

IN THE HIGH COURT OF BOMBAY AT GOA

LD-VC-CW NO. 135 OF 2020

1. Zuari Agro Chemicals Limited, a company incorporated under the provisions of Companies Act, 1956 through its Company Secretary, Mr. Vijayamahantesh Khannur, having its registered office at Jai Kisaan Bhawan, Zauarinagar, Goa – 403726.
2. Mr. Nitin Kantak, a Shareholder of Petitioner no.1, having his/her address at Jai Kisaan Bhawan, Zuarinagar, Goa – 403726. Petitioners

V e r s u s

1. Union of India, through the Secretary/Joint Secretary, Fertilizers, Department of Fertilizers, Ministry of Chemicals & Fertilizers, Shastri Bhawan, New Delhi – 110 001.
2. GAIL (India) Limited, a company incorporated under the Companies Act, 1956 and a Government of India undertaking having its registered office at GAIL Bhawan, 16 Bhikaji Cama Place, New Delhi 110066 Respondents

Mr. Gaurav Joshi, Senior Advocate with Mr. Haabil Vahanvaty, Mr. Pronov Sompot, Mr. Sandesh Padiyar and Mr. Prashil Arolkar, Advocates for the

Petitioners.

Mr. S. Karpe, Central Government Standing Counsel for the Respondent no.1.

Mr. Akshat Khare, Advocate for the Respondent no.2.

Coram :- M. S. SONAK &
M. S. JAWALKAR, JJ.

Date : 14th August, 2020

ORAL JUDGMENT (Per M. S. Sonak, J.)

1. Heard Mr. Gaurav Joshi, learned Senior Advocate for the petitioners, Mr. S. Karpe, the learned Central Government Standing Counsel for the respondent no.1 and Mr. Akshat Khare, learned Counsel for the respondent no.2.
2. Considering the issue raised in this petition, we grant Rule. With the consent of and at the request of the learned Counsel for the parties, we make Rule returnable forthwith. Learned Counsel for the respondents, waive service.
3. The petitioners seek the following substantive reliefs :

“ (a) this Hon'ble Court be pleased to issue a writ of Mandamus or writ in the nature of Mandamus any other writ, order or direction directing the Respondent no.1 to forthwith process and release and continue t process and release all amounts due to petitioners including amounts mentioned in ANNEXURE A-33.

(b) this Hon'ble Court be pleased to issue a writ of Mandamus or writ in the nature of Mandamus any other writ, order or direction restraining respondent no.2 from taking any coercive steps including but not limited to stoppage of gas supplies to petitioner no.1 and/or encashing the SBLCs till respondent no.1 does not clear outstanding fertilizer subsidy dues owed to petitioner no.1;

(c) this Hon'ble Court be pleased to issue a writ of Mandamus, or writ in the nature of Mandamus any other writ, order or direction directing the respondent no.2 to give credit to petitioner no.1 for the sum of Rs. 53,90,03,030 due to petitioner no.1 under the Gas Pool Fund Account.

4. Upon hearing the learned Counsel for the parties, we are satisfied that the main issue relates to the processing and releasing of subsidy amount by the respondent no.1 in terms of the various subsidy schemes formulated by the respondent no.1. No doubt, Mr. Karpe, the learned Central Government Standing Counsel has pointed out that the applications of the petitioners along with the applications of several fertilizer companies are being considered and disposed off in accordance with law. He pointed out that there are office memoranda which deal with the procedure for disposal of such applications and such office memoranda are being adhered to.

5. Mr. Joshi, the learned Senior Advocate for the petitioners, submits that in terms of the scheme, the applications are required to be processed within one day and even the subsidy amounts are required to be released within a period of seven days.

6. For the present, we do not wish to go into the aforesaid issues. This is because Mr. Karpe, the learned Central Government Standing Counsel, on instructions, has made a statement that by 25th August, 2020, some of the

applications of the petitioners will be processed and, if any payments are due, the same will also be made in the usual course. We accept this statement for the present.

7. Insofar as respondent no.2 is concerned, Mr. Khare, the learned Counsel, pointed out that the petitioners are due and payable a huge amount of almost 812 Crores as on date. He submits that the petitioners have in fact made several proposals for clearance of such dues but, most of such proposals, have not been honoured by the petitioners. He points out that in terms of the proposals made by the petitioners themselves, an amount of atleast ₹ 120 Crores ought to have been paid by now and the same is not yet paid. In these circumstances, he submits that no restraint can be imposed upon respondent no,2 in the matter of disconnection of gas supply.

8. Mr. Joshi, learned Senior Advocate, pointed out that it is not correct that the petitioners have not honoured the proposals made. He submits that according to the understanding of the petitioners, an amount of around

₹ 64.5 Crores is required to be paid by end of September, 2020. However, without prejudice, he states that an amount of ₹ 75 Crores will be paid to respondent no.2 within a period of four weeks from today by way of two instalments i.e. ₹ 37.5 Crores will be paid within 15 days from today and the balance ₹ 37.5 Crores to be paid within a period of 15 days thereafter. He states that there is also an escrow arrangement in terms of which the subsidy amount which is to be received from the respondent no.1 is to be directly paid to respondent no.2.

9. Mr. Joshi, the learned Senior Advocate, submits that it is true that on account of the pandemic situation, there is financial crunch, which affects all the parties to these proceedings. He submits that in such a situation, the respondent no.1 should be directed to expedite the subsidy applications and in the meantime, the GAIL should be restrained from taking any coercive actions such as disconnection of the gas supply.

10. Although, we quite appreciate the contentions raised, we have to bear in mind that these are essentially contractual matters as between the

petitioners and the respondent no.2. This is also not a case where the respondent no.1 is refusing to process the petitioners' applications but, as pointed out by Mr. Karpe, the learned Central Government Standing Counsel, the applications are being taken up in accordance with the office memorandum dated 20.08.2019 which postulates consideration of applications on first-in-first-out basis. No doubt, Mr. Joshi contends that such office memorandum cannot govern the operation of the main scheme which contemplates the process of such applications within 24 hours and payment within seven days.

11. As we have made it clear, in these proceedings, we really do not wish to go into these issues. We have already accepted the statement of Mr. S. Karpe, the learned Central Government Standing Counsel, that at least some of the applications will be processed by 25th August, 2020. Further, we have also accepted the statement of Mr. Joshi, the learned Senior Advocate for the petitioners, that over and above the amounts which respondent no.2 may receive in terms of the escrow arrangement, the petitioners will pay an amount of Rs. 75 Crores to respondent no.2 within four weeks from today.

12. In the aforesaid circumstances, we feel that at least up to the end of September 2020, GAIL will not be justified in disconnecting the gas supply. Such disconnection will virtually result in the petitioners' industry coming to a halt. This will have large scale ramification not only in functioning of the petitioners' industry but also the labour which is employed in the industry. At least for a limited time, taking into consideration the pandemic situation which affects one and all, we therefore restrain the respondent no.2 at least up to the end of September, 2020 from disconnecting the gas supply or taking any other coercive steps. This is of course on the understanding that the petitioners within four weeks from today, will pay the amount of ₹ 75 Crores to respondent no.2. If there is any breach in the matter of such payment, respondent no.2 will obviously be entitled to take coercive steps including the disconnection of the gas supply.

13. Mr. Khare, the learned Counsel, had also submitted that no indulgence may be shown to the petitioners because the respondent no.2 has reasons to believe that the petitioners are in the process of selling Goa Plant in favour of some third parties.

14. Mr. Joshi, the learned Senior Advocate for the petitioners, on basis of instructions, makes it clear that there will be no sale without obtaining the consent of respondent no.2. Mr. Joshi also pointed out that this position has been made clear to the respondent no.2 in the correspondence between the petitioners and the respondent no.2.

15. We make it clear that for the present, we have not gone into the rival contentions particularly with regard to the operation of the subsidy scheme as also the rights and entitlements of respondent no.2. Therefore, all contentions of all parties including objections regarding territorial jurisdiction, are left open and, in case any occasion arises, to raise such contentions in future.

16. We also make it clear that this order has been made only in the peculiar facts and circumstances of the present case. Therefore, this order is not intended to lay down any precedent as such. This is clarified because Mr. Khare, the learned Counsel, expressed an apprehension that similar

reliefs may be claimed by other fertilizer companies who are being supplied gas by respondent no.2.

17. With the aforesaid directions and by accepting the statements made by the learned Central Government Standing Counsel as well as the learned Senior Counsel appearing for the petitioners, we dispose off this petition.

18. All concerned to act on the basis of an authenticated copy of this order.

M. S. JAWALKAR

M. S. SONAK, J.

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