

Abs Polymers vs District Collector

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Court : Kerala

Decided On : Nov-29-2023

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : WP(C)/31595/2022

Appellant : Abs Polymers

Respondent : District Collector

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN WEDNESDAY, THE 29TH DAY OF NOVEMBER 2023 / 8TH AGRAHAYANA, 1945 WP(C) NO. 31595 OF 2022 PETITIONER: ABS POLYMERS, NEW INDUSTRIAL DEVELOPMENT AREA VIII/156, (NEW XIII/680) KANJIKKODE P.O., PALAKKAD, PIN - 678 621, REPRESENTED BY ITS MANAGING PARTNER BABU SAIDALY, AGED 45 YEARS, S/O.T.BHAVA SAIDALY, S/O.T.BHAVA SAIDALY, THAYYALAL HOUSE, CHOORAKKAD, PATTIMATTOM P.O., ERNAKULAM DISTRICT, PIN - 683 562. BY ADVS. P.N.SANTHOSH K.P.GEETHA MANI RESPONDENTS: 1 DISTRICT COLLECTOR, COLLECTORATE, KUNNATHUMEDU, PALAKKAD, PIN - 678 013. 2

ASSISTANT DIRECTOR OF AGRICULTURE, MALAMPUZHA BLOCK PANCHAYATH, MARUTHAROAD, PALAKKAD, PIN - 678 007. SRI P S APPU-GP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29.11.2023, ALONG WITH WP(C).27055/2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -2-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN WEDNESDAY, THE 29TH DAY OF NOVEMBER 2023 / 8TH AGRAHAYANA, 1945 WP(C) NO. 27055 OF 2022 PETITIONER: FALCON ELASTOMERS PRIVATE LIMITED, INDUSTRIAL DEVELOPMENT AREA, NALAM MILE, ERUMATHALA, P.O., ALUVA, PIN - 683 112, REPRESENTED BY ITS MANAGING DIRECTOR FAZIL T.H., AGED 42 YEARS, SON OF HASSAN, RESIDING AT THEKKEKUDI HOUSE, P.O.RAYONPURAM, PERUMBAVOOR, ERNAKULAM, PIN - 683 543. BY ADVS.P.N.SANTHOSH K.P.GEETHA MANI RENJITH THAMPAN (SR.) RESPONDENTS: 1 THE DISTRICT COLLECTOR, ERNAKULAM DISTRICT, CIVIL STATION, KAKKANAD, ERNAKULAM, PIN - 682 030. 2 THE DEPUTY DIRECTOR OF AGRICULTURE (FERTILIZER INSPECTOR), CIVIL STATION, KAKKANAD, ERNAKULAM, PIN - 682 030. 3 PRINCIPAL AGRICULTURE OFFICE, OFFICE OF PRINCIPAL AGRICULTURAL OFFICER, CIVIL STATION, KAKKANAD, ERNAKULAM, PIN - 682 030. THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29.11.2023, ALONG WITH WP(C).31595/2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -3- C.R.

JUDGMENT

[WP(C) Nos.31595/2022, 27055/2022] Under the Essential Commodities Act, 1955

(Act, for short), Agricultural Urea is

Technical Grade Urea, which is not subsidized and carries a market rate nearly eight times that of Agricultural Urea.

2. The petitioners in these cases are persons from whom large quantities of Urea were taken into custody by the competent Authorities, on the allegation that it is not Technical Grade Urea, but Agricultural Urea, which they have diverted through other sources.

3. The specific case of the petitioners in these cases is that the Urea taken from their -4- custody over a year ago is Technical Grade Urea and not Agricultural Urea; and that this is proven at least in the case of the petitioner in W.P.(C)No.27055/2022, through a Chemical Analysis Report, namely Ext.P13 therein.

4. The petitioners impugn Ext.P17 in W.P. (C)No.27055/2022 and Ext.P11 in W.P. (C)No.31595/2022 - which are the orders of confiscation issued by the District Collectors, being the competent Authority under the Act - asserting that it has been done without adverting to any of the germane or relevant aspects, but solely on surmises and conjectures.

5. In fact, the petitioner in W.P.(C)No. Chemical Analysis being attempted, their stock has been presumed to be Agricultural Urea and Ext.P11 order issued by the District Collector.

6. The petitioners, therefore, pray that -5- impugned orders be set aside and the stock in question be directed to be returned to them without any avoidable delay.

7. I have heard Sri.Ranjith Thampan -

learned Senior Counsel, instructed

appearing for the official respondents.

8. Sri.P.S.Appu - learned Government

Pleader, in response to the afore submissions of the learned Senior Counsel and learned counsel for the petitioners, vehemently argued that, as manifest from the

impugned orders, the District Collectors have found that petitioner did not produce any relevant documents, including bills and such other, to establish that the stock in

-6- question is Technical Grade Urea and not Agricultural Urea. He submitted, pointing out to Ext.R1(a), produced along with W.P. (C)No.27055/2022, that the difference in price

between these two commodities is nearly

Urea and project it as Technical Grade Urea, thus making a windfall by unscrupulous elements.

9. The learned Government Pleader further argued that District Collectors had gone into

these aspects in great detail in both these cases, to find that the bills produced by the petitioners did not contain the details of the General Sales Tax (GST) remitted by them, nor the specifics of the articles covered by it. He

submitted that, therefore, in

-7- therefore, prayed that these writ petitions be dismissed.

10. In reply, however, the learned Senior Counsel - Sri.Ranjith Thampan, vehemently argued that, as far as Ext.P17 in W.P.(C)No.27055/2022 is concerned, conclusions of the District

Collector are based evidently on conjectures because the test result, namely Ext.P13, would indicate without doubt that the confiscated Urea was not Neem Coated. He pointed out that, as per the notification of the Ministry of Chemicals and Fertilizers dated 25.05.2015, Agricultural Urea is only that which is Neem Coated, and any other will have to be treated solely as a Technical Grade Urea. He submitted that the District Collector, however, relied upon the bills produced by his client to say that, since the value shown therein is only Rs.13/- per kg, it ought to be presumed that it -8- is Agricultural Urea, even though Ext.R1(a) would establish beyond doubt that the maximum cost for such commodity would only be

Rs.5.50 per kg. He submitted that, therefore, even going by such mentation, the District Collector could have never assumed that the Urea confiscated is Agricultural Urea and not Technical Grade Urea.

11. The learned Senior Counsel then alluded to the allegations of his client not having paid GST - not being admitted - and argued that this per se would be of no consequence at all to the

issues impelled in this case because, at the

best, it is only a fiscal violation and would not ipso facto lead to a presumption that the article in question is Agricultural Urea. He vehemently pointed out that the controversy is not whether petitioners paid less or more for the commodity, but whether same is Technical -9-

Grade Urea or Agricultural Urea; conceded

findings in Ext.P17 in W.P.(C)No.27055/2022 are untenable and without legal basis and thus prayed that it be set aside.

12. Sri.P.N.Santhosh - learned counsel for the petitioner in W.P.(C)No.31595/2023, adopted most of the afore submissions of Sri.Ranjith Thampan - learned Senior Counsel, adding that, in the case of his client, the situation is far

worse because, the Authorities did not

Urea. He submitted that, when no analysis has been done and no attempt has been made in such direction, Ext.P11 in this writ petition becomes without any feet to stand on. He thus prayed that said order be set aside. -10-

13. The learned Government Pleader, at this

time, intervened to say that afore arguments of Sri.P.N.Santhosh are not factually true because, in paragraph 3 of Ext.P11 in W.P.(C)No.31595/2022, it is clearly stated that the test result from the laboratory shows that the sample having 46% Nitrogen(sic). He submitted that, therefore, the argument that there was no

laboratory analysis of the sample does not appear to be factually true; however, conceding that there is no mention in the said order whether the sample was found to be Neem Coated or otherwise.

14. When I evaluate and consider the afore rival submissions, it is indubitable that any action against the petitioners would become warranted only if the article in question is found to be Agricultural Grade Urea. If it is otherwise, then action under the Act becomes untenable. -11-

15. Going by the impugned orders in these

cases, Prima facie, the District Collectors had not been able to establish conclusively that the articles in question are Agricultural Urea, but had gone by certain assumptions and even surmises, to hold so.

16. I say as afore because, though the test

result of the Urea confiscated in

Coating on the article, the District Collector says that this will not conclusively establish that the seized Urea is not subsidized. This is rather debatable because, prima facie, when it was found that there is no Neem Coating on the seized goods - thus leading to a rebuttable presumption that it is not Agricultural Urea - normally, it could have been found otherwise only through cogent and verifiable contra - -12- evidence. As matters now stand, that does not appear to be available.

17. Coming to the case of articles seized in W.P.(C)No.31595/2022, even if this Court is to accept the argument of Sri.P.S.Appu, learned Government Pleader, that there was an Analysis

Report available with respect to it, Ext.P11 therein only says that it was found to have 40% nitrogen. One fails to understand what is meant by this because, there is no case for any body that the seized article is not Urea, and it would have the component of nitrogen as aforementioned.

18. The acme question is whether it was Neem Coated, to bring it within the ambit of Agricultural Grade Urea; but this is conspicuously absent in Ext.P11 order. One,

therefore, prima facie, fails to fathom how the District Collector would have still assumed that -13- the article seized is an Agricultural Grade Urea, and not Technical Grade Urea.

19. Suffice to say, this Court cannot find

favour with either of the impugned orders in these two writ petitions, and am certain that these matters must be sent back to the District Collector for fresh consideration, based on all relevant aspects.

20. Before I close, I must record the

submissions of the learned Government P

on 07.10.2022, and having thus remained on files for more than a year, it would not be prudent for this Court to relegate the petitioners to an alternative remedy, particularly in view of my observations above. This is because, I am -14- certain that the orders now issued by the District Collectors cannot find favour in law and that the matter will require to be reconsidered at their level immediately. In the afore circumstances and since the learned Government Pleader did not oppose the afore course suggested by this Court, I allow these writ petitions in the following manner:

(a) W.P.(C)No.27055/2022 is allowed and Ext.P17 therein set aside; with a consequential

direction to the District Collector to reconsider the matter under Section 6A of the Act, advertent to all the records produced by the petitioner and to be produced by them during the time of hearing; thus culminating in an appropriate order and necessary action thereon, as expeditiously as is possible, but not later than two months from the date of receipt of a copy of this judgment. -15-

(b) W.P.(C)No.31595/2022 is allowed and Ext.P11 therein set aside; with a consequential

direction to the District Collector to reconsider the matter under Section 6A of the Act, advertent to all the records produced by the petitioner and to be produced by

them during the time of hearing; thus culminating in an appropriate order and necessary action thereon, as expeditiously as is possible, but not later than two months from the date of receipt of a copy of this judgment.

Sd/- DEVAN RAMACHANDRAN JUDGE akv -16- APPENDIX OF WP(C) 27055/2022 PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF THE PROCEEDINGS DATED INDUSTRIES CENTRE ERNAKULAM. EXHIBIT P2 A TRUE COPY OF THE GST CERTIFICATE DATED 16/07/2018 ISSUED TO THE PETITIONER COMPANY BY THE GOVERNMENT OF INDIA. EXHIBIT P3 TRUE COPY OF THE NOC ISSUED BY THE FIRE AND RESCUE DEPARTMENT DATED EXHIBIT P4 TRUE COPY OF THE SITE APPROVAL ISSUED BY THE DISTRICT MEDICAL OFFICER DATED EXHIBIT P5 TRUE COPY OF THE CERTIFICATE ISSUED BY THE DEPARTMENT OF FACTORIES AND BOILERS DATED 29/1/2021 TO THE PETITIONER COMPANY. EXHIBIT P6 TRUE COPY OF MAHZAR DATED 20/05/2022 PREPARED BY THE 2ND RESPONDENT. EXHIBIT P7 TRUE COPY OF PROFORMA BOND OF CUSTODY FOR SEIZED FERTILIZERS DATED EXHIBIT P8 TRUE COPY OF THE INSPECTION REPORT DATED 20/05/2022 PREPARED BY THE 3RD RESPONDENT. EXHIBIT P9 TRUE COPY OF THE RECEIPT DATED RESPONDENT. EXHIBIT P10 TRUE COPY OF FIR DATED 21/05/2022 IN -17- CR.NO.0372/2022 OF EDATHALA POLICE STATION. EXHIBIT P11 A TRUE COPY OF THE INTERIM ORDER DATED THIS HON'BLE COURT. EXHIBIT P12 A TRUE COPY OF THE JUDGEMENT DATED THIS HON'BLE COURT. EXHIBIT P13 A TRUE COPY OF THE ANALYSIS REPORT OF

FERTILIZER SAMPLE DATED 17/06/2022 ISSUED FROM THE OFFICE OF THE CENTRAL FERTILIZER QUALITY CONTROL & TRAINING INSTITUTE, FARIDABAD.

EXHIBIT P14 A TRUE COPY OF THE REQUEST DATED BEFORE THE 3RD RESPONDENT. EXHIBIT P15 A TRUE COPY OF THE REQUEST DATED BEFORE THE DISTRICT COLLECTOR. EXHIBIT P16 TRUE COPY OF THE ARGUMENT NOTE ALONG WITH THE DOCUMENTS PRODUCED BEFORE THE DISTRICT COLLECTOR EXHIBIT P17 TRUE COPY OF THE ORDER NO.

DCEKM/5101/2022-M7 DATED 17/09/2022 ISSUED BY THE 1ST RESPONDENT
RESPONDENT EXHIBITS EXHIBIT R1(A): A TRUE COPY OF THE LETTER
DATED 23.05.2022 BY THE DIRECTOR OF AGRICULTURE. -18- APPENDIX OF
WP(C) 31595/2022 PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF THE
TAX INVOICE NO.28 DATED 04/06/2022. EXHIBIT P1A TRUE COPY OF THE E-
WAY BILL NO.191482673036 DATED 04/06/2022. EXHIBIT P2 TRUE COPY OF
THE INVOICE NO.034 DATED EXHIBIT P2A TRUE COPY OF E-WAY BILL
NO.58137674267 DATED 06/06/2022. EXHIBIT P3 TRUE COPY OF THE TAX
INVOICE NO.34 DATED 18/06/2022. EXHIBIT P3A TRUE COPY OF THE E-WAY
BILL NO.101488711953 DATED 19/6/2022. EXHIBIT P4 TRUE COPY OF THE
TAX INVOICE NO.43 DATED 23/6/2022. EXHIBIT P4A TRUE COPY OF THE E-
WAY BILL NO.191490772523 DATED 23/06/2022. EXHIBIT P5 TRUE COPY OF
THE SHOW CAUSE NOTICE NO.MP(S) 112/2022 DATED 12/7/2022 ISSUED BY
THE 2ND RESPONDENT TO THE PETITIONER.5A EXHIBIT P5A TRUE COPY
OF THE NOTICE OF SEIZURE OF FERTILIZER STOCK UNDER CLAUSE
28(I)(D) DATED 12/07/2022. EXHIBIT P6 TRUE COPY OF THE FORM
INDICATING PARTICULARS SAMPLED DATED 12/7/2022. EXHIBIT P7 TRUE
COPY OF THE SEIZURE NOTICE NO.PDY -19- EXHIBIT P7A TRUE COPY OF
THE MAHZAR/PANCHAMA DATED EXHIBIT P7B TRUE COPY OF THE BOND
FOR CUSTODY OF SEIZED FERTILIZER DATED 8/08/2018. EXHIBIT P8 TRUE
COPY OF THE REPRESENTATION FILED BY THE PETITIONER BEFORE THE
1ST RESPONDENT DATED 15/07/2022 WITHOUT ANNEXURES. EXHIBIT P9 A
TRUE COPY OF THE JUDGMENT DATED THIS HON'BLE COURT. EXHIBIT
P10 A TRUE COPY OF THE HEARING NOTE DATED BEFORE THE DISTRICT
COLLECTOR.

EXHIBIT P11 A TRUE COPY OF THE ORDER

NO.DCPKD/10348/2022-J7 DATED RESPONDENT.

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