A KRISHI UTPADAN MANDI SAMITI AND ORS.

v.

PILLIBHIT PANTNAGAR BEEJ LTD. AND ANR.

NOVEMBER 28, 2003

B [V.N. KHARE, CJ. AND S.B. SINHA AND DR. AR. LAKSHMANAN, JJ.]

U.P. Krishi Utpadan Mandi Adhiniyam, 1964; Sections 2(a), 2(y), 11, 17(iii)—Seeds Act, 1966; Section 2(11)—Seeds Rules, 1968; Rule 2 (e) -
C *Wheat and wheat seed - Respondents dealing in purchase and sale of certified seeds of wheat—Levy of Market Fee under the State Act—Competency of—Held, wheat and wheat seed are different—Hence, State is not competent to levy market fee since seeds of wheat is not a specified agricultural produce under the State Act—On harmonious reading of State Act and Central Act, respondents are not traders under the State Act—*
D *Essential Commodities Act, 1955; Section 3—Seeds Control Order, 1983—Food grains Movement Restriction (Exemption of Seeds) Orders, 1970.*

Respondents are engaged in business of buying, processing and selling of certified wheat seeds. The appellant-Market Committee
E **issued notices to the respondents for levying market fees under section 17 (iii) (b) of the U.P. Krishi Utpadan Mandi Adhiniyam, 1964 (U.P. Act) on the ground that the respondents are dealing in wheat, a specified 'agricultural produce' under section 2(a) of the U.P. Act. The respondents replied to the notices of the appellants that they are**
F **dealing with certified seeds of wheat and not wheat and hence are not liable to market fee under the U.P. Act. The appellants rejected the representations and passed an order demanding market fees under the U.P. Act. The respondents filed a Writ Petition before High Court for quashing the order of the appellants. The High Court allowed the writ petition and quashed the order of the appellants following the decision**
G **in** *State of Rajasthan* **v.** *Rajasthan Agriculture Input Dealers Association,* **AIR (1996) SC 2179.**

In appeal, the appellants contended that the market fee is levied under the U.P. Act on purchases of wheat by the respondents and not
H **on sale of certified seeds; that wheat is an agricultural produce notified**

under the heading 'cereal' chargeable to market fee under the U.P. Act; that cereal is a seed in itself; and that there is no difference between wheat and wheat seed. A

The respondents contended that they are dealing only in certified seeds of wheat and not in purchase or sale of wheat; that the breeder seeds of wheat are purchased from Agricultural Universities for processing them into certified seeds; that the seeds of wheat are not wheat; and that wherever seeds are intended to be notified, it has been specifically mentioned as seeds in the Schedule to the U.P. Act and since the seeds of wheat are not notified, it cannot be subjected to market fee under the U.P. Act. B C

Dismissing the appeal, the Court

Per AR. Lakshmanan, J (for himself and V.N. Khare, CJ):

HELD : 1.1. A perusal of the Schedule to the U.P. Krishi Utpadan Mandi Adhiniyam, 1964 (U.P. Act) shows that wherever seeds have been intended to be notified, it has been specifically mentioned as seeds. In case of wheat, the Schedule does not provide or notify seed of wheat and thus the seeds of wheat are not specified in the Schedule and thus not covered by the definition of 'agricultural produce'. The object of legislature was to notify only those seeds which are different from the produce itself. [360-G-H] D E

1.2 The ratio decidendi of the decision in *State of Rajasthan* v. *Rajasthan Agriculture Input Dealers Association* is squarely applicable where the appellants seek to give a wide connotation to the words in the Schedule. Giving a wide interpretation is not possible and since wheat seed is not included in the Schedule, the Market Committee is not allowed to levy market fee on its purchase. As the Market Committee plays no role in the trade of the respondents' seeds, it may not be allowed to levy the market fee. [364-F-G-H] F G

1.3. There is no nexus whether the seed has been chemically treated or not and the levy of market fees. Since the seed is a separate commodity from grain, the same is not covered under the Schedule of the U.P. Act and as such no market fee is leviable over the sale or H

A **purchase of the same. [366-C-D]**

1.4. The seeds are not specified agricultural produce under the provisions of the Act and therefore the business of purchase and sale of seeds under the supervision of Seed Certification agency established under the Act is not a business of sale and purchase of specified agricultural produce and as such the respondents are not required to pay the market fee or to take out a licence. Since the processing of wheat resulting in loss of its basic characteristics of being cereal, it cannot be subjected to levy as agricultural produce since the purchase by the respondent is for the purpose of growing seeds, no levy is permissible and therefore the market fee cannot be imposed on seeds which are unfit for human consumption. [366-D-G]

State of Rajasthan **v.** *Rajasthan Agriculture Input Dealers Association,* **AIR (1996) SC 2179, relied on.**

State of Rajasthan **v.** *Mangi Lal Pindwasl,* **[1996] 5 SCC 60, referred to.**

Per S. B. Sinha, J (supplementing)

1.1. The entire process beginning from procurement of seeds breeder, further production thereof as well as sale is governed under the Seeds Act, 1966 and the Rules framed thereunder. The U.P. Krishi Utpadan Mandi Adhiniyam, 1964 contains both penal and fiscal provisions. A 'trader' within the meaning of the U.P. Act would be a person who carries on business *inter alia* in the agricultural produce. Although the dictionary meaning of 'business' may be wide, but for the purpose of considering the same in the context of regulatory and penal statute, the same must be read as carrying on a commercial venture in the agricultural produce. The rule of strict construction should be applied in the instant case. The intention of the legislature in directing the trader to obtain licence is absolutely clear and unambiguous in so far as it seeks to regulate the trade for purchase and sale. Thus a person who is not buying an agricultural produce for the purpose of selling it, whether in the same form or in the transferred form, may not be a trader. The construction of a statute will depend upon the purport and object of the Act. The different provisions of the

statute which have the object of enforcing the provisions thereof namely levy of market fee, which was to be collected for the benefit of the producers is to be interpreted differently from a provision where it requires a person to obtain a licence so as to regulate a trade. In case of doubt in construction of a penal statute, the same should be construed in favour of the subject and against the State. The fiscal statute must not only be construed literally, but also strictly. If in terms of the provisions of a penal statute, a person becomes liable to follow the provisions thereof, it should be clear and unambiguous so as to let him know his legal obligations and liabilities thereunder.

[368-C-D; 369-F-G; 370-G-H; 371-A-C, E-F]

State of Andhra Pradesh **v.** *M/s Abdul Bashi & Bros,* **AIR (1965) SC 531 and** *Sri Krishna Coconut Co.* **v.** *East Godavari Coconut & Tobacco Market Committee,* **AIR (1967) SC 973, referred to.**

London & North Eastern Railway Company & Berrriman, **(1946) AC 278 and** *Tuck & Sons* **v.** *Priester,* **[1987] 19 QBD 629, referred to.**

1.2. The legal maxim "*Expressio unius (persone vel rei) est exclusio alterius***" is applicable in the instant case.**

M/s. Khemka & Co. (Agencies) Pvt. Ltd. Etc. **v.** *State of Maharashtra Etc.,* **[1975] 2 SCC 22, referred to.**

1.3. A conflict would arise in the event it is held that buying of seeds, which is a commodity governed by a Central Act (Seeds Act) would attract payment of market fee in terms of the State Act (U.P. Act). In ordinary parlance, at particular stages in which seeds are grown from breeder seeds may take the form of wheat but the said production which is bought by the respondents is also governed by the provisions of the Seeds Act and the Rules framed thereunder. The definition of 'seed', is of wide amplitude. It includes seedling of food crops. It is thus necessary to construe both the statutes harmoniously. Both the statutes must be given proper effect and allowed to work in their respective fields, Taking into consideration the totality of the situation and upon giving harmonious construction to both the Seeds Act and the U.P Act, the respondent cannot be said to be a trader of agricultural produce and hence no market fee can be demanded from it by the appellants. [371-H; 372-A-D]

1.4. 'Seed' is also an essential commodity within the meaning of the provisions of the Essential Commodities Act, 1955. If a Parliamentary Act governs the entire field, the seeds, which are brought and further seeds produced therefrom and processed upon being governed by the Parliament Acts and Statutory Rules, it must be held to have been excluded from the purview of the provisions of the U.P. Act. The seeds, which are subject matter of not only a Parliamentary Act but also an order made under Section 3 of the Essential Commodities Act would by necessary implication are not meant to be included within the definition of 'agricultural produce' under the U.P. Act. As the respondents purchase the seed is not meant to be used as a 'cereal', which is an agricultural produce within the meaning of the said Act, the High Court has rightly held that the respondents are not liable to pay any market fee. [372-D-E, G-H; 373-E-F]

State of Maharashtra **v.** *Indian Medical Association & Ors.*, **[2002] 1 SCC 589 and** *S. Samuel, M.D. Harrisons Malayalam & Anr.* **v.** *Union of India & Ors.*, **JT (2003) 8 SC 413, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6301 of 2001.

From the Judgment and Order dated 25.8.99 of the Allahabad High Court in C.M.W.P. No. 17877 of 1999.

Rakesh Dwivedi, Pradeep Misra, Ms. Indu Misra, Ms. Vimla Sinha, Abhishek Chaudhary for the Appellants.

Dushyant A. Dave Huzefa Ahmadi, Vibha Datta Makhija, Nakul Diwan, Ms. Priya Ahluwalia, Sanjay R. Hegde for the Respondents.

The Judgments of the Court were delivered by

DR. AR. LAKSHMANAN, J. The unsuccessful respondents 2,3 and 4 before the High Court of Allahabad are the appellants in this appeal. The writ petition was filed by the first respondent herein to quash the order dated 12.03.1999 (Annexure 17 to the writ petition) and for mandamus restraining the appellants herein from interfering in the business in certified seeds either before or after processing and further in restraining the

appellants from demanding and realising market fee on the transaction of unprocessed or processed certified seeds.

A Division Bench of the Allahabad High Court allowed the writ petition following the decision of this Court in *State of Rajasthan* v. *Rajasthan Agriculture Input Dealers Association* reported in AIR (1996) SC 2179 which has also been followed by the Division Bench of the said Court in Writ Petition No. 7262 of 1993 dated 18.12.1996. The High Court quashed the impugned order dated 12.03.1999 and also held that the respondents in the writ petition/appellants herein cannot charge mandi fee on the seeds in which the first respondent herein deals. Aggrieved by the judgment of the High Court in Civil (M) No. 17877 of 1999 dated 25.08.1999, a Special Leave Petition was filed under Article 136 of the Constitution of India. When the Special Leave Petition came up for hearing on 06.09.2001, leave was granted by this Court and considering the importance of the questions involved, the matter was placed before Hon'ble the Chief Justice for referring to a larger Bench.

The facts giving rise to this appeal are stated below:-

The U.P. Krishi Utpadan Mandi Adhiniyam, 1964 (hereinafter referred to as "the Adhiniyam") was enacted to regulate sale and purchase of agricultural produce and for establishment, superintendence and control of market in U.P. Section 6 provides for declaration of market area and Sections 9 and 10 prohibit business of specified agricultural produce in such market areas without licence.

Specified Agricultural produce is defined under Section 2 (a) of the Adhiniyam, as follows:

> "2(a) 'agricultural produce' means such items of produce of agriculture, horticulture, viticulture, apiculture, sericulture, pisciculture, animal husbandry or forest as are specified in the Schedule, and includes admixture of two or more of such items, and also includes any such item in processed form, and further includes gur, rab, shakkar, khandsari and jaggery."

The schedule appended to the Adhiniyam provides a list of agriculture produce. Section 17(iii) of the Adhiniyam provides for imposition of

A market fee on the transactions of such specified agricultural produce in the market area, on such rates notified by the State. Wheat is specified in the Schedule at Serial No.1 under the heading of cereals. It was submitted that wherever seeds have been intended to be notified, it has been specifically mentioned as seeds. In case of wheat, however, it has not been notified B for seed and thus the seeds of wheat are not covered in the Schedule and are thus not covered by the definition of Specified Agricultural Produce.

The first respondent-company is a private limited company, engaged in production of certified seeds since 1996-97 and holds valid registration certificate from the District Agriculture Officer, Pilibhit under the Seeds C Control Order 1983 valid upto 25.5.2000 and holds a certificate of registration from the U.P. Seeds Certificatcn Agency, Alam Bagh, Lucknow.

According to the first respondent, the business of the company is to purchase 'breeder seeds' from Agricultural Research Institute and to D produce 'certified seeds'. The first step of production is to distribute this breeder seeds to the listed and scheduled farmers. The breeder seeds are sown and are germinated under strict supervision of the statutory Seeds Certification Agency, set up under the Seeds Act, 1966 (hereinafter referred to as "the Act"). The harvest is selected carefully under E supervision of the Agency. The lots which do not conform to specifications are rejected.

It was further submitted that the standardized seeds so obtained are called 'Foundation Seeds'. These foundation seeds are thereafter again supplied to the listed farmers variety wise with intimation to the Agency. F The farmers sow these foundation seeds which are again supervised by the Agency. This crop is again germinated under strict supervision of the agency and once again the lots rejected are not taken back by farmers. After harvesting the approved standardised certified seeds, these lots are fumigated for preservation under the samples of each lot is tested in the G laboratories of Seeds Certification Agency at Alam Bagh (Lucknow), Kanpur, Rudrapur (Udham Singh Nagar). The rejected lots and losses at processing are returned to farmers only after the foundation seeds are certified as conforming to specifications, the lots are subjected to treatment with insecticides (Cell phose, Quick phose) and pesticides (thiram and H barastin) at the time of packing.

It is the case of the first respondent that the bags are marked as poison and are thereafter marketed. The entire production, operation is supervised by the Seed Certification Agency. It was submitted that until the seeds are certified they continue to be the property of the farmer, who agrees to such agreement on the foundation seed distribution form. In the year 1988, the Market Committee issued notices to the companies engaged in certified seeds. The notices were challenged and that after contest, the High Court allowed the writ petition holding that certified seeds are not specified agricultural produce and the notices issued by the Mandi Samiti were quashed. The aforesaid judgment was challenged by the Mandi Samiti in Civil Appeal Nos. 106-110 of 1990. This Court relying upon the judgment in *State of Rajasthan* v. *Rajasthan Agriculrural Input Dealers Association,* (supra) dismissed the civil appeals. Based on the aforesaid judgment, all the pending writ petitions were also decided in favour of the dealers in certified seeds. However, by notice dated 15.10.1997, the Mandi Samiti directed the Ist respondent to deposit the market fee on seeds. The first respondent submitted a detailed reply annexing certificates issued by the Seeds Certification Agency and the other relevant documents. The first respondent also submitted that they are not dealing in sale and purchase of food grains or wheat but deals only in certified seeds and that the stock stored by them were not of wheat but by the certified seeds of wheat under the supervision of the U.P. Seeds Certification Agency. The appellants rejected the representation of the first respondent and directed them to pay market fee. The first respondent challenged the aforesaid order by filing Writ Petition No.1090 of 1997. Again by Notification dated 11.8.1998, the first respondent was required to submit information regarding sale and purchase of wheat for the year 1997-1998. A reply was submitted protesting the demands against law laid down by this Court. Aggrieved by the demands, the first respondent filed Writ Petition No. 32740 of 1998 against the order dated 22.9.1998. The writ petition was disposed of with a direction to the first respondent herein to file a fresh representation. In pursuance of the aforesaid order, the first respondent filed a detailed representation dated 15.2.1999. The representation was rejected by the appellants on 12.3.1999 and a demand has been made for payment of market fee which was again challenged by the first respondent herein by filing the present Writ Petition No. 17877 of 1999 which was allowed by the High Court on 25.8.1999.

A Against the said judgment of the High Court, the above appeal by way of special leave petition has been filed.

The instant appeal raises the following questions of law:

(i) What is the true scope and ambit of Sections 2(a) and 17 iii (b)
B of the Krishi Utpadan Mandi Samiti Adhiniyam, 1964?

(ii) Whether the market fee can be levied on the purchases of wheat by the seed processing unit to process and convert the same into certified seed by treating it chemically?

C

(iii) Whether there is any difference in wheat and wheat seed before it is chemically treated and converted into certified seed and thus becomes unfit for human consumption?

(iv) Whether it is necessary, to notify seed of cereals which can itself
D be used as seed when the object of the legislature was to notify only those seeds which are different from produce itself?

On the above pleadings, we heard Mr. Rakesh Dwivedi, learned senior counsel appearing for the appellants and Mr. Dushyant A. Dave, learned senior counsel for the contesting respondent.

E

It was submitted by the appellants herein/respondents in the writ petition that after the first respondent purchased wheat, they convert it into seed by applying pesticides and other chemicals and then the sale was effected as wheat seed and on this transaction, Mandi Samiti is not
F demanding market fee. It was also submitted that the decision of this Court in *State of Rajasthan* v. *Rajasthan Agricultural Input Dealers Association* (supra) are not applicable in the case of the first respondent and that what is purchased by the first respondent herein is nothing but wheat and the entire transaction of wheat is within the market area of Mandi Samiti, Pilibhit and hence subject to payment of market fee. It was
G also submitted that the first respondent - Company is engaged in producing certified seeds but for that purpose it purchases regularly wheat and other commodities for preparing seeds and on these transactions, the first respondent is liable to pay market fee. Before adverting to the respective arguments, it is beneficial to reproduce sub-sections (a) & (b) of Section
H 17(iii) of the Adhiniyam, which reads as under:

"(iii) levy and collect: A

(a) such fees as may be prescribed for the issue or renewal of licences; and

(b) market fee, which shall be payable on transactions of sale of specified agricultural produce in the market area at such rates, B being not less than one percentum and not more than two and a half percentum of the price of the agricultural produce so sold as the State Government may specify by notification, and development cess which shall be payable on such transactions of sale at the rate of half percentum of the price of the agricultural produce C so sold, and such fee or development cess shall be realised in the following manner:-

(1) if the produce is sold through a commission agent, the commission agent may realise the market fee and the development D cess from the purchaser and shall be liable to pay the same to the Committee;

(2) if the produce is purchased directly by a trader from the producer, the trader shall be liable to pay the market fee and development cess to the Committee; E

(3) if the produce is purchased by a trader from another trader, the trader selling the produce may realise it from the purchaser and shall be liable to pay the market fee and development cess to the Committee: F

Provided that notwithstanding anything to the contrary contained in any judgement, decree or order of any court, the trader selling the produce shall be liable and be deemed always to have been liable with effect from June 12, 1973 to pay the G market fee to the Committee and shall not be absolved from such liability on the ground that he has not realised it from the purchaser:

Provided further that the trader selling the produce shall not be absolved from the liability to pay the development cess on the H

A ground that he has not realised it from the purchaser;

(4) in any other case of sale of such produce, the purchaser shall be liable to pay the market fee and development cess to the Committee:

B Provided that no market fee or development cess shall be levied or collected on the retail sale of any specified agricultural produce where such sale is made to the consumer for his domestic consumption only:

C Provided further that notwithstanding anything contained in this Act, the Committee may at the option of, as the case may be, the commission agent, trader or purchaser, who has obtained the licence, accept a lump sum in lieu of the amount of market fee or development cess that may be payable by him for an agricultural year in respect of such specified agricultural produce, for D such period, or such terms and in such manner as the State Government may, by notified order specify:

Provided also that no market fee or development cess shall be levied on transactions of sale of specified agricultural produce on which market fee or development cess has been levied in any E market area if the trader furnishes in the form and manner prescribed, a declaration or certificate that on such specified agricultural produce market fee or development cess has already been levied in any other market area."

F It was submitted by Mr. Rakesh Dwivedi, learned senior counsel appearing for the appellants that the first respondent being the purchaser/ trader is liable to pay market fee under Section 17(iii) of the Act and that the contention of the respondent that they sell wheat and the entire transaction is of wheat within the market area of Mandi Samiti cannot be G accepted.

Mr. Rakesh Dwivedi, learned senior counsel for the appellants, submitted that at the time of hearing in the case of *State of Rajasthan* v. *Mangi Lal Pindwal,* [1996] 5 SCC 60 by this Court, it could not be brought to the notice of this Court that the intention of the legislature was to notify H only those seeds which are different from its produce and that the definition

of agricultural produce being so wide that seeds of the cereals are included in that entry and hence there was no necessity to notify the same separately because there is no difference in Bazra or seed of Bazra. It was also submitted that in the aforesaid judgment, this Court has held that seeds which are manufactured after chemical treatment of Bazra by adding insecticides the market fee cannot be levied on the sale and purchase of the same because the same cannot be used for human consumption and ceases to be a cereal. Therefore, it is clear that before chemical treatment Bazra remains an agricultural produce and sale and purchase of the same attracts imposition of market fee. Arguing further, learned senior counsel for the appellants contended that the High Court failed to appreciate that the cereals are seeds itself and hence the same have not been notified separately because there is no difference between wheat and seed of wheat and that Wheat includes its seed. Otherwise also the appellant is imposing market fee on wheat and not its certified seed as manufactured by the first respondent. Concluding his arguments, learned senior counsel, submitted that since the Wheat purchased by the first respondent is neither chemically treated nor the same unfit for the human consumption and hence market fee was rightly imposed.

Per contra, Mr. Dushyant A. Dave, learned senior counsel appearing for the first respondent, submitted that the respondent is not dealing in sale and purchase of food grains or wheat but deals only in certified seeds and the stocks stored by them were not of wheat but the certified seeds of wheat. It was further submitted that the first respondent purchases breeder seeds from Agricultural Universities and that seeds of Wheat is not included in the Schedule to the Adhiniyam. It was further argued that the first respondent intakes only the standardised and certified seeds from the farmers and the undersize, oversize and seeds found unfit by Seed Certificate Agency are returned to the farmers and the certified seeds so purchased are thereafter chemically treated at the processing plant and, therefore, these certified seeds either before processing with chemical or thereafter do not fall within the definition of term "wheat" and its purchasers are not liable to market fee.

At the time of hearing, our attention was drawn to a note on method and process of seed production submitted by the first respondent. The principle and method of production, as submitted in the note, is as under:-

A "*1. Reasons for Seed Production:*

All high yielding seeds are made by scientists by changing the composition of genes in the seeds so that the seed gives high yields. However, nature's force has a tendency to change the seeds over a period of time and, therefore, it is necessary to produce pure seed year after year.

2. Laws governing seeds business:

2.1. The seed industry for production and sale is regulated under the Seeds Act, 1966 and Rules and Seed Control Order, 1983. Under the seeds Act, the Government has made State Seed Certification Agencies who are responsible to certify seeds and monitor their production and sales.

2.2. "The Indian Minimum Seed Standards" lays down the minimum seed standards required for each crop which can be certified.

3. Method of Seed Production:

3.1. The company purchases breeder seed from the Agricultural Universities and then produces the next stage *i.e.* foundation seeds. These foundation seeds are given to contract farmers for further production to certified seed. This certified seed is sold to trade and subsequently to farmers. Foundation Seed is the progeny of Breeder Seed and certified seed the progeny of Foundation Seed.

4. Procedure of production:

4.1. Purchase of breeder seeds from universities. [Rule 14(a)]

4.2. Classification of foundation seed from breeder seed. [Rule 14(a)]

4.3. Giving foundation seed to contract farmers. [Rule 14(c)]

4.4. Registration of the contract farmers with the State Seed

Certification Agency and payment of registration and inspection charges to the agency. [Rule 6(d) & Form I]

4.5. Sowing the foundation seed by the contract farmer in his field.

4.6. Inspection of the farmer's field by an inspector of all the State Seed Certification Agency, at least two times during the growth of the crop. [Rule 6(k)]

4.7. Submission of final field report by the State Seed Certification Agency, inspector stating that the crop meets the standards or rejecting the crop if it does not meet the standards. The final filed report also states the estimated quantity of produce of every field and farmer which the Company can purchase. [Rules 6(k) and 23(e)]

4.8. If the farmers seed crop has been found satisfactory and indicated as such in the final field report prepared by the State Seed Certificate Agency inspector it is purchased by the company and the seed stored in company godowns.

4.9. The seed is then processed under the supervision of an inspector of the State Seed Certification Agency who takes samples and sends them to the Government Seed Testing Laboratory. [Rule 6(g) & 6(e)]

4.10. After testing the Government Seed Testing Laboratory gives a report which shows that either the seed meets the "Minimum Seed Standards" or it does not. [Rule 21(3)]

4.11. If the seed meets the "Minimum Seed Standards", the chemical treatment and baging of the seeds is made under the supervision of an inspector of the State Seed Certification Agency. (Rule 17A)

4.12. After the seed is put in bag the inspector of the Seed Certification Agency will seal and tag each bag and this seed and bag is called certified seed which goes to the market. (Rule 17 II)

4.13. The seed inspector will also give a certificate to the

company stating that the seed has been found above the "Minimum Seed Standards" and has been certified as such by the State Seed Certification Agency. (Rule17)"

A letter under Reference No. 3374/12-5-2001-600(88)/93 dated 7th January, 2002 sent by the Secretary, U.P. Government to the Director, Mandi Parishad, U.P. Lucknow, was placed before us for our perusal with an english translation and Hindi version. The english translation of the letter reads thus:

"

No.3374/12-5-2001-600(88)/93

From : Dr. Naseem Jedi,
Secretary,
U.P. Government

To : Director
Mandi Parishad
U.P. Lucknow.
Krishi Anubhag-5

Lucknow : Dated 07 January, 2002

Sub:- Exemption of certified seeds by Trade Tax Department and accordingly exemption of certified seeds by Mandi Parishad from Mandi Tax.

Sir,

Regarding your letter dated 13.08.2001, in relation to the above subject No.V.P/M.SH/760/T.C.II Khand/86-2001-1220, I have been ordered to inform you that the production of certified seeds of various crops is taken through farmers and then this seed is procured by the corporation in uncertified form, after which it goes through the certification procedures and chemical treatment, and finally certified seed is produced. Therefore, please note *that for production of certified seeds, on the purchase of raw uncertified seeds there will be no Mandi Tax Liability.* Please ensure immediately and appropriate action to enforce this decision. (Emphasis supplied)

Yours faithfully' A
Sd/-
(Dr. Naseem Jedi)
Secretary"

A reading of the said letter would also show that the production of B
certified seeds, on the purchase of raw uncertified seeds there will be no Mandi Tax Liability.

Learned senior counsel appearing for the parties also drew our attention to the relevant provisions of the Seeds Act, 1966 (Act No. 54 of 1966) and the Seeds Rules, 1968 (hereinafter referred to as "the Rules"). C
We have also perused the Schedule [Sections 2(a) and 4-A] to the Addhiniyam in which under the Heading A-Agriculture, Wheat is included as Item No.1 in the sub-heading Cereals. In the Statement of Objects and Reasons, it is stated that in the interest of increased agricultural production in the country, it is considered necessary to regulate the quality of certain D
seeds, such as seeds of food crops, cotton seeds, etc. to be sold for purposes of agriculture including horticulture.

Section 2 of the Act deals with definition of "Agricultural produce", "Certification Agency" and the "Seed" etc. Section 2(11) defines Seed E
which means any of the following classes of seeds used for sowing or planting -

(i) seeds of food crops including edible oil seeds and seeds of fruits and vegetables;

F

(ii) cotton seeds;

(iii) seeds of cattle fodder;

(iv) jute seeds,

G

and includes seedlings, and tubers, bulbs, rhizomes, roots, cuttings, all types of grafts and other vegetatively propagated material, of food crops or cattle fodder;

Under Section 3 of the Act, the Central Government has the H

A authority to constitute a Committee called the Central Seed Committee to advice the Central Government and the State Governments on matters arising out of the administration of this Act and to carry out the other functions assigned to it by or under this Act. Section 4 deals with the authority of the Central Government to establish a Central Seed Laboratory
B or declare any seed laboratory as the Central Seed Laboratory to carry out the functions entrusted to the Central Seed Laboratory by or under this Act. Section 5 of the Act deals with power to notify kinds or varieties of seeds by the Central Government. Section 6 of the Act deals with the power of the Central Government to specify minimum limits of germination and
C purity, etc. Section 8 of the Act deals with Certification Agency which authorises the State Government or the Central Government to establish a Certification Agency for the State to carry out the functions entrusted to the Certification Agency by or under this Act. Section 9 provides the procedure for grant of certificate by Certification Agency. Section 25 deals with power of the Central Government to make Rules.

D

Rule 2(e) of the Rules defines "certified seed". Under Rule 2(f) of the Rules "Certified seed producer" has been defined. Rule 2(j) defines "processing" and 2(m) defines "treated". The functions of the Central Seed Laboratory has been dealt with under Rule 5 of the Rules. The functions
E of the Certification Agency has been specified under Rule 6 of the Rules. Rule 15 deals with the procedure for making application for the grant of certificate under sub-section(1) of Rule 9. Form I is prescribed for application for Seed production under the Seeds Certification programme. We are not now concerned with the other Rules.

F We have already reproduced Section 2(a) and Section 17(iii) of the Adhiniyam. Section 17(iii) of the Adhiniyam provides for imposition of market fee on the transactions of sale of specified agricultural produce in the market area at such rates notified by the State. As already noticed, Wheat is specified in the Schedule at S.No.1 under the Heading 'Cereals'.
G A perusal of the Schedule would show that wherever seeds have been intended to be notified, it has been specifically mentioned as Seeds. In case of Wheat, however, Schedule does not provide or notify seed of wheat and thus the seeds of wheat are not specified in the Schedule and are thus not covered by the definition of Agricultural produce. We have also
H referred to the Objects and Reasons for enacting the Seeds Act, 1966 and

the Seeds Rules, 1968. As already seen, Seeds Rules, 1968 have made detailed provisions of production, processing and certification of seeds under the Seed Certification Agency. The Central Government in order to exempt the movement of seeds and in exercise of its powers under the Essential Commodities Act, has enacted Foodgrains Movement Restriction (Exemption of Seeds) Orders, 1970 and the Seeds Control Order, 1983. The seeds are also exempted from Sales Tax under an exemption Notification dated 19.8.1970 issued under Section 4(1)(a) of the Act (Annexure CA 3).

We have already referred to the essential conditions incorporated in the Certificate of Registration. One of the essential conditions incorporated in the Certificate of Registration is that the certificate holder shall not carry on any business such as dealing in food grains, other than the business of sale of certified seeds. Under the terms and conditions of such certificate, the first respondent is not carrying any other business except the business of certified seeds and it is also not in dispute that the respondent does not hold any other licence for dealing in food grains including wheat.

It was also argued by Mr. Dushyant A. Dave that the Market Committee has completely failed to appreciate the declaration of law in the case of *State of Rajasthan* v. *Rajasthan Agriculture Input Dealer Dealers Association* (supra) affirmed by this Court on 21.8.1996. In these orders, two reasonings were adopted to hold that the transaction of seeds do not attract market fee namely (a) that the definition of agricultural produce includes items specified in Schedule and that wherever it was intended to separately cerealised seeds, they have been distinctly found mentioned in the Schedule and that wherever the Schedule does not include seeds specifically in the serialised item such seeds are not specified agricultural produce and (b) on the process of coating and applying insecticides, other chemicals and poisonous substances the basic character *i.e.* its consumption as food by human being or animals is irretrievably lost and that such commodity is distinct from food grains.

The decision of the State Government does not take into account the first reasoning and treats only that commodity as seeds which is treated with chemicals and that the action, in our view, is apparently and palpably wrong. It is to be noticed that the farmers are paid prices on the certified

A seed only after its certification and that the entire quantity of such seeds is chemically treated and is thus a distinct commodity as certified seeds. It was denied that the first respondent purchased wheat from farmers and the seeds purchased from the farmers are of very high quality specified standardised seeds each of which price is very high as compare to wheat. B It is not sold in the market and cannot be so sold as wheat and the entire quantity is taken for processing with chemicals at processing plant. The High Court has, in our view, correctly appreciated and accepted the contention of the respondent-Company and has rightly relied upon the judgment of this Court in *State of Rajasthan* v. *Agricultural Input Dealers Association* (supra). C

Learned senior counsel appearing for the first respondent drew our attention to Annexure CA 11 which is the representation in pursuance to the judgment of the High Court in Writ Petition No. 3274 of 1998. The relevant portion of the representation reads as under:

D

> "Thus our business procedure makes it clear that by the time we purchase seeds from farmers it remain no longer simple unprocessed seed but it comes into the category of certified seed after chemical treatment. At the time of purchase, this wheat is necessary to be determined is the nature of commodity at the time of purchase. E As per the specific view taken by Hon'ble Supreme Court in *M/s State of Rajasthan Agriculture Input Dealer Association,* AIR (1996) 2179 seed undergone chemical and pesticide treatment is an entirely different commodity and the same is not subject to market fee on account of its non inclusion on the Schedule of F Mandi Act.
>
> Under provisions of Section 17(iii)(b)(2) of the Mandi Act if agricultural produce is purchased directly by a trader from a producer, the trader shall be liable to pay the market fee but in the present circumstances it is clear that we have purchased only G certified seeds from the farmers and certified seed not being scheduled produced the same is not liable to fee at our level.
>
> In the same reference, the decision taken in the meeting dated 16.5.1998 presided by Secretary Agriculture is also important. In the abovesaid meeting, it has been decided that if trader H

purchases unprocessed seed before chemical treatment in that case the trader is liable to pay market fee on such purchase of unprocessed seeds. However, in the present case, the trader has not purchased unprocessed seed before chemical treatment, therefore, trader is not liable to pay fee on such purchases. Thus direction issued by Secretary Agriculture in meeting dated 16.5.1998 also support trader's stand."

I.A.No. 3 of 2001 is filed by the first respondent for seeking permission to place on record a letter dated 19.1.2000 annexed as Annexure A which is very important for the final adjudication of the case. The said I.A. be taken on record. By the said I.A., the first respondent sought to place on record a letter dated 19.1.2000 addressed by the Principal Secretary, Government of Uttar Pradesh to the Commissioner, Trade Tax Department, Government of Uttar Pradesh directing that instructions be issued to the taxation officers that when the growers or the distributors, seed certification machinery sell the seeds in sealed containers after producing themselves after certification along with the tag of the Uttar Pradesh Certification Agency affixed as under the Central Seed Act, 1966 then in such circumstances, no liability of purchase tax is attracted under Section 3 AAAA(4). We have perused the communication dated 19.01.2000 marked as Annexure A.

The judgment in the case of *State of Rajasthan* v. *Rajasthan Agriculture Iinput Dealers Association* (supra) was heavily relied on by the learned senior appearing for the first respondent. In the said case, the respondent therein claimed themselves to be engaged in the business of purchasing and selling seeds and, in particular, Bazra seeds. According to them, seeds can not be termed to be agricultural Produce for the purposes of the Rajasthan Agricultural Produce Market Act, 1961 and its Schedule, as amended from time to time by the State Government in exercise of powers under Section 40 enabling it to add, amend or cancel any of the items of agricultural produce specified in the Schedule. It is maintained that seeds are a processed item and coated by insecticides, chemicals and other poisonous substances whereby the grains employed lose their use and utility as foodgrains and become unfit for human or animal consumption or for extraction therefrom for such consumption. The challenge posed by the respondents before the High Court was answered by the appellants

A (State of Rajasthan) maintaining that foodgrains of all sorts, as mentioned in the Schedule, were seeds, *per se*, the only exception carved out from the items mentioned in the Schedule being those relating to blue tagged certified seeds and white tagged certified foundation seeds; such exceptions have been notified by way of amendment to the Schedule in exercise of the power of the State Government under Section 40 of the Act. The High Court took the view that when foodgrains of particular varieties were treated and subjected to chemical process for preservation, those grains become commercially known as "seeds". It was ordered that no licence under the Act was required for sale of such seeds. On appeal, this Court held as under:

> "It is undoubtedly true that foodgrains *per se* could be used as seeds for being sown and achieving germination, but in that form they retain the dual utility of being foodgrains as well as seeds. By process of coating and applying insecticides, other chemicals and poisonous substances to the foodgrain meant to be utilised as seeds, one of its basic character, *i.e.*, its consumption as food by human beings or animals or for extraction for the like purpose, gets irretrievably lost and such processed seeds become a commodity distinct from foodgrains as commonly understood. That distinction was borne in mind by the High Court in allowing the writ petition of the respondents, and in our view rightly."

The other decisions cited by the counsel for the appellants will not be of any assistance in deciding the factual disputes involved in the instant case.

In our view, the High Court has correctly applied the above judgment. This Court held that no market fee could be levied by the State of Rajasthan on seeds on the ground that a seed was distinct from foodgrains inasmuch as they were not fit for human consumption. The *ratio decidendi* of the above decision is squarely applicable to this case wherein the appellant seeks to give a wide connotation to the words in the Schedule. In our opinion, that giving a wide interpretation is not possible and as Wheat Seed is not included in the Schedule, the Mandi Samiti is not allowed to levy a market fee on purchase. As the Mandi Samiti plays no role in the trade of the respondent's seeds, it may not be allowed to levy the market fee. It is also not in dispute that the Breeder Seeds are allocated by the Ministry

of Agriculture or by the Universities to the various seed producing agencies and companies who multiply the breeder seeds into foundations seeds.

It is also very useful to refer hereunder the process by which the seed is manufactured under the Seeds Act and the Seeds Rules:

> "(i) Seeds developed in laboratories are classified as Breeder Seeds and are sold through the Ministry of Agriculture or notified Agriculture Universities to producing agencies, Companies and farmers. Foundation Seeds (Stage I and II) are developed as progenies of Breeder Seeds and are required to obtain a Certificate from the Seed Certification Agency.
>
> (ii) The production of Foundation Seeds is supervised and approved by the Certification Agency to maintain specific genetic identity and genetic purity and are required to conform to certification standards specified for the crop/variety being certified.
>
> (iii) The Foundation Seed is then grown by the farmer in a land earmarked specifically for the sowing of the Foundation Seed. The offsprings of these Seeds are terms as Certified Seeds, which too are required to meet the minimum standards of genetic purity and genetic identity.
>
> (iv) It is only if the Seeds meet the minimum standards are they subsequently categorised as Certified Seeds and can be purchased by the respondent for further processing.
>
> (v) The processing done by the respondent is done under the aegis of an Inspector of the State Seed Certification Agency and thereafter the samples are taken for testing to notified Government Seed Testing laboratories.
>
> (vi) It is only after meeting the minimum standards of genetic purity and genetic identity that the Seed is put in a bag that is sealed and tagged by the Inspector of the Seed Certification Agency. It is this seed which is allowed to be sold in the market and a certificate is issued by the Agency stating the standards of the Seed and other particulars."

A It was submitted by the first respondent that all the above mentioned stages of Certification are as per the provisions of the Rules and that right from the inception to the time when the Seed is sold in the market, it is done under regulation issued to govern each and every stage of seed production and certificates are only issued after the seed is found to achieve B the minimum standards of genetic identity and genetic purity. It was also pointed out that no such certification standards exist for food grains sold by farmers to the Mandi Samiti. Thus the production of seeds is an integrated process and needs to be regulated at every stage, right from the inception, in order to maintain genetic identity and genetic purity.

C There is no nexus whether the seed has been chemically treated or not and the levy of market fees. Since the seed is a separate commodity from grain, the same is not covered under Schedule I of the Adhiniyam and as such no market fee is leviable over the sale and/or purchase of the same.

D

We are, therefore, of the view that the seeds are not specified agricultural produce under the provisions of the Act and, therefore, the business of purchase and sale of seeds under the supervision of Seed Certification Agency established under the Act is not a business of sale and E purchase of specified agricultural produce and as such the first respondent is not required to pay the market fee or to take out a licence.

We are also of the view that the respondents have grossly erred in ignoring the law settled by this Court in the case of *State of Rajasthan* v. *Rajasthan Agricultural Input Dealers Association* (supra) under Article F 141 of the Constitution in demanding market fee on seeds. Since the processing of wheat resulting in loss of its basic characteristics of being cereal, it cannot be subjected to levy as agricultural produce since the purchase by the respondent is for the purpose of growing seeds, no levy is permissible and, therefore, market fee cannot be imposed on seeds which G are unfit for human consumption.

Question No. i

Thus, the true scope and ambit of Sections 2 (a) and 17 (iii) (b) of H the Act has been explained in paras supra.

Question No. ii

The appellant has no authority to levy market fee on the purchase of wheat by the seed processing unit. This question is answered in the negative.

Question No. iii

Wheat seed converted into certified seed is unfit for human consumption and, therefore, market fee levy is impermissible.

Question No. iv

The object of legislature was to notify only those seeds which are different from the produce itself.

Thus all the questions are answered as above.

The argument of the counsel for the first respondent is well merited and founded on sound legal principles and on practical and factual aspects of the matter.

For the foregoing reasons, we hold that the appeal has no merit and is liable to be rejected. Accordingly, we do so. However, there will be no order as to costs.

S.B. SINHA, J. The core question involved in this appeal is as to whether 'seed' would come within the purview of the expression 'Wheat' within the meaning of the provisions of U.P. Krishi Utpadan Mandi Samiti Adhiniyam ('The Act'). The Act was enacted to curb the malpractices in the old markets. Mandi Samitis are established under Section 12 thereof. The Mandis are entitled to collect market fee on the sale and purchase of agricultural produce in terms of Section 17 of the Act.

Agricultural produce is defined in Section 2(a) of the Act to mean:

> "2(a) Agricultural produce means such items of produce of agriculture, horticulture, viticulture, apiculture, sericulture, pisciculture, animal husbandry or forest as are specified in the schedule and includes admixture of two or more of such items and

A also includes any such item in processed form and further includes gur, rab, shakkar, khandsari and jaggary."

Section 2(y) defines trader to mean :

"'Trader' means a person who in the ordinary course of business
B is engaged in buying or selling agricultural produce as a principal or as a duly authorized agent of one or more principals and includes a person, engaged in processing of agricultural produce."

It is not in dispute that the respondents are engaged in production and sale of 'seeds' which is governed by a Parliamentary Act known as
C the 'Seeds Act, 1966' (1966 Act). The entire process beginning from procurement of seeds breeder, further production thereof as well as sale is governed by 1966 Act and Rules framed thereunder and Seed Control Order 1983. The preamble of the 1966 Act suggests that the same was enacted with a view to monitor the production and sale of seeds. The
D purport and object of enacting the 1966 Act was to bring green revolution in the country as would appear from the following statement of objects and reasons thereof:-

"In the interest of increased agricultural production in the Country, it is considered necessary to regulate the quality of certain
E seed, such as seeds of food crops, cotton seeds etc., to be sold for purposes of agriculture (including horticulture).

The methods by which the Bill seeks to achieve this object are -

F (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;

G (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
H State Government;

(d) Creating of seed inspection and certification service in each State and grant of licences and certificates to dealers in seeds; A

(e) Compulsory labelling of seed containers to indicate the quality of seeds offered for sale, and B

(f) restricting the export import and inter-State movement of non-descript seeds."

Section 2(11) of the Seeds Act defines seeds to mean :

"Seed means any of the following classes of seeds used for sowing or planting : C

(i) seeds of food crops including edible oil-seeds and seeds of fruits and vegetables; includes *seedings*, and tubers and bulbs, rhizomes, roots, cutting, all topes of grafts and other vegetatively propagated material, *of food crops or* cattle fodder". D

The definition of 'seeds', therefore, is not exhaustive.

It is not in dispute that the entire process for procurement of 'breeder seeds' to sale of 'seeds' is governed under the provision of the Seeds Act as well as the rules framed thereunder. E

Wheat is an agricultural produce within the meaning of Section 2(a) which together with thirteen other food products have been placed under the heading "cereals". F

The Act contains both penal and fiscal provisions. A trader within the meaning of the said Act would be a person who carries on business *inter alia* in the agricultural produce. The question is as to whether in the aforementioned situation the respondent would be a trader of Agricultural produce within the meaning of the provisions of the said Act. It is not disputed that 'seed' as purchased and 'sold' is not meant to be used as a cereal. The respondent buys only certified seeds and sales the same as seeds after processing the same. 'Seeds' which are sold by the respondent admittedly are not consumable. It is furthermore not disputed that in terms G H

A of the licenses granted in their favour under the 1966 Act, they are not permitted to deal in the commodities for any other purpose.

In the *State of Andhra Pradesh* v. *M/s. H. Abdul Bakhi & Bros.*, AIR (1965) SC 531, the Supreme Court held :-

B

> "We are unable to agree with this view of the High Court. A person to be a dealer must be engaged in the business of buying or selling or supplying goods. The expression 'business' though extensively used is a word of indefinite import; in taxing statutes it is used in the sense of an occupation, or profession which
C occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with profit motive, and not for sport or pleasure."

D

Yet again in *Sri Krishna Coconut Co.* v. *East Godavari Coconut and Tobacco Market Committee,* AIR (1967) SC 973, this Court while considering interpretation of Section 11 of the Madras Commercial Crops Markets Act held :-

E

> "The relevant provisions of the said Act and the rules which fell for consideration by the Supreme Court would be evident from paragraph 5 of the reported case which is in the following terms:

Section 11(1) with which we are concerned in these appeals reads :

F

> "The Market committee shall, subject to such rules as may be made in this behalf, levy fees on the notified commercial crop or crops bought and sold in the notified area at such rates as it may determine".

G Although the dictionary meaning of business may be wide, in our opinion, for the purpose of considering the same in the context of regulatory and penal statute like the Act, the same must be read as carrying on a commercial venture in agricultural produce. The rule of strict construction should be applied in the instant case. The intention of the
H legislature in directing the trader to obtain licence is absolutely clear and

unambiguous in so far as it seeks to regulate the trade for purchase and sale. Thus a person who is not buying an agricultural produce for the purpose of selling it whether in the same form or in the transformed form may not be a trader. Furthermore, it is well known that construction of a statute will depend upon the purport and object of the Act, as has been held in *Sri Krishna Coconut's* case (supra) itself. Therefore, different provisions of the statute which have the object of enforcing the provisions thereof, namely, levy of market fee, which was to be collected for the benefit of the producers, in our opinion, is to be interpreted differently from a provision where it requires a person to obtain a licence so as to regulate a trade. It is now well known that in case of doubt in construction of a penal statute, the same should be construed in favour of the subject and against the State.

In the case of *London and North Eastern Railway Company and Berrriman*, [1946] AC 278 Lord Simonds quoted with approval the following observations of Lord Esher N. K. in the case of *Tuck & Sons* v. *Priester,* [1887] 19 QBD, 629, 638. "We must be very careful in construing that section, because it imposes a penalty. If there is a reasonable interpretation which will avoid the penalty in any particular case, we must adopt that construction. If there are two reasonable construction we must give the more lenient one. That is the settled Rule for the construction of penal sections." It is trite that fiscal statute must not only be construed literally, but also strictly. It is further well known that if in terms of the provisions of a penal statute a person becomes liable to follow the provisions thereof it should be clear and unambiguous so as to let him know his legal obligations and liabilities thereunder.

The matter may be considered from another angle, "*Expressio unius (persone vel rei) est exclusio alterius*", is a well known maxim which means the express intention of one person or thing is the exclusion of another. The said maxim is applicable in the instant case. [See *M/s Khemka & Co. (Agencies) Pvt. Ltd. etc.* v. *State of Maharashtra etc.,* [1975] 2 SCC 22 paras 47 and 48].

Having regard to the fact that in the event it is held that buying of seeds which is a commodity governed by a Parliamentary Act would attract

A payment of market fee in terms of the said Act, a conflict would arise. In ordinary parlance at particular stages in which seeds are grown from breeder seeds may take the form of wheat but the said production which is bought by the respondents is also governed by the provisions of the Seeds Act and the Rules framed thereunder. The definition of 'seed' as noticed B hereinbefore is of wide amplitude. It includes seedling of food crops. It is, thus, necessary to construe both the statutes harmoniously. Both, the Statutes must be given proper effect and allowed to work in their respective fields. Even if there is some over-lappings, the same should be ignored.

C Taking into consideration the totality of the situation and upon giving harmonious construction to both the 1966 Act as well as the said Act, we are of the opinion that the respondent cannot be said to be a trader of agricultural produce as in the ordinary course of business, he is engaged in buying or selling agricultural produce. Once it is held that the respondent is not a trader, no market fee can be demanded from it by the D appellant.

'Seed' is also an essential commodity within the meaning of the provisions of the Essential Commodities Act, 1955 which has been enacted by the Parliament in exercise of its power conferred under Entry 33 of E List III of the 7th Schedule of the Constitution of India. Further more, if a Parliamentary Act governs the entire field, the 'seeds' which are bought and further seeds produced therefrom and processed upon being governed by the Parliamentary Acts and Statutory Rules must be held to have been excluded from the purview of the provisions of the said Act.

F The Central Government, made Foodgrains Market Restrictions (Exemption of Seeds) Order, 1970 and Seeds Control Order, 1983 in exercise of its power under Section 3 of the Essential Commodities Act, 1955. In terms of sub-section (2) of Section 4 of the Act, the provisions of Section 3 of Essential Commodities Act, 1955 and the orders made G thereunder shall have effect, notwithstanding anything inconsistent therewith contained in the said Act or in any law made thereunder, thus, the seeds which are subject matter of not only a Parliamentary Act but also an order made under Section 3 of Essential Commodities Act would by necessary implication are not meant to be included within the definition H of 'agricultural produce' under the said Act.

Furthermore the interpretation Clauses contained in Section 2 of the said Act is prefaced with the expressions "unless there is anything repugnant in the subject or context". A

This Court in *State of Maharashtra* v. *Indian Medical Association and Others,* [2002] 1 SCC 589, *inter alia,* held that the expression contained in one Statute may have to be read differently in a particular context. B

Recently in *S. Samuel, M.D., Harrisons Malayalam & Anr.* v. *Union of India & Ors.,* J.T. (2003) 8 SC 413, this Court has held that 'tea' does not come within the purview of the expression 'food stuff' contained within the meaning of the provisions of Essential Commodities Act, holding :- C

> "It is thus clear that in common parlance food is something that is eaten. In a wider sense 'food' may include not only solid substances but also a drink. Still the fact remains that whether a solid or a liquid, the substance called 'food' should possess the quality to maintain life and its growth; it must have nutritive or nourishing value so as to enable the growth, repair or maintenance of the body. D

As the purpose for which the respondents purchase the 'seeds' is not meant to be used as a 'cereal' which is an agricultural produce within the meaning of the provisions of the said Act, the High Court, in our opinion, has rightly held that the respondents are not liable to pay any market fee. E

I respectfully agree with the proposed judgment of Brother Dr. AR. Lakshmanan that the appeal be dismissed. F

B.S. Appeal dismissed.

G

A KANPUR DEVELOPMENT AUTHORITY

v.

SMT. SHEELA DEVI AND ORS. ETC.

NOVEMBER 28, 2003

B [SHIVRAJ V. PATIL AND D.M. DHARMADHIKARI, JJ.]

Development Authority—Housing Scheme floated in 1978—Tentative cost of MIG Flat fixed at Rs. 48,000—Applications received for such scheme less than total number of flats to be constructed under the scheme—
C *Brochure containing a clause that the price was not to be escalated in excess of 10% of the tentative cost—Construction of flats under the Scheme was completed in 1980—However, flats not allotted to eligible applicants who applied for the scheme—No fault was attributed to the applicants—In 1994 the price of the Flat was increased from Rs. 48,000 to Rs.*
D *2,08,000—Challenge to High Court directing delivery of possession of flats at the cost mentioned in the brochure—Held, valid—The cost of construction of flats was to be determined on the date of the completion of the construction and not on the date of delivering possession - The determination of cost of house/flat or escalation of cost cannot be arbitrary or erratic—*
E *The Development Authority could not enhance the prices for the unforeseen or for compelling reasons beyond control of the Development Authority even as against the terms and conditions contained in. the brochure.*

Appellant floated three housing schemes with financial support from 'HUDCO' "on no profit no loss basis" for Lower Income Group;
F **and Middle Income Group. A brochure was issued showing the cost of each house and terms and conditions of the scheme. Respondents applied for Middle Income Group (the "MIG") and were not allotted the house after more than 18 years for no fault of theirs. The estimated cost of each house was specified in the brochure, which was Rs. 48,000.**
G **The houses were to be allotted among the valid applicants by lottery and on receipt of letter of information of allotment, the applicants had to deposit the balance of the 1/4th of the cost of the house. Thereafter the physical possession of the houses was to be delivered to the allottees and the remaining 3/4th of the cost of the house was to be paid by the**
H **allottees in 48 quarterly installments in 12 years. Out of 111 MIG flats**

only 108 were valid applications so all the applicants were required to be allotted the MIG flats when 1/4th of the cost of the flats were deposited. However, the Appellant chose to include the names of some more persons after the last date, which gave rise to disputes. Some affected applicants filed suits and the court finding fault with the Appellant decreed the suit and directed it to allot the houses to 108 valid applicants keeping 8 houses reserved for the persons who were plaintiffs in those two suits. The appeals filed by the Appellants against the decree passed by the trial court were also dismissed. Instead of complying with the decree, Appellant increased the cost of house from Rs. 48,000 to Rs. 2,08,000 and directed the applicants to deposit further sum of Rs. 40,000 and in case of default the name of such applicant would not be included in the list of lottery for allotment of houses. Some of the Respondents filed Writ Petitions, which were admitted. The High Court quashed the order issued by the Appellant and directed the Appellant to deliver the possession of the houses to the Respondents at the cost fixed in the brochure. Hence these appeals.

It was contended by the Appellant that the High Court failed to appreciate that the Vice Chairman of the Appellant could determine the cost of the houses and the cost fixed by him was reasonable and fair; that the Appellant had brought out the scheme for allotment of houses on 'no profit no loss basis'; that the cost fixed was based on the relevant materials and it was not arbitrary so as to interfere with the same; that it was not open for the High Court to hold that the price of the house fixed was arbitrary and unreasonable without going into the method or the basis for calculating the cost of the house; the delay in allotment of houses was not deliberate or intentional but was because of the long pending litigation in court; that the houses were constructed by raising loans under the HUDCO Scheme; that enormous amount of interest has been paid on the loan amount; and that the appellant had to pay heavy compensation for the acquisition of land.

It was contended by the Respondents that the delay in allotment of houses and delivering possession of the same to the Respondents was on account of the Appellant; the Respondents compiled with every condition of the brochure; the unreasonable stand and the conduct of

A the Appellant was responsible for delay and no blame can be put on the Respondents; that the suits were filed by 8 Plaintiffs and nothing prevented the Appellant from allotting the houses to the Respondents keeping aside eight houses for those Plaintiffs as houses were available in excess of the Applications; that the interim orders in those suits were
B passed in 1981/1982 whereas the Appellants moved the court for vacating the interim order in 1990; that the present Respondents were not parties in those suits; that as per the brochure issued by the Appellant, escalation of cost of houses could not exceed 10%; that the cost of the house should be determined as on the date of completion
C of the houses and not on the date of the allotment or delivering possession of the houses; and that the Respondents were salaried employees having lesser income and they had arranged their financial affairs with a hope to get the houses; that had they been given the possession of the houses in 1981, after its construction, they could have saved money paid by way of rent to houses where they were staying.
D

Dismissing the appeals, the Court

HELD : 1.1. It is not in dispute that the Respondents made applications within the time fixed, satisfied the terms and conditions
E for allotment of houses and they were not the Plaintiffs in the suits filed in 1981/1982. The construction of houses was completed in 1980, the cost of the house was determined as on 24.12.1994. Nothing prevented the Appellant from allotting houses to the Respondents, when the houses were ready for allotment particularly, when houses available were more than the applications received before the last date. For no
F fault on the Respondents, they were made to wait for more than 18 years. As per the brochure the houses were to be allotted through lottery system by drawing lot among the eligible applicants, who got themselves registered through the prescribed format within the time fixed and paid the required money within time. In the MIG Scheme,
G 111 houses were available but the number of applicants were less including the Respondents. Only 8 persons had filed suit in the years 1981/1982. There should have been no difficulty in allotting the houses and delivering possession to the Respondents immediately on their completion in 1980. In that event, the payment of interest on loan said
H to have been taken by the authority would not have arisen. [386-C-F]

1.2 It cannot also be ignored that the Respondents were / are mostly salaried employees having monthly income of Rs. 601 to Rs.1500. They must also have adjusted and arranged their finance and affairs to make payment towards the houses. It may also be kept in mind the allottees were expected to pay the remaining amount after initial deposit in 48 installments. Even having regard to the payment of money in installments, the estimated cost which was fixed at Rs. 48,000 with a clear and express understanding that increase in the cost of the house could be up to 10% of the cost of the house. In the brochure, it is also mentioned that the price of the house mentioned is totally approximate and that the final price of the houses would be determined by the Vice Chairman, on the completion of the houses. Prices of the houses in these cases were determined as on 24.12.1994 as against the express clause that the determination of the final price shall be as on the date of completion of the construction of the houses *i.e.* in the year 1980. As can be seen from the prescribed form of application and rules for payment the increase of the cost of the house can be up to 10%. Further it is clear from the prescribed form of application as filed by the Respondents that the estimated cost of the house is Rs. 48,000, which could exceed up to 10%. [386-F-H; 387-A-C]

1.3. The arguments advanced on behalf of the appellant to the effect that the Vice Chairman has power to determine the prices of the houses and the price determined is binding on the Respondents, runs contrary to brochure. Hence it cannot be accepted. [387-C]

1.4. For no fault of the Respondents they cannot be penalized to pay the cost of construction as determined on 24.12.1994 when the houses were ready in 1980. [387-D]

1.5. The High Court rightly concluded that delay in allotting and in delivering possession of the houses to the Respondents was caused due to the lapse on the part of the Appellant, and, therefore, in the fairness of things, the Appellant should not be allowed to determine unjust and unfair cost of the houses in an arbitrary manner. [388-E]

Delhi Development Authority **v.** *Pushpendra Kumar Jain,* **[1994] Supp. 3 SCC 494 and** *Prashant Kumar Shahi* **v.** *Ghaziabad Development Authority,* **[2000] 4 SCC 120, distinguished.**

A **2. As regards the claim that the Appellant works on no profit no loss basis and it has raised huge loan under the HUDCO scheme for construction of houses and it has to pay heavy interest on the amount of loan raised, the Appellant neither urged nor laid any foundation for this argument before the High Court. No details or particulars were** B **given as to the amount of loan raised and the period for which interest has been paid in respect of the houses constructed which are to be allotted to the Respondents. [388-F-G]**

3. As found, there was delay on account of the Appellant and if that occasioned payment of interest, the respondent cannot be held C **responsible, having regard to the terms and conditions contained in the brochure. This apart, no justifiable case has been made out for escalation of price of the houses in these cases, to say that the Appellant could enhance the prices for the unforeseen or for compelling reasons beyond its control even as against the terms and conditions contained** D **in the brochure. [388-H; 389-A-B]**

4. Each case is to be decided in the facts and circumstances of the case in the light of the scheme published /framed and the terms and conditions mentioned in the brochure and/or in the prescribed form E **of application in the matter of escalation/determination of cost of house/ flat. However, cases where there is limit for fixing the escalation of cost, normally the price of house or flat cannot exceed the limits so fixed. The determination of cost of house/flat or escalation of cost cannot be arbitrary or erratic. The authority has to broadly satisfy by placing** F **material on record to justify the escalation of cost of a house/flat. Whether the delay was caused by the allottee or the authority itself is also a factor, which has bearing in determination of cost of house/flat. The unforeseen cause or the reason beyond control of the authority in a given case may be another factor to be kept in view. [393-C-E]**

G *Indore Development Authority* **v.** *Sadhana Agarawal (Smt.) and Ors.*, **[1995] 3 SCC 1 and** *Bareilly Development Authority* **v.** *Ajay Pal Singh,* **[1989] 2 SCC 116, referred to.**

5. In these cases the tentative cases of houses was fixed at Rs. H **48,000 but the final cost was determined at Rs. 2,08,000. This increase**

is not mere escalation but it is a multiplication by almost four and half times, although escalation could not exceed 10% as is evident from the contents of the brochure read with prescribed form application for allotment of house itself. Contentions of the appellant run contrary to the contents of its own brochure on which the Respondents acted adjusting their financial affairs understanding that the cost of the houses would be fixed in terms of brochure and that too not exceeding 10% of the estimated cost fixed initially. [393-E-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 913-914 of 1998.

From the Judgment and Order dated 21.5.97 of the Allahabad High Court in c.M.W.P. Nos. 303 and 9478 of 1995.

Vikas Singh and Ms. Amrit Narayan for L.R. Singh for the Appellant.

Ranjeet Kumar, Ms. Bina Gupta, Ms. Rakhi Ray and Ms. Sreedevi Raja for the Respondents.

The Judgment of the Court was delivered by

SHIVARAJ V. PATIL, J. Kanpur Development Authority (KDA) has filed these appeals challenging the correctness and vaiidity of the common order dated 21.5.1997 made by the Division Bench of the High Court in Writ Petitions.

Three schemes were floated by KDA in September, 1978 with financial support of 'HUDCO' "on no profit no loss basis". The three scheme were; (1) For Economically Weaker Section; (2) For lower Income Group and (3) Middle Income Group. Applications were invited in the prescribed form fixing the last date as 29.9.1978. The applications were to be made in the prescribed form along with the earnest money for each category. A brochure was issued showing the cost of each house and terms and conditions of the Schemes. In these cases, we are not concerned with the houses constructed in two other schemes which were allotted to the applicants on the basis of lottery on 25.10.1980 and cost specified in the brochure and the possession of the houses was delivered to them. However, the applicants (respondents herein) in the Middle Income Group were not

A allotted the houses and their applications were kept pending for more than 18 years for no fault of them.

As per the terms and conditions mentioned in the brochure in the MIG Category, the applications were to be made along with the earnest money by 29.9.1978. The estimated cost of each house was specified in the B brochure as Rs. 48,000. The persons whose income was between Rs. 601 to Rs. 1500 per month were eligible for Middle Income Group Houses. The houses were to be allotted among the valid applicants by lottery. After the lottery was drawn and on receipt of letter of information of allotment, the applicants had to deposit balance of the 1/4th of the cost of the house. C Thereafter, physical possession of the houses was to be delivered to the allottees and the remaining 3/4th of the cost of the house *i.e.* Rs. 36,000 was to be paid by the allottees in 48 quarterly installments in 12 years with 11.5% interest as per the brochure. Since there were only 108 valid applications altogether for 111 MIG houses, all the applicants could have D been allotted MIG houses when 1/4th cost of the house was deposited by the applicants as on 31.3.1979, what remained was only to draw a lottery among the 108 valid applicants for the specific houses to each one of the applicants. And thereafter the possession of specified house was to be delivered to each allottee as the constructions of 111 MIG houses were E completed in 1980.

However, KDA chose to include names of some more applicants after the last date *i.e.* 29.9.1978, which gave rise to disputes. Some affected applicants filed suits in 1981/1982. None of these respondents were parties F in those suits.

The court finding fault with the KDA decreed the suit and directed it to allot the houses to 108 valid applicants keeping 8 houses reserved for the person who are plaintiffs in those two suits. The appeals filed by the KDA against the decree passed by the trial court were also dismissed. G Instead of complying with the decree, KDA increased the cost of each houses from Rs. 48,000 to Rs. 2,08,000 by the notification dated 24.12.1994 stating that each applicant had to deposit a further sum of Rs. 40,000 and in case of default the name of the applicant would not be included in the list of lottery for allotment of houses. In these circumstances, some of the H respondents were compelled to file writ petitions.

The writ petitions were admitted and interim orders were issued to include the names of 85 general category applicants in the lottery. In spite of the interim order dated 4.1.1995, KDA again issued a notification on 10.1.1995 stating that the date of lottery had been extended to 17.1.1995.

The lottery was drawn among the 108 valid applications, keeping 8 houses reserved to the plaintiffs in the two suits. In February, 1995, information of allotment was issued to all the allottees along with demand for Rs. 24,000 from each one of them towards first 6th monthly installment. The High Court in the writ petitions stayed this demand. The KDA filed the counter affidavit in the writ petitions taking a stand that it was entitled to escalate the price as per the brochure; the initial price fixed as the cost of the houses, was only tentative; the delay in drawing of lottery and allotment of house was on account of the suits filed and because of the pendency of the cases. According to the KDA, the action taken by it in increasing the cost of the house to Rs. 2,08,000 was quite justified. The Division Bench of the High Court, after detailed consideration of the respective contentions, allowed the writ petitions granting relief to the respondents by quashing the order dated 24.12.1994 of the KDA increasing the cost of the houses and directed it to deliver the possession of the houses to the respondents on the cost fixed in the brochure.

The learned counsel for the appellant urged that the High Court failed to appreciate that the Vice Chairman of KDA could determine the cost of the houses and the cost fixed by him was reasonable and fair; the High Court could not have interfered with such determination of cost. The High Court should have taken into consideration the position that the KDA brought out the scheme for allotment of houses on 'no profit and no loss basis'; the cost fixed was based on the relevant materials and it was not arbitrary so as to interfere with the same; it was not open to the High Court to hold that the price of the house fixed was arbitrary and unreasonable without going into the method or the basis for calculating the cost of the house. The delay in allotment of houses was not deliberate or intentional; it was because of long pending litigation in courts. The learned counsel added that KDA constructed houses by raising loans under the HUDCO Scheme; it has paid enormous amount of interest on the loan raised; it had to pay heavy compensation for acquisition of land.

A On the other hand, the learned senior counsel for the respondents argued fully justifying the impugned order. He submitted that the delay in allotment of houses and delivering the possession of the same to the respondents was on account of the appellant; the respondents complied with the every condition contemplated in the brochure; the unreasonable B stand and conduct of the appellant was responsible for delay and no blame can be put on the respondents in that regard. Two suits were filed in 1981/ 1982 by eight plaintiffs in all. Nothing prevented the appellant from allotting the houses to the respondents keeping aside eight houses for the eight plaintiffs as they were available in excess of the applications. The C appellant moved for vacating the interim order in those suits filed in 1981/ 1982 only in 1990. The present respondents were not parties in those suits. The appeals filed by the KDA against the decree passed in the suits were dismissed on 24.5.1994. The learned counsel further contended that as per the brochure issued by the appellant, escalation of cost of houses could not D exceed 10%; cost of the houses should be determined as on the date of completion of the houses and not on the date of the allotment or delivering the possession of the houses. The appellant has tried to prosecute parallel remedies inasmuch as it filed review petitions before the High Court and special leave petition before this Court against the impugned order. The E respondents were salaried employees having income between Rs. 601 to Rs. 1500 per month; they had arranged their financial affairs with a hope to get houses. Had they been given the possession of the houses immediately after their completion in 1981, they could have saved money paying by way of rent to houses where they were staying. The learned counsel drew our attention to I.A. Nos. 7-8 of 2003 filed by the respondents to take action F against the appellant under Section 340 read with Section 195 of the Code of Criminal Procedure by ordering an inquiry into the offences committed by the appellant under Sections 193, 196, 199, 200, 463, 464, 465, 467, 468, 471 read with Section 120-B of the Indian Penal Code in respect of production of false and fabricated documents and giving false evidence G during the proceedings. In these applications it is specifically averred that the appellant produced a translated copy of the brochure (Annexure A-1) alleging the same to contain the 1978 Scheme for allotment of houses in Mohalla Barra Third Phase, Kanpur. The correct copy (translated) of the brochure that was given to the respondents at the time of application for H the said scheme is filed as Annexure A-2. The original copy in Hindi was

placed before us during the hearing. According to the respondents Annexure A-1 was filed before the High Court by the appellant, which is fake, fabricated and materially different from the true translation of the original brochure and that the said document has been filed by the appellant with oblique motives to thwart/alter the course of justice. It is further stated in these I.As. that the case of the appellant before this Court is based on the premise that "In the brochure Clause 4 relating to payment of price, stipulated that the final price shall be determined by the Vice Chairman of the KDA and that the said price shall be determined by the Vice Chairman of the KDA and the price would be binding on the applicants. The brochure for allotment of houses under the Scheme also provided that the Vice Chairman of the KDA is empowered to alter/change the price/ shape of the houses shown in the brochure and it shall be binding on every applicant". The prayer is made in these I.As. to order for a preliminary inquiry into the offences committed by the persons responsible in the appellant authority during the course of the judicial proceedings and after recording the findings make a complaint to the Chief Judicial Magistrate for the prosecution of the accused persons in accordance with law. During the course of hearing when the original brochure in Hindi was produced on behalf of the respondents the learned counsel for the appellant did not dispute its correctness and authenticity.

We have carefully considered the respective submissions made on behalf of the parties and to appreciate them, it may be necessary to refer to the relevant terms and conditions under different headings contained in the brochure. In the light of the controversy as to the translated copies of the brochures produced by the appellant and the respondents and in view of what is stated above in relation to them the relevant terms and conditions contained in translated copy of the brochure (Annexure A-2) filed along with I.A. Nos. 7-8 on comparison of the same with the original in Hindi, reads :—

"Signature
(L.N. Tripathi) (Rubber stamp)
Head Cleark (Sales)
Kanpur Development Authority

A BURRA HOUSING CONSTRUCTION SCHEME
(financially supported by HUDCO)

Third Phase

B (Application Form)

KANPUR DEVELOPMENT AUTHORITY

Price Rs. 5

C "(Application form for applicant only)

KANPUR DEVELOPMENT AUTHORITY No.:.....
(without putting adverse effect)

Price Rs. 5

D

BARRA HOUSING SCHEME

To:

E Vice Chairman
Development Authority
Kanpur

Sir,

F I/We :..... son/wife of .....apply for a house in the proposed houses under "Barra Gran Nirman Yogna" of Kanpur Development Authority, the estimated cost of which is Rs. 48,000 *(which can also exceed upto 10%)*
G .....”

"SYSTEM AND RULES OF ALLOTMENT OF HOUSES

(8) The Vice-Chairman can change any rule or cn-cancel and
H can make other rule which shall be acceptable to the applicant."

"KANPUR DEVELOPMENT AUTHORITY
BARRA HOUSING CONSTRUCTION SCHEME
Details of House & Rule for Payment

Sl. No.	Category of house	Area of land In sq. mt.	Details of house	Monthly income of family Not exceeding	Sale price of house which can increase upto 10%	Adv. amt. with appli-cation	31.12.78	31.12.79	Qtly. install-ments	Rate of intere-st/year
1	2	3	4	5	6	7	8	9	10	11
1.	.....									
2.	.....									
3.	Middle Income Group	167.20	2 rooms, drawing dinning, Bath & Toilet Room & Lounge	1500	48000	5000	2500	4500	48	11.5%

In the application form as prescribed by the KDA, it is clearly mentioned that the estimated cost of the house in MIG scheme is Rs. 48,000 (which can also exceed up to 10%). There was some controversy with regard to the terms and conditions mentioned in the brochure. It was contended on behalf of the respondents that there was deliberate misrepresentation by KDA before the High Court by filing incomplete and incorrect extract of Brochure. Before us, not only translated copy but original of Brochure in Hindi itself was produced by respondents and there was no controversy as to the terms and conditions in relation to the relevant clauses extracted above. As rightly contended on behalf of the respondents there is no clause 4 in the brochure relating to payment of price on which the appellant claimed that the Vice-Chairman of the KDA has the right to increase the price and fix the final price that would be binding on the applicants. This being the position, the very foundation for increase of the price of houses and justification thereof itself is destabilized and knocked

down. Clause 4 of the brochure is altogether different, which reads:—

> "(4) House category 2 and 3, the interested applicants to deposit full amount of the house, will have to deposit balance of the 1/4th of cost by 31.12.1978. The information of lottery will be sent by registered post on the address mentioned in the application form. The remaining 3/4th of the cost of the house will have to be deposited in cash or by Bank draft in favour of Development Authority within 60 days from the information of lottery given by registered post, otherwise all proceedings regarding allotment will be cancelled and the advance money will be forfeited."

It is not in dispute that the respondents made applications within the time fixed, satisfied the terms and conditions for allotment of houses and they were not the plaintiff in the suits filed in 1981/1982. The construction of houses was completed in 1980, the cost of the house was determined as on 24.12.1994. Nothing prevented the KDA from allotting houses to the respondents, when the houses were ready for allotment. Particularly, when houses available were more than the applications received before the last date. For no fault of the respondents, they were made to wait for more than 18 years. As per the brochure, the house were to do allotted through lottery system by drawing lot among the eligible applicants, who got themselves registered through the prescribed format within the time fixed and paid required money within time. In the instant case in MIG scheme, 111 houses were available but the number of applications were less including the respondents. Only 8 persons had filed suits in the years 1981/1982. There should have been no difficulty in allotting the houses and delivering the possession to the respondents immediately on their completion in 1980. In that event, the payment of interest on loan said to have been taken by the authority would not have arisen. It cannot also be ignored that the respondents were/are mostly salaried employees having monthly income of Rs. 601-1500. They must also have adjusted and arranged their finances and affairs to make payment towards the houses. It may also be kept in mind that the allottees were expected to pay the remaining amount after initial deposit and first installment, in 48 installments. Even having regard to the payment of money in installments, the estimated cost which was fixed at Rs. 48,000 with a clear and express understanding that increase

in the cost of the house could be up to 10% of the cost of the house. In the brochure, it is also mentioned that the price of the houses mentioned is totally approximate and that the final price of the houses would be determined by the Vice Chairman, KDA, on the completion of the houses. Prices of the houses in these cases were determined as on 24.12.1994 as against the express clause that the determination of the final price shall be as on the date of completion of the construction of the houses *i.e.* in the year 1980. As can be seen from the prescribed form of application and rules for payment the increase of the cost of the house can be up to 10%. Further it is clear from the prescribed form of application as filled by the respondents that the estimated cost of the house is Rs. 48,000 which could exceed up to 10%. The argument advanced on behalf of the appellant to the effect that the Vice Chairman has power to determine the prices of the houses and the price determined is binding on the respondents, runs contrary to brochure. Hence it cannot be accepted.

Further for no fault of the respondents they cannot be penalized to pay the cost of construction as determined on 24.12.1994 when the houses were ready in 1980. As can be seen from the impugned order, the High Court has found thus :—

> "It was undesirable conduct of the authority which gave rise to the civil litigation. There were no restraints and constraints for the respondents in drawing the lottery and making the allotments to the genuine applicants even during the pendency of the civil suit and appeal before the District Judge. There is nothing in the counter affidavit to demonstrate that the respondents were under legal obligation to refuse the allotment of the houses to the persons or make delay in allotment of the houses to them. So in absence of a reasonable and sufficient justification preventing the respondents to make allotment in 1979, we feel that the respondents should be blamed for delay in making the allotment."

The High Court has further observed :

> "It may be mentioned that the petitioners deposited the installments under the hope and trust that they will get the houses within the

A time schedule advertised at the initial stage. Much time is elapsed between the registration of the applications for allotment of the houses and actual construction and delivery of possession thereafter. It is worth mentioning that the petitioners might be living in the rented house since 1979 and they might have managed their B financial position in such a manner that after the deposit of the installments they will get the house of their own and thereafter they will be free from payment of house rent and then they will be shifted from the rented house to the allotted house, but on account of inordinate delay in delivery of possession of allotted C house, their financial calculation and expectation stands frustrated causing various types of financial loss to them. On the other hand, once the authorities made offers and the same were accepted by the allottees, with the legitimate exception, the statutory obligation cast upon the authorities to complete the same within the time D schedule mentioned in the offer and if they fail to discharge the same, they should be held responsible for it and not the petitioners."

The High Court finally concluded that delay in allotting and in E delivering the possession of the houses to the respondents was caused due to the lapse on the part of the appellant, and, therefore, in the fairness of things, the KDA should not be allowed to determine unjust and unfair cost of the houses in an arbitrary manner.

We have no good reason to take a different view in the light of what F is stated above. We have to note one more submission made on behalf of the appellant that the appellant works on no loss and no profit basis and it has raised huge loan under the HUDCO scheme for construction of houses and it has to pay heavy interest on the amount of loan raised. The appellant neither urged nor laid any foundation for this argument before G the High Court. No details and particulars were given as to the amount of loan raised and the period for which interest has been paid in respect of the houses constructed which are to be allotted to the respondents.

Further the final price of the houses had to be determined on the date H of their completion. As found, there was delay on account of the appellant

and if that occasioned payment of interest, the respondents cannot be held responsible, having regard to the terms and conditions contained in the brochure. This apart, no justifiable case is made out for escalation of price of the houses in these cases, to say that the appellant could enhance the prices for the unforeseen or compelling reasons beyond control of appellants even as against the terms and conditions contained in the brochure.

The learned counsel for the appellant cited two decisions in *Delhi Development Authority* v. *Pushpendra Kumar Jain,* [1994] Supp. 3 SCC 494 and *Prashant Kumar Shahi* v. *Ghaziabad Development Authority,* [2000] 4 SCC 120, in support of his submissions. In our view both the decisions do not help the appellant when we look at the facts of those cases and the views expressed therein.

In the case of *Delhi Development Authority* (supra) the facts were that Delhi Development Authority (DDA) published a scheme called "Registration Scheme of New Pattern, 1979 of intending purchasers of flats to be constructed by Delhi Development Authority" providing a procedure for allotment of flats. In the brochure, clause (11) provided schedule of payment. Clause (14) was to the effect that "it may please be noted that the plinth area of the flats indicated and the estimated prices mentioned in the brochure are illustrative and are subject to revision/modification depending upon the exigencies of lay-out, cost of construction etc.". The Court took notice that there were always more applicants than the number of flats available. The DDA had been adopting the method of draw of lots among the registered applicants to select the allottees. The writ petition was filed by one of the allottees because between the date on which lots were drawn and the date on which the allotment was communicated to the respondent, the land rates were revised by the DDA by the circular dated 6.12.1990, as there has been substantial enhancement of land rates in the region of about 50 to 70%. Since the allotment was made ot allottee on January 9/13, 1991, he was called upon to remit the amount on the basis of revised land rates as aforesaid. The Division Bench of the High Court accepted the plea of the allottee writ petitioner. This Court, allowing the appeal filed by the DDA, found fault with two reasons given by the High Court:(1) Though the draw was held on 12.10.1990, the allotment-cum-demand letter was issued to the respondent only on January 9/13, 1991. This delay was the result of inefficiency of the DDA, and (2) as the issue

A of allotment-cum-demand letter was delayed in the office of DDA, it cannot charge the revised land rates to the respondent inasmuch as the respondent became entitled to get the flat on 12.10.1990; the revision of land rates subsequent to the draw of lots cannot effect the respondent. This Court held that there was no legal basis for holding that the respondent B obtained the vested right to allotment on the draw of lots as the system of drawing of lots was resorted to with a view to identify the allottee; it was not the allotment by itself. Mere identification or selection of the allottee does not clothe the person selected with a legal right to allotment at the price prevailing on the date of draw of lots. The scheme did not say so C either expressly or by necessary implication. On the contrary clause (14) made provision for modification or revision of cost of construction, etc. On facts it was also found that there was no unreasonable delay or inefficiency on the part of the DDA. Further, the validity or justification of the revision of land rates by circular dated 6.12.1990 was not questioned in the writ petition. But in the present case the facts are entirely different. D On facts it is found that there has been unreasonable and unjustified delay on the part of the appellant in allotting and delivering the possession of the houses. The clause in regard to determination of price is not similar to clause (14) in the aforementioned case of DDA. The cost of escalation could not exceed 10% of the tentative cost. The cost of construction of E house in these cases on hand was to be determined as on the date of the completion of the construction of the house and not on the date of delivering possession of the house. Unlike in the case of DDA it was not the case of revision of land rates alone, that too in the absence of any circular indicating revision of cost of land before allotment or delivery of F possession of houses.

The case of *Prashant Kumar Shahi,* aforementioned, is also of no help to the appellant. It supports the case of the respondents. This Court held that if the authority is found to be responsible for the delay in delivery of G the possession of the plots in terms of the agreement arrived at or according to the assurance given in the brochure, the allottee cannot be burdened with the interest on the balance amount not paid by him. But on the facts of that case fault was found with the allottee in reagard to the delay in payment. As already recorded above, in these appeals, with which we are H concerned, delay was on account of the appellant. authority itself.

The learned counsel for the respondents in support of his submissions cited the decision of this Court in *Indore Development Authority* v. *Sadhana Agarwal (Smt) and Others.*, [1995] 3 SCC 1. In the facts and circumstances of that case having regard to the reasons for the increase in the cost no interference was called for by the High Court. Further, the High Court was justified in saying that in such circumstances, the authority owed a duty to explain and satisfy the court, the reasons for such high escalation. The High Court has to be satisfied on the materials on record that the authority has not acted in an arbitrary or erratic manner. In the said decision reference is made to two earlier decisions of this Court including the case of DDA aforementioned. In paragraph 9 it is stated, thus :—

> "9. This Court in the case of *Bareilly Development Authority* v. *Ajai Pal Singh,* [1989] 2 SCC 116, had to deal with a similar situation in connection with the Bareilly development Authority which had undertaken construction of dwelling units for people belonging to different income groups styled as "Lower Income Group", "Middle Income Group", "Higher Income Group" and the "Economically Weaker Sections". The respondents to the said appeal had registered themselves for allotment of the flats in accordance with the terms and conditions contained in the brochure issued by the Authority. Subsequently, the respondents of that appeal received notices for the Authority intimating the revised cost of the houses/flats and the monthly installment rates which were almost double the cost and rate of installments initially stated in the General Information Table. But taking all facts and circumstances into consideration, this Court said that it cannot be held that there was a misstatement or incorrect statement or any fraudulent concealment, in the brochure published by the Authority. It was also said that the respondents cannot be heard to say that the Authority had arbitrarily and unreasonably changed the terms and conditions of the brochure to the prejudice of the respondents. In that connection, it was pointed out that the most of the respondents had accepted the changed and varied terms. Thereafter they were not justified in seeking any direction from the Court to allot such flats on the original terms and conditions. Recently, the same question has been examined in the case of *Delhi Development Authority* v. *Puspendra Kumar Jain.* In

respect of hike in the price of the flats, it was said : (SCC p. 497, Para 8)

> "Mere identification or selection of the allottee does not clothe the person selected with a legal right to allotment at the price prevailing on the date of draw of lots. The scheme evolved by the appellant does not say so either expressly or by necessary implication. On the contrary, clause (14) thereof says that 'the estimated prices mentioned in the brochure are illustrative and are subject to revisions/modification depending upon the exigencies of lay out, cost of construction etc.'."

Although this Court has from time to time, taking the special facts and circumstances of cases in question, has upheld the excess charged by the development authorities over the cost initially announced as estimated cost, but it should not be understood that this Court has held that such development authorities have absolute right to hike the cost of flats, initially announced as approximate or estimated cost for such flats. It is well known that persons belonging to middle and lower income groups, before registering themselves for such flats, have to take their financial capacity into consideration and in some cases it results in great hardship when the development authorities announce an estimated or approximate cost and deliver the same at twice or thrice of the said amount. The final cost should be proportionate to the approximate or estimated cost mentioned in the offers or agreements. With the high rate of inflation, escalation of the prices of construction materials, and labour charges, if the scheme is not ready within the time-frame, then it is not possible to deliver the flats or houses in question at the cost so announced. It will be advisable that before offering the flats to the public such development authorities should fix the estimated cost of the flats taking into consideration the escalation of the cost during the period the scheme is to be completed. In the instant case the estimated cost for the LIG flat was given out at Rs. 45,000. But by the impugned communication, the appellant informed the respondents that the actual cost of the flat shall be Rs. 1,16,000 *i.e.* the escalation is

more than 100%. The High Court was justified in saying that in such circumstances, the Authority owed a duty to explain and to satisfy the Court, the reasons for such high escalation. We may add that this does not mean that the High Court in such disputes, while exercising the writ jurisdiction, has to examine every detail of the construction with reference to the cost incurred. The High Court had to be satisfied on the materials on record that the Authority has not acted in an arbitrary or erratic manner."

We are of the view that each case is to be decided in the facts and circumstances of the case in the light of the scheme published/framed and the terms and conditions mentioned in the Brochure and/or in the prescribed form of application in the matter of escalation/determination of cost of house/flat. However, cases where there is limit for fixing the escalation of cost, normally the price of house or flat cannot exceed the limits so fixed. The determination of cost of house/flat or escalation of cost cannot be arbitrary or erratic. The authority has to broadly satisfy by placing material on record to justify the escalation of cost of a house/flat. Whether the delay was caused by the allottee or the authority itself is also a factor which has bearing in determination of the cost of house/flat. The unforeseen cause or the reason beyond control of the authority in a given case may be another factor to be kept in view. We may also notice that is these cases the tentative cost of houses was fixed at Rs. 48,000 but final cost was determining at Rs. 2,08,000. This increase is not mere escalation but it is a multiplication by almost four and half time, although escalation could not exceed 10% as is evident from the contents of the Brochure read with prescribed form of application for allotment of house itself. Contentions of the KDA run contrary to the contents of its own Brochure on which the respondents acted adjusting their financial affairs understanding that the cost of the houses would be fixed in terms of brochure and that too not exceeding 10% of the estimated cost fixed initially.

As to the complaint that the appellant having filed review petition before the High Court seeking review of the impugned judgment could not prosecute parallel remedy by filing SLP in this Court, the learned counsel for the appellant was not in a position to say as to what happened to the review petition filed in the High Court. In our view it may be unnecessary to say anything further on this aspect in the view we have taken and are

A disposing of these appeals themselves on merits. As regards the prayer made by the respondents in I.As. 7-8 we do not think it necessary to probe further in these proceedings. Hence no orders are required to be passed in these I.As.

B Thus having regard to the facts found and in view of what is stated above, we cannot find fault with the conclusions arrived at by the High Court in the impugned judgment. Hence, finding no merit in these appeals, they are dismissed but with no order as to costs.

R.K.S. Appeals dismissed.