IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.2450 OF 2015

Nagarjuna Fertilizers and Chemicals Ltd.
and another ... Petitioners
v/s
Union of India and others ... Respondents

Mr Venkatesh Dhond, Sr. Counsel with Mr Shyam Kapadia, Mr Anoj Menon and Ms Dhanashri Jadeja i/b M/s Desai and Diwanji for Petitioners.
Dr G.R. Sharma with Mr D.P. Singh for Respondent No.1 – Union of India.
Mr G.W. Mattos, AGP for Rspondent Nos.2 to 4.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA JJ.

DATE : 9TH SEPTEMBER 2015

***P.C.*:-**

1. Rule, returnable forthwith. Heard finally.

2. The Controller of Legal Metrology, Maharashtra, State, Mumbai has, by the impugned order dated 30th July 2015, dismissed

the Petitioners' Appeal No.150 of 2015. Hence this Writ Petition under Article 226 of the Constitution of India.

2. A notice to show cause was issued to the Petitioners dated 25th May 2015. The Petitioner No.1 is a Public Limited Company, engaged in the business of manufacturing and distributing fertilizers and chemicals. A product styled as Urea is stated to be controlled under section 3 of the Essential Commodities Act 1955 and Fertilizer Control Order 1985. It is the case of the authorities that there is an obligation and duty to abide by maximum retail price and determination in relation to every product and particularly a controlled product. It is stated that the sale price of Urea is notified by the Central Government and it is Rs.5,360/- per ton plus applicable taxes. The case of the Petitioners is that based on this notified price and also the State in which the fertilizers are sold applicable taxes are added to fix the price. In these circumstances, they cannot round off the price as is mandated by the Central Government. The rounding off is being insisted and to that extent there is a challenge. The Packaged Commodities Rules cover this

issue of retail sale. The Petitioners' essential prayer is that Rule 2(n) of the Rules styled as Legal Metrology (Packaged Commodities) Rules 2011 be declared as unconstitutional, null and void and having no legal effect.

3. However, the Petitioners are also challenging the notice and the order passed by the Appellate Authority, copy of which is annexed to this Writ Petition at Annexure 'F'.

4. Mr Dhond, learned Senior Counsel appearing for the Petitioners inter alia contended that the appellate Authority viz. The Controller of Legal Metrology, Maharashtra State, Mumbai has decided the Appeal not by a speaking order but by same abrupt conclusion. He has invited our attention to the impugned order to submit that in paragraph 2 of the same, the contentions of the Petitioners – original Appellants are noted. In paragraph 3, the stand of the Respondents has been referred to. In paragraph 4, the issue to be decided is framed but reiterating that issue, neither the rival contentions are considered thereafter nor cogent and

satisfactory reasons are assigned for an abrupt conclusion that the bags are meant for retail sale, they are packaged commodity and are covered under the Rules.

5. Once the above contention was raised, we have called upon Mr Mattos, learned counsel appearing for the State to satisfy us as to whether the Controller of Legal Metrology has decided the Appeal in accordance with law.

6. Despite all persuasive skills at his command, Mr Mattos was unable to justify a very abrupt and sudden conclusion in the impugned order.

7. In view of the above, we do not think that the larger question or wider controversy should be decided in the Petitioners' case presently. We can keep that question and issue open and to be decided at an appropriate stage or in an appropriate case. We keep contentions in that regard of both sides open.

8. By section 50 of the Legal Metrology Act 2009 and subject to provisions of sub-section (2) of the said section, an Appeal shall lie from every decision or order mentioned in clauses (a) to (e) of sub-section (1) of section 50. By sub-section (3), the Appellate Authority shall, after giving a reasonable opportunity of being heard and after making such inquiry as it deems proper, make such order as it may think fit, confirming, modifying or reversing the decision or order appealed against or may send back the case with such direction as it may think fit for a fresh decision or order after taking additional evidence, if necessary.

9. We would proceed on the footing that it is this appellate power invoked. If that is invoked and that is the sweep of the power of Appellate Authority, then the entire case or issue is open before the Appellate Authority. The Appellate Authority is at liberty to apply its independent mind to the issue raised and after taking into consideration the rival contentions, pass a reasoned order. The conclusion must be based on reasons and which reasons in turn deal with rival contentions. We understand that is how a speaking order

is made. Though the Appeal lies and in the present case, to the Controller of Legal Metrology, Maharashtra State, Mumbai, he is expected to apply his independent mind. Though he may be a creature of the Act, it is not expected that he approves or puts a seal of approval on several decisions mechanically. In such circumstances, we would not be in a position to uphold this Appellate order. It does not satisfactorily decide the issue. On this short ground alone we set aside the impugned order. We restore the appeal of the Petitioner bearing No.150 of 2015 to the file of the Appellate Authority for being decided afresh on merits and in accordance with law without being influenced in any manner by any earlier findings. The Appeal shall be decided after a personal hearing is given to the Petitioner. The date, time and venue shall be intimated to the Petitioners. We keep all contentions open and of both the parties.

10. Since the Appeal is restored and pending before the Appellate Authority, we would expect Respondent Nos.2 to 4 not to take any punitive or coercive steps against the Petitioners for alleged

violation of the Rules pending the disposal of the appeal.

11. We take note of Mr Dhond's request, which is made on instructions, that meanwhile the Petitioners have also received another notice from the State and particularly from the Office of the Respondent No.4, copy of which is at page 76 of the paper-book. That notice or action is also appealable. If that is an undisputed position, then we permit the Petitioners to also include the challenge to this notice, copy of which is at page 76 of the paper-book, by a separate Appeal. Such an Appeal be filed on or before 15th September 2015, then, the appellate Authority shall decide Appeal No.150 of 2015 and this appeal together and dispose them of by a common order. All contentions in relation to this notice also are kept open.

(B.P. COLABAWALLA, J.) **(S.C.DHARMADHIKARI J.)**

<u>CERTIFICATE</u>

Certified to be true and correct copy of the original signed order.