

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 25269 OF 2011

DATED 7TH November, 2015

BETWEEN

M/s. K.P.R. Fertilizers Limited,

Rep. by its Executive Director K.Rajasekhar Reddy

...Petitioner

And

The Government of Andhra Pradesh,

Rep. by its Principal Secretary,

Department of Agriculture and Cooperation,

Secretariat, Hyderabad and ors

...Respondents.

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 25269 of 2011

ORDER:

Heard learned Counsel for the petitioner and learned Government
Pleader appearing for the respondents.

The petitioner is carrying on business in manufacture and sale of Mixure (NPK) Fertilizers. On 02.09.2010 the respondent authorities inspected the business premises of the petitioner and seized 1505 MTs of Urea on the ground that the petitioner has violated the Fertilizer (Control) Order 1985. After seizure of the goods, the District Collector, third respondent herein registered a case against the petitioner under Section 6-A of the Essential Commodities Act, 1955 and directed sale of the seized goods by way of interim order. Challenging the seizure panchanama dated 02.09.2011 and sale of seized goods, the present Writ Petition has been filed.

Various contentions have been raised by the petitioner and by interim order dated 8.9.2011 this Court directed the respondents not to sell the seized stock. Thereafter, on 7.11.2012 this Court further directed the respondents to release the seized stock on condition of the petitioner furnishing bank guarantee to the value of the seized goods as assessed to the tune of Rs.83,82,850/- and made it clear that the release of the seized stock should however be subject to the result of the Writ Petition. However, the petitioner could not furnish the bank guarantee and as a result, the goods are lying in the go-down even as on today. On 6.9.2011, a show cause notice was issued by the District Collector alleging violations of not maintaining prescribed records, holding stocks beyond six months, violation of Clause 35(1) of the Fertilizer (Control) Order, 1985 and Section 3(2)(f)(a) and (b) of the Essential Commodities Act and the petitioner was asked to submit explanation within thirty days from the date of receipt of said notice.

The learned Counsel for the petitioner, Sri V.R. Reddy Kovvuri while reiterating various grounds as raised in the Writ Petition fairly submits that no explanation as such was submitted by the petitioner to the show cause notice dated 6.9.2011. He produced a decision of learned single Judge of this Court in Writ Petition Nos. 24954 and 25020 of 2011, dated 7.12.2012 wherein also issuance of show cause to the manufacture of fertilizers was in issue. Though the learned Counsel for the petitioner strenuously made effort to persuade this Court to consider the case on merits, particularly in respect of the grounds raised in the Writ petition relating to validity of seizure and subsequent order of

the District Collector directing sale of seized goods, however, in view of the judgment of this Court referred supra, I am not inclined to enter into that arena, particularly considering the issuance of show cause notice dated 6.9.2011.

In that view of the matter, in the interest of justice this Writ Petition can be disposed of by giving liberty to the petitioner to submit its explanation to the show cause notice dated 6.9.2011 and with a direction to the District Collector, East Godavari District, at Kakinada to consider the same and pass appropriate orders. Considering the fact that the seized goods is Urea and its quality would deteriorate over the years, it is expedient on the part of the District Collector to consider the explanation to be submitted by the petitioner in expeditious manner. Accordingly the petitioner shall submit its explanation to the show cause notice dated 6.9.2011 within two weeks from the date of receipt of a copy of this order, including specific objections as raised in the Writ Petition in relation to very validity of the show cause notice and applicability of various provisions of the Fertilizers Control Order, if so advised. As and when such explanation is submitted by the petitioner, the same shall be considered and disposed of by the third respondent within four weeks thereafter. While considering the explanation submitted by the petitioner, the third respondent shall have regard to the decision of this Court in Writ Petition Nos. 24954 and 25020 of 2011, dated 7.12.2012.

Subject to the above, the Writ Petition is disposed of. However, it is made clear that the observations made in this Writ Petitions shall not be construed as opinion expressed on the merits of the subject matter.

Miscellaneous petitions pending consideration if any in the Writ Petition shall stand closed in consequence. No order as to costs.

JUSTICE CHALLA KODANDA RAM

DATED 7th November, 2015 .

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