

Limited, Raniganj Road, Forbesganj. At the time of inspection, factory was found closed, but from perusal of stock register as well as distribution register, it was found that production was going on in the factory. On 01.12.2010, while he had inspected the stock register as well as distribution register, he had found 105 bags (each containing 50 k.g.) of NPK Dhanvarsha, Harasona-18:18:10, but on 18.12.2010, he has found from the distribution register, sale of 7415 bags (each containing 50 k.g.) and so, from the aforesaid registers, it transpired that in the month of December, 7310 bags (each containing 50 k.g.) has been manufactured by the M/s Himalaya Agro Chemicals Private Limited, Raniganj Road, Forbesganj, in contravention of Fertilizer Control Order, 1985, more particularly Rules-7 as well as 12 thereof. As such, the allegation has been attributed against the M/s Himalaya Agro Chemicals Private Limited, Raniganj Road, Forbesganj to the effect that without having its license renewed, there has been manufacturing of the fertilizer as well as sale thereof, and for that, Managing Director of the aforesaid factory is liable to be prosecuted for an offence punishable under Section 7 of the Essential Commodities Act.

3. After registration of Forbesganj P. S. Case No.488 of 2010, investigation proceeded and completing the same,



chargesheet was submitted followed with order impugned, subject matter of instant petition.

4. The learned counsel for the petitioner has challenged the order impugned on the ground that in terms of Clause-8 as well as Clause-11(4) of the Fertilizer Control Order, unless there happens to be refusal followed with communication, legal fiction lead in favour of the petitioner to the extent that the certificate of registration will be deemed to be renewed relating to the intermediary period and in the aforesaid background, it has been submitted that the date on which, inspection was done, the date on which, written report was filed, the matter was pending before the Competent Authority for the renewal of the licence and on account thereof, neither the written report is tenable in the eye of law nor the investigation in consonance with the order impugned by which, petitioner has been summoned to face trial for an offence punishable under Section 7 of the E. C. Act. Furthermore, learned counsel for the petitioner referred order dated 12.04.2010 passed by this Court with regard to C.W.J.C. No.5168 of 2010 (Annexure-8) and has drawn attention towards the finding of the Court as enumerated over Page-3 thereof, *“Further, in terms of Clauses-8 and 11 of the Fertiliser Control Order, the moment a renewal application is filed till the time it is*



not refused and the refusal communicated, it would be deemed that the certificate of registration is duly renewed.”

5. In order to justify the same, the learned counsel for the petitioner also drew attention towards Annexure-2, the order dated 20.07.2010 passed by the Director (Agriculture), Bihar, Patna communicated vide Memo No.898 dated 23.07.2010, whereby and whereunder, the Director had rejected the prayer of the petitioner to renew the licence against which, Appeal No.07 of 2010 was filed and the same was decided by the Commissioner, Agriculture Production (Annexure-3) by way of setting aside the same and remitting back with certain direction. In pursuance thereof, petitioner had filed relevant representation before the Director (Agriculture) with regard to compliance of direction in true tone and tenor, but the same has again been rejected on 06.01.2011 (Annexure-7). That means to say, the date on which, written report was filed i.e. 19.12.2010, the matter for renewal of licence was pending before the Competent Authority and in the aforesaid background, in terms of Clause-11(4) of the Fertilizer Control Order, law lean in his favour and on account thereof, there should not have been prosecution, nor the investigation followed with submission of chargesheet as well as order impugned.



6. It has further been submitted that malafide of the prosecution agency is found very much exposed from their conduct as in the written report, they have concealed knowingly as well as intentionally that matter being remanded by the Agriculture Commissioner was pending before the Director (Agriculture) for consideration of renewal of licence. Had there been genuine conduct at the end of the prosecution, then in that circumstance, the prosecution would not have been initiated as petitioner was entitled for protection in accordance with Clause-11(4) of the Fertilizer Control Order. So, submitted that in the facts and circumstances of the case as well as the principle laid down by the Hon'ble Apex Court in *AIR 1992 SC 604 State of Haryana & Ors. Versus Bhajan Lal & Ors.*, it is fit case wherein order of cognizance along with whole prosecution is liable to be quashed.

7. On the other hand, learned Additional Public Prosecutor while supporting the order impugned has submitted that there happens to be no illegality in the order impugned and that being so, instant petition sans merit. To justify such plea, it has been submitted that whatever argument has been advanced at the end of the petitioner, happens to be a factual aspect as well as it happens to be a plea of defence, which could be adjudged during



course of the trial. In likewise manner, it has also been submitted that from Annexure-3, it is evident that matter was not remanded to the Director (Agriculture) rather whatever defects were pointed out vide Annexure-2, which happens to be basis for refusal of renewal and for that, petitioner was directed to remove the same by way of informing the authority concerned and Director (Agriculture), being satisfied on inspection note, will renew. That means to say, the matter was not in accordance with Clause-11 of the Fertilizer Control Order, on account thereof, petitioner would not be entitled to avail the privilege, so prescribed under Clause-11(4) of the Fertilizer Control Order and that being so, the order impugned did not require interference.

8. Before coming to main issue, certain clauses so applicable in the facts and circumstances of the case is to be taken note of. Section 8 prescribes an obligation for obtaining a certificate of registration from the Controller in case, one intends to deal with fertilizer business and Sub-clause-2 deals with the status of the manufacturer and Sub-clause-3 is the acknowledgement of the issuance of letter of authorization. Clause-9 deals with grant of refusal of certificate of registration. Clause-10 deals with period of validity of certificate prescribing three years from the date of issuance thereof. *Clause-11 of the*



Fertilizer Control Order deals with the event of renewal and for better appreciation, same is quoted below:-

“11. Renewal of certificates of registration and authorization letters

(1). Every holder of a certificate of registration granted under clause 9 or authorization letter granted or deemed to have been granted under clause 8, desiring to renew such certificate or authorization letter shall, before the date of expiry of such certificate of registration or authorization letter, as the case may be, make an application for renewal to the Controller, in Form C, or to the Notified Authority in Form A1, respectively, in duplicate, 8 together with the fee prescribed under clause 36 for such renewal and a certificate of source as required under clause 8.

(2). On receipt of an application under sub-clause (1), together with such fee and certificate of source, the controller may renew the certificate of registration or the Notified Authority, as the case may be shall issue acknowledgement receipt of renewal in form A 2.

Provided that a certificate of registration shall not be renewed if the holder of the same did not sell any fertiliser during the period of one year immediately preceding the date of expiry of the period of validity.

(3). If any application for renewal is not made before the



expiry of the period of validity of the certificate of registration or, as the case may be, the authorization letter but is made within one month from the date of such expiry, the certificate of registration or, as the case may be, the authorization letter shall be dealt as provided in sub-clause (2) on payment of such additional fee as may be prescribed under clause 36 in addition to the fee for renewal.

(4). Where the application for renewal of certificate of registration is made within the time specified in sub-clause (1) or sub-clause (3), the applicant shall be deemed to have held a valid certificate of registration until such date as the controller passes orders on the application for renewal.

(5). If an application for renewal of a certificate of registration or authorization letter is not made within one month from the date of expiry of their period of validity, the same shall be deemed to have lapsed on the date on which its validity expired and any business carried on after that date shall be deemed to have been carried on in contravention of clause 7.]”

9. Much emphasis has been drawn up over Sub-clause-4 of Clause-11 of the Fertilizer Control Order, which speaks that in case, application for renewal of certificate of registration is made within the specified time or extended time as



prescribed under Sub-clause-1(3), in that event the applicant shall be deemed to have possessed a valid certificate of registration till the date of order having been passed by the Controller over the application for renewal.

10. Application for renewal was filed on 09.03.2010 (as disclosed under Para-8 of the petition) in the background of the fact that the life certificate for manufacturing was valid up to 12.03.2010, for sale also upto 12.03.2010 (as disclosed under Para-6 of the petition). So, the petition for renewal was filed within time. As per Annexure-2, the same was rejected vide order dated 20.07.2010 and was communicated to the petitioner on 23.07.2010. That means to say, the privilege whatsoever been in terms of Clause-11(4) of the Fertilizer Control Order extinguished the movement order dated 20.07.2010 was communicated upon the petitioner. It is evident that appeal is provided under Clause-32(A) of the Fertilizer Control Order. After parallel scrutiny of Clause 11(4) as well as Clause-32(A) of the Fertilizer Control Order, it is apparent that no such legal fiction was made available to that extent. That means to say, the prescription having in terms of Clause 11(4) of the Fertilizer Control Order seized to survive just after passing as well as communication of the order. That being so, mere pendency of the appeal would not give petitioner to



indulge in manufacturing and sale under the garb of Clause-11(4) of the Fertilizer Control Order.

11. Apart from this, it is evident that while Annexure-7 was pending, petitioner had preferred C.W.J.C. No.20251 of 2010, wherein after passing of Annexure-7, relief was amended. The aforesaid C.W.J.C. No.20251 of 2010 was finally decided on 27.01.2011, giving a liberty to the petitioner to file an appeal before the Agriculture Production Commissioner with a further direction that *“if the petitioner files such an appeal within 15 days from today, the appellate authority shall decide the same expeditiously preferably within a period of six weeks from the date of filing of appeal”* without divulging towards other reliefs. The instant petition has been filed in the Year 2016, but the reason best known to the petitioner. He had not exposed gambit of chess.

12. In the aforesaid facts and circumstances of the case, the order impugned did not require any kind of interference. Consequent thereupon, instant petition is found meritless over which, is dismissed.

(Aditya Kumar Trivedi, J)

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