



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

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CWP-6323-2022

Date of decision: 23.10.2024

ASHWANI NARANG

.....Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Harish Mehla, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present writ petition is to the order (Annexure P-1) passed in Appeal under Section 32 (A) (2) read with Section 29 (1A) and (1B) of Fertilizer (inorganic, Organic or mixed) (Control) order, 1985 against the order dated 07.09.2020 passed by the Director, Agriculture & Farmers Welfare Department, Panchkula, Haryana.

2. Learned Counsel appearing on behalf of the petitioner contends that the petitioner is a manufacturer of Bio-fertilizer and that sample of (Mycorrhiza) Bio-fertilizer was drawn on 25.06.2020 by the Quality Control Inspector, Panchkula from the premises of the petitioner. One of the sealed packets from the samples seized was given to the Deputy Director of Agriculture, Department of Agriculture & Farmers Welfare, Panchkula, as

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per the procedure established under the Fertilizer Control order. The said sample was sent by the Deputy Director of Agriculture, Department of Agriculture & Farmers Welfare, Panchkula to the Regional Centre of Organic Farming, Sector-14, Panchkula for testing. The test report dated 21.07.2020 was prepared by the Centre and marked as “the sample is not according to the specification of Fertilizer Control Order (FCO) and failed in as mentioned above in column verification”. A show cause notice was thereafter served by the office of the respondent No.3 i.e. the Department of Agriculture and Farmers Welfare, Panchkula bearing memo no. 2356-57 dated 29.07.2020 upon the petitioner.

3. Aggrieved of the report of sample analysis and the show cause notice, the petitioner moved a request/appeal with the respondent-authorities to get the test conducted from the referral laboratory, as per the provisions of Fertilizer Control Order under Section 32 (A) read with Section 29 (B) of the Fertilizer Control Order. The said appeal was fixed for hearing on 07.09.2020. The petitioner was required to remain present for the hearing, however, on account of certain family exigencies pertaining to congenital Glaucoma suffered by his new born daughter, the petitioner could not attend the said hearing. A written request alongwith all the relevant medical records was sent by him to the Appellate Authority for deferring the date of hearing, however, the needful was not done. The order dated 07.09.2020 dispatched on 19.10.2020 was thereafter sent to the petitioner declining to allow the said appeal.

4. As against the said decision, the petitioner preferred the appeal



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before the Appellate Authority i.e. Financial Commissioner-cum-Additional Chief Secretary, Govt. of Haryana, Department of Agriculture and Farmers Welfare, Chandigarh which such appeal was also dismissed vide an undated order.

5. Counsel contends that the Appellate Authority had denied referral of the sample on the following grounds:-

"1. "The Fertilizer (Mycorrhiza) for which the appeal has been made is Bio-fertilizer which contains living organisms and has expiry date. The premises of the applicant firm are in district Panchkula itself, No request has been made by the appellant to defer the hearing. Therefore, non-attending the appeal by the appellant on the scheduled date and time is a deliberate attempts to avoid the legal course of action against the manufacturing firm.

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 & pesticides should not be encouraged for appeal in a general manner unless & until there is sufficient cause to believe their reason."

6. He contends that as against the said grounds, the petitioner had specifically averred that there was no delay on his part in submission of an application to the competent authority for referral testing and that the violation, if any, of the mandate of the Fertilizer Control Order is on the part of the respondents as a result whereof an invaluable right of the petitioner stands annulled. It is also stated that the Additional Chief Secretary to the Government had dismissed the above said appeal on the ground that there is

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no provision in the Fertilizer Control Order to hear the appeal against an order of the Appellate Authority by him which such finding is contrary to the notification dated 22.07.2004 as per which the Appellate Authority against the order of Director, Agriculture is the Financial Commissioner or the Principal Secretary to the Government in the Agricultural Department. It is thus contended that both the said reasons cited by the respondents for denial of the relief to the petitioner to establish his defence is misconceived and the petitioner is being unnecessary harassed and being subjected to harassment of prosecution due to inaction on the part of the respondent-themselves and abdication of the responsibility.

7. Counsel for the respondent-State on the other hand submitted that the present writ petition has been rendered infructuous at this stage on account of passage of time. He contends that the shelf life of the product in question was for a period of two years and that the sample in the case had been drawn on 25.06.2020. It is averred that even if the impugned orders are set aside, yet, the samples cannot be re-drawn and it would be an exercise in futility.

8. No other argument has been raised nor any judgment has been cited.

9. I have heard learned Counsel appearing on behalf of the respective parties and have gone through the documents available on record.

10. A specific question had been asked to the Counsel for the parties as to what was the date of manufacture of the fertilizer. Learned State Counsel has although drawn attention to the manufacturing date as

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mentioned in Annexure R-1 which shows it as October, 2020, however, I am of the opinion that the aforesaid averment contained in the said Annexure is incorrect solely for the reason that the samples in the present case were drawn on 25.06.2020. Hence, the manufacturing date of the product could not have been October, 2020. Be that as it may, the fact remains that the expiry date of the sample is stated to be in September, 2022.

11 At this stage, the questions raised by the petitioner are purely academic. A specific query is also put to the Counsel for the petitioner as to whether there is any provisions of the Fertilizer Control Order wherein in the event of denial of the right of a suspect/accused to seek re-testing through a referral laboratory, it would amount to vitiation of the proceedings or not. He is not in a position to respond or refer to any provision that would specify the consequential effect of denial of re-testing of the sample to an accused.

12. Under the given circumstances, the petitioner may at best take advantage of the situation during the course of the trial before the competent Court about having lost his right to seek retesting from the referral laboratory. A mere delay on the part of the respondents in deciding the appeal cannot, at this stage, be conclusively held to vitiate the proceedings that may be instituted by the respondents.

13. The present writ petition is accordingly disposed of as having been rendered infructuous on account of the intervening circumstances. Liberty is, however, granted to the petitioner to raise all pleas before the competent Court. The said Court shall decide the matter on merits and in accordance with law, after considering the rival contention of the parties as



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also the effect of the denial of the referral sample analysis to the petitioner.

14. Petition stands disposed of.

OCTOBER 23, 2024
Vishal Sharma

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No