



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12417 OF 2022

M/s. Organic Agro Manufactures Association ... Petitioner

vs.

The Union of India, through its Secretary (A& FW), ...Respondent
Ministry of Agriculture and Farmers Welfare & Ors.

Mr. Prashant G. Kayande for the petitioner.

Mrs. Shehnaz V. Bharucha for respondent no. 1-UOI.

Ms. Shruti D. Vyas, Addl. G.P. a/w. Mr. Sachin H. Kankal, AGP for the
State.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 5 April, 2024

ORAL JUDGMENT (Per G. S. Kulkarni, J.)

1. This petition under Article 226 of the Constitution of India assails the legality of the order dated 23 February, 2021 titled as “Fertilizer (Inorganic, Organic or Mixed) (Control) Amendment Order, 2021 (for short ‘**the impugned order**’) issued by respondent no. 1 in exercise of the powers conferred under section 3 of the Essential Commodities Act, 1955 which has amended the Fertilizer (Inorganic, Organic or Mixed) (Control) Order, 1985 (for short “**1985 Order**”).

2. By virtue of the impugned order, an amendment is brought about to the 1985 Order whereby a definition of “bio-stimulant” was incorporated under

sub-clause (ab) after sub-clause (aa) in Clause 2 along with other consequential amendments.

3. By sub-clause (3) of Clause 20C, it is *inter alia* provided that notwithstanding anything contained in the 1985 Order, every manufacturer or importer of a bio-stimulant shall make an application to the Controller in Form G along with necessary requirements (data) relating to such product for specifying it as a bio-stimulant by furnishing various details. Under sub-clause (4) of Rule 20C it was provided that any person manufacturing a bio-stimulant as on the date of publication of the said order, for which no standards have been specified, may, subject to making an application for grant of provisional registration under sub-clause (5), continue to manufacture for sale, sell, offer for sale, stock or exhibit such bio-stimulant for a period of two years from the date of publication of the said order. Under sub-clause (5), it was provided that the manufacturer referred to in sub-clause (4) shall, within a period of six months from the date of publication of the said order, submit an application to the Controller for grant of provisional registration in Form G-1 along with details as specified. In sub-clause (6) it was provided that on receipt of an application under sub-clause (5) for provisional registration, the Controller shall, by an order in writing, grant a provisional certificate of registration of bio-stimulant in Form G-3. Sub-clause (7) provided that no person shall manufacture or import any bio-stimulant unless such bio-stimulant is included

in Schedule VI. Sub-clause (8) provides that the Controller shall, by notification in the Official Gazette, publish the name of the manufacturer or importer of the bio-stimulant included in Schedule VI. There are other provisions which are made in the said order. Thus, on a perusal of the impugned order, it is clear that in regard to any person intending to deal with the bio-stimulants, the order appears to be a code by itself.

4. The primary objection as urged by the petitioner, who claims to be the association of the manufacturers of the bio-stimulants, in assailing the validity of the said order is on the ground that the bio-stimulants ought not to be controlled / regulated, so as to brought within the purview of 1985 order which is an order in relation to Control of Fertilizers. It is contended that bio-stimulants are not fertilizers and hence such action on the part of respondent no. 1 to issue the 2021 order is bad and illegal.

5. It is next contended that in fact the bio-stimulants were required to be notified in Schedule VI and the absence of the same being notified, the members of the petitioner cannot be called upon to have a provisional registration. It is further contended that very few permanent registration application are granted under the 2021 order and in that regard averments are made on jurisdictional issues in regard to the implementation of the said order. It is also a contention that bio-stimulants products are not hazardous or

poisonous products like the insecticides and that the experts of the technical committee had opined that it has no pesticidal property, hence they are not expected to be toxic. Bio-stimulants are generally natural/organic and are used in very low doses of 1 litre per acre, hence restrictions which are imposed by the impugned order are not reasonable. Also issues are raised in regard to non-inclusion of heavy metals in bio-stimulants, in such context, technical issues are raised on the composition etc. The petitioner has also raised issues in regard to non-process of registrations. It is for such reasons the impugned order is discriminatory, unreasonable and arbitrary.

6. Learned counsel for the petitioner has reiterated the contentions as asserted in the petition. His basic contention is that such a regulatory regime ought not to be foisted on the manufacturer of bio-stimulants. The bio-stimulants are not fertilizer and not to be brought under the ambit of Fertilizer Control Order.

7. Having noted the contentions as urged on behalf of the respective parties, we may also observe that the memo of petition is extremely prolix in nature replete with technical pleas.

8. The averments and allegations which are made in the memo of the petition revolve around the technical issues as raised by the petitioner so as to contend that as to how bio-stimulates cannot form part of the Fertilizer

Control Order of 1985 and even considering the contents of various bio-stimulants.

9. We have also perused the reply affidavit filed on behalf of respondent no. 1. At the outset, it is contended that the petition is misconceived, as there is suppression of several material facts, in relation to the policy decision which is taken by the Government. It is contended that policy decision was taken by the respondents to regrade bio-stimulants and thereafter the legislative exercise of framing the impugned rules cannot be challenged on the grounds as raised in the writ petition. It is next contended that in issuance of the impugned order, different stakeholders were examined and after a complete exercise was undertaken, it was decided to include the bio-stimulant under the Fertilizer Control Order. The affidavit has set out in detail the reasons and circumstances which led to the issuance of the impugned order. It is contended that bio-stimulants are those products when applied to plants/seeds/rhizosphere, regulate and enhance the crop's physiological processes and thus, improve input use efficiency, growth, yield, quality and/or stress tolerance. It is contended that bio stimulants may include products of plants/animals or microbial origin. It is respondent's case that prior to the issuance of the impugned rules, these products were being sold in the market without any regulation. There were serious concerns on quality of these products, which were raised before various forums. It is contended that

nutrients were regulated under Fertilizer Control Order, 1985 and Pesticides under Insecticides Act, 1968, however bio-stimulants were being traded in the market as “free for all”, in which both scientifically developed as well as dubious products were being dealt, which were required to be suspended as pesticides were traced in such products which were freely dealt in the absence of a regulatory system. It is contended that there were serious health hazards in use of such products. This resulted in a situation in which the farmers tend to be persons who are not only prejudicially affected but tend to be the losers, since they cannot distinguish high quality and well tested product from those of poor quality.

10. In the reply affidavit it is further contended that in view of the need to encourage the use of new innovative products with the conventional agro inputs and in order to ensure distribution of quality products to farmers, the need for regulation of these products was under consideration of the Government for quite sometime. A reference is also made to a meeting held at the NITI Aayog in October 2017 in which it was *inter alia* felt that the provisions of Fertilizer Control Order, 1985 and Central Insecticide Board and Registration Committee (CIBRC) be modernized to facilitate the recognition of new products, bio-composts and bio-fertilizers within two months. It is stated that accordingly, a Technical Committee was constituted in November, 2017 under the Chairmanship of DG, Institutes & State Agriculture

Universities (ICAR) in relation to the bio-stimulants and other related organic products with a mandate to provide recommendations on definition/classification of bio-stimulants, parameters and method of analysis for bio-stimulants and to decide their positioning either in FCO/CIBRC. A reference is also made to an order passed by the Punjab and Haryana High Court in CWP No. 12536 of 2011 wherein the High Court had issued extensive directions in regard to regulation of such products. It is stated that in the light of said directions, it was felt necessary that regulations are required to be framed for ensuring the quality of these products. The Committee accordingly, having deliberated on the issues, prepared a report in consultation with the concerned divisions. The Committee opined that bio-stimulants cannot be regulated unless amendments are made to the Insecticides Act and after such consultation process, with all the stakeholders, i.e. industry representatives, scientific and research institutes etc. it was decided that bio-stimulant, being in close proximity with the fertilizers, they be included under the 1985 order. It is contended that in pursuance of the impugned order, all bio-stimulants manufacturers are required to apply in the prescribed form along with bio-efficacy trials to be conducted in National Agriculture Research Framework along with the toxicity tests reports from NABL accredited laboratories. It is stated that after such details are examined by the Central Bio-stimulants Committee (CBC), it would make appropriate recommendation to

include these products in Schedule VI of the FCO. It was also considered that in view of the large industry dealing with these products especially the MSMEs who were trading in this sector, the bio-stimulants policy has stipulated for a provisional registration of two years under the impugned order to be applicable, from the date of issuance of the notification, in order to facilitate manufacturers to build up the required data and tests and accordingly a provision is made for obtaining such provisional registration. The reply affidavit accordingly concludes that in view of such state of uncertainty as also considering the toxicity and unregulated regime in relation to the bio-stimulants and keeping in view the interest of farmers, the clouds of uncertainty over the quality of the bio-stimulants has been removed by the impugned order. It is hence contended that the regulation which is now prescribed is in no manner arbitrary or illegal much less violating the rights of the petitioner. It is hence submitted that the petition on the ground as raised is devoid of merits and deserves to be rejected.

11. There is also a reply affidavit filed on behalf of respondent nos. 2, 3 and 4, which are State Authorities. The affidavit is similar to the affidavit filed on behalf of respondent no. 1.

12. There is a rejoinder affidavit filed on behalf of the petitioner asserting the contentions as urged on behalf of respondent no. 1 in the reply affidavit.

Such affidavit is the reiteration of the case of the petitioner in Writ Petition. From perusal of the rejoinder affidavit, it appears that the intention of the petitioner is against any regulatory regime and control, which is brought about by the impugned 2021 order.

13. Learned counsel for the respondent-State has drawn our attention to the reply affidavit filed on behalf of the State and the need which was felt by the Government of India to exercise legislative and executive powers in framing the impugned order. Ms. Vyas has also placed reliance on the decision of Panaji Bench of this Court in the case of **The Goa Judicial Officers' Association vs. The State of Goa & Ors.**¹. She contends that the petitioner, which is an association of manufacturers, cannot be a person aggrieved so as to maintain a petition under Article 226 of the Constitution. It is her contention that as an association, the petitioner cannot be aggrieved by the implications which are brought about by the order which would require any compliance by the association. The relevant observations as made by the Division Bench in the said judgment reads thus:

“49. The Senior Counsel Mr. Kakodkar, who is appearing for the High Court, has contended that a writ petition on behalf of petitioner Association is not maintainable under Article 226 of the Constitution of India because the petitioner is not the person aggrieved. In other words, he submits that the petitioner cannot identify itself with the grievances of its members. He has contended that even if the petitioner is a Corporate Body registered under the Societies Act, the petitioner cannot maintain a petition under Article

1 1995 SCC Online Bom 178

226 for and on behalf of its members. He has cited several decisions of different High Courts: *Madhav Janardan v. Shrinivas Narayan Naik and another*, A.I.R. 1962 Mysore 26, (*Director General Ordinance Factories Employees' Association v. Union of India and Director General Ordinance Factories*, AIR 1969 Cal. 149, *Satyavart Sidhantalankar and others v. Arya Samaj, Bombay*, A.I.R. 1946 Bom. 516 and *Chanranjit Lal Chowdhury v. The Union of India and others*, AIR 1951 SC 41. We find considerable force in his arguments. A juristic person can maintain an action only when it is aggrieved or when its rights are infringed or violated by the action of an Authority. Here the grievance highlighted is that of the members and that grievance is that by the impugned Rules, the promotional avenues available to members of the petitioner's Association under the existing Rules have been taken away and, therefore, their chances of promotion have been in jeopardy. As we have already seen, that chance of promotion is not a right at all and, therefore, the members of the Association cannot have a legal right to maintain an application under Article 226 of the Constitution. Apart from that, the petitioner, as an Association of the Judicial Officers, cannot identify itself with the grievances of its members. The grievances of the members and the Association are distinct. This elementary principle has been stated by Salmond in 'Salmond on Jurisprudence', 12th Edition, at page 67, which reads thus:

"It is essential to recognise clearly that in neither of these forms of incorporation is the legal person identical with any single human being. A company is in law something different from its shareholders or members. The property of the company is not in law the property of the shareholders. The debts and liabilities of the company are not attributed in law to its members. The company may become insolvent, while its members remain rich. Contracts may be made between the company and a shareholder, as if between two persons entirely distinct from each other. The shareholders may become so reduced in number that there is only one of them left; but he and the company will be distinct persons for all that."

50. In the case of *The Bangalore District Hotel Owners' Association v. The District Magistrate, Bangalore and another*, A.I.R. 1951 Mys. 14, the Bangalore District Hotel Owners' Association filed an application before Mysore High Court against the District Magistrate, Bangalore and the Government of Mysore to cancel the order of the District Magistrate, Bangalore, notified in the Mysore Gazette on 10-11-1949, directing that all hotels, restaurants, milk bars and coffee clubs in the villages of the Bangalore District except those as are licensed by the Amildar of the Taluka under the Village Panchayat Act should be closed immediately. The hotel owners of

Bangalore formed an Association and the said Association is said to have been registered under the Mysore Societies Registration Act, 1904. That Association challenged the validity of the Notification issued by the District Magistrate, Bangalore. A Division Bench of the Mysore High Court in the aforesaid decision in paragraph 5 of the Judgment, held as follows:

"Mr. Venkataranga Iyengar contends that the Association is a corporate body and that it can therefore make such application to the Court in its own name. Under section 7, Societies Registration Act, it is provided that a society which is registered under that Act may sue or be sued in its own name and for that purpose it may have a corporate existence of its own. And if there was any action or order by which the fundamental rights of the Association as such, say for example, under Article 19(b) or (c) or its rights of property or franchise were affected or jeopardised, it may be that such an application may be maintainable. But that is quite a different thing from saying that for some personal and individual grievance of some of its members the Association can agitate and apply for such extraordinary and discretionary writs which are clearly meant to prevent the taking away or abridging the fundamental rights conferred on individual citizens by Part III of the Constitution. Although no specific cases appear to have arisen on this aspect of the matter after the Constitution of India came into force we have some earlier rulings which are useful in deciding the matter."

51. This principle has been again highlighted in a recent decision of Calcutta High Court. Considering various decisions of the High Courts and Supreme Court on the subject, the Calcutta High Court in *Sand Carrier's Owners' Union and others v. Board of Trustees for the Port of Calcutta and others*, AIR 1990 Cal. 176, has held that the Company has no locus standi for the grievances of the petitioner. It held:

"Unincorporated associations are not legal persons and as such, writ petitions are not maintainable. An association could be formed to protect the interest of consumers, tenants or other groups with the common interest but such group cannot move writ application. No aspect of the representative law has been changing more rapidly than the law governing standing and the standing barrier has been substantially lowered in recent years, but on the basis of the law relating to standing as in England or in America as also in India, it can be held without any difficulty that the writ petition at the instance of an association is not maintainable where the

association itself is not affected by any order. The members of such association may be affected by common order and may have common grievance, but for the purpose of enforcing the rights of the members, writ petition at the instance of such association is not maintainable. The door of the writ Court could be made open at the instance of persons or authorities under the aforesaid four categories and to hold that every Tom, Dick and Harry can move the writ application would render the standing requirement meaningless and would introduce a procedure which is not judicially recognised.”

(emphasis supplied)

14. We find substance in the contentions as urged by Ms. Vyas to the extent she would contend that considering the object and the scheme of the impugned Order, so as to bring the regulatory regime, in regard to the bio-stimulants and for such purpose the procedure which is required to be followed for registration and for inclusion in Schedule VI, it would in fact be an individual grievance. It certainly cannot be a grievance of an association and necessarily if at all, it could be a grievance of an individual member of the petitioner-association. Thus, on such count, the petition at the behest of the association would not be maintainable.

15. This apart having considered the nature of the contentions as urged on behalf of the petitioner, we are not inclined to accept the case of the petitioner that the impugned order is in any manner illegal, arbitrary or it takes away the rights of the petitioner or its members on being regulated. The public interest and/or public good which is sought to be rendered by such order is quite

apparent in the contentions as urged on behalf of the respondents. We find that the impugned order has been issued after a rigorous exercise of a scientific study and deliberation was resorted, so as to remedy the mischief which was prejudicial to the interest of the farmers, who would otherwise be purchasers of dubious and unregulated products of such nature, which were being freely marketed. The impugned rules thus eminently cater to a public interest.

16. For the aforesaid reason, we find no merit in the petition. It is accordingly rejected. No costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI , J.)