

***IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH***

CWP No. 2563 of 2014

Date of Decision:-21.08.2018

M/s Sagar Seeds

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Rakesh Verma, Advocate
for the petitioner.

Ms. Ambika Sood, DAG, Punjab
assisted by Mr. Dharam Pal, ADO (Enfo.), Bhatinda.

RITU BAHRI J.(Oral)

Petitioner is seeking writ of mandamus directing respondent No.2-The Joint Director of Agriculture (Inputs), Punjab to get the sample of fertilizer re-analyse as per the provisions of Fertilizer Control Order, 1985.

Brief facts of the case are that petitioner Firm has been working as a licensee under Fertilizer Control Order, 1985 since 2010. They dealt in various kinds of fertilizers in the retail market at Bathinda. On 10.7.2012, one Fertilizer Inspector, Bathinda visited the shop of the petitioner and drew a sample of fertilizer namely Zinc Sulphate Monohydrate 33% as manufactured and supplied by M/s Jai Shree Rasayan Udyog Ltd., Delhi

through its Depot situated at Ludhiana. Form -J was prepared at the time of sampling as Annexure P-1. Three parts of the sample were prepared by the Fertilizer Inspector, one part was sent to State Fertilizer Testing Laboratory, Ludhiana by the officials of respondent No.3 who is notified Authority in this regard under Fertilizer Control Order, 1985. After analysis, the sample was found non-standard as it was found 27.5% against 33% in respect of its active ingredients. Thereafter, respondent No.3 issued a show cause notice to the petitioner dated 6.9.2012. The petitioner gave its reply vide letter dated 12.9.2012 (Annexure P-2). In this reply a prayer was made for sending the sample for re-analyse from the referral laboratory and in the meantime prayer was made not to initiate any action against the firm. The Chief Agriculture Officer vide letter dated 7.1.2013 (Annexure P-3) gave an opportunity of personal hearing to the petitioner on 14.1.2013. However, thereafter no order was communicated to the petitioner and the petitioner filed the appeal against the show cause notice dated 6.9.2012 for re-analysis of the sample of fertilizer. The Chief Agriculture Officer, Bhatinda did not pass any final order on the reply filed by the petitioner nor gave him permission to re-analyse the sample. The petitioner thereafter made an appeal against the show cause notice to the Joint Director Agriculture, who, vide impugned order dated 26.8.2013 dismissed the appeal and did not send the sample for re-testing on the ground that there was delay of 10 months in approaching the authority for sending the sample for re-testing.

On notice, the precise stand taken by the respondent in the written statement is that they have supported the order (Annexure P-4) by

taking a stand that the sample could not be sent for re-testing after a gap of 10 months.

Learned State counsel on instructions from Mr. Dharam Pal, ADO (Enfo.), Bhatinda states that no order has been passed by the Chief Agriculture Officer, Bathinda on 14.1.2013. The presumption would be that the application for re-testing had been made on 12.9.2012 (Annexure P-2) after getting the show-cause notice on 6.9.2012 i.e. within 30 days. His stand was of granting the permission for re-testing the sample but no order was passed on 14.1.2013 and hence, the Joint Director has wrongly dismissed the appeal filed by the petitioner by observing that there was 10 months delay in making the application for re-testing the sample. Learned counsel for the petitioner further states that it is admitted in para 7 of the reply that there is no expiry of the fertilizer in question and its re-analysis has only been denied only on the ground of delay.

The judgments referred to by learned counsel for the respondent, first in **CWP No.132 of 2013**, titled 'Mehin Total Chemicals Pvt. Ltd. vs. The State of Punjab and others', decided on 8.1.2013 by this Court (Annexure R-1) and secondly; **LPA No.725 of 2013 (O & M)**, titled 'Mehin Total Chemicals Pvt. Ltd. vs. The State of Punjab and others', decided on 11.4.2013 (Annexure R-2) passed by the Division Bench of this Court will not be applicable to the facts of the present case as in this case a specific reply has been filed within time (Annexure P-2) where a request for re-analysis has been made within 30 days of show cause notice.

Consequently, the writ petition is being allowed and order

dated 26.8.2013 (Annexure P-4) is set aside and direction is issued to the respondents to send the sample for re-testing within two weeks from the date of receipt of certified copy of this order.

August 21, 2018
Vijay Asija

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No