

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION NO.31354 of 2010

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Between:

Nakirikanti Krishna Rao

PETITIONER

AND

1. The Mandal Agricultural Officer, Jaggaiahpetta, Krishna District,
and another.

RESPONDENTS

ORDER:

The order dated 27.01.2009 purported to have been passed in exercise of the powers under Section 6-A of the Essential Commodities Act, 1955 (for short 'the Act') is under challenge in this writ petition.

The petitioner is a manufacturer of fertilizers under the trade name 'Sripriya Fertilizers' at Jaggaiahpetta, Krishna District. On 6.08.2008, the Vigilance and Enforcement officials intercepted one lorry bearing No.OR 02F 8940 at Kodada town on the allegation that 200 bags of fertilizers were being transported in the said lorry to Palakurti village of Warangal District without any valid documents. On receiving the report, the 1st respondent inspected the premises of the petitioner on 08.08.2008 and seized the fertilizers worth Rs.5,76,160/- and initiated proceedings against the petitioner under Section 6-A of the Act before the 2nd respondent. Accordingly, a show cause notice was issued to the petitioner calling for his explanation. Pending enquiry under Section 6-A of the Act, the seized stock was released to the petitioner on his furnishing a bank guarantee for Rs.1,16,000/-. A charge memo was issued to the petitioner with the following charges.

"The respondent was diverting and indulging in clandestine business by selling the fertilizers into black market at higher prices for his personal gain through lorry bearing No.OR02F8940 without any valid documents and it was intercepted by the Police authorities at Kodada Town and Mandal, Nalgonda District by violating Clause 28(3) of Fertilisers Control Order, 1985 read with Memo No.FERT.II (3) 598/2006, dated 16.01.2008 of the Commissioner and Director of Agriculture, Andhra Pradesh, Hyderabad."

The petitioner submitted his explanation wherein while admitting that the seized fertilizers were sold by him to various

agriculturists, he stated that he has nothing to do with the stock in the lorry; that the ryots, who purchased the fertilizers, from him might have transported same in the subject lorry, and at any rate, he has nothing to do with the stock in the lorry as he had already sold the same to ryots. The petitioner raised a specific objection that Clause 28(3) of the Fertilizer (Control) Order, 1985 (for short 'the Control Order) has no application to the present case, as there is no violation of the said clause, and hence he sought to drop all the proceedings. The said explanation was not considered by the 2nd respondent and ultimately the petitioner was issued with penalty of forfeiture of Rs.50,000/- from the bank guarantee of Rs.1,16,000/- filed at the time of release of seized fertilizers. The petitioner challenged the said order in E.C.Appeal No.30 of 2009 before the District Judge, Machilipatnam and the same was dismissed by the District Judge vide order dated 30.04.2010 confirming the order of the District Collector. Hence the present writ petition.

A counter affidavit sworn to by the District Collector, Krishna District, is filed denying the allegations made in the writ affidavit.

Heard learned counsel for the petitioner and learned Government Pleader for Civil Supplies for respondents.

Sri V.H.R.R. Swamy, learned counsel for the petitioner drew the attention of this Court to Clause 28 of the Control Order, and contends that the said clause has no application to the present case.

The facts are not in dispute. It is a classic case where the impugned order is bereft of any details. The allegation made against the petitioner is violation of Clause 28(3) of the Control Order.

Clause 28 of the Control Order reads as under:

The Fertilizer (Control) Order, 1985

Clause 28: Powers of Inspectors:- (1) An inspector may, with a view to securing compliance with this Order –

(a) require any manufacturer, pool handling agency, wholesale dealer or retail dealer to give any information in his possession with respect to the

manufacture, storage and disposal of any fertilizer manufactured or, in any manner handled by him;

(b) draw samples of any fertilizer in accordance with the procedure of drawal of samples laid down in Schedule II :

Provided that the inspector shall prepare the sampling details in duplicate in Form J, and hand over one copy of the same to the dealer or his representative from whom the sample has been drawn;

(c) enter upon and search any premises where any fertilizer is manufactured or stored or exhibited for sale, if he has reason to believe that any fertilizer has been or is being manufactured, sold, offered for sale, stored, exhibited for sale or distributed contrary to the provisions of this Order:

(d) seize or detain any fertilizer in respect of which he has reason to believe that a contravention of this Order has been or is being or is about to be committed;

(e) seize any books of accounts or documents relating to manufacture, storage or sale of fertilizers, etc., in respect of which he has reason to believe that any contravention of this Order has been or is being or is about to be committed;

Provided that the Inspector shall give a receipt for such fertilizers or books of accounts or documents so seized to the person from whom the same have been seized;

Provided further that the books of accounts or documents so seized shall be returned to the person from whom they were seized after copies thereof or extracts therefrom, as certified by such person, have been taken.

Provided also that the Inspector shall give the stop sale notice, in writing, to the person whose stocks have been detained and initiate appropriate actions as per the provisions of this order within a period of twenty one days. If no action has been initiated by the Inspector within the said period of twenty one day from the date of issue of the said notice, the notice of stop sale shall be deemed to have been revoked.

(2) Subject to the proviso to paragraphs (d) and (e) of sub-clause (1), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to search and seizure shall, so far as may be, apply to searches and seizures under this clause.

(3) Where any fertilizer is seized by an Inspector under this clause, he shall forthwith report the fact of such seizure to the Collector whereupon the provisions of Sections 6-A, 6-B, 6-C, 6-D and 6-E of

the Act shall apply to the custody, disposal and confiscation of such fertilizers.

(4) Every person, if so required, by an Inspector, shall be bound to afford all necessary facilities to him for the purpose of enabling him to exercise his powers under sub-clause (1).

In the impugned order, there is no mention as to how the Fertilizer Control Order is applicable, and if so, to what extent the said Control Order has been violated. On the contrary, in the counter affidavit it has been stated at paragraph 3(1) that there was no stock variation found between the book balance and ground stock in the premises of the petitioner. Except stating that the petitioner had ample opportunity to built up the records as per the ground stock, the counter affidavit is virtually nothing but reiteration of the impugned order. The counter also does not answer the specific allegation that Clause 28(3) has no application, except stating that Clause 28(1) (c) authorizes the Fertilizers Inspector cum Mandal Agricultural Officer to conduct search and seizure.

The question before this Court is not with regard to the power of the authority to search and seize the premises of the petitioner, but, the power to order forfeiture of Rs.50,000/-. It is not stated in the impugned order that for what violation Rs.50,000/- was directed to be paid by the petitioner. It is also on record that the fertilizers, which were being transported in the lorry bearing No.OR 02F 8940, were seized, but there was no material brought before the authority in the impugned proceedings to support the allegation that the petitioner was indulging in clandestine business by selling fertilizers in black-market at higher prices. No persons were examined or no material has been placed before the 2nd respondent in 6-A proceedings to support the said allegation. However, by making a bald allegation in the charge that the petitioner had indulged in clandestine business, the 2nd respondent imposed a penalty of Rs.50,000/- on the petitioner. The said action is totally unjustified and is not supported by any facts on record.

Accordingly, the impugned order is set aside and the writ petition is allowed. However the 2nd respondent is directed to release the bank guarantee said to have been furnished by the petitioner for release of stock seized, within a period of four weeks from the date of receipt of a copy of this order.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

CHALLA KODANDA RAM, J.

15th December, 2015
Js.