

(2003) 03 MAD CK 0079

In the Madras High Court

Case No : Writ Petition No. 45190 of 2002, W.M.P. No. 66062 of 2002 and
W.V.M.P. No. 289 of 2003

Vic Nivas Agency

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 21-03-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) WritLR 459

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : R. Subramanian, for the Appellant; J. Madanagopal Rao, Sr. Central Govt. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—By consent of all the parties main writ petition itself is taken up for disposal. Aggrieved by the Office Memorandum

dated 18-11-2002 of the second respondent, fixing fresh guidelines, the petitioner has filed the above Writ Petition to quash the same and direct

the respondents to follow the guidelines issued in the Office Memorandum of the second respondent dated 6-9-2002.

2. The case of the petitioner is briefly stated hereunder:

The petitioner firm is a registered partnership firm carrying on business as handling Agents for Metal and Minerals Trading Corporation Limited

("MMTC" in short), a Central Government company for Tuticorin and Visakapattinam Ports. The petitioner handles wheat exports on behalf of

MMTC Ltd. As per the contract entered into by the petitioner with MMTC, the petitioner has to collect the wheat sent by them to Visakapattinam

and Tuticorin ports from the Railway yard and load the same in ships. Since wheat is an agricultural produce, any export requires clearance from

the 2nd respondent. The clearance certificate issued by the 2nd respondent for the said purpose is called phytosanitary Certificate. This is done to

ensure that the wheat meant for export is free from insects. In order to ensure that the cargo is free of insets, the cargo is fumigated on board the

vessel. Aluminium phosphide is used to fumigate the wheat cargo. In order to regulate as board fumigation, the 2nd respondent issued guidelines on

6-9-2002 whereby the 2nd respondent allowed on board fumigation of the cargo subject to certain conditions. It is clear that fumigation should be

done only once and it should be done on board the vessel. This is also clear from the letter of the importer. As per the guidelines issued by the 2nd

respondent, 3rd and 4th respondents were allowing on board fumigation of the wheat meant for export. By proceedings dated 18-11-2002, the

second respondent issued a fresh set of guidelines. As per clause 3 of the guidelines issued by the 2nd respondent, a certificate to the effect that the

entire quantity of the grain is fumigated at the place of procurement with aluminium phosphide not more than 8-10 days just prior to procurement,

should be produced to enable on board fumigation of wheat. The said clause 3 is wholly un-workable and cannot at all be complied with by the

exporter or its agent. The entire purchase and sale of wheat meant for export is handled by Food Corporation of India and the wheat meant for

export is in the custody of the Food Corporation of India till it is delivered to the petitioner at the Railway yards either at Vishakapattinam or at

Tuticorin as the case may be. As such it is not humanly possible for the petitioner or its principal MMTC Ltd., to produce such certificate

contemplated in clause 3 of the guidelines issued by the 2nd respondent; hence the present writ petition.

3. On behalf of the respondents, Deputy Director (Entomology), Government of India, Regional Plant Quarantine Station, Meenambakkam,

Chennai-27, has filed a counter affidavit disputing various averments made by the petitioner wherein it is stated that Phytosanitary Certificates are

issued for export of agricultural commodities only after necessary inspection/treatment of the commodity to ensure it is free from pest infestation.

The said certificates are issued in accordance with the quarantine requirements of the importing country so as to meet the international obligation as

required under the International Plant Protection Convention. The Ministry of Agriculture has notified various functionaries of the Directorate of Plant Protection, Quarantine and Storage (PPQ&S) for undertaking inspection and issuance of the Phytosanitary Certificates. They have major responsibility of not only preventing the exotic plant pests/diseases into India but also ensuring that certified plants and plant materials exported are free from the pests of concern to the importing country. The samples of grain drawn are subject to visual inspection to ensure free from quarantine pests, if any and also subject to x-ray examination to detect hidden infestation. Only stocks that are conforming to quarantine regulations of importing country are fumigated and permitted for loading into the vessel. It is prime concern to ensure that the stocks are presented insect-free condition prior to loading of the consignment and this can be achieved only through the initial fumigation of the cargo at the place of procurement. Subsequently, on-board fumigation of cargo is carried out as additional safeguard measure to prevent escape of cross-infestation. It is done in the best national interest and to meet the requirement of pest-free export of wheat which is in conformity with international agreements such as WTO agreements. The guidelines issued by the Directorate of PPQ and S dated 18-11-2002 are valid and self-contained in each respect and the same are to safeguard the interests of the country's export and its standard in International market.

4. Heard Mr. R. Subramanian, learned counsel for the petitioner and Mr. J. Madanagopal Rao, learned Senior Central Government Standing counsel, for respondents.

5. It is the grievance of the petitioner, who is only an Agent of MMTC, that the subsequent guidelines in the form of Official Memorandum dated 18-11-2002, particularly clause 3 cannot at all be complied with. Before going into the merits of such contention, it is to be noted that as stated earlier, the petitioner is only an Agent and his primary duty is to collect the wheat sent by MMTC to Vishakapatnam and Tuticorin Ports from the Railway yard and load the same in ships. Admittedly, the main exporter namely MMTC has not challenged the impugned guidelines fixing certain conditions. There is no dispute that Phytosanitary certificates are issued in accordance with the quarantine requirements of the importing country so

as to meet the international obligation as required under the International Plant Protection Convention. In order to streamline and see whether the requirements are being complied with, the Ministry of Agriculture has notified various functionaries of the Directorate of Plant Protection, Quarantine and Storage (PPQ and S) for undertaking inspection and issuance of the Phytosanitary Certificates. There is no dispute that the Directorate of Plant Protection, Quarantine and Storage, being official Plant Protection Organisation of the country recognised under the International Plant Protection Convention, has major responsibility of not only preventing the exotic plant pests/diseases into India, but also ensuring that certified plants and plant materials exported are free from the pests of concern to the importing country. Admittedly, the petitioner has no grievance regarding the guidelines issued on 6-9-2002. They are very particular about the Official Memorandum dated 18-11-2002 in and by which the Directorate of Agriculture and Cooperation, Ministry of Agriculture, Government of India has issued new guidelines for on-board fumigation of wheat with Aluminium Phosphide. This procedure has to be followed by exporters. As stated earlier, the petitioner is very much aggrieved by Clause 3 of the guidelines which reads as under:

Clause 3. The exporter shall also submit at the time of application copy of the fumigation certificate indicating to the effect that the entire quantity of grain is fumigated at the place of procurement with aluminium phosphide not more than 8-10 days just prior to procurement.

With regard to the said contention, as observed earlier, the petitioner is only a transporting Agent of MMTC who is an exporter. As per the said Clause, the exporter has to submit at the time of application a copy of fumigation certificate stating that the entire quantity of grain is fumigated at the place of procurement with Aluminium Phosphide not more than 8-10 days prior to procurement. Though it is vehemently contended on the side of the petitioner that it is impossible to comply with the said condition, as rightly contended by the learned senior Central Government Standing counsel, first of all, the petitioner is only an Agent authorizing to transport wheat to Vishkapatnam and Tuticorin Ports and load them in ships.

Accordingly, as rightly contended, if at all the person aggrieved is the exporter namely MMTC., admittedly, it is the MMTC which has to challenge

the said guidelines. But the MMTC has not challenged the same. It is explained before me that Phytosanitary Certification is carried out as per the guidelines and procedures issued by the Directorate of PPQ and S, according to which, the inspection and certification of bulk shipment of food grains etc., involve; (i) pre-shipment inspection of stocks at the storage warehouse to ascertain whether the stock confirm to the quarantine requirements of importing country as stipulated in Trade Agreement/Letter of Credit; (ii) fumigation of stocks at scheduled rates under the supervision of plant quarantine authority; (iii) post-fumigation inspection and evaluation of stocks to ensure pest-free; (iv) inspection/disinfestations of ship holds to render it pest-free and (v) final inspection and Phytosanitary certification of cargo loaded into the vessel. As explained by the respondent, the samples of grain drawn are subject to visual inspection to ensure free from quarantine pests, if any, and also subject to X-ray examination to detect hidden infestation. Only stocks that are conforming to quarantine regulations of importing country are fumigated and permitted for loading into the vessel. As explained by the respondent, the requirement of presenting 8-10 days pre-fumigated wheat stocks for Plant Quarantine inspection was to ensure that the insect free wheat stocks should only be transported to the destination. It is explained by the respondent that as soon as the insect infestation takes place in wheat, the intensity of the infestation increases rapidly and consequently the percentage of damaged grain also increases. This will not only affect the quality and marketability of the wheat stock but may render the wheat stock unfit for human consumption. I am satisfied that this guidelines are framed so as to ensure that good quality and pest free wheat is only being exported to other countries, which is very much essential to boost the export to Indian wheat in International market. It is explained by the respondent that a two level fumigation is recommended as Aluminium Phosphide will not kill all the stages of insect infestation. It is further explained that the problem of residue will not arise at all as Aluminium Phosphide applied in gaseous form and not absorbed by the wheat stocks. The two level fumigation suggested in the present guidelines is to give maximum security against the escape of live insect infestation. I am also satisfied that it is prime concern to ensure that the stocks are presented insect-free condition prior to loading of the consignment and this can be

achieved only through the initial fumigation of the cargo at the place of procurement. It is further explained that subsequently, on-board fumigation

of cargo is carried out as additional safeguard measure to prevent escape of cross-infestation. I am also satisfied that it is done in the best national

interest and to meet the requirement of pest-free export of wheat which is in conformity with international agreements such as WTO agreements on

Application of Sanitary and Phytosanitary Measures and International Plant Protection Convention". The guidelines dated 18-11-2002,

particularly Clause 3 is to ensure insect free export of wheat stocks which is not guaranteed by merely undertaking on-board fumigation.

6. In the light of what is stated above, the guidelines issued by the Directorate of PPQ and S dated 18-11-2002 are valid and the same are to

safeguard the interests of the country's export and its standard in International market. I am also satisfied that the guidelines issued are also in

conformity with the International standards/guidelines established under International Plant Protection Convention and in line with the provisions of

World Trade Organisation-Sanitary and Phytosanitary Agreement. Accordingly, there is no merit in the claim made by the petitioner; consequently

the Writ Petition fails and the same is dismissed. No costs. W.M.P. No. 66092/2002 and W.V.M.P. No. 289/2003 are closed.