

THE HON'BLE SRI JUSTICE C.V. RAMULU

Tuesday, 25th day of July, 2006

W.P.No.31944 of 1997

Between:

The Fertilizers and Chemicals Travancore
Limited (FACT Ltd) rep. by its
Area Manager I.V.Madhusudhan Rao ... Petitioner

and

The Commissioner of Civil
Supplies and Ex-Officio Secretary to
Government, Food and Civil Supplies
Department, Government of
Andhra Pradesh, Civil Supplies Bhavan,
Somajiguda, Hyderabad
and others. ... Respondents

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ORDER:

This is a very peculiar case. The petitioner is a company duly incorporated under the provisions of the Companies Act. It is wholly owned by Government of India and is under the control of Ministry of Chemicals and Fertilizers, New Delhi. The company is engaged in manufacture and marketing of Chemical Fertilizers and it has got marketing network in Andhra Pradesh including Rayalaseema districts for the effective distribution of fertilizers manufactured at Kerala and distributes the fertilizers in rake loads and supplemented by road. According to the petitioner, in the usual course of distribution of fertilizers, the company received a rake quantity of 1662 tons of Factamfos 20:20 at Cuddapah Railhead and the said stock was allocated to Rayalaseema districts. Cuddapah Railhead is the feeder point to Kurnool, Nandyal, Anantapur and Cuddapah districts. As such, the stock received by rake on 27-8-1992 was transported to Nandyal. The company started transporting the stocks received by Railhead on 27-8-1992 at Cuddapah to various godowns at various places through a contractor. During the said exercise, the company moved 19 tons of Factamfos 20:20 to State Warehousing Corporation, Nandyal out of 374 tons allocated from the above rake. While so, on 28-8-1992, the 3rd respondent-Mandal Revenue Officer illegally seized two lorries bearing Nos. APA 5453 and APD 3545 along with 19 tons of Factamfos 20:20 when the lorries were going to Nandyal for the

purpose of transporting the goods to State Warehousing Corporation at Nandyal. Both the lorries containing 10 tons and 9 tons of fertilizers, respectively were being transported with valid way bills dated 28-8-1992 issued by the competent authority and also the Material Delivery Advices issued by the authorized authority. In the said documents, it was clearly mentioned that the stocks of fertilizers were being transported to A.P. State Warehousing Corporation, Nandyal. While so, to the utter surprise of the petitioner-company, the 2nd respondent disposed of the seized stocks at the pre-revised rate of Rs.3380/- per ton, in pursuance of the order passed by him on 4-9-1992. Before the said sale, the petitioner was neither served with any notice nor a copy of the said order was communicated to it. The company nor its Officers have knowledge about the same and hence, they could not take any legal steps restraining the authorities from selling the commodities pending the proceedings under Section 6-A of the Essential Commodities Act,1955 before the 2nd respondent. The petitioner company submitted detailed representations on 21-9-1992 and 28-9-1992 before the 2nd respondent denying the allegations made in the show cause notice and sought for release of the stocks inviting his attention to the Circular of the Government of India in letter No.4/12/92/FDA-1(D), dated 28-9-1992, which reads as under:

“As regards decontrolled fertilizers, no subsidy in any form is payable on stocks dispatched on or after 25-8-92. As regards the stocks moved out of the factory upto and including 24-8-92 which are lying unsold in your warehouse, field godowns or held on your behalf by your buffer stockists or in transit at the close of 24-8-92, no subsidy is payable as after the said date there is no price and movement control and you are free to sell the material at any price.”

According to the petitioner, there are no restrictions for the movement of fertilizers by the Government of India organization from the Railway wagons to their godowns. Therefore, the seizure of the commodities

by the 3rd respondent is illegal and high handed. Neither the petitioner-company nor its subordinates contravened any of the provisions of the Act or the Control Orders framed under the Act. As such, the petitioner-company was entitled for release of the seized stocks. However, the 2nd respondent passed final orders through Proceedings dated 1-12-1993 stating that the charges framed against the petitioner remained unproved and, therefore, the value of the seized stocks was ordered to be released in favour of the petitioner. The petitioner filed an appeal against the said order before the 1st respondent only to the extent that the company is entitled for the value of the stocks as on the date of seizure, but the appeal was dismissed as not maintainable vide Order dated 30-1-1997. Challenging the same, the present Writ Petition is filed.

The case of the petitioner is that the value of the fertilizers was Rs.6,820/- per ton as on the date of seizure, whereas respondents 2 and 3 illegally disposed of the same at Rs.3,380/- per ton and since the said disposal was without any authority, the company is entitled for refund of the amount at Rs.6,820/- per ton with interest thereon. Now, the controversy boils down only to the question whether the petitioner is entitled for the value of the seized fertilizers at Rs.6,820/- per ton or at the rate of Rs.3,380/- per ton.

No counter affidavit is filed. But, the learned Government Pleader opposed the claim of the petitioner and contended that the authorities have not committed any error and they have disposed of the seized stocks as per the rates available as on that date (4-9-1992) i.e., at the rate of Rs.3,380/- per ton. The value of the seized fertilizers cannot be said to be Rs.6,820/- per ton and the revised rates were not available with the authority, which sold the seized stocks. Therefore,

the authority cannot be blamed for such things. There is no necessity of giving any notice to the petitioner before the sale of the seized stocks. It is always open for the authorities, which seized stocks to sell as per the existing market value as on that date and in this case, the goods being fertilizers, were rightly sold, as there was lot of demand from the ryots. As such, the authority, which seized stocks cannot be blamed for such sale or for such price being fixed.

Whereas, learned counsel for the petitioner states that Government of India issued instructions fixing the rate at Rs.6,820/- per ton, which is available even as on the date of seizure of the goods; therefore, it is not fair on the part of the respondents to say that they have no information about the rates and as such, they have sold as per the information available to them. In this regard, he relied upon a Judgment reported in **LAKSHMI RICE MILLS v. DISTRICT**

REVENUE OFFICER, MADURAI^[1] wherein it was held that once the seizure was held to be improper, the payment of value of goods seized illegally be made on the basis of market value of goods prevailing at the time of seizure. Learned counsel for the petitioner submitted that in view of the above, the respondents are bound to pay the differential value of the goods, since the goods were seized without any authority of law and were sold by the authorities. Whereas, learned counsel for the respondents relied upon a reported Judgment in **T.**

NAGABHUSHANAM v. JOINT COLLECTOR, NALGONDA^[2] wherein the cement seized from the petitioner therein was confiscated and sold. Subsequently, the said confiscation was set aside by the High Court. Thereafter, a review petition was filed seeking a direction to pay the petitioner therein the amount of the value of cement bags prevailing on the date of said review. But, this Court held that the

petitioner is not entitled to the current market value, but he is only entitled to interest at 12% on the amount for which the goods were sold by the authorities.

The said Judgment has no application to the facts of this case. This is a case where as on the date of seizure and sale of the goods, the market price fixed by the Government of India in consultation with the State Government was Rs.6,820/- per ton, where the seized goods i.e. fertilizers were sold at Rs.3,380/- per ton. Therefore, the ratio laid down in **LAKSHMI RICE MILLS** case (1 supra) is applicable to the facts of the present case.

For the aforementioned reasons, the Writ Petition is allowed and the respondents are directed to pay the market value of the fertilizers seized illegally, as on the date of sale i.e. at Rs.6,820/- per ton, within a period of three months from the date of receipt of a copy of this order, as the seizure itself was held to be illegal even according to the respondents. No order as to costs.

25-7-2006

prk

[1] AIR 1998 Madras 22

[2] 1997(1) ALD (Crl.) 904 (AP)