

112-14454

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CWP No.14454 of 2021  
Date of Decision:05.08.2021

Royal Chemical and Fertilizer

...Petitioner

Versus

The Appellate Authority, Agriculture and Farmers Welfare Department  
Haryana and another

....Respondents

**CORAM: HON'BLE MRS. JUSTICE LISA GILL**

Present: - Mr.Sahil Gupta, Advocate, for the petitioner.

Mr.AshishYadav, Addl. A.G., Haryana.

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

**LISA GILL. J.**

This matter is being taken up for hearing through video conferencing due to the outbreak of pandemic, COVID-19.

This writ petition has been filed by the petitioner seeking quashing of reports of Quality Control Laboratory (Fertilizer), Karnal dated 31.10.2018 (Annexure P-4) and dated 17.12.2018 (Annexure P-6). It is further prayed that respondent No.1 be directed to send third sample of fertilizer collected at Hisar on 31.10.2018 and Jind on 17.12.2018 by the concerned field officer, to any of the National Test House Laboratories prescribed under Clause 29B(3) of Fertilizer (Inorganic, Organic or Mixed) (Control) Order,

1985.

Learned counsel for the petitioner submits that petitioner has preferred an appeal before the Appellate Authority but the same has not been decided causing grave prejudice to the petitioner. It is further submitted that the appellate authority was bound to send the third sample for analysis to National Test House Laboratories at Chennai, Kolkata, Mumbai, Ghaziabad or Jaipur.

Mr.AshishYadav, Addl. A.G., Haryana, to whom advance copy of the petition has been supplied, was directed to seek instructions as to whether appeal filed by the petitioner (Annexure P-9) for sending the third sample for testing has been decided or not and the matter was kept for today.

Learned counsel for the State, while referring to communication dated 28.7.2021 from the Director General, Agriculture and Farmers Welfare Department, Haryana, Panchkula, to the office of Advocate General, Haryana, points out that there is concealment of material facts in this writ petition inasmuch as appeal, which was filed by the petitioner on 4.1.2019, was rejected by the appellate authority on 14.2.2019 itself. Relevant portion of the order is reproduced in this communication wherefrom it transpires that the appellate authority had given an opportunity of personal hearing to the petitioner and thereafter, FIR No.0056 dated 02.02.2019 under the Essential Commodities Act and under Sections 7 & 420 IPC was registered against the petitioner at Police Station, Hisar, Sadar by the Quality Control Inspector office of Deputy Director of Agriculture and Farmers Welfare Department, Hisar. It is further stated therein that sample of Zinc Sulphate was sent for retesting under orders of learned Chief Judicial Magistrate, Hisar to the Fertilizer Control Laboratory, Thiruvananthapuram, Kerala on 24.7.2019 and the same was found to be non-standard again. Another sample was also sent

19.9.2019. Both the samples, it is stated, were retested and re-analysed by the Central Laboratories and found sub-standard. Relevant portion of communication dated 28.7.2021 reads as under: -

*“2(1) That the appeal of the petitioner was rejected by the appellant authority vide order dated 14.2.2019. The relevant portion of the order is reproduced as under: -*

*“The undersigned heard them personally and went through facts of the case alongwith the relevant provisions of FCO, 1985. The appeal/reference analysis is declined on the following grounds.*

- 1. The contents of the sample were found to be zero against the specifications of 21% of Zinc Sulphate.*
  - 2. Any reference analysis in a different Lab. will provide scope for manipulation which is not in public interest.*
  - 3. Companies indulging in malpractices like duplicate fertilizer, seeds and pesticides should not be encouraged for appeal in general manner unless & until there is sufficient cause to believe their reason.*
- Copy of order enclosed.”*

- 2. That the competent authority i.e. Director General Agriculture and Farmers Welfare Department Haryana Panchkula took a decision for lodging an FIR against the petitioner. Consequently, an FIR No.0056 dated 02.02.2019 under Essential Commodities Act 1955 under Section 7 and Section 420 of IPC was registered*

*against the petitioner in the Police Station, Hisar, Sadar by the Quality Control Inspector office of Deputy Director of Agriculture and Farmers Welfare Department Hisar. Copy of the same is enclosed. The Criminal proceedings against the petitioner is still pending in the competent Court of law.*

3. *That the samples of Zinc Sulphate (ZnSo<sub>4</sub>) was sent by the Court of Ms. Nidhi Bansal Ld. C.J.M. Hisar, Haryana sent the sample for re-testing and the Fertilizer Control Laboratory, Thiruvananthapuram, Kerela on 24.07.2019 declared the sample as Non-Standard i.e. 1.49% against 21%. The Hon'ble Chief Judicial Magistrate, Jind Haryana, sent another sample for analysis to the CFQCL, Faridabad, Haryana on 19.09.2019 declared the sample as Non-Standard i.e. 0.64% against 21%. Both samples of the petitioner has been re-tested/re-analysed by the Central Laboratories and the report of the Central Laboratories is conclusive. According to these reports of Central Laboratories, there is no requirement of further re-analysed/re-testing of the sample of the petitioner because the report of the Central laboratories is conclusive. Copies of the same is enclosed."*

Copy of the communication has been circulated on the WhatsApp group created for the purpose of video conferencing. Print out of the same be taken and attached with the file.

Faced with the same, learned counsel for the petitioner does not deny that FIR in question has indeed been registered and matter is pending before learned trial Court. The only explanation set forth by learned counsel for the petitioner is that registration of FIR in fact is not even relevant to the controversy at hand because learned CJM has no power to send third sample for reanalysis. There is no plausible reason or explanation coming forth for concealment of such a material fact in this writ petition.

Keeping in view the facts and circumstances as above, I do not find any ground, whatsoever, to interfere at the instance of the petitioner, who is guilty of concealment of material facts. It is a settled position of law that any litigant, who approaches the Court, has to come with clean hands.

Present writ petition deserves to be dismissed with explanatory heavy cost. However, due to fervent request of learned counsel for the petitioner, this petition is dismissed with cost of Rs.10,000/- to be deposited by the petitioner with the Haryana State Legal Services Authority. Needless to say, this order is not an expression of opinion on the merits of the matter(s) pending before the learned trial Court.

**(LISA GILL)**  
**JUDGE**

**05.08.2021**

*Vivek*

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