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APHC010157852006

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3560]**
(Special Original Jurisdiction)

MONDAY, THE 6th DAY OF JULY 2026

PRESENT

THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

CRIMINAL REVISION CASE NO: 146/2006

Between:

1. TATA CHEMICALS LIMITED,, REP.BY ITS AUTHORISED SIGNATORY, GENERAL MANAGER (LEGAL & TAXATION) MR. S.C.KALANI, S/O. LATE DRADHA KILSHAN KALANI, AGED:52 YEARS, HAVING ITS OFFICE AT HOMI MODY STREET, FORT , MUMBAI

...PETITIONER

AND

1. ASST DIRECTOR AND 3 OTHERS, ANAKAPALLE.
2. DISTRICT COLLECTOR, VISAKHAPATNAM.
3. SOUTH INDIA CORPORATION AGENCIES LTD SICAL, VISAKHAPATNAM.
4. STATE OF A P, REP.BY ITS PUBLIC PROSECUTOR, HIGH COURT OF A.P., HYDERABAD.

...RESPONDENT(S):

Revision filed under Section 397/401 of Cr.P.C. praying that in the circumstances stated in the affidavit filed in support of the Criminal Revision Case, the High Court may be pleased to allow the Revision by setting aside the judgment passed in Criminal Appeal No.90/2004, dt.22.11.2005 passed by the Court of the Special Judge under Essential Commodities Act, 1955-cum-

District and Sessions Judge, Visakhapatnam in so far as it holds that there was a contravention and issued a consequential order of fine of Rs.5.00 lakhs (Rupees five lakhs only)

IA NO: 1 OF 2006(CRLRCMP 198 OF 2006

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the judgment passed in Criminal Appeal No.90/2004, dt.22.11.2005 by the Court of the Special Judge under Essential commodities Act, 1955 - cum-District and Sessions Judge, Visakhapatnam in so far as it directs payment of Rs.500 lakhs (Rupees five lakhs only)

IA NO: 1 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to recall the bailable Warrant Dt.30.07.2025 issued against the Petitioner by this Hon'ble Court in Crl.R.C.No.146 of 2006 and to pass

Counsel for the Petitioner:

1. CHALLA AJAY KUMAR
2. J PRABHAKAR

Counsel for the Respondents:

1. PUBLIC PROSECUTOR (AP)

The Court made the following:

THE HON'BLE SRI JUSTICE SUBHENDU SAMANTA

CRIMINAL REVISION CASE No:146/2006

ORDER:

1. Instant criminal revision case has been preferred against judgment, dated 22.11.2005 passed by learned Special Judge under Essential Commodities Act, 1985 -cum- District and Sessions Judge, Visakhapatnam in Criminal Appeal No.90 of 2004.

2. **The facts of the case, in a nutshell, are as follows:**

   a. M/s.Hind Lever Chemicals Ltd., is a company incorporated under the Companies Act, 1956 and was engaged, inter alia, in the business of manufacturing, marketing and importing Muriate of Potash (MOP) fertilizer. The said company was amalgamated with the Tata Chemicals Ltd., Mumbai, petitioner herein pursuant to order dated 14.10.2002 passed by the Hon'ble High Court of Bombay. The Hind Chemical Lever Ltd., company was duly registered under the Fertilizer (Control) Order, 1985 (for short '**Control Order**'). The said Company, initially, had appointed M/s.Sarat Chatterjee (VCB) as its stevedore and subsequently appointed M/s.South India Corporation Agencies Ltd. (SICAL), respondent No.3 herein.

   b. The petitioner company had contracted with Campotex Shipping Services Ltd., British Columbia, on or about 19.07.2004 for import of one consignment of MOP fertilizer comprising 19,800 MT of Red Standard Grade and 16,500 MT of Red Fine Grade from Vancouver,

British Columbia, Canada by the vessel M.V.Top Carrier. The said vessel was started from discharge port Vancouver BC, Canada on 25.07.2004 and expected to arrive at Indian Port at Visakhapatnam or Haldia after about 35 days of its normal journey from the date of discharge dated 25.07.2004.

c. However, anticipating an early arrival of the vessel, the petitioner company had organized its storage facilities at Visakhapatnam Port, for storage of MOP fertilizer, by identifying four new locations. The matter was intimated to the respondent authority regarding fixing of new locations vide letter dated 20.08.2004 along with original R.C. and treasury challan towards inclusion fee and requested inclusion of the newly identified storage locations.

d. The vessel arrived and berthed at Visakhapatnam Port on 22.08.2004. Under such circumstances, it was impossible to store MOP fertilizer in the existing godown as listed in the registration certificate in Form-C, the petitioner company promptly applied for the authority for inclusion of new locations. Accordingly, the petitioner company stored MOP fertilizer at No.3, Industrial Development Area, Mindi, Visakhapatnam.

e. On 29.08.2004, the Assistant Director of Agriculture, Anakapalli, along with the Agriculture Officer, Gajuwaka, surprised the premises and seized the stock of 3,668.090 MT of MOP fertilizer belonging to

the petitioner company and stored by its handling agent, M/s.South India Corporation Agencies Ltd.

f. During inspection, it was noticed that the premises in which MOP fertilizer was stocked had not yet been included in the licence and no records were available at the time of inspection or produced. Consequently, the Assistant Director of Agriculture, Anakapalli, seized the said stock under cover of mediators report under Clause 28(3) of the Control Order and submitted a report. On the basis of the said report, the Joint Collector framed four charges against the petitioner and issued a show cause notice.

g. On hearing both sides, the District Collector, Visakhapatnam, passed an order on 22.11.2004, which reads as under:

> "In view of the above, I am of the considered view that such a long experience in the field of import and storage of fertilizers, etc., had by the Respondent-1 has imported, unloaded and stored in an unauthorized godown without intimation to the competent authority with a malafide intention of adultering same colour of inferior quality for packing of 50 kgs each bag for sale at higher rate and which is harmful for fertilization of agricultural lands etc., and to divert the highly subsidized fertilizers from public channel for their illegal profits. Hence, the value of the seized product of 3668.090 M.Ts. of M.O.P. is liable for confiscation. Since the seized stock was already released to the respondent on furnishing bank guarantee for Rs.35,00,000/- the respondent-1 has to pay the balance amount to Government.
>
> In view of the above and the powers conferred me under Section 6-A of E.C. Act, 1955, I hereby order for confiscation of the entire value of seized stock in favour of Government to meet the ends of justice. The Joint Director of Agriculture, Visakhapatnam is requested to take action to realize the balance amount of Rs.1,34,64,916/- from the respondent-1 and remit to 1456 Civil Supplies-800 Other Receipts-81 Other items immediately and send the original challan to the Court of District Collector, Visakhapatnam."

h. Being aggrieved by the said order of confiscation, the petitioner approached judicial authority i.e., Special Judge under Essential Commodities - District & Sessions Judge, Visakhapatnam in Crl.A.No.90 of 2004.

i. Learned Sessions Judge, after hearing both parties, by judgment dated 22.11.2005, has passed the impugned order, appropriate portion of the order reads as under:

> "the impugned order of the learned Collector dated 22.11.2004 is interfered and the order of confiscation of the entire stock is modified to the extent that the appellant should pay a sum of Rs.Five Lakhs towards contravention, and the remaining amount shall be released to the appellant and but for this modification, in all other respects, the order of the learned Collector is upheld."

j. Being aggrieved by the imposition of the penalty of Rs.5,00,000/-, the petitioner has preferred the present Criminal Revision.

3. **SUBMISSIONS OF LEARNED COUNSEL FOR PETITIONER**:

a. Learned counsel for the petitioner submits that learned Sessions Judge has failed to appreciate the facts and circumstances of the case and passed an erroneous order. There is no prima facie case against the petitioner to impose fine amounting to Rs.5,00,000/- for alleged contravention. He further submits that the petitioner company being holder of R.C., time to time report the registering authority any changes in the premises of store depot and godown attached to the sale depot. The petitioner's company has correctly informed to the Director of Agriculture vide letter dated 20.08.2002 regarding new storage location at Visakhapatnam, for storing of

fertilizers, since the imported consignment had arrived earlier than anticipated. He further submits that there is no contravention of any provision of the Control Order. Learned Sessions Judge, though have arrived at the conclusion that observation of the Collector is only based on imagination and not on the basis of materials on record, but for imposing penalty of Rs.5,00,000/- is illegal.

b. He further submits that when the order of confiscation passed by the Collector was set aside, there nothing left in the case to hold that the petitioner's company has contravened any provision of the Control Order. He further submits that the impugned order of learned Sessions Judge suffers illegality and thereby the same is required to be set aside.

4. **SUBMISSIONS OF LEARNED ASSISTANT PUBLIC PROSECUTOR APPEARING FOR THE RESPONDENTS 1, 2 AND 4**:

a. Learned Assistant Public Prosecutor appearing on behalf of the respondent authority submits that there are clear violation of Clause 35(4) of Control Order. Though the petitioner's company has pleaded that they informed regarding change of new location to Director of Agriculture through letter dated 20.08.2004, the said letter was only received by the authorities only on 31.08.2004. He further submits that learned Sessions Judge has properly dealt with the issue and is of the view that there is no materials to hold when the said letter dated 20.08.2004 was sent to the Director of Agriculture, Hyderabad. He further submits that the Collector also properly dealt

with the issue and in fact the Director of Agriculture, Hyderabad, has received the intimation only on 31.08.2004 i.e., subsequent to the date of seizure made on 29.08.2004, which is also after expiry of statutory period of 21 days as envisaged in clause 35(4) of Control Order.

b. He further submits that though learned Sessions Judge has held that the order of confiscation is illegal, but is correctly hold that there is contravention of provision of clause 35(4) of Control order. Reasons thereof, penalty was imposed upon the petitioner justifiably.

5. **OBSERVATIONS OF THIS COURT**

a. Heard learned counsel for the parties and perused the impugned order passed by learned Sessions Judge and also the order of confiscation passed by the Collector.

b. The only issue before this Court exists as to whether imposition of penalty by learned Sessions Judge upon the petitioner company amount to Rs.5,00,000/- towards contravention of Clause 35(4) of Control Order is justifiable or proper.

c. In assessing the entire matter, it appears that, before issuing the order of confiscation, a show cause notice was issued to the petitioner. There are four charges in the said show cause notice, which reads as follows:

> Charge No.1: that at the time of surprise by the Assistant Director of Agricutlure, Anakapalli, 3666.090 MTs of MOP Fertilizer which belongs to 1st Respondent Company, is available at Plot No.3 IDA, Mindi, Gajuwaka in heap stage. During their enquiry representative of

respondents 1 & 2 available at that time failed to produce the valid Licence for stock stored at Plot No.3, IDA Mindi, Gajuwaka. Hence, it is clear that the respondents are in possession of huge quantity of MOP fertilizer without having any valid Licence to store the stock in that premises. Thereby the Respondents have contravened the Cl.9 of Fertilizer (Control) order, 1985 and Condition 4 of the Registration Certificate issued under Fertilizer Control Order, 1985.

Charge No.2: that the place where the stock is available is an authorized godown, but the Respondents have failed to produce the valid licence to the inspecting authority. Hence it is clear that the respondents have stored the imported MOP in an unauthorized premise with a view to sell the same to needy persons at price exceeding the rate fixed by the Government clandestinely for their personal gain. Thereby the respondents have contravened the Cl.3(3) of Fertilizer (Control) Order, 1985.

Charge No.3: that at the time of inspection, no records are made available at the above business premises/ produced by the respondents for verification. Thereby it is clear, that the respondents are not maintaining true and correct accounts as specified in this order. Thereby the respondents have contravened the Cl.35(2) of Fertilizer Control Order, 1985.

Charge No.4: that at the time of inspection, it is revealed that M/s.Hindu Lever Chemicals Ltd., Kolkatta are the owner of the stock available at Plot No.3, IDA, Mindi, Gajuwaka, but the representative available at that time, has failed to produce necessary documents to prove that M/s.South India Corporation Ltd., Visakhapatnam are handling agents to M/s.Hind Lever Chemicals Ltd., Kolkatta at Visakhapatnam for handling the said stock. Hence it is clear that the respondent-1 has indulged in clandestine business with the connivance of Respondent-2 for their pecuniary gain. Thereby, the respondents have contravened the condition 4 of the registration certificate and provisions of Fertilizer (Control) Order, 1985 under clauses 3(3), 9 & 35(2) of the same.

d. Surprisingly, in the said show cause notice, no charges were framed against the petitioner company for contravention of Clause 35(4) of Control Order. It appears that in dealing with the order of confiscation, learned Sessions Judge is of view that there are no materials before Collector to substantiate charges against the petitioner company. Learned Sessions Judge is of the view that the stock has been reached to the Visakhapatnam Port on 22.08.2004

for the first time, the agriculture department officials had happened to notice the stock on 27.08.2004 and seized on 29.08.2002. For all these days, there was no change in the nature of MOP fertilizer or in the quantity. The quantity that has been unloaded in the new storage location is completely tallying with the documents relating to the quantity of the MOP got from Vacouver, Britain Columbia, Canada, after purchasing the same from Campotex Limited.

e. Learned Sessions Judge is also of the view that there is no materials with the Collector to hold that the petitioner company being dealer, manufacturer and importer or pool handling agency shall sell or offer for sale any fertilizer at a price exceeding the maximum price of rate fixed by the concerned licensing authority or there are no materials before the Collector that fertilizer was processed for making the petitioner illegal profits.

f. In my view, the order of confiscation was rightly set aside by learned Sessions Judge. Let me consider whether learned Sessions Judge is justified in holding that the petitioner company has made a contravention of Clause 35(4) of Control Order. The provision of Clause 35(4) of the Control Order reads as follows:

> "35. Maintenance of records and submission of returns, etc.
> (1) …..
> (2) …..
> (3) …..
> (4) Every importer shall inform the Director of Agriculture of the State in which he intends to discharge the imported fertilizer, under intimation to the Central Government, before the

import is made or within a period of fifteen days after an indent for import is placed, the following details, namely ;-

(i) name of fertiliser
(ii) name of country of import.
(iii) name of manufacturer.
(iv) quantity to be imported
(v) date of arrival of the consignment.
(vi) name of the discharge port.
(vii) other information

g. A plain reading of the said provision shows that every importer shall inform the Director of Agriculture of the State in which he intends to discharge the imported fertilizer, under intimation to the Central Government, before the import is made or within a period of fifteen days after an indent for import is placed. It is the case of the petitioner that the company intimated the indent of MOP fertilizer at the new locations of Visakhapatnam vide letter dt.20.08.2002. The Collector has also dealt with the issue. Surprisingly, the Collector as well as learned Sessions Judge has lost sight to the specific charge framed against the petitioner in the show cause notice. There are no specific charge against the petitioner for contravention of Clause 35(4) of Control Order. Thus, petitioner company had no opportunity to reply on the basis of allegations of contravention of Clause 35(4) of the said Control Order. Reasons thereby, Collector or learned Sessions Judge cannot make a roving or fishing enquiry about the alleged contravention of clause 35(4) of Control Order by the present petitioner. Thus, learned Sessions Judge who was only dealing with the order of confiscation by the Collector cannot proceed to see or

verify whether the petitioner has actually contravened Clause 35(4) of Control Order.

h. In my view, the order of imposition of penalty upon the petitioner by learned Sessions Judge is illegal, improper and without jurisdiction. Consequently, the same is hereby set aside.

i. I make it clear that this Court has not entered into the merit of the fact that whether there is contravention of Clause 35(4) of the Control Order by the petitioner or not. But the authority concerned is at liberty to proceed according to law, if they found any contravention under Clause 35(4) of the Control Order.

6. Under the above observation, portion of imposition of penalty by learned Sessions Judge upon petitioner, in passing the impugned order is hereby set aside. Accordingly, instant criminal revision case is disposed of.

7. Miscellaneous petitions, if any, pending in this criminal revision case shall stand closed.

JUSTICE SUBHENDU SAMANTA

Date: 06.07.2026
BV

Whether the order is :

Speaking: Yes/No Reasoned: Yes/No

Reportable: Yes/No Non-Reportable: Yes/No