

JUDGMENT:

1. Rule. Rule made returnable forthwith.
2. The learned AGP waives service of notice for the respondents/State.
3. By this petition filed under 226 of the Constitution of India, the petitioner seeks writ of mandamus directing respondent Nos. 2 and 3 to decide the representations described in the prayer clause-B of writ petition and also for order direction to grant permission in favour of the members of the petitioner association to manufacture and sell Granulated Mixture Fertilizer 20:20:00, granulated Mixture Fertilizer 10:20:20, Granulated Mixture Fertilizer 18:18:10 and Granulated Mixture Fertilizer 20:10:10 as per the licenses and certificates of manufactures issued by the respondent No.3 by not imposing condition to manufacture only one grade 18:18:10 while granting permission to purchase raw material.
4. The petitioner is an association of about 30 manufactures of mixed fertilizers registered in accordance with law and the provisions contained in the Societies Registration Act, 1860. It is the case

of the petitioner that for the purpose of carrying the business activities of manufacture and sale of Granulated Mixture Fertilizer, the member of the petitioner-Association used to procure raw material, like Urea, MOP,DAP etc. from the manufacturers in subsidized rates and they have been issued licenses and the certificates of manufacture in the prescribed format.

5. In July 2018, Director of agriculture issued communication to one of the members of the petitioner association. Vide clause one of the said communication, one of the members of the petitioner association was directed that raw material shall be purchased only in respect of 18:18:10 and to manufacturer the said item only. Being aggrieved by the said communication dated 09-07-2018, the petitioner has filed this petition.

6. Mr. Deshmukh, learned senior counsel for the petitioner invited our attention to the memorandum of intimation issued by the Commissioner of Agriculture Maharashtra State alongwith Annexure A and form-F. He submits that the member of the petitioners has been granted license in respect of four Granulated Mixture Fertilizers i.e. 20:20:20, 10:20:20, 18:18:10 & 20:10:10. The said license is valid till 27-08-2023.

7. It is submitted by the learned senior counsel for the petitioner that the petitioner is supplied with mixed fertilizer. The members of the petitioner purchased the raw material from big companies and not from the Government. He submits that the license issued is valid till 2013. He submits that the Director of Agriculture has no authority to issue any such communication dated 09-07-2018.

8. According to the learned senior counsel directions if any can be issued only by the Commissioner of Agriculture and not the Director of Agriculture. There is no authority vest with the respondent No.3 to impose any such condition. He submits that in any event, the said communication is by way of the letter and not notification or by way of circular. He invited our attention to the representations made before the authority. The learned senior counsel invited our attention to the averments made by the respondents in paragraph Nos.7 and 8 of the affidavit-in-reply filed by the respondents contending that giving permission to manufacture and sell 20:20:0, 10:20:20 & 20:10:10 may create shortage of subsidized straight fertilizers such as Urea, Diammonium Phosphate, Murate of Potash and Single Super Phosphate in the

State. He submits that said contention of the State Government is totally frivolous. All such raw materials are purchased by big companies and not from the State Government and thus there is no question of any shortage of raw material as sought to be canvassed by the respondents in affidavit-in-reply.

9. The learned senior counsel invited our attention to the notification dated 26-06-1995 issued by the Government of India Ministry of Agriculture by exercising powers under clause-2-E of the Fertilizer (Control), Order 1985 authorizing the officers to exercise the function of the controller under clause 35 of the order in the States. He invited our attention to the entry No. 19 of the said Government notification. It is submitted that even if an officer who is authorized by the State notification, he is Commissioner of Agriculture and not the Director of Agriculture. He invited our attention to the clause 35 of the said Fertilizer (Control) Order 1985 and would submit that under the said notification, authority prescribed therein is allowed to perform the functions of the controller only for the purpose of maintenance and submissions of returns specifically prescribed under said control order and not for imposing any condition whereby modifying the condition of the licenses

issued in favour of the members of the petitioner.

10. The learned senior counsel placed reliance on such clause 12 of the said Fertilizer (Control) Order 1985 and would submit that even if restriction are permissible under the said provision, said restrictions are permitted only in accordance with law the terms and conditions prescribed under said control order. He submits that if the respondents wanted to impose any such condition restricting the conditions of licenses issued in favour of the members of the petitioner, such conditions could have been imposed while granting renewal to the license of the petitioner in accordance with law. He submits that though license has been renewed from time to time, no such restriction are imposed in the license.

11. The learned senior counsel submits that respondents by issuing such communication are trying to protect the interest of big entities and not farmers as sought to be canvassed in the affidavit-in-reply by the respondent Nos.1 to 3. He placed reliance on the judgment of Andhrapradesh High Court in the case of Omkar Fertilizers Pvt. Ltd. rep. By its Managing Director and others Vs Government of Andhra Pradesh, Agriculture and Co-operation (Agri-V), Department, m Rep. By its Special Chief Secretary

and others and in particular paragraph 26 and 27, in support of the submission that conditions if any of the nature as sought to be prescribed by the Director of Agriculture could be only by the Commissioner of Agriculture. It is submitted by the learned senior counsel that such condition imposed by the such impugned communication imposes on unreasonable restriction which is not permissible under Article 19(2) of the Constitution of India. Business undertaken by the members of the petitioners is not malicious. In view of the impugned conditions imposed by the impugned communication, the members of the petitioner are severely prejudiced.

12. The learned AGP for the respondent/State on the other hand vehemently urged that license was issued by the Director of Agriculture of Maharashtra State and thus power to regulate the conditions also vest in the the Maharashtra Government and not the Central Government. In case of any violation if committed by the licensee the State Government being licensing authority can suspend the license. He submits that license was renewed in ordinary course since no violation of any of the terms and conditions was found by the licensing authority. He relied on Section 3 of the Essential Commodities Act and section 2-e of the said Fertilizers(Control)

Order 1985 which defines the terms 'control'. He submitted that license was issued in favour of the petitioner under Section 15 and 18 of the said control Fertilizer (Control) Order, Act 1985. The Government has to consider interest of farmers. Since there is shortage of fertilizer action taken by the Director of Agriculture is fully justified.

13. This matter was on board on 02-05-2022 when this court directed the learned AGP to point out the relevant provision which is invoked by the Director of Agriculture while passing the impugned communication on the next date. The learned AGP tenders the compilation of the documents. He vehemently relied upon the communication dated 23-05-2018 issued by the Government of India Ministry of Chemicals and Fertilizers Department to all the Chief Secretaries of States/Union Territories. He submits that under clause 2 of the said communication the State agriculture department is empowered with the approval to the State Agriculture Commissioner and Principal Secretary (Agriculture) in writing, to decide the type and the quantity of the subsidized fertilizers required to be purchased by each mixture/customized Fertilizers units in the format.

14. It is submitted that thus Director of

Agriculture was authorized to impose such condition upon manufacturer of various fertilizers products mentioned in the license. It is submitted by the learned AGP that authority given to the State Government by the Central Government by the said communication dated 23-05-2018 has been extended from time to time and is in place even today. He also placed the communication dated 09-11-2021 issued by the Government of India, Ministry of Chemical and Fertilizers. He would submit that by the said communication, revised guidelines for subsidized fertilizers delivery mechanism for mixture or customize /manufactures have been issued.

15. Mr. Deshmukh, learned senior counsel in his rejoinder argument submits that admittedly none of the members of the petitioner have committed any contravention of any of the conditions of license or any other provisions of the Fertilizer (Control) Order, 1985. Kharip crop season would be during the period June to August whereas Rabbi crop would be during is October to December. He submits that the petitioner has not been supplied with any raw material by the State Government but has procured from the other raw material suppliers.

16. It is submitted that even the said communication dated 23-05-2018 and 09-11-2021 are

issued by the Central Government. He submits that in any event, powers exercised by the Director of Agriculture in the impugned communication not only without authority but also beyond the scope of powers under clause 35 of the Fertilizers (Control) Order 1985. He submits that raw material is common to be utilized for all four items forming part of licenses issued by the licensing authority. The condition thus imposed by the Director of Agriculture in the impugned communication that the petitioner shall manufacture only one item out of four item is totally absurd and without application of mind.

17. A perusal of the license issued to one of the members of the petitioner which is annexed at Exh.-A indicates that said license has been issued for four types of fertilizers and has been renewed up to 27-08-2023 granting permission to manufacture the granulated mixed fertilizers specified in the said license. Said license was issued in favour of the members of the petitioner and was renewed from time to time.

18. The short question that arises for consideration of this Court is whether the Director of Agriculture who has issued communication dated 09-07-2018 was at all authorized to impose any such

conditions directing the petitioner to manufacture only one item out of four items prescribed in the license which is valid and exist as on date or not.

19. During the course of argument, the learned AGP placed reliance on the Government notification dated 26-06-1995 issued by the Government of India Ministry of Agriculture Department by exercising the powers under Clause-2(e) of the Fertilizers (Control) Order, 1985 and in supersession of the notification dated 14-05-1988, 20-03-1990 and 14-09-1990. By the said notification the Central Government appointed with immediate effect the officers specified in the column 2 of the table as the officers to exercise functions of the controller under clause 35 of the said order, in the States specified in the corresponding entry in column 3 of the said table. Entry No. 19 of the said notification designates the Commissioner of Agriculture (Government of Maharashtra) so far as the State of Maharashtra is concerned. We shall now examine whether the impugned notification dated 09-07-2018 is within the authority granted by the Central Government in favour of the Commissioner Agriculture so far as the State of Maharashtra is concerned is validly exercised or not.

20. The said notification clearly refers to the

Fertilizers (Control) Order 1986. A perusal of clause 35 indicates that under the said clause, controller is empowered to direct the dealers, manufacturers for and full handling Agencies in writing to do various acts relating to maintenance and record and submission of returns. The said power exercised by the Director of Agriculture whereby imposing the condition that the petitioner shall manufacture only one item out of four items prescribed in valid license do not find in any part of the clause 35 of the Fertilizer (Control) Order, 1985.

21. Under Clause 12 of the said Fertilizers (Control) Order, 1985 provides that no person shall carry on the business of preparation of any mixture fertilizers, special mixture of fertilizer except under any terms and conditions of certificate of manufacture granted to him under clause 15 or 16.

22. It is not the case of the respondent that the petitioner or any of the members of the petitioners have manufactured any of the items not prescribed in the certificate of manufacture granted under clause 15 or 16. The case of the respondent is that the petitioner shall restrict the manufacture of only one item out of four items. If the respondents wanted to modify the terms and

conditions of the license, same could be done only by exercising powers under clause-12 of the said Fertilizer (Control) Order, 1985 and not by exercising power under clause 35 of the said control Order. In our view the said clause 35 invoked by the respondents and more particularly by Director of the Agriculture is ex-facie without jurisdiction and without authority of law. The invocation of the said clause 35 while modifying terms and conditions of the license is without application of mind and is illegal.

23. In so far as the communication dated 23-05-2018 issued by the Government of India and all Chief Secretaries of States/ Union Territories and also communication dated 09-11-2021 placed by the learned AGP across the bar are concerned in our view the said revised guidelines also cannot be issued thereby reducing the eligibility of the petitioner without amending the terms and conditions of the license issued to the members of the petitioners. Be that as it may, the Director of Agriculture has not invoked the said powers purported to have been delegated under communication dated 23-05-2018 or 09-11-2021.

24. In so far as the submission of the learned AGP that the said impugned communication was issued

in the interest of farmers is concerned, the learned AGP could not demonstrate as to how the interest of the farmers would be affected by the restricting the manufacturing activities of the petitioner by permitting only one item out of four items prescribed in the license which admittedly is enforce till the end of 2023.

25. The learned counsel for the intervenor who seeks intervention in the writ petition also could not demonstrate as to how the interest of the farmers was affected and for protecting such interest of the farmers, the impugned communication annexure-A was justified by the State Government.

26. We accept the statement made by the learned senior counsel that members of the petitioner have not purchased any raw material from the State Government and thus question of any shortage of the raw material did not arise. In our view, entire action on the part of the Director of Agriculture is totally without authority of law. Impugned communication dated 09-07-2018 in so far as the clause 1 and 6 and all other such communications imposing similar conditions are quashed and set aside.

27. Rule is made absolute in terms of prayer

clause-B-1. The writ petition is allowed in aforesaid terms. No order as to costs.

28. Parties to act upon authenticated copy of this order.

29. In view of disposal of the writ petition, pending civil application does survive and is disposed of.

[S. G. MEHARE, J.]

[R. D. DHANUKA, J.]

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