

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

WP(C).No. 17154 of 2009 (L)

PETITIONER(S):

**AGASTYA BIO-PHARM INDIA LTD.,
REP. BY ITS CHAIRMAN AND MANAGING DIRECTOR
PROF. D. ARAVINDAKSHAN,
HAVING ITS CORPORATE OFFICE AT CHAVARA P.O.,
KOLLAM DISTRICT.**

**BY ADVS.SRI.V.N.ACHUTHA KURUP (SR.)
SRI.B.S.SWATHY KUMAR
SRI.BINDU SREEKUMAR**

RESPONDENT(S):

- 1. UNION OF INDIA, REPRESENTED BY THE
SECRETARY, DEPARTMENT OF COMMERCE
MINISTRY OF COMMERCE AND INDUSTRIES, UDYOG BHAVAN,
NEW DELHI -110 011.**
- 2. THE DEPUTY SECRETARY, BOARD
OF APPROVAL FOR S.E.Z, DEPARTMENT OF
COMMERCE AND INDUSTRY,
GOVERNMENT OF INDIA, UDYOG BHAVAN, NEW DELHI-110 011.**
- 3. STATE OF KERALA, REP.BY THE
CHIEF SECRETARY, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.**
- 4. PRINCIPAL SECRETARY TO THE
GOVERNMENT OF KERALA, DEPARTMENT OF
INDUSTRIES AND COMMERCE, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM.**
- 5. PRINCIPAL SECRETARY TO THE GOVERNMENT
OF KERALA, DEPARTMENT OF HOME AFFAIRS, GOVT
SECRETARIAT, THIRUVANANTHAPURAM.**
- 6. PRINCIPAL SECRETARY TO THE GOVERNMENT,
OF KERALA, DEPARTMENT OF REVENUE, GOVT. SECRETARIAT
THIRUVANANTHAPURAM.**
- 7. THE DISTRICT COLLECTOR, PALAKKAD.**

**R1 & R2 BY ADV. SRI.T.PM.IBRAHIM KHAN, ASST.S.G OF INDIA
R3 TO R7 BY GOVERNMENT PLEADER SRI.S.JAMAL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
29-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF NOTIFICATION DTD.10.2.2006 PUBLISHED BY THE FIRST RESPONDENT.

EXT.P2: TRUE COPY OF THE LETTER DTD.29.3.2008 TO THE 2ND RESPONDENT ALONG WITH APPLICATION FOR SETTING UP OF SPECIAL ECONOMIC ZONE.

EXT.P3: TRUE COPY OF THE LETTER DTD.23.6.2008 FROM THE PETITIONER TO THE 4TH RESPONDENT.

EXT.P4: TRUE COPY OF LETTER NO.BCIL/HRD/CR/07 DTD.19.10.2007 TO THE PETITIONER.

EXT.P5: TRUE COPY OF THE LETTER NO.DBT/HRD/BITP/JOIN/COM DTD.17.12.2007.

EXT.P6: TRUE COPY OF THE JUDGMENT IN WP(C) NO.2144/2009 DTD.4.2.2009.

EXT.P7: TRUE COPY OF THE LETTER NO.18823/J2/08/ID DTD.25.2.2009 TO THE PETITIONER.

EXT.P8: TRUE COPY OF THE LETTER DTD.11.3.2009 FROM THE PETITIONER TO THE 4TH RESPONDENT.

EXT.P8(a): TRUE COPY OF THE LETTER NO.18823/J2/08/ID DTD.9.3.2009 FROM THE 4TH RESPONDENT.

EXT.P9: TRUE COPY OF THE LETTER NO.18823/J2/09/ID DTD.8.5.2009 OF THE 4TH RESPONDENT.

EXT.P10: TRUE COPY OF SALE DEED NO.530/2008 DTD.18.3.2008.

EXT.P11: TRUE COPY OF THE POSSESSION CERTIFICATE NO.772/2008 ISSUED BY VILLAGE OFFICER, ERUTHEMPATHY DTD.27.9.2008.

EXT.P12: TRUE COPY OF THE CERTIFICATE NO.57/2009 DTD.15.2.2009 OF THE VILLAGE OFFICER, ERUTHEMPATHY.

EXT.P13: TRUE COPY OF THE LETTER FROM MINISTRY OF HUMAN RESOURCE DEVELOPMENT DTD.13.4.2009.

EXT.P14: TRUE COPY OF THE PARLIAMENT PROCEEDINGS DTD.4.12.2006.

EXT.P15: TRUE COPY OF THE LETTER NO.1/3922/05 DTD.15.10.2005 FROM THE DISTRICT INDUSTRIES CENTRE, PALAKKAD.

EXT.P16: TRUE COPY OF THE LETTER NO.TVM/GEN/101/PROJ/2445 DTD.9.12.2008 FROM THE KSIDC.

EXT.P17: TRUE COPY OF THE LIST OF SHARE HOLDERS AND QUALIFICATIONS.

Msv/

WP(C).No. 17154 of 2009 (L)

EXT.P18: TRUE COPY OF THE SCIENTISTS TO PROVE THE EXPERIENCE.

EXT.P19: TRUE COPY OF THE PAPER PUBLICATION HINDU DAILY DTD.6.5.2009.

EXT.P20: TRUE COPY OF THE LETTER DTD.15.4.2008 ISSUED BY THE DEPARTMENT
OF COMMERCE (SEZ) SECTOR.

EXT.P21: TRUE COPY OF THE NOTIFICATION ISSUED BY THE 1ST RESPONDENT
DTD.10.8.2006.

EXT.P22: TRUE COPY OF THE LETTER NO.D/GM(R)/AASTYA BIOPHARAM/09
DTD.6.4.2009 ISSUED BY TAMILNADU INDUSTRIAL DEVELOPMENT
CORPORATION LTD.

EXT.P23: TRUE COPY OF THE AGENDA FOR THE MEETING OF THE BOARD OF
APPROVAL TO BE HELD ON 2.6.2009.

EXT.P24: TRUE COPY OF THE PERFORMS FOR INSPECTION FRO DECLARING THE
SECTION SPECIFIC SEZ STATUS DATED NIL.

EXT.P25: TRUE COPY OF THE MINUTES OF THE MEETING OF THE SEZ DTD.2.6.2009.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

K. VINOD CHANDRAN, J.

W.P.(C) No. 17154 of 2009 (L)

Dated this the 29th day of July, 2015

J U D G M E N T

The petitioner is aggrieved with Ext.P9 Order of the State rejecting a proposal for setting up a Bio Technology Park in the 30 acres, said to be in the possession of the petitioner as per Special Economic Zones Act, 2005 (for brevity 'Act') and the Special Economic Zones Rules, 2006 (for brevity 'Rules') framed by the Central Government, produced at Ext.P1.

2. A reading of the Act & Rules would indicate that no individual/private body has the capacity or competence to make an application for setting up a Special Economic Zone (SEZ). It is the prerogative of the State Government to forward a proposal to the Board constituted under the Act and it mandates that while forwarding a proposal under sub rule (1), the State Government shall ensure that the

requirements under Rule 5 have been complied with. Rule 5, in fact, speaks of minimum requirement of area as also the provision of electricity, water and other services by the State Government and exemption from various taxes, duties and levies which also is the responsibility of the State Government.

3. The petitioner relies on the proviso to Sub Clause (b) of Clause 5(2) to contend that for setting up a Bio Technology Park, the minimum requirement of area is 10 hectares or more, which the petitioner has. However, it is to be noticed that it is for the State Government to make a proposal and no developer can take up a proposal by itself. It was in such circumstance that the petitioner made a proposal to the State Government, which was directed to be considered in accordance with the Rules, by Ext. P6 judgment of this Court. Ext.P9 passed, in pursuance to the judgment of this Court, is assailed herein.

4. Ext.P9 rejection order has been made on three grounds. One the land in possession of the petitioner were found to be paddy fields, covered under the Kerala Conservation of Paddy Land and Wet Land Act, 2008 (for brevity 'Act of 2008'). The petitioner was not able to satisfy the Government of the financial capacity to set up the project as proposed by them. Further, it was also found that there was misrepresentation made in the proposal submitted.

5. The communication of the Agricultural Processed Food Products Export Development Authority (APEDA) reproduced in the brochure of the petitioner Company, had stated that Kerala Government had allotted 30 acres of land for setting up the project and also agreed to allot additional 32.5 acres for expansion. The Kerala State Industrial Development Corporation (KSIDC) was also said to have promised equity participation in the project. The State Government specifically found that there was no offer to

allot any additional land for expansion. The allotment said to have been made of 30 acres was also found to be not factually correct, since the petitioner had, by themselves, purchased the said properties from their owners. The KSIDC who is said to have offered equity participation had considered the proposal of the Company and had rejected the same. Further, the property purchased by the petitioner being paddy fields, no filling up of the same could be done under the Act of 2008.

6. In such circumstance, the State Government having rejected the proposal, there could be no claim for exemption under the Act of 2008 since evidently there is no public purpose intended to be served. It is the State Government's prerogative to make a proposal for a Bio Technology Park, especially in the SEZ, since the State Government would be enjoined upon to make concessions of duties, levies and taxes for the activities carried on in the SEZ and the products manufactured thereon. The proposal

of the petitioner Company has been rejected by the KSIDC, which is a fully owned Corporation of the State Government, which was to have equity participation in the project. In such circumstance, this Court does not find any reason to interfere with Ext.P9 order.

The writ petition would stand dismissed.

Sd/-
K.VINOD CHANDRAN,
JUDGE