

(2013) 05 P&H CK 0038
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 12667 of 2013

M/s. Hind Fertilizers

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 31-05-2013

Acts Referred:

Citation : (2013) 05 P&H CK 0038

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : Brijender Kaushik, for the Appellant;

Judgement

Rajiv Narain Raina, J.—The petitioner-Company is a manufacturer of fertilizer under a licence granted to it by the Director General of Agriculture, Haryana under Clauses 15(2) and 18(2) of the Fertilizer (Control) Order, 1985 (for short "the FCO 1985"). Clause 15 of the FCO 1985 deals with grant of or refusal of certificate of manufacture, import for preparation of mixtures of fertilizer whereas Clause 18 deals with renewal of certificates. The petitioner was granted Certificate of Manufacture under Form "F" on 19.12.1995 valid till 8.12.1998. One of the 6 kinds of NPK Granulated Mixture available in the market is a fertilizer known as NPK 12:32:16. Manufacture of 12:32:16 NPK was renewed upto 18.12.2001 and then upto 18.12.2004 and thereafter upto 17.12.2007. The petitioner's application for renewal was considered and vide letter dated 5.3.2008, the Company was granted certificate of manufacture of 12:32:00 NPK and 15:15:7-1/2 NPK upto 17.12.2010 (P-2). The company was, therefore, prohibited from manufacturing 12:32:16 NPK. Aggrieved by deletion of two grades of NPK i.e. 12:32:16 and 20:20:00 from the earlier list, the petitioner petitioned the Registering Authority-cum-Director General, Agriculture, Haryana against the non-speaking order passed by the lower authority. The appeal was allowed to the extent that a direction was issued to the Deputy Director, Agriculture, Ambala, Haryana respondent No. 3 to pass a speaking order.

2. In the light of that order, the petitioner moved a representation dated

1.6.2008 before the 3rd respondent. The petitioner made an offer that it will not manufacture or sell NPK 12:32:16 and 20:20:00 in the State of Haryana. On the basis of the undertaking given, the petitioner was licensed to manufacture two grades of NPK which were added in Form "F" authorizing it to manufacture those products to be sold in other States but not in the State of Haryana. The renewed licence was granted on 16.10.2008 and that is how the petitioner started manufacturing of the earlier prohibited fertilizers for sale in Madhya Pradesh.

3. The Registering Authority vide order dated 23.4.2010 (P-7) permitted the petitioner to selling NPK 12:32:16 and six other grades of fertilizers in the State of Haryana. It is then said that the petitioner's Managing Director was implicated in a false case and an FIR No. 48 dated 13.7.2010 under Sections 420/120B of the IPC read with Essential Commodities Act was registered against him for violation of conditions of sale certificate and for selling prohibited NPK 12:32:16 in the State of Haryana.

4. The petitioner submits that they moved this Court for quashing of FIR and further proceedings have been stayed in the FIR. The petitioner was issued a show-cause notice dated 15.9.2010 (P-9) by the Director General of Agriculture, Haryana, Panchkula following an inspection carried out in the premises of one M/s. Milap Trading Company, Sector 20, Panchkula on 13.7.2010 wherefrom 91 bags of prohibited Fertilizer Mixture NPK 12:32:16 manufactured by the petitioner-Company were found lying for sale. It was stated in the show-cause notice that the State Government has notified only two grades of Fertilizer Mixture i.e. NPK 12:32:0 and NPK 15:15:7.5 vide its notification dated 20.5.2010 which notification de-notifies all other grades of Fertilizer Mixture. The notice was for cancellation of licence. The petitioner filed response to the show cause notice. The Director General of Agriculture, Haryana by the impugned order dated 18.5.2012 (P-15) has rejected the application of the petitioner for renewal of certificate of manufacture. The reasons for rejection are best read in the words of the Registering Authority as under:-

It is pertinent to point out that the applicant-Company was allowed to manufacture granulated mixture of fertilizer NPK 12:32:16 for sale in Madhya Pradesh and not in Haryana as per the terms and conditions of the Certificate of Manufacture No. 3 and its undertakings as mentioned hereinabove. Thus, it was well within the knowledge of the applicant-Company that it was not authorized to sell NPK 12:32:16 in the State of Haryana. However, the applicant mischievously and fraudulently obtained the Memorandum of Acknowledgment to sell NPK 12:32:16 from the Deputy Director of Agriculture, Ambala by suppressing the most vital condition that it was not authorized to sell the said grade in the State of Haryana. However, no plausible reasons were put forth by the applicant-company during its personal hearing for fraudulently obtaining the Memorandum of Acknowledgment from the office of Deputy Director of Agriculture, Ambala by concealing true facts. It is surprising that the firm, M/s. Hind Fertilizers & Chemicals Industries Pvt. Ltd., further sold the granulated mixture of fertilizer

NPK 12:32:16 to M/s. Milap Trading Company, Panchkula illegally and hence, contravened the provisions of the Fertilizer (Control) Order, 1985 and terms and conditions of Certificate of Manufacture No. 3. It is relevant to add that appropriate disciplinary action against the then Deputy Director Agriculture, who did not exercise due diligence as a man of ordinary prudence while granting the Memorandum of Acknowledgment to sell granulated mixture of fertilizer NPK 12:32:16 to the applicant-Company in total disregard to the Certificate of Manufacture, has been launched for this act of omission and commission on its part.

5. The order is a severe indictment of the order passed by the Notified Authority-cum-Deputy Director Agriculture, Ambala dated 23.4.2010 (P-7) in favour of the petitioner-Company. The sum total of which order reads as follows:-

Sub: Certificate of Fertilizer for Sale/Stock of Fertilizers. On the above mentioned subject considering your request, your fertilizer registration certificate No. 12 A:M:B:/Renewal/Authority Letter entered and is sent to and on your request you are hereby allowed through this fertilizer registration letter you are permitted to sell the following fertilizers.

Original certificate attached along with this letter is also sent to you, which is your licence and you can sell the fertilizers the details of which is as above.

Sd/- Superintendent Deputy Director Agriculture, Ambala 22.04.2010

6. It is apparent that the order dated 23.4.2010 (P-7) was obtained by sleight of hand contrary to law. I find no discernible flaw in the order passed by the Director General of Agriculture, Haryana, Panchkula which may warrant interference. The Director General of Agriculture, Haryana, Panchkula is the best judge of the officers of his Department and their functioning and is the custodian of enforcement of FCO 1985 in his jurisdiction. If IFFCO is permitted to sell Fertilizer Mixture NPK 12:32:16 in the State of Haryana, it would not confer any right on the petitioner and other private manufacturing companies and to lay stake on sale, if the Government has thought it fit in the interest of farmers within its territory to restrict sale of Fertilizer Mixture NPK 12:32:16 only through an agency like IFFCO. This may be reasonable restriction on the right to manufacture and sell in Haryana. No case for discrimination is made out as well. Dismissed.