

## \* IN THE HIGH COURT OF DELHI AT NEW DELHI <u>Reserved on: 22<sup>nd</sup> August, 2023</u> Date of Pronouncement: 5<sup>th</sup> October, 2023

### + <u>W.P.(C)</u> 4917/2021, CM APPLs. 15090/2021, 29199/2021, 47828/2022

 FRESH FRUIT FLOWERS AND VEGETABLES TRADERS

 ASSOCIATION
 ..... Petitioner

Through: Mr. Shakeel Sarwar Wani, Advocate.

versus

DIRECTORATE GENERAL OF FOREIGN TRADE & ANR.

..... Respondents

Through: Mr. Chetan Sharma, ASG with Mr. Ripu Daman Bhardwaj, CGSC with Mr. Amit Gupta, Mr. Kushagra Kumar, Advocates with Mr. S.K. Verma, Joint director and Mr. Hariom Miglani, Legal Officer.

#### CORAM: HON'BLE THE CHIEF JUSTICE HON'BLE MR. JUSTICE SANJEEV NARULA

## JUDGMENT

#### SANJEEV NARULA, J.

1. The Petitioner, the Fresh Fruits, Flowers & Vegetables Traders Association is a body committed to the advancement and well-being of flower traders operating in Delhi. Their grievance presented before us originates from a notification, dated 09<sup>th</sup> July, 2020 (hereinafter "*impugned notification*") issued by Respondent No. 1, the Directorate General of Foreign Trade ("*DGFT*"), under the aegis of Ministry of Commerce and Industry, Government of India ("*MoCI*"). The impugned notification imposes a



prohibition on importation of a variety of cut flowers into India through all airports, save for the Chennai airport. The Petitioner contends that this regulatory measure discriminates against Delhi's flower traders by putting them in an unfavourable position relative to their Chennai-based counterparts. Moreover, they argue that the impugned notification infringes upon the Petitioner's rights under the Constitution of India, as it imposes an unreasonable constraint on the commercial activities undertaken by the members of the Petitioner-association.

2. The impugned notification is reproduced as under:

"MINISTRY OF COMMERCE AND INDUSTRY (Department of Commerce) (DIRECTORATE GENERAL OF FOREIGN TRADE) NOTIFICATION New Delhi, the 9th July, 2020 No. 17/2015--2020 Subject: Amendment in import policy of cut flowers under HS Code 0603 of Chapter 6 of ITC (HS), 2017, Schedule -I (Import Policy).

**S.O.** 2289(E).-In exercise of powers conferred by Section 3 of FT (D&R) Act, 1992, read with paragraph 1.02 and paragraph 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby inserts policy condition for import of cut flowers under HS Code 0603 of Chapter 6 of ITC (HS), 2017, Schedule -1 (Import Policy), as under:

Exim Code	Item Description	Policy	Policy conditions
0603	CUT FLOWERS		
	AND FLOWER BUDS OF A KIND		
	SUITABLE FOR BOUQUETS OR		
	FOR ORNAMENTAL		
	PURPOSES,		
	FRESH, DRIED, DYED,		
	BLEACHED, IMPREGNATED		



	OR OTHERWISE PREPARED.		
	Fresh:		
0603 11 00	Roses	Fr ee	Import of cut flowers is
0603 12 00	Carnations	Fr ee	allowed through Chennai airport
0603 13 00	Orchids	Fr ee	only.
0603 14 00	Chrysanthem ums	Fr ee	
0603 15 00	Lilies (Lilium spp.)	Fr ee	
0603 19 00	Other	Fr ee	
0603 90 00	Other	Fr ee	

2. *Effect of this Notification*; Import Policy of cut flowers under HS code 0603 continues to remain "Free". However import will be allowed through Chennai airport only.

[F. No. 01/89/180/10/AM-20/PC-2(A)/e -21609] AMIT YADAV, Director General of Foreign Trade & Ex- officio Addl. Secy."

#### **Background to the Present Petition**

3. The genesis of the dispute can be traced to a prior writ petition before this Court [W.P.(C) 8831/2020]. In that petition, the Petitioner not only challenged the impugned notification, but also lamented the lack of response to their representations submitted before DGFT and MoCI. Addressing these concerns, the Court, through order dated 18<sup>th</sup> December, 2020, instructed the DGFT and MoCI to decide the Petitioner's representations. However, this decision did not mark the end of Petitioner's legal tussle. Frustrated by DGFT's failure to act upon the Court's directions, the Petitioner filed an additional representation on 06<sup>th</sup> January, 2021. In a parallel action, on 28<sup>th</sup>



January, 2021 the Petitioner also communicated its grievance before the Respondent No. 2, the Department of Agriculture Co-operation & Farmers Welfare, Ministry of Agriculture and Farmers Welfare, Government of India ("*DAC&FW*"). Eventually, on review of the representations and after affording the Petitioner a personal hearing, the DGFT, in consultation with the DAC&FW, issued an order on 02<sup>nd</sup> March, 2021 (hereinafter "*impugned order*"). This order denied Petitioner's requests, leading them to once again, seek judicial intervention challenging both the original notification and the subsequent order, which reads as under:

"No. 01/89/180/32/AM-20/PC-2 (A)/P-24868 Government of India Ministry of Commerce & Industry Department of Commerce Directorate General of Foreign Trade

> Udyog Bhawan, New Delhi Dated 2<sup>nd</sup> March, 2021

#### ORDER

....

Subject: Civil Writ Petition No.8831/2020 entitled Fresh Fruit Flowers & Vegetables Trades Association v. DGFT filed in the Hon'ble High Court of Delhi.

The Government of India amended the import policy of cut flowers under HS Code 0603 of chapter 6 of ITC (HS). 2017, Schedule – I (Import Policy) vide Notification No. 17/2015-2020 [S.O. 2289 (E)] dated 9<sup>th</sup> July, 2020 imposing port restrictions and allowing import of cut flowers through Chennai airport only.

2. The Fresh Fruits, Flowers and Vegetable Traders Association, Delhi filed a Writ Petition (C) 8831/2020 in the Hon'ble High Court of Delhi at New Delhi challenging the said Notification. The Hon'ble High Court of Delhi at New Delhi vide Order dated 18.12.2020 has directed as under:

"In view of this limited submission, we hereby direct the concerned respondent authorities to decide the representations preferred by this petitioner, which are at Annexures P - 3 and P - 4, or to treat this writ petition as a representation and decide the



grievances ventilated by this petitioner in accordance with law, rules, regulations and Government policies applicable to the facts of the case as early as possible and practicable, preferably within a period of eight weeks from the date of receipt of a copy of this order."

In this regard, a meeting was held, through Video Conference, at 3. 10:30 AM on 22<sup>nd</sup> February, 2021 with Mr. Raj Kumar Verma, Joint Secretary, representative of the Petitioner i.e. Fresh Fruits, Flowers and Vegetable Traders Association, Delhi wherein Shri Hari Om Miglani, Sr. Law Officer, Directorate of Plant Protection, Quarantine & Storage, Department of Agriculture, Cooperation and Farmers Welfare was also present. The Petitioner highlighted the issue of delay in clearance of consignments, which are perishable in nature, by the Chennai Customs. The Petitioner was suggested to directly take up the issue with the Customs Authorities and if DGFT is asked to take up the issue with Customs Authorities, then a representation indicating details and help required from Customs Authorities, Chennai may be sent by the Association. The Petitioner further raised the issue that the climate of Chennai is very hot adversely affecting the perishable consignments. It was informed that the summer months temperature in Delhi are much higher than in Chennai and the need for early clearances may be the focus, rather than temperature.

4. Department of Agriculture, Cooperation and Farmers Welfare was also sent the representations dated 08.08.2020 and 09.09.2020 of the Petitioner, wherein it has informed that:

- (a) The cut flowers import into India comes under Schedule-VI & VII Plant Quarantine (Regulation of Import into India) Order, 2003 which can be imported with Phytosanitary Certificates and additional declaration under Schedule VI and with only Phytosanitary Certificate under Schedule VII. The major import of cut flowers is mainly from Thailand, Netherlands, Columbia, Kenya, South Africa and New Zealand. Import of cut flowers are permitted from any country and allowed to enter into India through all notified points of which includes Airports, Seaports & Land Frontiers, but being perishable item, it is mainly imported through Airports.
- (b) Imposition of restriction on the entry of cut flowers into India was necessitated by the fact that cut flowers are perishable item and which has to be released within time line of 4-6 hrs after phytosanitary inspection and clearance. Therefore, Cut flowers import requires 24x7 working of Plant Quarantine Station(s). Further, there is an increasing trend in export and import of agricultural commodities which require more technical manpower



and time for inspection of the consignment to prevent the entry of exotic pests which is important to protect the bio-diversity of the country. There is about 20% increases in import / export inspections of consignments from 2015-16 to 2019-2020. Moreover, there is also increase of points of entry for imported commodities and export units to facilitate the trade and due to limitation of the availability technical manpower, for timely release of the consignments, the existing plant quarantine officials are over stretched.

5. After examining each issues raised in the representation dated 08.08.2020 and 09.09.2020 of the Petitioner and Writ Petition No.8831/2020 and after affording Personal Hearing to the Petitioner, in consultation with the Department of Agriculture, Cooperation and Farmers Welfare, it is noted that the issues raised have been carefully gone through and in light of inputs provided by Department of Agriculture, Cooperation cannot be agreed upon and accordingly the representations are disposed of.

(Amit Yadav) Director General of Foreign Trade & Ex- officio Addl. Secretary to the Government of India Email: <u>dgft@nic.in</u>"

## <u>Petitioner's Contentions as presented by Mr. Shakeel Sarwar Wani,</u> <u>Advocate</u>

4. The Petitioner contends that both, the impugned notification and subsequent order run afoul of Articles 14 and 19 of the Constitution of India. Specifically, these actions discriminate against flower traders operating in Delhi, while unduly favouring those in Chennai. Moreover, the impugned notification contradicts the powers and provisions outlined in Section 3 of the Foreign Trade (Development & Regulation) Act, 1992, as well as the Foreign Trade Policy 2015-2020. Thus, the DGFT has erroneously invoked these legal frameworks to issue the said notification.

5. The prohibition on importing cut flowers into the Delhi NCR region is unjustifiable, given the fact that approximately 80% of the total imports of



fresh cut Orchid flowers — as well as significant quantities of other flower varieties like Eustoma, Chamelaucium, Delphinium, Cymbidium, Phalaenopsis, and Hydrangea — have historically been in this region. This pattern also aligns with local demand.

6. Although the notification maintains that the import policy for cut flowers under HS Code 0603 remains "free," it paradoxically restricts these imports to Chennai airport, creating a glaring inconsistency. The impugned order was passed in haste, lacking any reasonable justification for limiting flower imports to Chennai airport. The order itself acknowledges the perishable nature of cut flowers, specifying that they must be released within 4-6 hours following phytosanitary inspection and clearance. Despite this, the order inexplicably fails to consider how a single airport could feasibly meet this tight timeline while also satisfying the demand from millions of consumers nationwide.

7. The members of Petitioner-association have a history of smoothly importing cut flowers *via* Delhi airport, without encountering the issues cited in the impugned order. Given the presence of nearby plant quarantine stations at Vasant Kunj, New Delhi, and Faridabad, Haryana, the purported constraints related to technical manpower and overburdened plant quarantine officials do not hold water. Such justifications fail to meet the legal tests set forth under Articles 14, 19, and 21 of the Constitution of India. Furthermore, the Petitioner-association's members have consistently paid the requisite fees and charges mandated by the MoCI, undermining any argument concerning manpower or facility shortages.

8. The impugned notification makes it impractical for Delhi NCR flower traders to source fresh cut flowers from Chennai. The inherent loss of



freshness and quality due to the extended transit time, particularly after the first 24 hours from cutting, combined with transportation costs and potential damage in transit, significantly hampers their business operations. Beyond individual enterprises, this adverse impact extends to over 10,000 people whose livelihoods are compromised by the impugned notification and the order. Additionally, the Petitioner points out that the Government of India stands to lose substantial customs duty revenue. Between  $01^{st}$  April, 2017, and  $31^{st}$  March 2020, flower importers paid an estimated ₹22 crores in customs duty, a figure that is now jeopardized due to reduced imports.

# <u>Respondent's Counter-arguments, presented by Mr. Chetan Sharma,</u> <u>Additional Solicitor General</u>

9. Both the impugned notification and subsequent order fall within the purview of governmental policy and are neither illegal nor irrational, nor procedurally flawed.

10. The DAC&FW posits that the bio-security of the nation necessitates restriction on points of entry for cut flower imports. Due to a marked rise in the export and import of agricultural commodities, greater manpower and time are needed to stave off the introduction of exotic pests. Consequently, after examining both the volume and port-wise distribution of cut flower imports, DAC&FW recommended the import be limited to Chennai airport. This recommendation served as the basis for the impugned notification by the DGFT.

11. Following the judgment on  $18^{th}$  December 2020 in W.P. (C) No. 8813/2020, a meeting was convened on  $22^{nd}$  February 2021. Attendees included representatives from the Petitioner's association and from



DAC&FW, as well as the Directorate of Plant Protection, Quarantine, and Storage ("*DPPQ&S*") of the Ministry of Agriculture and Farmers Welfare. After comprehensive deliberations, the decision to restrict flower imports to Chennai remained unchanged. The impugned order, articulates DAC&FW's rationale for recommending the amendment to the import policy for cut flowers.

12. During the meeting, the Petitioner's representative raised concerns about delays in customs clearance at Chennai airport. The DGFT advised addressing this issue with the Customs Authorities and even offered its support for a suitable representation. Concerns were also voiced about Chennai's climate affecting flower quality, to which it was countered that Delhi's summer temperatures are in fact higher than that of Chennai.

#### **Rejoinder from the Petitioner-Association**

13. In their rejoinder, the Petitioner-association countered the claims made in the DGFT's preliminary affidavit. Specifically, they reiterated that prior to issuance of the impugned notification, the import of cut flowers through Delhi Airport was a smooth process, with consignments being consistently cleared within a 2–3-hour window. This stood in stark contrast to the procedural delays at Chennai Airport, where it took more than 2-3 days from the point of entry into India until the flowers reached the market. To substantiate these contentions, the Petitioner included documentary evidence showcasing instances of import logistics at both airports.

14. There exists a limited operational window at the Regional Plant Quarantine Station in Chennai (*hereinafter* "*RPQS*, *Chennai*"), which only functions from Monday to Saturday between 9:15 AM and 5:45 PM. In



contrast, they cited information obtained through a Right to Information (RTI) request, which revealed that five to six Plant Quarantine officials (*hereinafter* "*PQ Officials*") were available around the clock at Delhi Airport, ensuring there were no backlogs or delays in clearance.

15. The Petitioner-association challenged the assertion of overstretched resources at Delhi Airport as being without basis. They noted that the contentious notification came into effect during a period when international flights were suspended due to COVID-19 lockdowns, thus halting the import of cut flowers. This fact undercuts the claim of resource constraints and delays, painting it as an unfounded rationale for the policy change.

#### Proceedings thus far and Subsequent Developments

16. On 08<sup>th</sup> September, 2021, after an exhaustive hearing and careful scrutiny of DGFT's preliminary affidavit, this Court issued directions for further elaboration as under:

"Having heard the learned counsels appearing on behalf of both the parties at length and having perused the short affidavit filed on behalf of Respondent No. 1, we are of the view that for proper adjudication of the controversy involved in the present matter i.e. challenge to the Notification dated 09.07.2020 and the impugned order dated 02.03.2021, additional information would be required to be furnished by Respondent No. 1. It is accordingly directed that Respondent No. 1 shall file an additional affidavit furnishing information on the following points:-

(a) The effective date from which the import of various cut-flowers has been banned by Respondent No. 1 at the Delhi Airport?
(b) Details of how and why the technical manpower deployed at the Delhi Airport, for inspection of the imported cut-flowers, is insufficient to handle the current imports, keeping in view the necessity to protect bio-security, by preventing entry of the pests, as stated in the short affidavit and also keeping in view the fact that the Petitioner has been importing cut-flowers at the Delhi Airport, for the last 30 years.
(c) Specific reason for banning and discontinuing the import of various cut-flowers at all other Airports except the Airport at Chennai,



particularly with reference to the issue highlighted by the Petitioner that the goods in question are highly perishable as also the fact that by virtue of the same impugned Notification dated 09.07.2020, import of cut-flowers under HS-Code 0603, continues to remain 'Free'. The additional affidavit shall be filed before the next date of hearing. Learned counsel appearing on behalf of the Petitioner seeks time to file rejoinder to the short affidavit filed by Respondent No. 1. Let the rejoinder be filed before the next date of hearing. Petitioner will indicate as illustrations, the dates of few Bills of Entry and clearance of the goods at the Chennai Airport, in light of the principal contention of the Petitioner that the goods are perishable and the justification of Respondent No. 1 that the clearance at Chennai Airport will facilitate early clearance of the cut-flowers."

#### DGFT's Subsequent Affidavit

17. In response to the Court's query and Petitioner-association's rejoinder, the DGFT's subsequent affidavit stated that there was a 20% increase in the volume of agricultural commodities being exported and imported in the period between 2015-16 to 2019-20, necessitating a redistribution of resources to prevent overburdening of ports. The affidavit clarified that various officials at the Delhi Airport were redeployed to handle other agricultural commodities and other duty points as required. This redistribution of resources, according to the DGFT, eased the pressure on an already overburdened port. Further, it was admitted that cut flowers require quick processing, however it was also emphasized that the country had already suffered economic losses due to invasive species. Accordingly, it was contended that channelling imports through Chennai Airport meets two objectives: rapid clearance of consignments and strict adherence to phytosanitary requirements. The DGFT argued that this was possible due to the technically efficient manpower available at Chennai Airport.



## Petitioner's Reply to DGFT's Subsequent Affidavit

18. The Petitioner-association, in its reply to DGFT's subsequent affidavit, disputed the notion that the staff was overburdened or that the import of cut flowers specifically required dedicated PQ officials at Delhi Airport. The Petitioner reiterated that they had been importing cut flowers through Delhi Airport for years without any reported issues. The lack of any specific documented risks, they argued, further demonstrated lack of credibility of the DGFT's claims. In their view, the impugned order was arbitrary and unreasoned.

## Further Court Directions

19. On 14<sup>th</sup> September, 2022, this Court posed further queries to the Respondent. Specifically, the Court directed the Respondent to: (i) confirm whether Delhi is a port for import of vegetables and fruits or not, (ii) explore the possibility of providing the facilities in Delhi for import of cut flowers, akin to those in Chennai, and (iii) file an affidavit responding to the documents furnished by the Petitioner on the functioning of RPQS, Chennai. 20. On 10<sup>th</sup> November, 2022, the Respondents sought additional time to examine the grievances raised by the Petitioner-association, indicating that they were taking the concerns seriously. Subsequently, an affidavit was filed by DGFT on 06<sup>th</sup> January, 2023, where it was stated that steps were being taken to resolve the issues being faced by the Petitioner-association by strengthening technical manpower and lab facilities at other ports, including Delhi.

21. On 16<sup>th</sup> February, 2023, the Petitioner brought to the Court's notice an office memorandum by DAC&FW dated 07<sup>th</sup> November, 2022. The



memorandum indicated that facilities equivalent to those at Chennai Airport are available at all major airports including Delhi, Mumbai, Kolkata, and Bangalore. Subsequently, the Court directed the Joint Director, Plant Quarantine, DAC&FW, to file an affidavit confirming or refuting this information.

22. On 17<sup>th</sup> April, 2023, DAC&FW filed a short affidavit stating that while lab facilities were indeed comparable across the major airports, Chennai had specific machinery and trained manpower for the detection of exotic pests. In response to DAC&FW's affidavit, the Petitioner reiterated its previous arguments, emphasizing the absence of any incidents involving imported cut flowers at the Delhi airport. The Petitioner questioned why the government could not provide similar specialized facilities at Delhi airport. Further, it detailed how various orchid importers had benefitted from the impugned notification and argued that while various other items were still imported through Delhi, the specific restriction was inexplicably only on fresh cut flowers.

#### Analysis and Findings

23. We have carefully examined the pleadings, the material on record and the contentions raised by the counsel. The crux of the matter is whether the Union Government, represented by its respective departments, is justified in allowing the importation of cut flowers exclusively through Chennai Airport. On one hand, the Petitioner argues that the directive is arbitrary, especially given the absence of any incidents involving exotic pests from imported cut flowers at Delhi Airport, and the purported sufficiency of staffing and facilities there. On the other hand, Government argues that the directive serves



national interests related to bio-security and efficiently uses available resources.

24. The comprehensive affidavits submitted by the Respondent elucidate the reasoning behind the impugned notification and the order. While the Respondents agree upon the highly perishable nature of cut flowers and the necessity for time-sensitive clearance procedures, they assert that designating a singular port of entry would maximize operational efficiency. Specifically, this approach aims to expedite clearance processes and ensure rigorous adherence to phytosanitary inspection protocols, thereby alleviating pressure on other entry points, including but not limited to Delhi Airport.

25. The Court has also been apprised that the RPQS Chennai is notably well-equipped for the import of cut flowers. This facility boasts state-of-theart instrumentation, including Electron Microscopes, Stereo Binocular Microscopes with Image Analyzers, Polymerase Chain Reaction (PCR) equipment, and Gel Electrophoresis units. Furthermore, plant quarantine officials at this location have received specialized training to identify and diagnose elusive, sub-microscopic foreign pests such as Thrips, Aphids, and Mites. This specialized expertise was recently demonstrated when officials successfully identified an infestation of Thrips in a shipment of cut flowers from Kenya, thereby prompting the issuance of a non-compliance report to the Kenyan authorities.

26. The Respondents further explained that the northern region of India, being a more prolific producer of cut flowers compared to its southern counterpart, is particularly vulnerable to the incursion of harmful pests via imported floral shipments. Citing historical instances of pest outbreaks that led to monumental challenges in containment and eradication, they emphasize



the growing imperative for heightened vigilance. This is especially pressing given the escalating volume of agricultural commodities crossing international borders, both inbound and outbound.

27. To augment existing safety measures, the Respondents have initiated a "Pest Risk Analysis". This initiative aims to deepen the understanding of threats posed by various intercepted pests, thereby informing future quarantine procedures and policies. According to the DAC&FW, a scrupulous examination of past interception records reveals a conspicuously high incidence of invertebrate pests—most notably Thrips, Aphids, and Scales—on imported cut flowers. Of these, Thrips has been classified as a "quarantine pest" and is globally recognized as one of the most economically damaging plant viruses.

28. In essence, the Respondents make the case that the increasing intricacy and scale of global agricultural trade warrant intensified scrutiny, specialized expertise, and a central hub for regulatory oversight. The identification of Thrips, in particular, serves as a cautionary tale, underscoring the economic and ecological ramifications should such pests gain entry into India's agricultural ecosystems, especially in regions with heightened floral production like the north.

29. The Respondents have compellingly spotlighted the escalated phytosanitary risks—specifically, the risk of introducing harmful exotic pests—associated with importing certain types of cut flowers. These risks, necessitate the allocation of specially-trained manpower and cutting-edge technological resources. The imperative of bio-security gains further emphasis in the context of the widespread ramifications witnessed by our country due to cross-border spread of COVID-19 virus. Bio-security is thus



more than a health issue; it constitutes an integral facet of national security, given its direct impact on the ecological and environmental framework that is vital for growth of the country. The inadvertent introduction of invasive alien species or harmful exotic pests, whether through flowers, fruits, vegetables, or other pathways, poses a grave threat to the country's native agricultural produce and, by extension, its agrarian economy.

Tackling such complex and fluid risks requires specialized expertise 30. and informed decision-making. For example, during severe locust attacks, the bulk of the DPPQ&S staff is redeployed to specialized locust control units. This exemplifies the diverse range of considerations and real-time adjustments needed, underscoring that such decisions clearly fall within the purview of administrative and policy-making authorities. These are areas where the Respondents are best equipped to deliberate and enact suitable measures, including the evaluation of import conditions and the strategic deployment of personnel and equipment to mitigate the threat of invasive species or exotic pests. Courts cannot assume the role of the executive to dictate policy on matters such as import regulations, the safeguarding of domestic agriculture, or the allocation of state resources. Rather, these are specialized determinations best left to the discretion of experts in the relevant fields. In light of these submissions, we are of the view that the impugned notification and order do not arbitrarily discriminate against flower traders in the Delhi-NCR region but rather aim to fortify the bio-security of the nation.

#### Future Plans

31. While the focus of the Respondents has largely been on centralizing resources at a single port, Respondents have indicated an intent to scale up



technical and laboratory capabilities at multiple ports across the country. In an affidavit dated 06<sup>th</sup> January, 2023, submitted by the Deputy Director of the DGFT, specific commitments are made regarding this aspect.

"6. That it is respectfully submitted that the Cut flowers are nonessential imports, however, import of Cut flowers such as Anthurium spp and Dianthus spp etc. are associated with high Phytosanitary risk, includes (i) Arabis mosaic virus (hop barebine), (ii) Ditvlenchudipsaci (stem and bulb nematode) (iii) Smut (Sorosporiumspaonariae) (iv) Downy mildew (Peronosporadianthi, P.dianthicola) (v) Bacterial blight of Anthurium (Xanthomonasaxonopodispv *dieffenbachiae*) and (vi)Rust (Uromycesdianthi). Due to such high Phytosanitary risk associated with the import consignments of Cut flowers, the stringent Plant Quarantine inspections at point of entry followed by detailed lab testing are mandatory to safeguard Bio security of the Country. Therefore, deployment of trained technical man power with ultra-modern laboratory facilities are required for handling import consignments of Cut flowers.

At present strengthening of trained technical man power, besides modernization of laboratory facilities are being undertaken. Due to which, the interceptions of various pests from the import consignments of Cut flowers have been reported at Chennai. In a phased manner efforts will be made to strengthen technical manpower and laboratory facilities to other ports, including Delhi."

[Emphasis Supplied]

32. In a subsequent affidavit dated 17<sup>th</sup> April, 2023, submitted by the Joint Director of Plant Quarantine at DPPQ&S, further details are provided regarding the upgrading of facilities at various ports. This affidavit explicitly states that improvements to the Plant Pathology and Entomology laboratory facilities are underway at several major Regional Plant Quarantine Stations (RPQSs) and airports, including those in Mumbai, Kolkata, Bangalore, and Delhi. The upgrades are described as a phased process, acknowledging that the department intends to progressively allocate trained technical manpower and state-of-the-art technical infrastructure. The relevant portion is extracted hereunder:



"6. It is submitted that the <u>upgradation of Plant Pathology and Entomology</u> <u>laboratory facilities at all the other major RPQSs/ Airports i.e., Mumbai,</u> <u>Kolkata, Bangalore and Delhi are being done in a phased manner</u>. The department shall be taking further steps in due course of time to make available trained technical manpower and technical infrastructure in this regard as a policy issue."

[Emphasis Supplied]

33. Respondents, while currently emphasizing a centralized approach for bio-security, recognize the need for a more expansive and long-term strategy. This indicates the Government's commitment to ensure that advancements in plant quarantine facilities and bio-security are not isolated to a single port but are extended across a wider geographic framework. This strategy envisions enhancing technical prowess and expanding laboratory facilities at various entry points throughout the nation. In essence, it reflects a layered approach to national bio-security, adeptly juxtaposing immediate concerns with foresight for the future.

34. While Mr. Chetan Sharma, the learned Additional Solicitor General, did not provide a specific timeframe for completion of the phased upgradation, we urge the Government to ensure that the required augmentation is carried out promptly and without undue delay.

#### **Conclusion**

35. Considering the Respondents' ongoing initiatives for phased enhancements to laboratory facilities and equipment across several ports, including Delhi, it is clear that the core concern of the Petitioner—the challenges faced in importing cut flowers *via* Delhi—has not only been recognized but is also presently being addressed by the appropriate



authorities. Therefore, judicial intervention at this stage is not warranted.36. In accordance with these observations, the petition, along with any pending applications, is hereby disposed of.

## SANJEEV NARULA, J

## OCTOBER 5, 2023/nk

#### SATISH CHANDRA SHARMA, CJ