rule made thereunder*. The provisions of Seeds Act, 1966 and Seeds Rules, 1968 provide for various safeguards that the Seed Inspector does not exceed his authority. [Para 33] [943-D-E, G]
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5. The Seed Inspector must be satisfied or has reason to believe that an offence under the Act has been committed or is being committed and that exercise of such power of sealing is necessary for carrying out the purposes of the Act or the rules made thereunder. Since the exercise of power to seal in exceptional circumstances is only to carry out the purposes of the Act or the rules made thereunder, it is necessary that before the Seed Inspector proceeds to take action of sealing the premises, he has to record grounds for his belief as to how and in what manner the provisions of the Seeds Act and the rules made thereunder have been contravened and how mere search and seizure may not be sufficient to prevent further contravention. The grounds for his belief so recorded in writing has to be forthwith communicated to the Magistrate in terms of Section 15(5) of the Seeds Act, 1966 and also to their immediate official superior. This would ensure that the Seed Inspector does not exceed his authority or that power to seal is not misused. [Para 35] [944-E-G]

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6. In the present case, since the respondent was found to have stocked genetically modified seed of RRF Hybrid Cotton which may include transgenic varieties, for which the approval of Genetical Engineering Approval Committee is required, is also not submitted by the respondent. In that view, the authorities searched and inspected the godown but the seed material lying there in a voluminous stock was not appropriately segregated/staked and also the information was not furnished to inspection team by plant in-charge. Despite constant follow-up in writing and through oral instructions, the plant in-charge did not provide stock position of seeds as expected by the Seed Inspector and also not submitted the certified copy of licence having permission to stock the seeds at godown. The respondent's godown was sealed by 07:00 pm on 15.12.2017 after giving sufficient opportunity. In such facts and circumstances of the case, the action of the Seed Inspector and the authorities in sealing the plant cannot be said arbitrary. [Para 36] [944-H; 945-A-C]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6564 of 2019

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A From the Judgment and Order dated 21.02.2018 of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Writ Petition No.8157 of 2017

Nishant Ramakantrao Katneshwarkar, Anoop Kandari, Advs. for the Appellants.

B V. Giri, Sr. Adv., Prashant P., Ms. Suveni Bhagat, Ms. Shivi Sethi, Abhay Kumar, Advs. for the Respondents.

The Judgment of the Court was delivered by

R. BANUMATHI, J.

C 1. Leave granted.

2. This appeal is preferred against the judgment dated 21.02.2018 passed by the High Court of Judicature at Bombay, Nagpur Bench in Writ Petition No.8157 of 2017 in and by which the High Court has allowed the writ petition filed by the respondent-Company thereby ordering the

D appellant-authorities to de-seal all the godowns of the Company at Dhanora which was sealed by the appellant-authorities.

3. Brief facts which led to filing of this appeal are as follows:-

E Respondent-Company is a registered Company under the Companies Act and is engaged in the business of research, production, processing, marketing and sale of variety of Hybrid seeds. According to the respondent-Company, they have already obtained seeds licences under the provision of the Seeds (Control) Order, 1983 and the Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Rules, 2010 and that they are having licence for the storage

F and sale of such seeds in the State of Maharashtra. According to the respondent, the processing of cotton and non-cotton seeds of different varieties is done by the respondent in its processing unit/plant situated at Dhanora. All such processed seeds are then stored in the storage attached to the processing unit at the godown at Dhanora for being transported to different places.

G 4. Case of the appellant is that the respondent not having a valid licence for the processing unit at Dhanora has committed gross violation of the provisions of the mandate of the Seeds Act, 1966, Seeds Rules, 1968, Seeds (Control) Order, 1983 and the provisions of the Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of

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Sale Price) Act, 2009. On 08.12.2017, local police inspected the godown of the respondent located at Dhanora and noticed suspected seeds of various kinds stocked and the police informed the concerned authorities of the agricultural department. On 09.12.2017, the Seed Inspector inspected the respondent's godown at Dhanora and noticed huge quantity of seeds of various kinds stocked in random stakes in various godowns along with seeds suspected as Roundup Ready Flex (RRF) Hybrid Cotton. The Plant In-Charge was informed to furnish the Seed Inspector the information about crop wise, variety wise and lot wise stock details of the seeds along with stake details in various godowns. It is stated that on 10.12.2017, Plant In-Charge submitted the details of crop wise, variety wise and lot wise quantity out of the total stock of seeds in the godown. According to the appellant, the details so furnished were incomplete and indeterminate. The appellant alleges that the Plant In-Charge did not cooperate towards the written instruction of the Seed Inspector on the same day. The Seed Inspector therefore issued a notice to the respondent-Company on 15.12.2017 informing the Plant Manager that the appellant Company does not have the licence for storage or sale of the seeds in Dhanora unit and that it has come to their knowledge that the activity of sale is being carried out by respondent in their godown at Dhanora. In the show-cause notice, the respondent was asked to provide certain documents and informed that in case of non-supply of the documents, the godown and the entire premises at Dhanora would be sealed. The appellants claim that respondent did not produce the documents and accordingly, the godown was sealed by executing a panchnama to prevent further violation of the provisions.

5. Aggrieved by the sealing of the Dhanora godown, respondent filed Writ Petition No.8157 of 2017 before the High Court of Judicature at Bombay, Nagpur Bench. The High Court vide interim order dated 22.12.2017 directed the appellant-authorities to open the sealed godown after taking a *prima facie* view and held that since the requisite sample of the seeds has already been taken and no purpose would be served in keeping the storage sealed. The High Court held that packed and labelled seeds were kept in Dhanora unit only for further transportation and no separate licence was required to be obtained for storage of seeds in the godown attached to respondent's processing unit at Dhanora for such transportation. The High Court further held that the power of sealing was not available to the appellant-authorities, especially to seal

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- A the storage and keep it sealed indefinitely or till the report of the samples is received from the laboratory. Being aggrieved, the appellant-State of Maharashtra has preferred this appeal.

6. Learned counsel for the appellants Mr. Katneshwarkar submitted that no licence was obtained by the respondent-Company “for storage of seeds” in the godown attached to the processing unit at Dhanora under the Seeds (Control) Order, 1983 or in Form ‘B’ under Rule 5 of the Maharashtra Cotton seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Rules, 2010. It was urged that the respondent has been operating seed processing plant at Dhanora and without obtaining a valid licence for the sale, the seeds were stored in godown attached to it for sale and the respondent has thus committed violation of the provisions of the Seeds Act, 1966 and the Seeds (Control) Order, 1983. It was submitted that the manner of packing and labelling which contains details of lot number, germination, percentage, purity, MRP, etc. which is prescribed in Rules 7, 8 and 9 of the Seeds Rules, 1968 indicate that the seeds were packed for Sale and not for transportation as claimed by the respondent-Company. Learned counsel contended that the High Court erred in making a distinction between “storage for sale” and “storage for transportation” and in holding that Company does not need any licence for transportation of the seeds from the processing unit at Dhanora. The learned counsel urged that respondent was given permission by the competent authority to undertake the field trial for ‘Ballgard II x RRF Cotton Hybrid’ (a prohibited seed) in the year 2010 only for a period of three years; but the respondent had been storing such seeds illegally even after expiry of three years’ time period without applying for any extension in the provided time period. It was urged that in exercise of powers under Section 14(1)(e) of the Seeds Act, 1966, competent authority has full authority to seal the godown for violation of the provisions of the Seeds Act, 1966 and to keep it sealed till the report of the samples is received from the laboratory for testing.

7. Refuting the above contentions, Mr. V. Giri, learned senior counsel appearing for the respondent-Company inter-alia submitted that the respondent has already obtained seed licences under the provisions of the Seeds (Control) Order, 1983 and the Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Rules, 2010. It was submitted that no separate licence is required to be obtained for processing the cotton and non-cotton seeds at Dhanora unit and H

those processed seeds are stored in the godown attached to the processing unit only for the purpose of transporting it to different sale points or storages meant for putting the seed in the network of marketing. The learned senior counsel contended that the power of seizure and sealing of the godown was not available to the Seed Inspector under Section 14 of the Seeds Act, 1966 as claimed by the appellant authorities and the High Court rightly directed desealing of the godown attached to the processing unit at Dhanora and the impugned order warrants no interference.

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8. We have carefully considered the submission of both the counsel and perused the impugned judgment and the relevant provisions and other materials on record. The following points arise for consideration in this appeal:-

- (i) Whether the High Court was right in saying that the packed seeds kept in Dhanora unit were only meant for transportation and no separate licence was required for such storage for transportation?
- (ii) Whether the High Court was right in saying that the power of seizure and sealing the godown is not available to the Seed Inspector?

9. Seed is the basic input for the farmer for successful agricultural production. Therefore, it is essential to maintain the purity and quality of the seed through various stages of seed production till the stage of sale. The Government of India had brought out different legislations to protect the quality of seeds namely the Seeds Act, 1966, Seeds Rules, 1968, Seed (Control) Order, 1983 and other policies. In order to ensure supply, distribution and sale of cotton seeds, the State of Maharashtra has also enacted Maharashtra Cotton Seeds (Regulation of Supply and Fixation of Sale Prices) Act, 2009 and the rules framed thereunder. The provisions of Maharashtra Cotton Seeds Act, 2009 are in *pari materia* with the Seeds Act, 1966.

10. The Preamble of the Seeds Act, 1966, provides “*An Act to provide for regulating the quality of certain seeds for sale, and for matters connected therewith*”. The Statement of Objects and Reasons explains the methodology for achieving the said objective of regulating the quality of seeds as under:-

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- A "The methods by which the Bill seeks to achieve the object are:-
- (a) constitution of a Central Committee consisting of representatives of the Central Government and the State Government, the National Seeds Corporation and other interests, to advise those Governments on all matters arising out of the proposed Legislation;
 - (b) fixing minimum standards of germination, purity and other quality factors;
 - (c) testing seeds for quality factors at the seed testing laboratories to be established by the Central Government and the State Government;
 - (d) creating of seed inspection and certification service in each State and grant of licences and certificates to dealers in seeds;
 - (e) compulsory labelling of seed containers to indicate the quality of seeds offered for sale; and
 - (f) restricting the export, import and inter-State movement of non-descript seeds."
11. The business of selling, keeping for sale, offering to sell, bartering or otherwise supplying any seed of any notified kind or variety other than cotton seeds is regulated by Section 7 of the Seeds Act, 1966 and it is controlled by the Seeds (Control) Order, 1983. As per Section 7 of the Seeds Act, 1966, 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 such seed conforms to the requirements as may be prescribed under Section 7(a) to 7(d) of the Seeds Act, 1966.
12. Sections 12 and 13 of the Seeds Act enables the State Government to appoint persons as Seed Analysts and Seed Inspectors. The State Governments including the Government of Maharashtra through their functionaries of agricultural department exercises its power to have an effective control over the quality and quantity aspects of the agricultural inputs. In the State of Maharashtra, various officers working at state level, district level, sub-division level and taluka level are by
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virtue of their post have been notified as the Seed Inspectors in terms of Section 13 of the Seeds Act, 1966. These Seed Inspectors perform their duties as Quality Control Inspectors and also exercise powers to regulate the sale, export, import and storage of the seeds relating to the respective provisions of the Seeds Act, 1966, Seeds Rules, 1968, Seeds (Control) Order, 1983 and the provisions of the Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Rules, 2010 etc.

13. Section 14 of the Seeds Act provides for the powers of Seed Inspector and Section 15 of the Seeds Act provides for the procedure to be followed by the Seed Inspectors in taking samples. As per the provision under Section 14(1)(c) of the Seeds Act, 1966, the Seed Inspectors are empowered to search or inspect the premises any time, where the Seed Inspectors have reason to believe that such offence has been committed. As per Section 14(1)(d) of the Seeds Act, the Seed Inspector may examine any record, register, document or any other material object found in any place and if he has reason to believe that the record, register, etc., may furnish evidence of the commission of an offence punishable under the Act, he may issue a seizure order in Form IV of the Seeds Rules, 1968 and seize the records. As per Section 14(1)(e) of the Seeds Act, 1966, the Seed Inspector can exercise such other powers as may be necessary for carrying out the purposes of this Act or any rule made thereunder. Section 14(1)(c), (d) and (e) of the Seeds Act, 1966 reads as under:-

Powers of Seed Inspector

14(1). The Seed Inspector may:-

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(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;

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- A (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
B (e) exercise such other powers as may be necessary for carrying out the purposes of this Act or any rule made thereunder.

14. As per Section 14(5) of the Seeds Act, 1966 the provisions of the Code of Criminal Procedure 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.

- C 15. Section 15 of the Seeds Act stipulates the duties of the Seed Inspector. As per Section 15(1) of the Seeds Act, whenever an Inspector intends to take sample of any seed of any notified kind or variety for analysis, he shall give notice of such intention in writing in Form IV of the Seeds Rules, 1968 to the person from whose seed lots he intends to take samples. He shall, as far as possible, call not less than two persons to be present at the time when he draws sample(s) and take their signatures in Form VIII of the Seeds Rules, 1968. In terms of Section 15(2) of the Seeds Act, 1966, the Seed Inspector shall divide the representative sample drawn, into three equal and identical parts and (a) deliver one sample to the person from whom it has been taken; (b) send another sample in the prescribed manner for analysis to the Seed Analysts 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 of Seeds Act, 1966, as the case may be. Section 15(5) of the Seeds Act provides for the safeguards regarding the seizure of the stock, record, register, etc. and after seizure of such record, register and other documents, he shall as soon as may be, inform the Magistrate and take his orders as to the custody thereof.
- G 16. Rule 23 of Seeds Rules, 1968 provides for the "*duties of a Seed Inspector*" in addition to the duties specified by the Seeds Act. As per Rule 23(a) of the Seeds Rules, the Seed Inspector shall inspect as frequently as may be required by certification agency all places used for growing storage or sale of any seed of any notified kind or variety.

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As per Rule 23(e) of the Seeds Rules, the Seed Inspector shall maintain a record of all inspections made and action taken by him in the performance of his duties including the taking of samples and the seizure of stocks and submit copies of such record to the Director of Agriculture or the certification agency as may be directed in this behalf. Rule 23(g) of the Seeds Rules enables the institution of the prosecutions in respect of any breaches of the Act or the Rules.

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Seeds (Control) Order, 1983

17. The inclusion of seeds as an essential commodity item under the Essential Commodities Act, 1955 has brought the Seeds (Control) Order. In terms of the Seeds (Control) Order, 1983, a person carrying on the business of selling, exporting and importing of seeds needs to obtain a licence. The licence provided to a seed dealer remains valid only for three years from the date of its issue which can be later renewed. The seed dealer has to display the stock position (opening and closing) on daily basis along with the list indicating prices or rates of different seeds.

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18. As per Clause 2(c) of the Seeds (Control) Order, 1983, “*Dealer*” means a person carrying on the business of selling, exporting or importing seeds, and includes an agent of a dealer.” As per Clause 3 of the Seeds (Control) Order, 1983, no person can 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 to him in Form ‘B’ under Clause 5 of the said order. As per Clause 4 of the Seeds (Control) Order, 1983, “*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 licensing authority.*” Clause 5 of the Seeds (Control) Order, 1983 states that “*The licensing authority may, after making such enquiry as it thinks fit, grant a licence in Form ‘B’ to any person who applies for it under clause 4.....* When the licensing authority refuses to grant licence to a person who applies for it under clause, he shall record his reasons for doing so.” Licence to carry on the business of a dealer in seeds is granted as per Form ‘B’ of the Seeds (Control) Order, 1983 which reads as under:-

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FORM 'B'

(See clause 5)

LICENCE TO CARRY ON THE BUSINESS OF A DEALER IN SEEDS

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Licence No. _____ Date:

Subject to the provisions of the Seeds (Control) Order, 1983 and to the terms and conditions of this Licence Shri/M/s _____ is hereby granted licence to sell, export, import and store for the said purposes of seeds.

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2. The licensee shall carry on the aforesaid business at _____ (**Place for storage and place for sale**)

(Tehsil or District)_____

Date: _____

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Seal:

Licensing Authority

State of _____

Terms and conditions of licence

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- (i) The licence shall be displayed at a prominent and conspicuous place in a part of the business premises open to the public.
- (ii) The holder of the licence shall comply with the provisions of the Seeds (Control) Order, 1983 and the notifications issued thereunder and for the time being in force.

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- (iii) This licence comes into force with immediate effect and shall be valid upto _____ unless previously cancelled or suspended.

- (iv) The holder of the licence shall from time to time report to the licensing authority any change in the premises where he carries on his business of sale, export, import or storage for the said purposes of seeds.

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- (v) **The licensee shall give every facility to the licensing authority or any other officer acting under his Authority for the purpose of inspecting his stock in any shop,**

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depot or godown or other place/places used by him for the purpose of storage, sale or export of seeds. [emphasis added] A

19. By combined reading of the above provisions of the Seeds (Control) Order, 1983 and Form 'B', it is clear that for obtaining licence, the applicant has to furnish "*place for storage*" and "*place for sale*". The dealer's licence is obtained in Form 'A'. Note 1 of Form 'A' states that "*where the business of selling/exporting/importing seeds is intended to be carried on at more than one place, a separate licence should be obtained for each such place.*" The object of the licences and such requirements to carry on the business of "*sale of seeds*" and "*storage of seeds*" at specific places as mentioned in the licence is that the locations of sale and storage of seeds be known to the Seed Inspector and be subject to the inspection and operation of the related laws. B

20. In terms of the Seeds (Control) Order, 1983, the respondent is having "*licence for sale*" at three places namely:—(i) Plot No.301, Chinar Heights, Pune, Maharashtra; (ii) Akola Z.P. Primary Teachers Cooperative Credit Society Building, Akola; and (iii) B4, Industrial Estate, Taluka Jalna, Maharashtra. The respondent also has licences for storage in three places namely:—(i) B4, Industrial Estate, Taluka Jalna, Maharashtra; (ii) Survey No.164 3c 2b 4b 1c 4, Taluka Haveli, Pune, Maharashtra; and (iii) C/o M/s Ambar Corporation Plot No.TA81, Godown No.2,3,4 Mide, Taluka Akola, Maharashtra. The respondent is obligated to conduct business of "*sale of seeds*" and "*storage of seeds*" **only at the places as mentioned in the licence so that the locations of sale and storage as mentioned in the licence obtained by the respondent is subject to the operation of the related laws.** C

21. Admittedly, the respondent has no licence for its godown at Dhanora either as "*storage of seeds*" or "*sale of seeds*". Case of the respondent is that Dhanora plant is only a processing unit where they are carrying on only processing of seeds and the seeds are stored only for the purpose of processing the seeds and there is no requirement under the Seeds Act, 1966 and the Seeds (Control) Order, 1983 for obtaining the licence. The word "**processing**" is explained in Rule 2(j) of the Seeds Rules, 1968 which reads as under:- F

"2. Definitions: -

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- A j. “**Processing**” means cleaning, drying, treating, grading and other operations which would change the purity and germination of the seed and thus requiring re-testing to determine the quality of the seed, **but does not include operations such as packaging and labelling.**”
- B 22. According to the appellants, when the initial inspection was conducted by the Seed Inspector in the godown of the respondent situated at Dhanora, huge quantity of seeds of various kinds were stocked in random stakes in various godowns. Roundup Ready Flex (RRF) Hybrid Cotton seeds were also found stocked in various godowns. It is stated that the quantity and kinds of specific seed/variety could not be assessed and categorized easily to undertake the seed sampling for quality analysis and hence, the plant in-charge was immediately informed to furnish the information about crop wise, variety wise and lot wise stock details of the seeds along with the stock details in various godowns. Case of the appellants is that the plant in-charge did not cooperate towards the written instructions of the Seed Inspector on the same day. It is stated that on 10.12.2017, the plant in-charge submitted details of crop wise, lot wise and variety wise quantity out of the total stock of seeds in godown; but the same was not godown wise and stake wise which according to the appellants was incomplete and indeterminate to the Seed Inspector to proceed further. According to the appellants on 15.12.2017, a warning letter was issued towards sealing of the godown in the presence of the police. As seen from the counter filed before the High Court in the writ petition, these documents have been produced before the High Court as annexures.
- F 23. Case of the appellants is that, on search of respondent’s godown at Dhanora, it was found to have many lots of seeds were “**packed**” and “**labelled**” there. According to the appellants, at the time of inspection, photographs taken by appellant No.3 show that there were labelling and packaging machines installed by the respondent at its Dhanora processing plant and also the huge quantity of finished products packed and labelled were found stored. In the counter affidavit filed before the High Court, it is stated that the authorized signatory of the respondent present at Dhanora plant has submitted a signed document dated 10.12.2017 stating that the packed seeds stocked at Dhanora is ready for dispatch and standard seeds stock is available there to be packed for sale.
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24. Respondent has obtained licence only under the Factories Act for its Dhanora unit. Admittedly, the respondent does not have licence in Form ‘B’ of Seeds (Control) Order, 1983 to carry on the business of “**dealer in seeds**” in Dhanora. The only activity legally permissible to be conducted by the respondent at Dhanora processing plant is “**processing of seed**”. During inspection, it was noticed that packaging and labelling machines were kept and respondent was carrying out the operations of “packaging and labelling” in Dhanora unit. For any activity of labelling and packaging of the seeds and storing the same, the respondent is required to obtain separate licence under the Seeds Rules, 1968 and the Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Rules, 2010. In the absence of such licence, the activity of labelling and packaging qua the seeds and the cotton seeds carried out at Dhanora godown by the respondent is illegal.

25. From the search of the godown at Dhanora and also from the statement of the authorized signatory of the respondent, it was found that the respondent was not only carrying out the activity of seed processing at Dhanora godown; but also carrying on operations of “*packing*” and “*labelling*” etc. As per Rule 2(j) of Seeds Rules, 1968, “**processing**” does not include operations such as “**packaging**” and “**labelling**”. The activities of the respondent like packaging, pricing and labelling of various seeds at Dhanora plant therefore cannot be said to be falling within the meaning of “processing” under Rule 2(j) of the Seeds Rules, 1968. The High Court erred in brushing aside the materials produced before the High Court and the huge quantity of seeds of various kinds found to have been stocked in random stake in various godowns of Dhanora unit. When the authorised signatory present in the Dhanora plant is said to have submitted the signed document dated 10.12.2017 stating that packed seeds stocked at the unit were ready for dispatch and the seeds are packed for sale, the High Court, in our view, erred in saying that the seeds packed and labelled are meant for transportation for which no licence was required.

26. As pointed out earlier, as per Rule 2(j) of the Seeds Rules, 1968, “processing” does not include operations such as packaging and labelling and this significant aspect was not kept in view by the High Court. As the respondent claims that Dhanora plant is only a processing unit, the respondent cannot carry on the activities of packaging, selling,

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- A pricing, labelling of various seeds under pretext of processing. Unless the licence is obtained for the Dhanora unit where huge quantity of seeds was found stocked, it cannot be subject to inspection with respect to related laws. Appellants-authorities rightly observed that the respondent has contravened the provisions of clause 3 of the Seeds (Control) Order, 1983 and Section 11 of the Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act, 2009 and Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Rules, 2010. The High Court erred in drawing the distinction between "**storage for sale**" and "**storage for transportation**" and holding that no licence was required for transportation of packed seeds.

- 27. Let us make a brief reference to the Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act, 2009 which is in *pari materia* of Seeds Act, 1966 insofar as the cotton seeds. Section 5 of the Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act, 2009 deals with grant of licence for cotton seeds. Every person, who has obtained licence under Section 11 of the Maharashtra Cotton Seed Act, 2009, shall sell cotton seeds in accordance with the requirement of the Maharashtra Cotton Seed Rules, 2010. As per Section 12(1) of Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act, 2009, no person shall sell or keep in his possession for sale any cotton seed which is misbranded. Section 7(2) of the Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act, 2009 provides for the entry, search any premises and draw samples, detain or seize the stock of seeds, if he has reason to believe that any person dealing in trade of cotton seed has contravened any of the directions issued by the Controller or that the quality of the cotton seed supplied by such person is of suspicion nature or that any person is about to commit an offence in respect of cotton seed. The proforma Form 'A' specified under Rule 4 of the Maharashtra Cotton Seed Rules, 2010 requires to specifically mention the place of business as place of sale and place of storage. Form 'B' specified under Rule 5 of the Maharashtra Cotton Seed Rules, 2010 consist of specific terms and condition Nos.3 and 4 mandates the licence holder to inform the controller any change in the place where he is carrying on the business of sale or storage of cotton seed.

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28. Case of the appellants is that the respondent has violated Section 12(2)(g) of Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act, 2009 by keeping in their possession the cotton seeds for sale which is misbranded. According to the appellants, reliable information was received that the genetically modified seed material of Roundup Ready Flex (BGII RR Flex) Cotton Hybrid are available at respondent's godown at Dhanora which requires the registration of Genetical Engineering Approval Committee (GEAC). It is in this context, the search was conducted in the respondent's premises on the basis of verified information and inspection was undertaken. Respondent stocked genetically modified seed of RRF Hybrid Cotton for which the approval of Genetical Engineering Approval Committee (GEAC) is required. According to the appellants, the respondent did not submit the valid subsisting permission granted to them by GEAC for the stock of "Roundup Ready Flex (BGII RR Flex) Cotton Hybrid" kept at Dhanora godown. The respondent has produced the document dated 24.06.2010 stating that the respondent has got the permission from GEAC to undertake confined BRL II field trial of "Bollgard II × Roundup Ready Flex (BGII RR Flex) Cotton Hybrid"; the said permission granted by GEAC was only for a period of three years. The respondent has not produced the permission granted by GEAC beyond 2013. As per the guidelines issued by GEAC in this regard towards conducting confined field trials of regulated genetically engineered (GE) plant, GE materials should have been burnt or specific permission from GEAC is required to keep it with them. The permission obtained by the respondent in the year 2010 to undertake field trial of "Bollgard II × Roundup Ready Flex (BGII RR Flex) Cotton Hybrid" cannot be treated as a permission to retain GE material even after the evaluation by GEAC was terminated.

29. The respondent has only obtained the licence under the Factories Act. For labelling and packaging of cotton seeds, the respondent was required to have a separate licence granted under Section 11 of the Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act, 2009 and Rule 4 of the Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Rules, 2010. Without such licence, the activity of labelling and packaging carried out at Dhanora godown by the respondent was illegal. This was all the more so, when the respondent stocked RRF Cotton Hybrid. The High Court erred in brushing aside the material brought before the High

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- A Court as to the alleged storing of “Roundup Ready Flex (BGII RR Flex) Cotton Hybrid” at Dhanora godown.

30. The High Court held that under Section 14 of the Seeds Act, power of sealing was not available to the appellants to seal the storage of seeds at Dhanora and such action on the part of the appellants is in

- B breach of the procedure prescribed under Section 15 of the Seeds Act. The High Court further held that if on examination, the report of the analysts disclose “misbranding”, the penalty can be imposed or the offences can be registered for that purpose as provided under the provisions of the Seeds Act but there is no power vested in the appellants to seal the godown and to continue to keep it sealed indefinitely or till the C report of the samples is received from the laboratory. The correctness of the findings of the High Court that the Seed Inspector does not have the power to seal the godown till the report of the samples is received from the laboratory, has to be examined in the light of the various provisions of the Seeds Act, 1966, Seeds Rules, 1968, Seeds (Control) D Order, 1983, Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act, 2009 and the Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Rules, 2010.

31. As discussed earlier, Section 14(1)(c) of the Seeds Act E empowers the Seed Inspector to enter and search any place in which he has reason to believe that an offence under the Act has been or is being committed. Section 14(1)(e) of the Seeds Act empowers the Seed Inspector to exercise such powers as may be necessary for carrying out the purpose of the Act or any rule made thereunder. Clause 13(d) of the Seeds (Control) Order, 1983 also provides that the Seed Inspector may F seize or detain any seed in respect of which he has reason to believe that a contravention of the Order has been committed or is being committed. As per Section 14(3) of the Seeds Act, the power conferred upon the Seed Inspector includes power to break-open any premises where any seed of the notified kind or variety may be kept for sale in G case, the owner or any person in occupation of the premises, in spite of being present, refuses to open the door even upon the request made by the Inspector and also to break-open any container in which any seed of any notified kind or variety may be contained. As per Section 15(5) of the Seeds Act, 1966, when Seed Inspector seizes any record, register, documents or any other material, he should inform the Magistrate and H take his order for which he can use Form IV.

32. By a conjoint reading of Sections 14 and 15 of the Seeds Act and Rule 23 of the Seeds Rules, 1968 and various other provisions, it is clear that the Seed Inspector is conferred with wide powers coupled with duties. In terms of Section 14(1)(c) of the Seeds Act, 1966, Clause 13(d) of the Seeds (Control) Order, 1983 and Section 7(2) of the Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act, 2009, the Seed Inspector is empowered to enter and search any premises, draw samples, seize or detain the stock of the seeds in respect of which he has reason to believe that a contravention of the provisions of the Act has been committed or is being committed. Under Rule 23 of the Seeds Rules, 1968, Seed Inspector can issue and stop sale order in case the seed in question contravenes the provision of the relevant Act and Rules (Form III). The Seed Inspector is empowered to enter and search any premises or break-open the door or any container, to examine any records, register, documents of the seed dealer and also to seize the seeds stock(s) and/or records.

33. There is, of course, no express provision empowering the Seed Inspector to seal any place, where there is contravention of the provisions of the Act. But Section 14(1)(e) of the Seeds Act confers wide powers upon Seed Inspector to "*exercise such other powers as may be necessary for carrying out the purposes of the Seeds Act or any rule made thereunder*". Rule 13 of the Seeds Rules provides for the requirements to be complied with by a person carrying on the business as referred to under Section 7 of the Seeds Act. Since the Seed Inspector is to ensure that the person who obtained licence is carrying on business in accordance with the provisions of the Act, in case of non-compliance with the provisions of the Seeds Act and the Seeds Rules, in rare and exceptional cases, the Seed Inspector has power to seal the premises where the exigencies of the situation require such sealing to carry out the purposes of the Seeds Act or the Seeds Rules thereunder. Such power to seal the place is deemed to be vested with the Seed Inspector in terms of Section 14(1)(e) of the Seeds Act which empowers the Seed Inspector *to exercise such other powers as may be necessary for carrying out the purposes of the Act or any rule made thereunder*. The provisions of Seeds Act, 1966 and Seeds Rules, 1968 provide for various safeguards that the Seed Inspector does not exceed his authority. In view of various safeguards provided under the Seeds Act, 1966 and other provisions in case the Seed Inspector proceeds to exercise his powers for sealing the godown, it is necessary to ensure necessary

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- A safeguards so that the Seed Inspector does not exceed his authority or misuse his power.

34. The *sine qua non* of Section 14(1)(c) of the Seeds Act - "to enter and search in places at all reasonable times" is that the Seed Inspector must have "*reason to believe that an offence under the Seeds Act has been or is being committed*". The expression "*has reason to believe that an offence under the Seeds Act has been or is being committed....*" implies a belief arrived at after consideration of the available materials with the sense of responsibility. For entering and search of any place, the statute stipulates "*reason to believe that an offence under the Act has been or is being committed*", "*Reason to believe*" means that the belief must have been arrived at judicially after considering all the materials and on *prima-facie* satisfaction of the authority concerned. Section 26 of the Penal Code defines that "*a person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise.*" Since the "*sealing of premises*" is a drastic step, such power can be exercised only in rare and exceptional cases and only on satisfaction of the Seed Inspector that such power of sealing is necessary to carry out the purposes of the Seeds Act or the rules made thereunder.

35. The Seed Inspector must be satisfied or has reason to believe E that an offence under the Act has been committed or is being committed and that exercise of such power of sealing is necessary for carrying out the purposes of the Act or the rules made thereunder. Since the exercise of power to seal in exceptional circumstances is only to carry out the purposes of the Act or the rules made thereunder, it is necessary that before the Seed Inspector proceeds to take action of sealing the premises, F he has to record grounds for his belief as to how and in what manner the provisions of the Seeds Act and the rules made thereunder have been contravened and how mere search and seizure may not be sufficient to prevent further contravention. The grounds for his belief so recorded in writing has to be forthwith communicated to the Magistrate in terms of G Section 15(5) of the Seeds Act, 1966 and also to their immediate official superior. This would ensure that the Seed Inspector does not exceed his authority or that power to seal is not misused.

36. In the present case, since the respondent was found to have stocked genetically modified seed of RRF Hybrid Cotton which may include transgenic varieties, for which the approval of Genetical H

Engineering Approval Committee is required, is also not submitted by the respondent. In that view, the authorities searched and inspected the godown but the seed material lying there in a voluminous stock was not appropriately segregated/staked and also the information was not furnished to inspection team by plant in-charge. Despite constant follow-up in writing and through oral instructions, the plant in-charge did not provide stock position of seeds as expected by the Seed Inspector and also not submitted the certified copy of licence having permission to stock the seeds at godown located at Dhanora. The respondent's godown was sealed by 07:00 pm on 15.12.2017 after giving sufficient opportunity. In such facts and circumstances of the case, the action of the Seed Inspector and the authorities in sealing the plant at Dhanora cannot be said arbitrary.

37. The finding of the High Court that seeds were stored in Dhanora unit and no licence was required for storage of seeds for transportation is set aside. The finding of the High Court that the Seed Inspector does not have the power to seal the godown and seizure is not in consonance with the provisions of the Seeds Act, 1966, Seeds Rules, 1968 and Seed (Control) Order, 1983 and the same is liable to be set aside. In compliance of the order of the High Court dated 22.12.2017, the authorities have already desealed the Dhanora unit of the first respondent and no further direction is necessary in this regard.

38. In the result, the impugned judgment of the High Court is set aside and the appeal is allowed.

Ankit Gyan

Appeal allowed.