

(2003) 02 MAD CK 0108

In the Madras High Court

Case No : Writ Petition No. 6284 of 1999 and W.M.P. No. 9070 of 1999

Tamil Nadu Essential Plant Nutrients Manufacturers and
Marketeers Association

APPELLANT

Vs

Union of India (UOI) and The Director of Agriculture/
Controller of Fertiliser for State of Tamil Nadu

RESPONDENT

Date of Decision : 17-02-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 02 MAD CK 0108

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : V. Ayyadurai, for the Appellant; N.R. Natarajan, ACGSC for R1 and V. Velumani, AGP for R2, for the Respondent

Final Decision : Dismissed

Judgement

E. Padmanabhan, J.—The writ petitioner, Tamil Nadu Essential Plant Nutrients Manufacturers and Marketers Association, has

prayed for the issue of a writ of declaration declaring that clause 21-A of The Fertiliser (Control) Order, 1995 is unconstitutional, ultra vires and

null and void as far as the members of the petitioner association is concerned.

2. The petitioner claiming to be a registered society formed for the purpose of promoting the welfare of its members, who are all manufacturers of

fertiliser mixtures and micro nutrient fertilisers, has moved the present writ petition. After referring to the various details of legislations introduced,

with respect to the licensing system as well as The Fertiliser (Control) Order, etc., the petitioner has referred to the provisions of The Essential

Commodities Act and the Fertiliser (Control) Order.

3. The petitioner association and other associations requested to dispense with the requirement of clause 21A of the order, as it is not at all

necessary having regard to the nature of business and in view of the expenditure involved in the establishment of a laboratory. The 2nd respondent

extended time to possess the minimum laboratory facility up to 31.8.1996.

4. The 2nd respondent by circular dated 9.8.96 instructed all Joint Directors of Agriculture to withdraw the certificate of registration in the event of

failure of owning the minimum laboratory facility. Challenging the said circular, the petitioner filed W.P. No. 12177 of 1996 and the same was

dismissed and also affirmed in writ appeal. Hence, the petitioner challenged the validity of clause 21-A of The Fertiliser (Control) Order.

5. It is contended that the power conferred under Clause 21-A is legislative in nature and, therefore such essential law making power cannot be

conferred upon an outside agency as it falls exclusively within the realm of The Parliament. Clause 21-A is liable to be struck down as the plenary

powers conferred upon executive or outside agency is unconstitutional and contrary to the scheme of The Constitution.

6. It is further contended that it is violative of Article 14 and 19(1)(g) of The Constitution. It is also contended that clause 21-A has not been

placed before both the Houses of the Parliament as required by Section 3 of The Essential Commodities Act. The members of the petitioner

association, to comply with clause 21-A have to spend considerable amount in setting up a laboratory, which will be several times more than what

they have invested and, therefore, the members of the petitioner association will have to go out of business, which will be in violation of

fundamental rights.

7. Per contra, on behalf of respondents, the first respondent has filed a counter pointing out that fertilisers have been declared as essential

commodity by the Central Government in exercise of powers conferred u/s 2(a) (xi) of The Essential Commodities Act, 1955. The Central

Government is conferred with the power u/s 3(1) of the Act to issue rules/regulations/orders for regulating or prohibiting production, supply and

distribution of trade and commerce in fertilisers so as to maintain or increase the supply or for securing its equitable distribution and availability of

fair prices. In exercise of the said powers, the Central Government issued

Fertiliser (Control) Order, 1985, to regulate quality, price, supply and distribution of fertilisers. Provision have been made empowering the State Government to enforce various provisions of the order to ensure availability of good quality fertilisers to farmers in adequate quantities in time and at reasonable prices. The fertilisers has to conform to prescribed standards as laid down in Schedule I Part-A of the Order in respect of straight and complex fertilisers including micro-nutrients or micro-nutrient fertilisers including mixtures of NPK fertilisers as well as mixture of micro-nutrient fertilisers with or without NPK are only to be produced and stocked for sale and distribution. The fertilisers which do not conform to the prescribed standard are not allowed to be sold to the farmers. Therefore, it has been made obligatory to obtain a certificate of manufacture of mixtures of fertilisers and the dealers have to secure a certificate of registration.

8. In order to ensure the quality of fertilisers at manufacturing unit, in exercise of power, the Controller on the recommendations of the Central

Fertilisers Committee has specified the minimum laboratory facilities to be possessed by different manufacturing units including the manufactures of mixtures of micro-nutrient fertilisers with or without NPK. One of the equipment specified being Atomic Absorption Spectrophotometer (AAS).

Every manufacturer has to comply with the provisions of the order as well as the notification issued under the order.

9. The AAS equipment has been specified by the Controller in exercise of powers conferred by order issued under the Act passed by the

Parliament and the same is legal and valid. AAS has been prescribed with a view to ensure quality of mixtures of micro-nutrient fertilisers at the

manufacturing level itself so that right quality mixtures of micro-nutrient fertilisers are made available to the farmers. AAS method is quite sensitive,

accurate, quick and capable of analyzing micro-nutrient fertilisers under all conditions. The promulgation of The Fertiliser (Control) Order and

introduction of Clause 21-A has an objective to meet the changing needs arising from time to time and such a power has been conferred by

delegation, as seen from The Essential Commodities Act, 1955, and The Fertiliser (Control) Order, 1985.

10. The contention advanced by the petitioner is devoid of merits and Clause 21-

A has been introduced with the sole object to provide good quality fertilisers to farmers. The quantity of micro-nutrient mixtures required for soil use is very small and the same are in very high demand in the market. The provision for establishing a laboratory by the manufacturers has been made under The Fertiliser (Control) Order so that the manufacturers themselves would check the quality of fertilisers and thus ensure that a right quality fertiliser is supplied to the farmers. This is a reasonable restriction and it is not violative of Article 19(1)(g) of The Constitution. It is not an excessive delegation.

11. It is also stated that clause 21-A has been laid before both the houses of Parliament as required under the Act and the averments to the contrary are denied. u/s 3(6) of The Essential Commodities Act, not only The Fertiliser (Control) Order, but also the amendment introducing clause 21-A has been placed before both the houses of Parliament. Every manufacturer has to set up a laboratory in terms of clause 21-A and such a restriction has been imposed in the interest of the farmers as well as national interest, lest any inferior quality fertilisers may result in failure of production of food grains and introduction of clause 21-A has a purpose and object.

12. Heard Mr. V. Ayyadurai, learned counsel appearing for the petitioner, Mr. N.R. Natrarjan, learned Additional Central Government Standing Counsel appearing for the first respondent and Ms. V. Velumani, learned Additional Government Pleader appearing for the 2nd respondent.

13. The following points arise for consideration in this writ petition :-

i) Whether Clause 21-A of The Fertiliser (Control) Order is unconstitutional, suffer the vice of excessive delegation or violative of Article 14 and

19 of The Constitution ?

ii) Whether Clause 21-A has been placed before both Houses of Parliament as required by Section 3(6) of The Essential Commodities Act, 1955

?

iii) To what relief, if any, the petitioner is entitled to ?

14. The Fertiliser (Control) Order, 1985, has been issued by the Central Government in exercise of powers conferred by Section 3 of The Essential Commodities Act, 1955. With respect to The Fertiliser (Control) Order, 1985, there is no challenge and what is being challenged is

clause 21-A of the said order, which reads thus :-

21-A. Manufacturers to comply with certain requirements for laboratory facilities
- Every manufacturer shall, in order to ensure quality of their

produce, possess the minimum laboratory facility, as may be specified from time to time by the Controller.

15. Clause 21-A prescribes that every manufacturer shall possess minimum laboratory facility as may be specified from time to time by the

Controller in order to ensure quality of their product fertiliser or mixtures. This is being challenged by the petitioner association. There is no dispute

that in respect of fertilisers, which the members of the petitioner association deal with as manufacturers, in terms of Schedule I read with part-B of

the order, the fertilisers should comply with the standards specified by the order.

16. Clause 2 (h) defines the expression ""fertiliser"" and the definition reads thus :-

fertiliser"" means any substance used or intended to be used as a fertiliser of the soil and/or crop and specified in Part A of Sch. I and includes a

mixture of fertiliser and a special mixture of fertiliser.

17. Clause 2 (p) defines the expression ""physical mixture"" made by physical mixing two or more fertilisers with or without materials necessary to

make a grade without involving any chemical reaction. Clause 2 (q) defines the expression ""prescribed standard"". A conjoint reading of the above

clauses require that every manufacturer of physical mixture of fertilisers has to strictly conform with the standards prescribed in Schedule I Part-A

and B as well. Any deviation from the standard is punishable in terms of the order itself. Thus, the Fertiliser (Control) Order stipulates very high

standards with respect to the manufacture of fertilisers, which are to be sold to the farmers, including mixture of fertilisers as well.

18. Clause 28 prescribed the procedure for drawal of samples of fertilisers and an exhaustive procedure has been prescribed in this respect. Part-

B of Schedule II prescribes the method to analyse fertilisers and detailed and elaborate procedure has been prescribed in this respect and various

methods to analyse has also been prescribed in the said Schedule II in respect of various mixtures of fertilisers or compounds as the case may be.

19. As rightly pointed out by the respondents, fertiliser is one of the items included by a notification by the Central Government by virtue of power

conferred u/s 2(a)(xi) of The Essential Commodities Act. In terms of Section 2(a)(xi), the Central Government's power for declaring a commodity

as an essential commodity is co-equivalent with legislative competence with respect to it under Entry 33 List 3 of VII Schedule to The Constitution.

20. The powers conferred by Section 3 of The Essential Commodities Act and the authority to promulgate or issue orders has already been upheld

by the Supreme Court in *Prag Ice and Oil Mills and Another Vs. Union of India (UOI)*, : In this respect, the Apex Court held thus:-

16. If orders passed u/s 3 of the Act also get a protection it would be what may be described as a ""derivative"" protection so long as the orders

are covered by Section 3 of the Act. It is available only so long as and because the source of their authority-Section 3 of the Act-is protected by

the Ninth Schedule. Orders purporting to be made u/s 3 of the Act must, however, satisfy the tests found in Section 3 itself in every case. They can

never escape the basic tests whether Section 3, the source of their authority, is protected by the Ninth Schedule or not. The further tests imported

by Articles 14 and 19 of the Constitution into Section 3 could be applied to these orders only so long as these added tests are attached to or can

be read into Section 3 of the Act, but not after they have been deliberately delinked or removed from Section 3, if one may so describe the effect

of the inclusion of the Act in. the Ninth Schedule.

17. The Solicitor-General contended that Section 3 of the Act constituted what he described as ""skeleton"" legislation, over which the exercise of

powers given by Section 3 built, so to say, a body of ""flesh and blood"". The term ""skeleton"" legislation is used sometimes for denoting the broad

outlines of a particular scheme found in an Act of which details are to be filled in later by administrative orders of experts. It is doubtful whether the

Essential Commodities Act, 1955, could be spoken of as a piece of ""skeleton"" legislation. Section 3, sub-section (1) of the Act provides for

delegation of powers to the Central Government in order that it may carry out certain purposes by framing appropriate schemes and evolving

policies which may meet the purposes of the Act. These schemes and policies to serve the stated purposes may differ as regards the nature of

means adopted and even in the particular objectives sought at particular times to accord with changing circumstances.

18. Orders passed u/s 3 of the Act, in pursuance of such schemes or policies, do not become parts of the Act for the purposes of the Ninth

Schedule of the Constitution. On the strength of the views expressed by this Court in *Godavari Sugar Mills Ltd. v. S.B. Kamble*, with which we

respectfully agree, the most one can say is that orders passed under the Act, before its inclusion in the Ninth Schedule, could also be said to be

protected directly by the Ninth Schedule if mentioned there. But, there could be no independent and direct protection of this Schedule conferred

upon orders passed under the Act before us just as none could be given to either the amendments of an Act or to regulations passed under the Act

which were considered in *Godavari Sugar Mills* case.

Therefore, the contention that clause 21-A suffers the vice of excessive delegation cannot be sustained. So also its validity as well.

21. As regards the contention that clause 21-A is violative of Article 14 as well as 19(1)(g), the above pronouncement of the Supreme Court is an

answer and clause 21-A is a valid and reasonable restriction. It is a reasonable restriction and it has been imposed in the interest of general public

or the farmers. In this respect, the Apex Court held thus :-

9. As already indicated above, the impugned control order is assailed mainly on the ground that it violates Articles 14 and 19(1)(/) and (g) of the

Constitution. It is alleged that the manufacturers of oil having invested a great deal of capital in mustard oil manufacturing industry and having

purchased oil seeds at higher rates than those which have entered into the calculation of the Government in fixing the price of mustard oil for the

consumer cannot be made to sell oil, into which mustard seed is converted, at prices below those at which they could themselves produce oil. It is

submitted that to require them to do so amounts to confiscation of property contrary to law as well as a restriction upon the right guaranteed by

Article 19(1)(^) of the Constitution upon them to carry on an industry or business free from unreasonable restrictions. Valid restrictions, it is

submitted, can only be reasonable and in the interests of the general public. It was suggested that the protection of Article 31(1) against deprivation

of property contrary to law was also involved here. The main question to be decided, therefore, is whether Part III of the Constitution is available

at all to test the validity of the impugned control order.

Following the same, the contention that clause 21-A is violative of Article 19(1) (g) or infracts the fundamental rights cannot be sustained.

22. So also the challenge with reference to Article 14 has to be repelled in the light of the said pronouncement of the Apex Court. In the said context, the Apex Court held thus :-

51. But, having won the battle on a point of law, undoubtedly of public importance, the petitioners have to lose the war of price-fixation because

there is no substance in their grievance that the Price Control Order offends against Articles 14, 19(1)(/) and 19(l)(g). Taking first the challenge

under Article 14 for consideration, the argument is that the impugned Order treats the entire country as one unit regardless of regional variations

relating to factors like the cost of procurement of raw material and freight. The contention, in other words is that the order is over-inclusive since it

treats unequals as equals by imposing an identical burden upon a wider range of individuals than those who can legitimately be treated as

constituting one single class for the purpose of remedying the mischief at which the law Aims In the first place, the averments in the various writ

petitions are far too vague and general to justify the application of Article 14. The petitioners have failed to show by acceptable data that they fall

into a separate class altogether and cannot therefore be subjected to the restraints of a single order of price fixation. It may be that economic

factors governing the mustard oil trade vary from region to region as in the case of any other trade and further, the pattern of the trade may differ in

different growing regions and manufacturing centres like Uttar Pradesh, Rajasthan, Bihar, West Bengal, Punjab and Orissa. But that by itself

cannot justify the argument that different prices must be fixed for different regions and that failure to do so would necessarily entail discrimination.

"Dealers" in Mustard Oil, wherever they operate, can legitimately comprise a single class for the purpose of price fixation, especially as it is

undisputed that the two basic constants of the trade are that the cost of mustard seed constitutes 94 per cent of the cost of the mustard oil and that

about 3"12 kilograms of seed goes into the extraction of one kilogram of oil. Fixation of different prices for different regions will, in this

background, frustrate the very object of the exercise that an essential commodity should be made available to the consumer at a fair price.

Consumer goods have a disconcerting tendency to disappear from regions where prices are lower and they notoriously migrate to areas where

higher prices rule. Besides, the grievances of the West Bengal dealers that since they have to import mustard seed from Uttar Pradesh their cost of

production is higher than in Uttar Pradesh can be met with the answer that in any event, West Bengal has also to import at least one-third of its

total annual requirement of 1 -3 lakhs of metric tonnes of Mustard Oil. Uttar Pradesh grows 66 % of the total production of mustard seed whereas

West Bengal grows only 6%. The question really is whether dealers in different regions can be said to be so differently situated in the context of

and in relation to the purpose for which the Price Control Order is issued that one common price for dealers all over the country can reasonably be

described as discriminatory as against some of them. As observed earlier, there is no reliable data to support this contention and we cannot accept

the charge of over-inclusiveness for the mere reason that dealers in a certain region have to import their raw material from another region. Perhaps,

the high rate of turnover and consumption in a region like West Bengal may easily absorb the additional cost of freight. We are therefore unable to

hold, to use the language of Mathew, J., in *State of Gujarat v. Shri Ambica Mills Ltd.*, that the Government of India, in fixing one common price for

mustard oil for the whole country, has acted like Herod who ordered the death of all male children born on a particular day because one of them

would some day bring about his downfall.

52. It is interesting that in matters of price fixation, whichever method the authorities adopt is made the subject-matter of challenge for one reason

or another, often conflicting and contradictory. In *Saraswati Industrial Syndicate Ltd. v. Union of India*, one of the contentions on behalf of the

manufacturers of sugar was that sugar prices should not have been determined on the basis of 22 different zones but should have been determined

either on an All-India basis or for a unit of five zones. That contention was rejected by this Court but the case is an instance of how a division of

the country into separate zones for the purpose of fixing the price of an essential commodity does not offer a commonly acceptable solution. It is

doubtless that if lower prices were fixed for Uttar Pradesh on the ground that the dealers there were not required to import raw material from

outside, a hue and cry would have been raised that the Government of India was victimising the dealers in a particular area for the irrelevant reason

that it grew the raw material in abundance. In the ultimate analysis, the mechanics of price fixation has necessarily to be left to the judgment of the

executive and unless it is patent that there is hostile discrimination against a class of operators, the processual basis of price fixation has to be

accepted in the generality of cases as valid.

23. By Notification in GSR 301 (E) dated 7.6.91, in pursuance of Clause 21-A of The Fertiliser (Control) Order, 1985, the Controller of Fertiliser

has specified that every manufacturer of fertilisers micro-nutrient fertilisers physical/granulated mixtures or NPK shall possess minimum laboratory

facilities. Such notification in no manner suffers with excessive delegation as Clause 21-A prescribes the minimum laboratory facilities, which alone

has been notified to verify the standard, specification and quality of the mixture of fertiliser as the case may be.

24. Clause 21-A prescribes that a minimum laboratory facility has to be provided for by the manufacturer. In the light of Schedule I Part-A as well

as B, which prescribes the standards and specifications with respect to the fertilisers, as well as fertiliser mixtures, the manufacturer has to comply

with the strict standards and specifications. The quality has to be maintained by the manufacturers and for the purpose of testing it cannot be held

that a direction issued under clause 21-A fixing a minimum laboratory facility is either arbitrary or illegal. Laboratory facilities will enable the

manufacturers to test the mixture or other fertiliser as they have to be in conformity with the standards and specification. A testing procedure also

been prescribed under The Fertiliser (Control) Order as was originally promulgated and to ensure such specification only clause 21-A has been

introduced. The very fact that the drawing of sample and testing has been prescribed would show and require that such a minimum laboratory

facility is a reasonable restriction and it cannot be contended that it is violative of either Article 14 or 19(1)(g) of The Constitution.

25. In the counter affidavit it has been stated that clause 21-A as introduced by the Central Government has been placed before both Houses of

Parliament. The counter affidavit has been signed on behalf of the Ministry of Agriculture and the competent authority has sworn to the counter

affidavit wherein it has been asserted that the order issued by the Central Government has already been placed before both the Houses of

Parliament. In this respect the respondents placed the Gazette of India and Rajya Sabha Bulletin Part I (190 Session) dated 2.8.91 to establish the

placement of Clause 2-A before both Houses. The mere assertion by the petitioner will not be sufficient. This Court is justified in accepting the

counter affidavit filed by the respondent in this respect. Therefore, the second contention has to necessarily fail.

26. That apart, it has been held by the Supreme Court in *ATLAS CYCLE INDUSTRIES VS. STATE OF HARYANA* reported in 1970 (1)

SCR 1070 that laying before the Legislature u/s 3(6) is only directory. Hence, the second contention is answered against the petitioner and in

favour of the respondents.

27. In the light of the above discussions, this Court holds that there are no merits in the various contentions advanced by the petitioner and clause

21-A as introduced by the Central Government is constitutionally valid. Hence, the writ of declaration as prayed for by the petitioner is dismissed.

28. The parties shall bear their respective costs. Consequently, connected miscellaneous petition is also dismissed.