

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:25.04.2019

+ **W.P.(C) 11704/2016 & CM Nos.1586/2017 & 14379/2017**

**THE STATE GOVERNMENT OF MADHYA
PRADESH**

..... Petitioner

versus

UNION OF INDIA & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr J. Sai Deepak with Mr Ashutosh Nagar.

For the Respondents: Mr Sanjay Jain, ASG with Mr Rakesh Kumar, CGSC for R-1 & R-2.
Ms R. Rajalakshmi and Mr SidharthShahi,
Advocates for R-3.
Mr MohitGoel and Mr AbhishekKotnala,
Advocates for impleaders.

**CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU**

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner – State Government of Madhya Pradesh – has filed the present petition under Article 226/227 of the Constitution of India, impugning the Office Memorandum dated 29.05.2008 (hereafter referred to as “OM-I”), Office Memorandum No.3-35/2014-SD-IV dated 07.02.2014 (hereafter referred to as “OM-II”) and letter dated 05.05.2016 (hereafter referred to as “impugned letter”) issued by respondent no.1 (Ministry of Agriculture).

2. By OM-I, respondent no.1 has set forth the standards of the “*Basmati*” variety of rice. Apart from setting forth the characteristics of *Basmati* Rice, OM-I also expressly provides that it would be necessary to ensure the linkage between the variety and the Geographical Indication and only *Basmati* varieties with prescribed characteristic grown in Indo-Gangetic region would qualify for such description. By OM-II, respondent no.1 had issued a direction to ensure that the registration of *Basmati* varieties for certified and foundation seeds is not undertaken outside geographical area detailed under the Geographical Indication (GI) for *Basmati* rice. By the impugned letter, respondent no.1 has withdrawn the allocation of seeds for *Basmati* allotted during the Kharif-2016, pursuant to the decision that production of *Basmati* variety seeds would not be taken outside the GI defined areas (areas included in the State of Punjab, Haryana, Himachal Pradesh, Delhi, Uttarakhand, Western Uttar Pradesh, Jammu and Kathua District of Jammu and Kashmir).

3. The petitioner has challenged OM-I, OM-II and the impugned letter, essentially, on four grounds. First, it contended that it is outside the scope of the Seeds Act, 1966 (hereafter ‘the Seeds Act’); second, that the OMs encroach upon the power of the petitioner to pass laws in relation to agriculture, which is a state subject; and third, that it ventures into the statutory field of the Geographical Indications of Goods (Registration and Protection) Act, 1999 (hereafter the ‘GI Act’).

4. Respondent nos.1 and 3 (The Agricultural and Processed Food and Products Export Development Authority) dispute the contentions

advanced on behalf of the petitioner. In the counter affidavit filed on behalf of respondent no.1, it was affirmed that OM-I, OM-II and the impugned letter were “*passed in pursuance of and within the powers and competence of respondent no.1 under Sections 3(5), 5 and 7(d) of the Seeds Act, 1966 declaring the features of Basmati Variety seed representing Basmati and its trade to determine its quality, characteristics as Basmati category and which geographical region of the country should it be restricted to*”. However, the oral submissions made on behalf of respondent nos.1 and 3 were at variance with the counter affidavit as filed. Thereafter, respondent no.1 filed an additional counter affidavit seeking to explain the stand of respondent no.3. They now claim that OM-I was issued by respondent no.1 on the recommendations made by the Sub-Committee of the Central Seeds Committee made within the scope of Section 3 of the Act, which were accepted by respondent no.1 in exercise of its executive powers under Article 77(3) of the Constitution of India.

5. Before proceedings to address the controversy involved in the present petition, it would be necessary to note a few facts.

6. Respondent no.3 (hereafter ‘APEDA’) is a body established under Section 4 of the Agricultural and Processed Food Products Export Development Authority Act, 1985. In terms of Section 10A of the said Act, APEDA is also charged with a duty to undertake measures in India and outside India for registration and protection of the Intellectual Property Rights (including GIs) in respect of Special Products listed in the Second Schedule to the said Act. *Basmati* has

also been notified as a Special Product and, therefore, APEDA is also required to undertake necessary measures for protection of the Intellectual Property Rights in relation to *Basmati* rice.

7. Respondent no.1 has issued notifications (three in number) dated 06.11.1989, 05.11.2005 and 20.07.2007, declaring various *Basmati* varieties of seeds as notified varieties for the whole of India.

8. On 26.11.2008, APEDA filed an application to register *Basmati* as a Geographical Indications (GI) in Class 30 under the GI Act. In terms of the said application, Geographical Indication of *Basmati* was confined to rice grown in the Indo-Gangetic Plains in the States of Punjab, Haryana, Delhi, Himachal Pradesh, Uttarakhand and parts of Uttar Pradesh and Jammu and Kashmir.

9. The petitioner filed a statement of opposition to APEDA's application on 29.09.2010. The petitioner claimed that thirteen districts in the State of Madhya Pradesh should also be included in the GI for *Basmati* Rice. On 31.12.2013, the Registrar of Geographical Indications passed an order, *inter alia*, observing that APEDA had failed to satisfy the fundamental requirement of clear, specific and reasoned demarcation of actual *Basmati* cultivation areas. APEDA was further directed to re-file its application after including the actual *Basmati* cultivation areas, along with a map clearly indicating such areas. On 12.02.2014, APEDA filed an appeal before the Intellectual Property Appellate Board (IPAB) impugning the order dated 31.12.2013 passed by the Registrar of Geographical Indications. On

05.02.2016, IPAB remanded the matter to the Registrar, Geographical Indications to reconsider the matter afresh in respect of the claim of the petitioner for inclusion of the thirteen districts of the State of Madhya Pradesh as GI for *Basmati* Rice. The petitioner states that it has filed a writ petition before the Madras High Court (W.P. 5798/2016) which is pending consideration. It is further claimed that on 17.02.2016, the Madras High Court had passed an interim order restraining respondent no.3 from taking any precipitate action in respect of *Basmati* rice produced in the 13 districts of the State of Madhya Pradesh.

10. It is apparent from the above that there is dispute as to whether the thirteen districts of Madhya Pradesh should also be included as GI for *Basmati* variety of rice. In terms of the order dated 15.02.2016, APEDA was granted the registration of *Basmatias* the GI in respect of areas claimed by it.

11. The principal controversy to be addressed is whether OM-I, OM-II and the impugned letter are without the authority of law.

12. As noted above, respondent no.1 had identified the source of authority for issuing OM-I and OM-II as Sections, 3(5), 5 & 7(d) of the Seeds Act. However, in the additional counter affidavit filed on its behalf, respondent no.1 claims the source of authority for issuing OM-I, as under:

“That the Central Sub-Committee on Crop Standards Notification had deliberated on the matter considering all information required on *Basmati* quality and had recommended the minimum standards for designation of

Basmati Varieties and, therefore, OM-I is founded. All the said recommendations were accepted and respondent no.1 issued OM-I. It is claimed that thus statutory foundation of OM-I is Section 3 of the Seeds Act.”

13. It is also stated on behalf of respondent no.1 that Rule 3(c) of the Seeds Rules, 1968 (hereafter ‘the Seeds Rules’) indicates that one of the statutory functions of the Central Sub-Committee is to “*send its recommendations and other concerning records to Central Government*”. It is stated that once such recommendations are received, the Central Government is to either agree, disagree, ignore or implement the recommendations of the Central Seed Committee. It is also stated that the subject matter of recommendation of the Central Seed Committee was found to be relevant to attain the object of the Seeds Act and, therefore, the Central Government was within its power to implement the recommendations in exercise of powers vested in the executive under Article 77(3) of the Constitution of India.

14. In view of the above, the first and foremost question to be addressed is whether the power to issue OM-I can be traced to the provisions of the Seeds Act and whether the impugned OMs are to fill the lacune in the said Act and whether respondent no.1 is empowered to do so in exercise of its executive powers.

15. Before proceeding further, it would be necessary to examine the scheme of the Seeds Act. The introduction to the Seeds Act indicates that the Seeds Act was enacted as it was considered necessary to regulate the quality of certain seeds to be sold for the purposes of

agriculture. The Statement of Objects and Reasons explains the methodology for achieving the said objective of regulating the quality of seeds, as under:-

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

- (a) constitution of a Central Committee consisting of representatives of the Central Government and the State Government, the National Seeds Corporation and other interests, to advise those Governments on all matters arising out of the proposed Legislation;
- (b) fixing minimum standards of germination, purity and other quality factors;
- (c) testing seeds for quality factors at the seed testing laboratories to be established by the Central Government and the State Government;
- (d) creating of seed inspection and certification service in each State and grant of licences and certificates to dealers in seeds;
- (e) compulsory labelling of seed containers to indicate the quality of seeds offered for sale; and
- (f) restricting the export, import and inter-State movement of non-descript seeds.”

16. Section 3 of the Seeds Act provides for constitution of a Central Seed Committee for advising the Central Government and the State Governments on matters arising out of the administration of the Seeds Act. Section 3 of the Seeds Act is set out below:-

“3. Central Seed Committee. - (1) The Central Government shall, as soon as may be after the commencement of this Act, constitute a Committee called the Central Seed Committee to advise 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.

(2) The Committee shall consist of the following members, namely:-

- (i) a Chairman to be nominated by the Central Government;
- (ii) eight persons to be nominated by the Central Government to represent such interests that Government thinks fit, of whom not less than two persons shall be representatives of growers of seed;
- (iii) one person to be nominated by the Government of each of the States.

(3) The members of the Committee shall, unless their seats become vacant earlier by resignation, death or otherwise, be entitled to hold office for two years and shall be eligible for re-nomination.

(4) The Committee may, subject to the previous approval of the Central Government, make bye-laws fixing the quorum and regulating its own procedure and the conduct of all business to be transacted by it.

(5) The Committee may appoint one or more sub-committees, consisting wholly of members of the Committee or wholly of other persons or partly of members of the Committee and partly of other persons, as it thinks fit, for the purpose of discharging such of its

functions as may be delegated to such sub-committee or sub-committees by the Committee.

(6) The functions of the Committee or any sub-committee thereof may be exercised notwithstanding any vacancy therein.

(7) The Central Government shall appoint a person to be the secretary of the Committee and shall provide the Committee with such clerical and other staff as the Central Government considers necessary.

17. It is apparent from the plain language of Section 3(1) of the Seeds Act that the role of the Central Seed Committee is to advise the Central Government and State Governments on matters arising out of administration of the Seeds Act or to perform any other functions assigned by or under the Seeds Act. Sub-Section (5) of Section 3 only enables the Central Seed Committee to form one or more sub-committees. Therefore, it is difficult to accept that the source of authority for the impugned OMs can be traced to Section 3 (5) of the Seeds Act.

18. Section 4 of the Seeds Act provides for setting up of the Central Seed Laboratory and the State Seed Laboratory by the Central Government and the State Governments, respectively. In terms of Section 4(1) of the Seeds Act, the Central Seed Laboratory is to carry out the functions as entrusted to it under the Seeds Act. Further, the constitution of State Seed Laboratories is contemplated to carry out the analysis of seeds of any notified kind or variety by Seed Analysts.

19. Section 5 of the Seeds Act empowers the Central Government to notify any kind or variety of seeds for the purposes of regulation under the Seeds Act. Section 5 is set out below:-

“5. Power to notify kinds or varieties of seeds. - If the Central Government, after consultation with the committee, is of opinion that it is necessary or expedient to regulate the quality of seed of any kind or variety to be sold for purposes of agriculture, it may, by notification in the Official Gazette, declare such kind or variety to be a notified kind or variety for the purposes of the Act and different kinds or varieties may be notified for different States or for different areas thereof.”

20. Section 2(9) of the Act defines the expression “notified kind or variety”, in relation to any seed to mean any kind or variety thereof notified under Section 5 of the Seeds Act.

21. A plain reading of Section 5 of the Seeds Act indicates that if after consultation with the Central Seed Committee, the Central Government is of the opinion that it is necessary to regulate the quality of seed of any species or sub species or group plants, it would, by notification, declare the seeds of that kind or variety to be notified. This declaration would bring the notified seeds of any kind or variety within the regulatory framework of the Seeds Act and the rules made thereunder.

22. Section 6 of the Seeds Act empowers the Central Government to specify, by notification in the Official Gazette, (a) the minimum limits of germination and purity with respect to any notified seed; and (b) the

mark or label to indicate that such seed conforms to the minimum limits germination and purity specified.

23. Section 7 of the Seeds Act proscribes any person from carrying on the business of selling, keeping for sale, offering to sell, bartering or otherwise supplying any seed of any notified kind or variety unless (a) the seed is identifiable as to its kind or variety; and (b) it qualifies the conditions as set out therein. Section 5,6 & 7 of the Seeds Act are set out below:-

“5. Power to notify kinds or varieties of seeds. - If the Central Government, after consultation with the committee, is of opinion that it is necessary or expedient to regulate the quality of seed of any kind or variety to be sold for purposes of agriculture, it may, by notification in the Official Gazette, declare such kind or variety to be a notified kind or variety for the purposes of the Act and different kinds or varieties may be notified for different States or for different areas thereof.

6. Power to specify minimum limits of germination and purity, etc.-The Central Government may, after consultation of the Committee and by notification in the Official Gazette, specify –

(a) the minimum limits of germination and purity with respect to any seed of any notified kind or variety:

(b) the mark or label to indicate that such seed conforms to the minimum limits of germination and purity specified under clause (a) and the particulars which marks or label may contain.

7. Regulation of sale of seeds of notified kinds or varieties. - No person shall, himself or by any other person on his behalf, carry on the business of selling,

keeping for sale, offering to sell, bartering or otherwise supplying any seed of any notified kind or variety, unless-

- (a) such seed is identifiable as to its kind or variety;
- (b) such seed conforms to the minimum limits of germination and purity specified under clause (a) of section 6;
- (c) the container of such seed bears in the prescribed manner, the mark or label containing the correct particulars thereof, specified under clause (b) of section 6; and
- (d) he complies with such other requirements as may be prescribed”

24. Section 8 of the Seeds Act provides for the State Government or the Central Government to establish a certification agency. Section 8A of the Seeds Act provides for setting up of a Central Seed Certification Board to advise the Central Government and the State Governments in all matters relating to certification and to coordinate the functioning of certification agencies.

25. Section 9 provides that any person dealing with seeds of any notified kind or variety may apply to such certification agency for a certificate to have such seeds certified and to obtain a certificate to the said effect.

26. Sections 12 and 13 of the Seeds Act enables the State Government to appoint persons as Seed Analysts and Seed Inspectors. Section 14 of the Seeds Act provides for the powers of the Seed Inspector and Section 15 provides for the procedure to be followed by the Seed Inspector. In terms of Section 14 (1), a Seed Inspector has the power to take samples of any seed of any notified kind or variety from

any person selling or delivering or purchasing such seeds. The Seed Inspector also has the power to search any place where he has reason to believe that any offence under the said Act has been or is being committed and to examine records and to seize the same. He can also take samples and send the same to Seed Analysts.

27. In terms of Section 16 of the Seeds Act, the Seed Analyst is required to analyze the samples received from the Seed Inspector at a seed laboratory and deliver his report in the manner as prescribed. Section 17 of the Seeds Act restricts the export and import of seeds of notified kinds or varieties unless the seeds conform to the minimum limits of germination and purity as specified under Section 6 (a) of the Seeds Act and the container bears, the mark or label as prescribed under Section 6 (b) of the Act. Section 19 provides for penalty in case of contravention of the Seeds Act.

28. Section 23 of the Seeds Act enables the Central Government to give such directions to State Governments as may appear to be necessary for carrying into execution in the State any provisions of the Seeds Act or any rule made thereunder. Section 25 of the Seeds Act enables the Central Government to make rules to carry out the purpose of the Seed Act.

29. It is at once apparent from the scheme of the Act that the scope of the Act is limited to regulating the business of seeds of notified kind or varieties. It is relevant to note that apart from Section 6 of the Seeds Act, which empowers the Central Government to specify the minimum

limits of germination and purity in respect of a seed and to specify the mark or label required, there is no other provision which enables the Central Government to set any bench mark or standard for seeds any notified kind or variety.

30. As stated above, Section 7 of the Seeds Act provides for regulation of the seeds of notified kinds or varieties, and proscribes any person from carrying on the business of dealing with notified kind of varieties of seeds, unless the conditions as specified under Section 7 of the Act are met. Rule 13 of the Seeds Rules, 1968, provides for the requirements to be complied with by a person who is carrying on the business as referred to under Section 7 of the Seeds Act. The said Rule is set out below:-

“13. Requirements to be complied with by a person carrying on the Business referred to in Section 7.-

{1) No person shall sell, keep for sale, offer to sell, barter or otherwise supply any seed of any notified kind or variety, after the date recorded on the container, mark or label as the date upto which the seed may be expected to retain the germination not less than that prescribed under clause (a) of section 6 of the Act.

(2) No person shall alter, obliterate or deface any mark or label attached to the container of any seed:

(3) Every person selling, keeping for sale, offering to sell, bartering or otherwise supplying any seed of notified kind or variety under section 7, shall keep over a period of three years a complete record of each lot of seed sold except that any seed sample may be discarded one year after the entire lot represented by such sample has been disposed of. The sample of seed

kept as part of the complete record shall be as large as the size notified in the official Gazette. This sample, if required to be tested, shall be tested only for determining the purity.”

31. Rule 14 of the said Rules specifies the classes and sources of certified seeds. Rule 14 is relevant and is set out below:-

“14. Classes and sources of certified seed. –(1) There shall be three classes of certified seed, namely, foundation, registered and certified and each class shall meet the following standards for that class:-

- (a) Foundation seed shall be the progeny of breeders' seed, or be produced from foundation seed which can be clearly traced to breeder's seed. Production shall be supervised and approved by a seed certification agency and be so handled as to maintain specific genetic purity and identity and shall be required to meet certification standards for the crop being certified. '
- (b) Registered seed shall be the progeny of foundation seed that is so handled as to maintain its genetic identity and purity according to standard specified for the particular crop being certified.
- (c) Certified seed shall be the progeny of registered or foundation seed that is so handled to maintain genetic identity and purity according to standards specified for the particular
crop being certified.

- (2) At the discretion of certification agency (when considered necessary to maintain adequate seed supplies) certified seed may be the progeny of certified seed provided this reproduction may not exceed three generations and provided further

that it is determined by the seedcertification agency. that the genetic purity will not be significantly altered.”

32. As is apparent from Rule 14 of the Seeds Rules, certified seeds are produced from breeder seeds. The seed certification agency is required to maintain a list of regularized breeders of seeds. After the breeder seeds have been procured the same are germinated to produce foundation seeds. The said germination is carried out under the strict supervision of the certification agency. The object is to ensure that the genetic purity and the identity of the seeds are maintained. Thereafter, registered seeds are produced from foundation seeds in a manner to ensure that the genetic identity and purity are maintained. The certified seeds are the progeny of the registered or foundation seeds.

33. It is apparent from the above that the scope and ambit of the Seeds Act is focused on regulation of sale of seeds of notified kind or varieties, and the object is to ensure that the notified seeds conform to the standards as specified under Section 6 of the Act, with regard to the minimum limits of germination and purity, as well as with regard to the mark and the labels specified.

34. The Seeds Act is not concerned with where and how the seeds are used. Once a person dealing with notified variety of seeds conforms to the requirement of Section 7 of the Seeds Act, there is no restriction as to where and how the crop is to be grown. The Seeds Act is limited to ensuring that the seeds available to farmers conform to the

minimum limits of germination and purity and the marks or label affixed thereon correctly indicate so.

35. The controversy in the present petition must now be determined in the aforesaid backdrop of the Seeds Act. It is, at once, clear that OM-I and OM-II draw no authority from the Seeds Act. OM-I sets out the characteristics of *Basmati* rice and expressly provides that “*only Basmati variety with prescribed characteristics grown in Indo-Gangetic region will qualify for such description*”. Plainly, this is neither a notification under Section 5 of the Act, which is only required to notify a kind or variety of seeds, nor a notification under Section 6 of the Act, which enables the Central Government by notification in the official gazette specify the minimum limits of germination and purity. The respondents have also not sought to support OM-I – and in this court’s view and rightly so – on the strength of Section 6 of the Seeds Act.

36. Section 3 of the Seeds Act provides for constitution of a Committee of a Central Seed Committee with a limited role. Rule 3 of the Seeds Rules, 1968 provides for functions of the Central Seed Committee. The said Rule is set out below:-

“3. Functions of the Central Seed Committee. –In addition to the functions entrusted to the Committee by the Act, the Committee shall,

- (a) recommend the rate of fees to be levied for analysis of samples by the Central and State Seed Testing Laboratories and for certification by the certification agencies;

- (b) advise the Central or State Governments on the suitability of seed testing laboratories;
- (c) send its recommendations and other concerning records to the Central Government;
- (d) recommend the procedure and standards for certification, tests and analysis of seeds; and
- (e) carry out such other functions as are supplemental, incidental or consequential to any of the functions conferred by the Act or these rules.”

37. It is also relevant to note that the Central Seed Committee is a Committee constituted under the Seeds Act, and the provisions of the Seeds Act and the Rules made therein circumscribe its role and functions. Clearly, the Central Seeds Committee cannot exercise any other function. Its role to act in an advisory capacity to the Central Government and the State Governments is also limited only to the matters arising out of the administration of the Seeds Act and/or other functions that are specified under the Seeds Act. Any advice or recommendation made by the Central Seeds Committee outside the scope of its functions, and role as specified under the Seeds Act and the Rules made thereunder, would be wholly without jurisdiction and the authority of law.

38. Respondent no.1 has sought to ascribe the advice or recommendations made by the Central Seeds Committee to Rule 3(c) of the Seeds Rules. This is, obviously, without merit as Rule 3(c) only pertains to sending recommendations concerning records to the Central Government. This function has to be read in the context of the Seeds

Act and cannot be interpreted to include all matters relating to crops and agriculture.

39. It is important to note that the import of OM-I is to restrict *Basmati* production to only regions in the Indo-Gangetic plain. OM-I, apart from specifying the characteristics of *Basmati* rice, seeks to ascribe a Geographical Indication to the said variety(ies). This is, clearly, outside the scope of the Seeds Act.

40. OM-II seeks to proscribe registration of *Basmati* variety for certification and foundation seed production outside the area detailed under G-I for *Basmati* rice. The production of certified seeds is required to be carried out in the manner as prescribed under the Seeds Act. As noticed above, in terms of Rule 14 of the Seeds Rules, the production of foundation seeds has to be supervised and approved by the Seeds Certification Agency so as to maintain specific genetic purity and identity. It is nobody's case that production of foundation seeds outside the GI for *Basmati* rice would dilute its genetic identity or purity. OM-II is plainly alien to the scope and object to the Seeds Act, which is to ensure that the quality seeds are available to farmers. The import of OM-II is to restrict the area of production of seeds, which is wholly outside the scheme of the Seeds Act. The question whether rice grown outside the specified regions of Indo-Gangetic plain can be termed as *Basmati*, is a matter which squarely falls within the scope of the GI Act and does not have any bearing on the quality of the seeds.

41. It was also contended on behalf of respondent no.1 that although the impugned OMs may not be traceable to any provision of the Seeds Act, the same are in furtherance of the object of the Seeds Act and, therefore, within the executive authority of respondent no.1. It was contended that the object of the impugned OMs is to further the object of the Seeds Act and, therefore, respondent no.1 could always supplement the concerned Statute. The learned counsel for the respondent has also referred to the decision of the Supreme Court in *The Joint Action Committee of Airlines Pilots Associations of India & Ors. v. The Director General of Civil Aviation & Ors. : Civil Appeal No. 3844/2011, decided on 03.05.2011* in support of the aforesaid contention.

42. The aforesaid contention is also not persuasive for the reason that the import of the impugned OMs does not fall within the object of the scope of the Seeds Act. As noticed above, the object of the Seeds Act is to regulate the quality of the certain seeds. The import of the OMs is not to ensure that the quality of seeds produced is maintained, but to restrict the area where the seeds could be used for production of crops. The effect of the impugned notifications is that breeder seeds would not be available for production outside the specified areas. The clear object is to ensure that the crop of *Basmati* rice is only grown in specified areas. This would not only be outside the scope of the Seeds Act but – as rightly pointed out by the learned counsel for the petitioner – relates to the field of agriculture, which is a state subject.

43. The contention that the impugned OMs are well within the scope of the power of the Central Government under Article 73 of the Constitution of India, is also unpersuasive. This contention is, clearly, an afterthought and there is no averment to this effect in the counter affidavit filed by respondent No.1. Secondly, as rightly pointed out by the learned counsel for the petitioner, the legislative competence for enacting the Seeds Act is traceable to Entry 33 of List III of the Seventh Schedule to the Constitution of India. It is, perhaps, for this reason that the Seeds Act also incorporates due participation by the State Government.

44. In terms of proviso to Article 73(1) of the Constitution, the executive powers of the Union does not extend to matters in respect of which the legislature of the State also has power to make laws. In view of the above, the impugned notifications are without the authority of law.

45. In view of the above, the impugned OM-I and OM-II (the Office Memorandum dated 29.05.2008 and Office Memorandum No.3-35/2014-SD-IV dated 07.02.2014) are set aside. It is not disputed that the impugned letter has been issued on the basis of the impugned OMs and consequently, the same is also set aside.

46. It is pointed out during the course of hearing that respondent no.1 had issued a notification dated 18.09.2017 under Section 5 of the Seeds Act, restricting the seeds production of *Basmati* varieties of rice to the rice growing areas of the States of Punjab, Haryana, Himachal

Pradesh, Delhi, Uttarakhand, parts of western Uttar Pradesh and State of Jammu and Kashmir. This Court is not expressing any opinion on the said notification. It will be open for the petitioner to challenge the same, in accordance with law.

47. All pending applications are disposed of.

April 25, 2019
Pkv/MK

VIBHU BAKHRU, J

सत्यमेव जयते