

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.33269 of 2018

ORDER:

Heard the learned counsel for petitioners and learned Government Pleader for Agriculture appearing for respondents.

2. With the consent of both sides, this matter is being disposed of at the admission stage.

3. In this Writ Petition, the petitioners had assailed the order dt.31-08-2018 of the 2nd respondent refusing to renew the licences of petitioners for manufacture of NPK granulated mixture fertilizers on the expiry of the earlier licence on 14-07-2018 pursuant to application for renewal made on 11-07-2018.

4. It is not in dispute that during the subsistence of the earlier licence, a show cause notice was issued on 13-06-2018 mentioning 3 alleged contraventions by petitioners, while in the impugned order dt.31-08-2018 two new allegations i.e. (a) with regard to the production and sale of a product alleged to be an imitation product and (2) petitioners' statement of drawing 2.00 LMTs of highly subsidized raw materials, were included without prior notice to the petitioners and the impugned order is based on all the 5 grounds.

5. Learned counsel for petitioners contends that non-renewal of petitioners' licence on the basis of the grounds which are not put to

the petitioners in any show cause notice causes serious prejudice to the petitioners and affects petitioners' fundamental right to do business under Article 19(1)(g) of the Constitution of India.

6. Learned counsel for petitioners has also placed reliance on the decision of the Supreme Court in **Institute of Chartered Accountants of India Vs. L.K.Ratna and others**¹, wherein the Supreme Court has held that principles of natural justice must be read into the unoccupied interstices of a statute unless there is a clear mandate to the contrary, and contended that principles of natural justice have to be read into clause 18 of Fertilizer (Control) Order, 1985 (for short "FCO, 1985").

7. Learned Government Pleader for Agriculture appearing for respondents did not dispute that two new points as mentioned above were included in the impugned order which did not form part of show cause notice dt.13-06-2018, but he sought to defend the action of 2nd respondent on the ground that the 2nd respondent is entitled to take such circumstances also into account apart from the performance of the petitioners under sub-clause (2) of Clause 18 of the FCO, 1985.

8. In view of the rival submissions, the question arises whether the principles of natural justice are required into sub-clause (2) of Clause 18 of the FCO, 1985?

¹ AIR 1987 SC 71

9. Sub-clause (2) of Clause 18 requires every holder of a certificate of manufacture for preparation of mixtures of fertilizers desiring to renew the certificate to apply before the expiry of the said certificate of manufacture before the Registering Authority (2nd respondent). Sub-clause (2) of Clause 18 states:

“18. Renewal of certificate of manufacture for preparation of mixtures of fertilizers, Biofertilizer or Organic fertilizer,

(1) xxx xxx

(2) On receipt of an application for renewal as provided in sub-clause (1) and keeping in view the performance of the applicant and other relevant circumstances, the registering authority may, if he so decides, renew the [certificate of manufacture by endorsement on Form F and in case the certificate of registration is not renewed, the registering authority shall record in writing his reasons for not renewing the certificate of manufacture.”

18. A reading of this clause indicates that the application for renewal ought to be considered by keeping in view the performance of the applicant as well as other relevant circumstances.

19. However, sub-clause (2) of Clause 18 does not exclude the principles of natural justice and if certain grounds are quoted as the basis for denial of renewal, they ought to have been put to the applicant for renewal, and his response obtained, before they are relied upon as a ground for denying renewal. The new grounds relied upon have far reaching consequences and have the effect of stopping the business activity of the petitioner, and thus result in civil consequences causing serious prejudice to the petitioner, and also

affect its fundamental rights to carry on business under Article 19(1)(g) of the Constitution of India. Therefore, the principles of natural justice have to be read into Clause 18 of the FCO, 1985 since it does not exclude natural justice.

20. No decision is cited by the learned Government Pleader for Agriculture that principles of natural justice do not apply in a situation like the present one.

21. Therefore, in view of the decision of the Supreme Court in **Institute of Chartered Accountants of India** (1 supra), I hold that the principles of natural justice are required to be followed by 2nd respondent before rejecting petitioners' application for renewal of licence. So the impugned order cannot be sustained.

22. The Writ Petition is accordingly allowed; the impugned order is set aside; the 2nd respondent is directed to issue a show cause notice mentioning all the relevant circumstances he intends to take into account while considering petitioners' application for renewal of licence to manufacture; invite response from the petitioner; and then pass a reasoned order and communicate the same to the petitioner. This exercise shall be completed within four (04) weeks from the date of receipt of copy of this order. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 17-09-2018
Vsv