

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.04.2019

DELIVERED ON : 21.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.14492 of 2011
and M.P.No.1 of 2011

Karaikal Chlorates
(Unit of MEPCO Industries Ltd.,)
Rep. by its Managing Director
Having Registered Office at No.17A Vallabhai Road
Chokkikulam
Madurai 625 002
..Petitioner

Vs

- 1.The District Magistrate-cum-District Collector
Karaikal
Puducherry
- 2.The Fertilizer Inspector-cum-Agricultural Officer
Uzhavar Uthaviyagam
Melakasakudy
Karaikal 609 603
Puducherry

... Respondents

Prayer:- This Writ Petition is filed, under the Article 226 of Constitution of India, to issue a writ of Certiorari calling for the records of the 1st respondent herein relating to the order dated 20.05.2011 in MC.No.1 of 2010 and quash the same.

For Petitioner : Mr.AR.L.Sundaresan,
Senior Counsel for
Mr.H.Rajasekar

For Respondents : Mr.Nambiselvan,
Addl.Govt.Pleader (Pondy)

ORDER

This Writ Petition is filed challenging the order of the 1st respondent herein relating to the order dated 20.05.2011 in M.C.No.1 of 2010 and seeks to quash the same.

2.1. Facts of the case: The Writ Petitioner Company is a

company incorporated in the year 1987 under the Indian Companies Act, 1956. It is a Joint Sector Company promoted by the Tamil Nadu Industrial Development Corporation Ltd. The Unit at Karaikal, Union Territory of Puducherry is under the name and style of M/s.Karaikal Chlorates. The said unit is engaged in the manufacture of Potassium Chlorate which is an essential raw material for hand-made safety Match Industry. The raw material for manufacture of Potassium Chlorate is refined Potassium Chloride/Carnalite. The same is freely available in open market.

2.2 Potassium Chloride is classified into 2 Grades, viz.,
(1) Potassium Chloride Technical grade and
(2) Pottasium Chloride (Muriate of Potash) Fertilizer Grade.
Potassium Chloride Technical grade is being sub-classified into Grade 1 and Grade 2 depending upon the purity.

2.3 The submissions put forth in the affidavit filed in support of the Writ Petition are that the petitioner has been engaged in production of Potassium Chlorate and for the said purpose, has been procuring Potassium Chloride Technical Grade from dealers registered under the Central Sales Tax Act. On 08.04.2009, the 2nd respondent-Fertilizer Inspector cum Agricultural Officer, Uzhavar Uthaviyagam, Karaikal, inspected the petitioner's factory at Karaikal and took 6 samples of Potasium Chloride Technical Grade/Carnolite which was available in the factory premises under Form-J prescribed under the Fertilizer (Control) Order, 1985 [hereinafter called as "FCO"]. Immediately, the Petitioner sent a letter to the Director of Agriculture, Puducherry, stating that the sample was only refined Carnalite, a chemical purchased from registered dealers in Tamilnadu for industrial use and no fertilizer was stored in the premises. The Petitioner also issued a notice dated 27.04.2009 with the above said averment; further sought for permission to send one sealed sample available with the petitioner to any recognized laboratory, to establish that the sample was a chemical. However, such request was not acceded to by the respondent-department.

2.4. The 1st respondent-District Magistrate-cum-District Collector, Karaikal, by communication dated 30.04.2009, stated that the samples analyzed in the Office of the Joint Director of Agriculture were found to be Muriate of Potash pointing to ferilizer status and alleged that the Petitioner had contravened the provisions contained under Regulation 25(1) of the Fertilizer (Control) Order, 1985.

2.5. Petitioner filed W.P.No.15893 of 2009 before this court with interim applications and this court by order dated 17.09.2009, while dismissing the stay applications directed the

respondents to analyse the samples in accordance with law and further directed the petitioner to furnish bank guarantee for the value of the Potassium Chlorate material.

2.6. Aggrieved by the above said order passed by the learned Single Judge, the respondents preferred W.A.No.665 and 666 of 2010 and a Division Bench of this Court, taken up the said Writ Appeals along with pending Writ Petition Nos.15893 to 15896 of 2009 and disposed of the same by order dated 21.06.2010, directing the 1st respondent to issue notice to the Writ Petitioner in relation to the proceedings under Essential Commodities Act.

2.7. The 1st respondent-District Magistrate, Karaikal, by Proceedings dated 15.11.2010, pointed out that seized samples were already analysed at Fertilizer Control Laboratory, Puducherry and the Regional Fertilizer Quality control Laboratory, Chennai and both the laboratories confirmed that the seized samples were fertilizer grade Potassium Chloride. Further it is pointed out that in view of the High Court's observation that the District Collector/District Magistrate exercises the power of a statutory authority as per the Essential Commodities Act 1955 [hereinafter called as "EC Act"] and hence, as per the directions of the High Court, ordered the Petitioner-M/s.Karaikal Chlorates to show cause u/s.6-B of EC Act in person or by pleader as to why the seized Potassium Chloride should not be confiscated under Section 6-A of the EC Act, 1955.

2.8. In the mean time, the Petitioner filed Review Application Nos.151 and 152 of 2010 and the Division Bench dismissed the Review Petitions, by order dated 30.11.2010. Thereafter, the Petitioner submitted objections as well as Additional objections to the show cause notice issued under Section 6-B of EC Act, 1955, and requested the District Magistrate, to drop the confiscation proceedings against the seized material and to release the Potassium Chloride as well as Potassium Chlorate.

2.9. The 1st respondent-District Magistrate, Karaikal, issued Confiscation Proceedings under Section 6-A of EC Act, by Proceedings dated 20.05.2011 by taking into consideration the objections raised by the Writ Petitioner and concluded that the core chemical i.e., K₂O (Potassium Oxide) which also meets the specifications of Essential Commodity, therefore, it is concluded that the seized sample sent for testing is an Essential Commodity.

2.10. Challenging the above Confiscation Order, the Writ Petitioner filed the present Writ Petition.

3. Grounds in W.P:-

(i) The grounds raised in this Writ Petition are that (i) insofar as Pottasium Chloride Fertilizer Grade is concerned, the specifications are provided in Sl.No.1 of 1(c) of Part 'A' of Schedule 1 of the E.C.Act. It provides specification in respect of 4 parameters. Unless the sample satisfies all the 4 parameters, it cannot be concluded that the seized material is Fertilizer Grade Potassium Chloride. It is not sufficient if the sample passes two or three out of 4 parameters to arrive at a conclusion that it is a Fertilizer Grade Pottasium Chloride. In the instant case, according to the National Test House test certificate dated 22.3.2011, the same fails to meet the requirement in respect of moisture. While the maximum limit of moisture in so far as Fertilizer Grade Potassium Chloride is 0.5, the moisture in the sample in question was 0.91. Hence, it does not pass the test of Fertilizer Grade Potassium Chloride according to National Test House, Kolkata.

(ii) The impugned order of 1st respondent is vitiated since the sample which was taken on the same day was also sent for testing and the certificate dated 18.03.2011 issued found all parameters except Sodium Chloride alone satisfies the prescribed requirements in respect of Technical Grade Potassium Chloride-Grade II. Therefore, it is not coming within the definition of Rule 2(h) of the Fertilizer (Control) Order and hence, would not come within the bar of Regulation 25 of the said Control Order and it is not liable for confiscation under Section 6 of the EC Act.

(iii) The twin requirements of use or intention to use within the specification in Part A of Schedule 1 of FCO, are to be specified. In the instant case, Petitioner has purchased the material from dealers who are registered under the Central Sales Tax Act and it was not stored or stocked by them for use as fertilizer and hence, it would not come within the definition of fertilizer and hence, it is not liable for confiscation.

(iv) The Petitioner submits that the impugned order is ex facie illegal as far as direction restricting them to source Potassium Chloride only from Indian Potash Ltd. Thus, on the above raised issues among other grounds, the petitioner sought to quash the impugned order.

4. Arguments raised on behalf of Petitioner:-

a) The learned Senior counsel appearing for the Petitioner submits that the confiscation proceedings passed under Section 6-A of EC Act, 1955, dated 20.05.2011, shows that on behalf of Petitioner therein ie., Department viz., Fertilizer Inspector-cum-Agricultural Officer, Uzhavar Uthaviyagam, Karaikal, (1) Dr.R.Jayanthi, Fertilizer Inspector-cum-Agricultural Officer and (2) Officials of Agriculture Department, Karaikal, represented the matter and they put forth the grounds on which seizure was

made and confiscation is proposed. Clause 27 A of the FCO provides for qualification for appointment of Fertilizer Inspector and the Fertilizer Inspector in the case on hand is not a qualified Officer to take samples from the Petitioner Company. As far as the qualifications viz, (i) Graduate in Agriculture or Science with Chemistry and (ii) Training or Experience in the quality control of fertilizers and working in the State or Central Department of Agriculture, the Petitioner by letter dated 25.08.2014 sought query to RTI seeking details of experience in quality control of fertilizer possessed by Tmt.R.Jayanthi as stipulated under Clause 27 A of FCO. The Information dated 07.10.2014 from the Additional Director of Agriculture cum Public Information Officer, Karaikal, is referred as follows:-

"Sl.No.2 & 3:- As per the Service Record, Tmt.R.Jayanthi, Agriculture Officer has not undergone training/gained experience in quality control of Fertilizer prior to appointment as Fertilizer Inspector. The Agriculture Officer of Uzhavar Uthaviyagam concerned can officiate as Fertilizer Inspector as per Government Order quoted above."

(b) The Petitioner also by RTI query dated 27.08.2014, sought details of experience possessed by Mr.T.Ilangovan as Lab Analyst as stipulated under Clause 29A of FCO. The Information received under RTI Act dated 13.10.2014 states as follows:-

"Reply to question No.2: No such entry is found in the Service Book of the retired Officer. Hence it is presumed that the said Deputy Director & Agriculture had not undergone any training in the Training Institute, Faridabad."

(c) The learned Senior counsel appearing for the Petitioner submits that though in the counter affidavit, it is stated that R.Jayanthi had prior experience and training nor any document produced in support of the said submission and as such, it is established beyond any doubt that R.Jayanthi does not have any experience in quality control of fertilizers prior to the appointment and hence the search and seizure is bad and the consequential proceedings are also bad. He further submits that the first analysis by the Department is said to have been made by Mr.T.Ilangovan. The said T.Ilangovan does not have any qualification and training or experience as required under Clause 29A of the FCO.

(d) The learned senior counsel appearing for the Writ Petitioner further submits that the 1st respondent in the course of hearing of confiscation proceeding, thought it fit to get the samples tested by a neutral laboratory viz., National Test House, Kolkatta, which agency, issued certificate of testing on 18.03.2011 in respect of sample which was tested vice verse the

specifications contained in technical grade potassium chloride specification viz., IS 4150-1984; test report was given on 22.3.2011 in respect of testing of the sample vice versa Fertilizer Control Order specification and it was reported that the sample shall pass the test in respect of core chemical potassium chloride and hence, in paragraph 40 of the impugned order, the 1st respondent categorically held that the seized sample for testing is technical grade potassium chloride. Having held so, the 1st respondent however, pointed out that when the sample was tested for the parameters under the EC Act, the sample failed to meet the requirement in respect of moisture alone and gave a contrary finding in paragraph 41 that the seized sample sent for testing is an essential commodity. The learned Senior counsel further submitted that the sampling has not been done as mandatorily required under Schedule II of the FCO and without any basis whatsoever random sample has been taken. Schedule II Part A 1 and 2 prescribes the method for preparing sample from the bagged material. The said method is a scientific method and that has not been followed by the respondent in the present case. As such, the result obtained as if the sample does not satisfy moisture content and hence should be treated as a fertilizer, is not based on a proper sample drawn as per the schedule and hence, the impugned order is unsustainable.

(e) The learned senior counsel appearing for the Petitioner further argued that price is not a deciding factor to come to a conclusion as to whether the Potassium Chloride is a Fertilizer or not. It is specifically stated by the Petitioner company that Potassium Chloride is freely available in the market and is not controlled and canalized and that it's sale and movement is not controlled, and it can be imported without any license under FCO and that it is manufactured in India and exported as well. In such circumstances just because the purchase range is between Rs.5400/- to 6000/-, the conclusion arrived at, that the seized material is fertilizer grade Potassium Chloride (Essential Commodity) and the reason arrived on the basis of price factor, cannot be said to sustainable.

5. Arguments raised on behalf of the Respondents:-

(a) On the other hand, Mr.Nambiselvan, learned Additional Government Pleader (Pondicherry) reiterated the submissions made in the counter affidavit filed on behalf of the respondents. It is submitted that as per clause 27A(2) of FCO, a fertilizer inspector should possess "training or experience" in the quality control of fertilizers etc and R.Jayanthi is concerned, she had ample experience in quality control as she had served as fertilizer inspector since 2003 prior to holding the additional charge as Agricultural Officer, Uzhavar Udhaviyagam, Melakasakudy from 05.02.2009. Hence, the second respondent

gained experience of more than 5 years in quality control as fertilizer inspector. It is further stated that gazette notification was published to appoint the Agricultural Officer, Uzhavar Udaviyagam, Melakasakudy as Fertilizer Inspector, vide G.O.Ms.No.33/Ag/2007 dated 30.11.2007 and whichever officer officiates as Agricultural Officer, Uzhavar Udhaviyagam, Melakasakudy, will, by virtue hold the powers of a Fertilizer Inspector. Hence, R.Jayanthi, the then Agricultural Officer, is authorized and competent officer to discharge functions and duties as Fertilizer Inspector under Fertilizer Control Order, 1985.

(b) It is pertinent to note that in paragraph 9.1. of the counter affidavit, it is submitted that the National Test House, Kolkata, District Collector, in his confiscation proceedings states that "the core chemical KCL Potassium Chloride qualifies for Technical Grade-II". Therefore, it is concluded that the seized sample sent for testing is Technical grade Potassium Chloride. Further it was remarked that the sample failed to meet the requirements as per FCO (1985) in respect of moisture only, which may be due to the improper storage but nutrient content of the sample confirms as Fertiliser Grade. It is further submitted that as per Schedule I of Fertiliser Control Order, Potassium chloride with minimum of 60% and above of K2O is a fertilizer. As per clause 23(1) of FCO, any fertilizer which does not confirm to the prescribed standard is referred to as "Non-standard fertilizer" as per FCO; in order to curb adulteration of fertilizer Potassium Chloride, the Fertilizer Control Order 1985 has fixed 60% K2O as minimum standard. The test results of both the sample also shown <60% K2O, which does not mean that it is not a fertilizer but "Non standard fertilizer" as per the clause mentioned above.

(c) The counter affidavit also states that as per Letter No.IPL/S/I/SKL, dated 10.08.2009, the price of KCI for industrial use is Rs.28,600/- per MT CST at 2%. Whereas the purchase invoice produced by the Petitioner at Rs.5,400/- to Rs.6,000/-. This price matches with the price of fertilizer grade KCI which is subsidized by Government of India at around Rs.25,000/- per MT for agricultural usage. The petitioner also gets raw material at subsidized rate meant for farmer from unauthorized dealers.

(d) The learned Additional Government Pleader appearing for respondents submits that Clause 28(1)(b) of FCO, allows an Inspector to enter upon and search any premises where any fertilizer is manufactured/imported or stored or exhibited for sale; if he has the reason to believe that any fertilizer has been or is being manufactured, stored, offered for sale, exhibited for sale, or distributed contrary to the provision of

the order, as per G.O.Ms.No.33/Ag/2007, dated 30.11.2007 of the Joint Secretary to Government (Agriculture), Puducherry, the Agricultural Officer, Melakasakudy, is the Fertilizer Inspector for entire jurisdiction of Melakasakudy Uzhavar Udhaviyagam, in which the petitioner's industry is situated. Hence the second respondent who is empowered, entered the industry, drew samples of raw material suspected as fertilizer and therefore, the drawal of sample, analysis, show cause notice and confiscation order are passed in accordance with law and satisfies the FCO in all respects and the contentions raised on the side of the Petitioner-Company, as against the same are liable to be rejected.

6. Heard both sides and perused the materials available on record.

7. Discussion:- While analysing the contentions raised by the learned senior counsel appearing for the Petitioner seeking to quash the impugned proceedings, firstly, the contention insofar as the Fertilizer Inspector cum Agricultural Officer is concerned, based on the materials on record placed before this court, it is necessary to point out that even though it is the submission of the respondents that as per gazette notification and by virtue, the officer hold the powers of Fertilizer Inspector, no proper document is set forth to satisfy this court as to whether the Officer possess qualification in respect of training or experience as provided under Clause 27 A of FCO. In such circumstances, this court has no hesitation to hold that the Officer who seized the samples is not a competent person to seize the same.

8. Secondly, based on the seized sample, fertilizer analyst tested the same and the test results of National Test House, Kolkata, the District Collector in his confiscation proceedings, states that the core chemical is the most important component in a given chemical composition and that the core chemical of Potassium chloride for specification of Technical Grade Potassium Chloride is Kcl (Potassium Chloride itself). In the above test only Sodium Chloride fails in the test of Technical Grade Potassium Chloride. The rest of the components qualify for Grade-II Technical Grade Potassium Chloride while 5 components qualify for Grade-I. The core chemical i.e., Kcl (Potassium Chloride) qualifies for Technical Grade-II. Therefore, it is concluded that the seized sample sent for testing is Technical Grade Potassium Chloride. However, remarks of the National Test House is that the sample fails to meet the requirements of Fertilizer (Control) Order, 1985 and the Essential Commodities Act, 1955, in respect of Moisture only.

9. In my considered opinion, the finding of the 1st

respondent in the impugned order itself in paragraph 40 on the basis of test certificate dated 18.03.2011 is that the seized sample is potassium chloride technical grade (Gr.II). Having given such a finding, confiscation proceedings in respect of clause 25 of the FCO, has no jurisdiction at all. The act of the 1st respondent in ordering confiscation, is without jurisdiction in view of the conclusion arrived at by the 1st respondent in paragraph 41 of its Proceedings, holding that in the above test the sample fails to meet the requirements of Essential Commodity in respect of Moisture and further holding in paragraph 40 that in the above test only sodium chloride fails in the test of Technical Grade Potassium Chloride and the rest of the components qualify for Grade II Technical Grade Potassium Chloride while 5 components qualify for Grade I.

10. In the impugned proceedings dated 20.05.2011, the Test Result of National Test House, Kolkata, has been annexed. The Test certificate issued on 18/03/2011 reads as follows:-

Sl. No.	Test Name	Test Result	Limit
1	Description	White granular mass	-
2.	Calcium (as Ca), % by mass, max.	0.05	Gr.1-0.1; Gr.2-0.2 (on dry basis).
3.	Iron (as Fe.), ppm, max	5.0	Gr.1-20; Gr.2-20 (on dry basis).
4.	Potassium chloride (as KCl), % by mass, min.	97.47	Gr.1-98.5; Gr.2-97.0 (on dry basis).
5.	Magnessium (as Mg), % by mass	0.03	Max. for Gr.1-0.03; gr.2-0.07
6.	Sulphate (as SO ₄), % by mass	Trace	Max.for Gr.1-0.3; Gr.2-0.6
7.	Sodium Chloride (as NaCl), % by mass	3.36	Max.for Gr.1-1.00; Gr.2-1.5
8.	Moisture, % by wt.	0.9	Not more than 2.0
9.	Water insoluble in water, % by mass.	0.40	Maxi.for Gr.1-0.15; for Gr.2-0.5

Remarks: The sample fails for Gr-1 in respect of Matter insoluble in water, Sodium Chloride, Potassium Chloride and Magnessium respectively and for Gr-2 in respect of Sodium Chloride and Potassium Chloride as per IS 4150-1984

(Reaffirmed 2000)."

The Addendum dated 20.04.2011 by the Scientist SC(Chem) NTH, Salt Lake, Kolkatta, in respect of the above Test Certificate dated 18.03.2011 reads as follows:-

"With reference to your telephonic discussion held on 20.4.2011, corrected remarks in respect of Test Certificate No.NTH(ER)/CH(G)/2011/0023H dated 18.03.2011 (Sample marked as A2/XYZ/2010-11) may please be read as follows in place of existing remarks :-

Remarks:- The sample fails for Gr.1 in respect of Matter insoluble in water, Sodium Chloride and Potassium Chloride respective and for Gr.2 in respect of Sodium Chloride only as per IS 4150-1984 (Reaffirmed 2000)."

11. The above test result and the addendum makes it apparent that the sample does not satisfy in respect of Water insoluble % as per specification prescribed by the FCO. Further, the Test Certificate dated 22.03.2011 in respect of sample as given by the Scientists of National Test House, Kolkatta reads as follows:-

Sl.No	Test Name	Test Result	Limit
1.	Description	White granular mass	----
2.	Sodium as NaCL, % by wt., max.	3.36	on dry basis :- 3.5
3.	Moisture, % by wt.	0.91	Max.0.5
4.	Particle size (pass through 1.7 mm IS sieve & be retained on 0.25mm IS sieve)	97.76% passes through 1.7 mm IS sieve and retained on 0.25 mm IS sieve	Mini. 95%
5.	Water soluble potash (as K2O), % by wt.	61.31	Mini.58.0

Remarks: 1. The sample fails to meet the requirements of Fertilizer (Control) Order, 1985 & the Essential Commodities Act, 1955, in respect of Moisture only."

12. Schedule I Part A of Fertiliser (Control) Order, 1985 deals with Specification of Fertilisers. Schedule I Part A 1. (c) mention about Straight Potassic Fertilisers 1(c)4 is added by S.O.354(E), dated 03.06.1993 and the said inclusion comes

with effect from 03.06.1993, which deals about Potasssium Chloride (muriate of potash) (granular), and the same reads as follows:-

Schedule	Name of the Fertiliser	Specifications
Schedule I Part A 1.(c) [4]	Potassium Chloride (muriate of potash) (granular)	(i)Moisture per cent. by weight, maximum 0.5 (ii)Water soluble potash (as K₂O) per cent, by weight, minimum 60.0 (iii)Sodium (as NaCl) per cent. by weight, minimum 3.5 (iv) Magnesium (as MgCl₂) per cent, by weight, maximum 1.0 (v)Particle size - Not less than - 90 per cent. of the material shall pass through [4.0] mm IS sieve and be retained on 1 mm IS sieve. Not more than 5 per cent. shall be below 1 mm IS sieve.] 1.0

Therefore, when the test certificate itself clearly states that the sample fails to meet the requirements of FCO and EC Act, in respect of Moisture only, it can be presumed that the mandatory provisions that to be followed while taking sample had not been strictly followed. In this regard, it is necessary to look into Schedule II Part A Procedure for drawal of samples of Fertilisers. The same is extracted as under:-

1.General requirements of sampling:

In drawing samples, the following measures and precaution should be observed."

a) Samples shall not be taken at a place exposed to rain/sun;

b) The sampling instruments shall be clean and dry when used.

c) The material being sampled, the sampling instrument and the bags of samples should be free from any adventitious contaminations;

d) To draw a representative sample, the contents of each bag selected for sampling should be mixed as thoroughly as possible by suitable means.

e)(i) The sample shall be kept in suitable, clean dry and air tight glass or screwed hard polythene bottle of about 400 gm., capacity or in a thick gauged polythene bag and this shall be put in a cloth bag which shall be sealed with the Inspector's seal.

(ii) The sealed cloth bag containing the sample and Form P shall be kept in another cloth bag which shall also be sealed with the Inspector's seal.

(iii) The identifiable details such as Sample number/Code Number, or any other details shall be put on the cloth bag containing sample and Form P which enables its identification.

f) Each sample bag should be sealed air tight after filling and marked with details of sample, and type of fertilizer and the name of Inspector who has collected sample."

13. In the absence of any special report or mahazar with regard to the procedure followed by the respondents for taking sample and without any documents put forth to substantiate the fact that it followed the mandatory provisions in taking sample of fertilizer on the one hand, and the test certificate which clearly indicates that the sample fails to meet the requirements of FCO and EC Act, in respect of Gr.I in respect of matter insoluble in water, sodium chloride, potassium chloride and magnesium and for Gr-2 in respect of sodium chloride and potassium chloride as per IS 4150-194 and the further test result given as addendum that the sample fails to meet the requirements of FCO and the ECT Act, 1955 in respect of moisture, clearly indicates that the sample is not according to specification given in FCO.

14. According to the learned senior counsel appearing for the Petitioner, admittedly the samples were drawn randomly and the respondent had not followed the procedures as contemplated under FCO. Therefore, there is no reason to believe that the samples were drawn as per the procedure set out in Schedule II Part A of FCO.

15. This court finds force in the above argument put forth by the learned senior counsel appearing for the Petitioner-company for the reason that the fertiliser is a component of chemicals and therefore, such a method is adopted to find out the true components of the samples and accordingly, such a mandatory procedure not followed as set out in FCO will go to the root of the issue and on the said ground, the impugned confiscation proceedings is liable to be quashed.

Result:-

16. In view of the above discussion, looking the confiscation proceedings from any angle, the order of confiscation is not passed on arriving at a clear finding based on Test Result or by following the procedures laid down in the FCO. In such circumstances, in the considered view of the Court, the impugned confiscation proceedings cannot be

sustained. Accordingly, the Writ Petition stands allowed. The impugned confiscation proceedings passed u/s.6-A of Essential Commodities Act, 1955 dated 20.05.2011 by the 1st respondent is quashed. No costs. Consequently, connected MP is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The District Magistrate-cum-District Collector
Karaikal
Puducherry

2.The Fertilizer Inspector-cum-Agricultural Officer
Uzhavar Uthaviyagam
Melakasakudy
Karaikal 609 603
Puducherry

+1 cc to M/s.H.Rajasekar,Advocate Sr.No. 71560

+1 cc to The Government Pleader Sr.No.71929

AKM/17.09.19/13P-5C /

Order in
WP.14492 of 2011

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