IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP 7717 of 2020 (O&M)
Date of Decision : November 17, 2020

M/s Sampuran Agri Ventures Pvt. Ltd. ...Petitioner

VERSUS

State of Punjab and others .....Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Anand Chhibbar, Senior Advocate with
Mr. Gaurav Mankotia, Advocate
for the petitioner.

Mr. Shireesh Gupta, Sr. DAG, Punjab
for respondents No. 1 to 3.

Mr. M.L. Saggar, Senior Advocate with
Ms. Aarman Saggar, Advocate
for respondent No. 4.

Ms. Tanvi Jain, Central Government Counsel
for respondent No.5.

FATEH DEEP SINGH, J.

The petitioner/Company M/s Sampuran Agri Ventures Private Limited (in short **'the Company'**) has come in this civil writ petition under Articles of 226/227 of the Constitution of India seeking issuance of directions in the nature of *certiorari* for quashing of order dated 15.01.02020 (Annexure P-10) passed by respondent No. 3 denying permission to the Company to manufacture and sell their agri products which as per the claim of the Company do not fall in the definition of fertilizer and, hence, governed under the Fertilizer (Control) Order 1985, as amended up to date (in short **' the FCO'**).

The Company has sought the relief that the respondents No. 1 to 3 did not have any authority to stop the production of the Company as well as action of the respondents No. 1 to 3 in rejecting the permission for sale of agri products namely, Bio-Products viz. **Kudrat Alkafin, Kudrat Nutreen and Kudrat Soi-mix** within the State of Punjab. Along with the prayer in the writ the relief has been sought to issuance of directions to the respondent No. 3 to correspond with respondent No.4 as to composition and contents of these agri products and respondent No.5 to issue guidelines and frame legislation for production and sale of bio-products and not to interfere in any manner in the manufacture, sale and distribution of these products.

The claim of the Company is that they are registered under the Company's Act 1956 with the Registrar of Companies, Chandigarh and is a venture of mechanical engineering and Commerce graduate who have managed to develop processing technology to process paddy straw and with which bio-products of bio-gas and manure is made and which is under the aegis of

Indian Institute of Technology, Delhi has been launched. Without going into the various steps that were initiated by the promoters of this Company in launching the products as detailed in their petition, the Company claimed that its products are primarily aimed at improving soil health, promote production by manure so as to sustain agriculture and, therefore, to put to an end the old age practice of burning crop residue (stubble burning), the present products have been launched. The Company terming the products to be mere compost and not fertilizer is normally recommended for use as soil conditioner and would go a long way in providing immunity against biotic and a-biotic stress to plants. Thus, preventing heavy material like arsenic etc. to be absorbed by the plants and makes the agri food good for human consumption.

The petitioners/Company have detailed at length various recommendations, evaluation reports and research trials at farmers fields to support their claim that even the specialists have recommended after field level investigation, uses of such organic manure which would besides improving soil water-holding capacity and have spelt at length the main advantages of paddy straw compost which form these agri products of the Company being rich source of silica which not only improves crop productivity but would also brings about a dramatic change in the agricultural grains making them internationally acceptable as per the laid norms besides generating more finances for the farmers and creation of employment so on and so-forth. The Company has termed this technology to be renewable energy by way of bio-CNG and would develop the economy of the country. Thus, terming the action of the respondents No. 1 to 3 to be abrasive and impulsive decision has sought to denounce this action being wholly unconstitutional against the settled laws of the Courts having been passed at their back in the utter violation of the principles of natural justice and, hence, prayed for issuance of the writ to enable the Company to carry on with its activities.

Respondents No. 1, 2 and 3 in their joint response besides taking up usual preliminary objections claiming that for the products so intended to be sold by the Company a letter was received by the answering respondents dated 17.12.2017 and since the products were found to be falling within the definition of fertilizer as defined under Clause 2(a) of the FCO, thus, the same was denied. The answering respondents have given the categories of fertilizer under the Chemical Fertilizers (as detailed in Schedule-I), Bio-Fertilizers (as detailed in Schedule III), Organic Fertilizer (as detailed in Schedule IV) Non-Edible and De-Oiled Cake Fertilizers (as detailed in Schedule V) and in view of the Government of India's specific imposition of restriction on the manufacture, sale and distribution of the fertilizers, the Company was not entitled to carry on with this trade in the absence of any due sanction and approval. The answering respondents have claimed that the products being sought to be manufactured and sold by the petitioners rather come under the notification dated 13th July 2020 whereby the Government of India has inserted these products at serial No. 9 in Schedule IV of the FCO. Such products being covered under the fermented organic manure and thereby placing rider for its analysis and standards so as to ensure minimum standards of quality for such products, which is also in larger interests of the farmers, majority of whom mostly are illiterate, semi-literate and economically from lower strata. The answering respondents have stressed that under the provisions of law, the Company has to to apply before the notified authority to seek permission for manufacture, sale and distribution of such products. The answering respondents have termed that since the product is duly covered under the latest notification bearing No. SO-2324(E) dated 13.07.2020 w.e.f. 14.07.2020, the Company is not entitled to seek any such relief in the absence of fulfillment of the requirements laid down in the FCO. It is claimed by the answering respondents that to prevent befooling the farmers in purchasing such products without there being any due approval and sanction necessitates their regulation and control by the competent authority. Terming each and every averment of the petition to be wrong and incorrect the answering respondents sought dismissal of the same.

Respondent No.4 in its tersely worded written reply has taken the plea that the bio compost of paddy straw and the three products manufactured by the petitioner had to be used in combination with fertilisers so as to increase the yield of crops and the studies are viz-a-viz the farm manure and has sought dismissal of the petition.

Respondent No.5 in his reply has taken preliminary objections as well as reply on merits claiming that the Central Government under Section 3(i) of the Essential Commodities Act has power to formulate rules and regulations for production, supply, distribution, trade and commerce in essential commodities and since the products in question falls within the ambit of the FCO which were primarily formulated with the object to regulate sale, quality and price of the fertilizer and for ensuring availability of good quality of fertilizer to the farmers at fair price. It is the claim of the answering respondent No. 5 that products in question fall within the definition of the **'fertilizer'** under Section 2(a) and that of organic fertilizer, bio enrich organic manure, bone meal, raw and steamed potash are notified under the FCO and, therefore, guidelines have been formulated for production, distribution etc. of such bio stimulant. The answering respondent No. 5 had specifically denied each and every averment of the petition and taking the refuge of Clause 19 of the FCO has claimed that such manufacturing, sale and distribution is stipulated by the law and, therefore, the Company cannot claim any immunity and has termed the petition to be wholly false and frivolous and sought dismissal of the same.

Heard Mr. Anand Chhibbar, Senior Advocate assisted Mr. Gaurav Mankotia, Advocate for the petitioner, Mr. Shireesh Gupta, Sr. DAG, Punjab for respondents No. 1 to 3, Mr. M.L. Saggar, Senior Advocate assisted by Ms. Aarman Saggar, Advocate for respondent No. 4 and Ms. Tanvi Jain, Central Government Counsel for respondent No.5 and perused the records.

Upon consideration of the rival contentions what permeates and crystallizes out of the same is the sole question whether the claimed bio-products, namely, **Kudrat Alkafin, Kudrat Nutreen and Kudrat Soi-mix** claimed to be the invention and production of the Company falls within the definition of the **'fertilizer'** or not. Section 2(h) of the FCO is reproduced as below to lay emphasis:-

"**Fertiliser** means any essential substance, either in straight or mixed form and derived from either inorganic, organic or mixed sources, that is used for intended to be used to provide essential plant nutrients or beneficial elements or both for the soil or for the crop or makes essential plant nutrients available to the plants either directly or by biological process or by both in the soil or plant as notified from time to time by Central Government and specified in the schedules appended to this order or as may be notified by the State Governments.

Explanation:- For the purpose of Fertilizer,

(i) "the essential plant nutrients" include Primary Nutrients (Nitrogen, Phosphorous and Potassium), Secondary Nutrients (Calcium, Magnesium and Sulphur) and Micro Nutrients (Zinc, Manganese, Copper, Iron, Boron and Molybdenum);

(ii) "Beneficial element" means any element as notified by the Central Government from time to time.]

Plain reading of this provision shows that **'fertiliser'** means and has within its sweep any such nutrients whether organic, inorganic etc. which is used for the purpose of providing nutrients to the plants and proves to be a beneficial element. Reverting back, it is own pleadings of the Company in its petition that these products are purely for enhancing soil conditions being rich in certain elements which are essential for crop production. The technology as claimed is bio use of cow dung, paddy straw and though claimed to be **'compost'** and ordinarily dictionary meaning assigned to the word '**compost'** means a mixture manure especially of organic origin and, therefore, being of organic origin clearly stands covered within the definition of '**fertiliser'** as has been brought about by substitution on amendment of Section 2 (h) of the FCO with this enlarged definition has brought about in its sweep of such products which were being sold in market under the garb of organic/inorganic compost, nutrient etc. It has been ensured by this amendment that even primary nutrients, i.e., the elements fall within the definition of beneficial element and are covered under the very definition of fertiliser. This amendment in the definition has been brought about w.e.f. 06.02.2017 and, thus, much prior to the filing of the instant petition. Furthermore, by this amendment Schedule IV of the FCO also amends specifications of organic fertiliser detailed at serial No. 19 and has clarified that the same includes source of organic manure made of the plant bio-mass/animal bio-mass/animals excreta. It is the own stand of the Company that its product is produced from use of paddy straw, cow dung etc. leaves no scope to doubt as to being covered under this amendment so introduced. The claim in the submissions of Mr. Anand Chhiber, learned counsel for the petitioner that it contains silicon and invariably leads to one and the only inference by the Court that such an element helps the plants to enhance their growth and, thus, yield. It is not the case similicitor of the Company that these products are mere farm yard manure product.

The claim of legitimate expectation by the Company that it had in collaboration with I.I.T., Delhi after field tests and testing by Panjab Agricultural University Ludhiana (PAU) creates an element of promissory estoppel restraining the respondents from denying them permission by virtue of order dated 15.01.2020 (Annexure P-10) does not impresses the Court much. There cannot be claim of promissory estoppel against a statute which has been brought about by valid legislation. It is highly unthinkable and unacceptable as has been claimed on behalf of the Company that where the Government/Public Authority has legislated an Act and, thereafter, cannot be debarred by a principle of promissory estoppel from enforcing that very provision of the statute and, therefore, to the mind of the Court such a principle cannot be used to compel the respondents to allow the petitioner to carry on with their trade untended. Accordingly, because the Company has spent money on its research with institutions of repute does not attracts any legal consequence purely because there is pious hope by the Company that its product would put to an end of stubble burning, promote organic cultivation and would be conducive and enhancing environmental quality so on and so-forth.

The Essential Commodities Act 1955 was promulgated on 1st of April 1955 to provide in the interest of general public sufficient control of production, supply and distribution, trade and commerce in certain commodities including fertiliser. It is the own stand of the Company that it had earlier vide letter dated 17.12.2017 made request to the respondents for considering sale permission of their products is in itself suggestive that the Company was well aware of the provisions underway and which have ultimately seen the light of the day in the year 2020. The impugned order dated 15.01.2020 (Annexure P-10) does not cuts much ice for the Company in view of the amendment and counsel for the petitioner could not convince this Court how this order was violative of the Code or violates the essentialities of Article 14 of the Constitution to hold out that there is arbitrary classification by the respondents which results in unfair and unjust classification nor any challenge has been laid to this new provision in the Code. Thus, to the mind of this Court there is no inequality arising out of this provision nor any prejudice has been caused to the Company by order dated 15.01.2020 (Anneuxre P-10). The Company cannot derive any benefit out of previous views of this Court which were considering the provisions of the Code prior to this amendment.

The instant petition in the light of forgoing discussion does not augurs well for the Company manufacturing these products and there is apparently no illegality, perversity or contravention of any law or enactment by refusal communicated through order dated 15.01.2020 (Annexure P-10).

The petition being hopelessly without merits stands dismissed.

November 17, 2020 **(FATEH DEEP SINGH)**
amit rana **JUDGE**

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No