

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE
AND**

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT APPEAL NOs.140 and 141 of 2016

Date: 09.03.2016

W.A.No.140 of 2016

Between:

The State of Telangana, rep.by its Principal
Secretary, Department of Agriculture and
Cooperation, Secretariat Buildings,
Hyderabad and two others.

.....Appellants/
respondents

and

Maheswari Fertilizers, situated at Plot No.26-A,
Industrial Estate, Kadapa, Y.S.R. District,
Rep.by its Partner, V.Rami Reddy and another.

.....Respondents/
petitioners

The Court made the following:

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND**

HON'BLE SRI JUSTICE P. NAVEEN RAO

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PC: (Per the Hon'ble Sri Justice P.Naveen Rao)

Heard learned Government Pleader for the State of Telangana for appellants/respondents and senior Counsel Sri C.V.Mohan Reddy representing Sri V.R.Reddy Kovvuri counsel for respondents/petitioners. For convenience, the parties are referred to as arrayed in W.P.No.15861 of 2015.

2. The issue for consideration in both the writ appeals being the same, the writ appeals are disposed of by this common order.

3. The first petitioner is manufacturer of mixture fertilizers (NPK) having obtained licence under the Fertilizer (Control) Order, 1985 (hereinafter referred to as 'Order, 1985'). Petitioners were authorized to carryon dealership activity in the combined State of Andhra Pradesh for a period of three years commencing from 17.06.2013, on which date acknowledgement in Form-A2 was issued. However, as a consequence to bifurcation of the State of Andhra Pradesh and formation of State of Telangana, first petitioner was required to apply afresh for grant of such authorization from State of Telangana to carryon its activities in the State. On 13.02.2015 petitioners submitted a memorandum of intimation to the notifying authority in Form-A1. However, they were not issued authorization in the form of acknowledgment in Form-A2.

4. Alleging inaction on the part of the respondent authorities in granting acknowledgment on the memorandum of intimation given by the petitioners, petitioners filed W.P.No.15861 of 2015.

5. The respondent-State opposed the claim of petitioners on the ground that Urea is a controlled fertilizer and its price, distribution and

movement is controlled by the Order, 1985 and Fertilizer (Movement Control) Order, 1973. Petitioners are producing NPK in Andhra Pradesh. Urea is used as one of the raw material to make NPK. Thus, unless authorization letter from the State of Andhra Pradesh is obtained, petitioners would not be permitted to act as authorized dealers in the State of Telangana.

6. In support of the said stand, reliance is placed on definition clause 2(h) of the Order, 1985 read with clause 2(b) of the Order, 1973 and other provisions of the orders. On consideration of rival submissions, learned single Judge of this Court held that NPK is excluded from the definition of 'fertilizer' and, therefore, Order 1973 cannot be invoked.

7. Having held as above, the learned single Judge directed processing of the application submitted by the petitioners and if any deficiencies are noticed, to communicate those deficiencies and if the deficiencies are complied, the respondents 2 and 3 in the writ petition were directed to consider whether application in Form-A1 was complete in all respects and if so, should issue a memorandum of acknowledgement in Form-A2.

8. Consequent to the above orders, vide letter dated 21.08.2015, respondents communicated to the petitioners two deficiencies in the memorandum of intimation dated 13.02.2015. Aggrieved by the same, W.P.No.28645 of 2015 is filed.

9. The two deficiencies pointed out are as under:

"1. Permission from the Government of Andhra Pradesh, duly allowing the export of NPK granulated mixtures of fertilizers which are manufactured from the allotments made by the Govt. of India to that State i.e., (Andhra Pradesh) as per clause 3 of the Fertilizer Movement Control Order, 1973.

2. Details of person responsible as mandated under clause 24 of FCO, 1985 along with signature of concerned."

10. With reference to the first objection, the learned single Judge has held that in view of order in W.P.No.15681 of 2015, no such insistence can be made and, therefore, the first objection is not valid. With reference to the second objection, the Court was informed that the petitioners have already complied with the objection.

11. Having regard to the same, the learned single Judge directed issuance of necessary acknowledgement as contained in Form-A2.

12. The State of Telangana challenges the said orders in these writ appeals.

13. Having regard to the specific contention urged by the learned Government Pleader on justification to insist for authorization from State of Andhra Pradesh to sell NPK in State of Telangana by relying on provisions of Order, 1985 and Order, 1973, we have considered the definition of 'fertilizer' as defined in clause 2(b) of the Order, 1973 and as defined in clause 2(h) of the Order 1985. A plain reading of these two provisions makes it clear that NPK is excluded from the definition of 'fertilizer'. Thus, NPK cannot be treated as 'fertilizer' for the purpose of application of provisions of the Order, 1973 and Order, 1985. The State of Telangana was insisting for obtaining authorization letter from the competent authority of the State of Andhra Pradesh only on the premise that the provisions of the Order, 1985 are applicable. Since NPK is not a fertilizer, the State of Telangana cannot insist for obtaining authorization letter from the State of Andhra Pradesh as a condition precedent for issuing acknowledgement in Form-A2.

14. We do not see any error in the decision of learned single Judge. There is no merit in the writ appeals and they are accordingly dismissed. There shall be no order as to costs.

Miscellaneous petitions if any pending in the writ appeals shall stand closed.

DILIP B. BHOSALE, ACJ

P.NAVEEN RAO, J

Date: 09.03.2016

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**HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE
AND
HON'BLE SRI JUSTICE P.NAVEEN RAO**

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