HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

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WRIT PETITION No.15861 of 2015

ORDER:

Heard Sri C.V.Mohan Reddy, learned Senior Counsel appearing for the petitioners, and the learned Government Pleader for Agriculture (TG).

The first petitioner is a manufacturer of mixture fertilizers (NPK) Mixture for sale to the agriculturists. Licence was granted in favour of the petitioners under the Fertilizer (Control) Order, 1985. The first petitioner, being a manufacturer and a whole sale dealer within the meaning of clause 2(m) of the Fertilizer (Control) Order, 1985, submitted a memorandum of intimation, to the then authority of the erstwhile State of Andhra Pradesh, notified under clause 26-A of the Fertilizer (Control) Order, 1985, as provided under clause 8(2) of the Fertilizer (Control) Order, 1985, and an acknowledgment was issued in Form A-2 on 17.06.2013 which was valid for a period of three years. Thereafter, the State was bifurcated and after bifurcation, in case of dealers who were having godowns, in the newly formed state of Telangana, they were put under obligation to intimate afresh to the authorities in the State of Telangana by virtue of circular memo No.Fert(1)2/2014 dated 03.11.2014. Though the petitioners submitted a memorandum of intimation on 13.02.2015, to the notifying authority in Form-A1, no acknowledgment was issued to them. Hence the Writ Petition.

A counter affidavit is filed by the respondents stating that the urea is a controlled fertilizer which is under price, distribution and movement control through the instrument of Fertilizer (Control) Order, 1985, and Fertilizer (Movement Control) Order, 1973 under Essential Commodities Act. As per Circulars issued by the Government of India, States would be required to allocate the entire quantity of planned urea arrivals i.e. both regulated and de-regulated urea in district-wise, month-wise and supplier-wise format. The Department would work through the Agriculture Departments of State to realize the objective of adequate and timely availability of urea at block level. The main

object of the entire exercise undertaken by the Government is to ensure availability of fertilizers to farmers at the door steps on affordable prices for sustainable growth in the agricultural sector. It is admitted that the petitioner made an application through online in Form-A1 intending to carry out its business in the State of Telangana for marketing of NPK mixture fertilizers. Since the required information was not submitted relating to permission to export granulated mixtures as per Fertiliser (Movement Control) Order, 1973, the petitioner was asked to resubmit. Though the first petitioner has a manufacturing license obtained from the Registering Authority in the State of Andhra Pradesh, it was under an obligation to comply afresh to the authorities in the State of Telangana. In the absence of application, it is difficult to monitor the quality control aspect by the authorities of Telangana. It is specifically stated that the respondents have not rejected the petitioners' request and they did not make any attempt to resubmit the said application and, in order to claim acknowledgment, the application has to be in full shape with all relevant documents for issuance of letter of authorization by notifying authority. The petitioners were directed to produce the relevant permissions from the concerned state allowing to obtain authorization for marketing such NPK grades which were manufactured using highly subsided fertilizers as raw materials from supply plan of the State of Andhra Pradesh

Learned Senior Counsel appearing for the petitioners submitted that the application given in Form-A1 was submitted pursuant to clause 8 of Fertilizer (Control) Order, 1985 and, upon receipt of memorandum of intimation under sub-clause 2 of clause 8, the notifying authority shall issue an acknowledgment of receipt in Form-A2.

Learned Government Pleader appearing for the respondents submitted that regulation of movement of fertilizer is necessary in view of Fertilizer (Movement Control) Order, 1973.

In reply to the said contention of the learned Government Pleader, learned Senior Counsel appearing for the petitioners drew the attention of this Court with regard to provisions of Fertilizer (Movement Control) Order which clearly states that 'fertilizer', defined in clause 2 thereof, clearly excludes N.P.K. fertilizers in its definition. Hence, Fertilizer (Movement Control) Order,

1973 cannot be invoked in the instant case. He relied upon the following definition in clause 2(b) which reads as follows:

(b) 'Fertiliser' shall have the same meaning as given in sub-clause (h) of Clause 2 of the Fertiliser (Control) Order, 1985 but shall not include Straight Phosphatic Fertilisers, Straight Potassic Fertilises, N.P.Fertilisers, N.P.K. Fertilisers, Micro-nutrients and Fortified Fertilisers.

In view of the rival contentions, this Court perused the online application bearing No.150426 dated 13.02.2015 submitted by the petitioners and it is stated that the said application was forwarded to the Joint Director of Agriculture, Ranga Reddy District. According to the Fertilizer (Control) Order, 1985, upon submission of Memorandum of Intimation, the Notified Authority shall issue an acknowledgment of receipt in Form-A.2 and it shall be deemed to be an authorization letter granted and the concerned person becomes an authorized dealer for the purpose of the order. In view of the definition contained in clause 2, in respect of N.P.K.Fertilisers, Fertilizer (Movement Control) Order, 1973, cannot be invoked.

In the counter affidavit, respondents state that the application of the petitioners is not complete in all respects and they want further information and the application was not rejected. As stated above, a reading of clause 8 does not provide for rejection of the application but, on receipt of memorandum of intimation, complete in all respects, the authority shall issue a receipt in Form-A2. The case of the petitioner is that memorandum of intimation of petitioner was submitted wayback on 13.02.2015. In view of non-issuance of acknowledgment receipt, the petitioners are unable to continue their business activity. The counter affidavit is silent with regard to information that was incomplete in the application. However the papers, filed along with the counter affidavit by the government, indicate the status as follows:

"Submitted: The firm has submitted the proposal for grant of marketing licence for NPK mixtures. Moreover the tenancy will be commenced from November, 2015. Therefore, submitted for further orders."

In the above circumstances, respondent Nos.2 and 3 shall communicate the deficiencies in the application submitted by the petitioners within a period of

fifteen (15) days from the date of receipt of a copy of the order, and they shall comply with the same and resubmit the application, as desired by the respondents, and, upon receipt of the same, respondent Nos.2 and 3 shall consider whether the application in Form – A1 was complete in all respects and, if that is so, shall issue a memorandum of acknowledgment within thirty days from the date of submission of deficiencies.

The Writ Petition is, accordingly, disposed of.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

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A. RAMALINGESWARA RAO,J

Date:20.07.2015

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