

M/s. Super Packaging Industries Vs The National Fertilizers Limited and others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 5, 2011

Acts Referred: Constitution of India, 1950 " Article 14

Citation: (2011) 164 PLR 180

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Final Decision: Allowed

Judgement

K. Kannan, J.

I. Civil Writ Petition No. 2472 of 2001

1. The writ petition is for issuance of a writ of certiorari to quash the order dated 09.11.2000 (Annexure P-14) passed by the Chief Manager

(Projects) on behalf of the National Fertilizers Limited, (a Government of India undertaking), arrayed as the 1st respondent in the petition. The

National Fertilizers Limited (NFL) is also sought to be represented through the Chairman-cum-Managing Director. Through the impugned order,

the petitioner, who had been granted "ancillary status" was withdrawn.

2. The relationship between the parties have commenced with the Committee called as the Plant Level Committee (PLC) identifying the petitioner

as an ancillary unit for manufacture of HDPE bags. After initially eliciting the industrial ability to produce quality bags through a communication

made on 16.11.1999, the respondents 1 and 2 had informed the petitioner about the grant of ancillary status as laid down procedure of NFL. The

letter dated 16.11.1999 records the fact that the petitioner had completed all the formalities as per NFL laid down procedure and the Plant had

been commissioned and sample approved for a trial order of 75,000 bags. It also states that "the performance of the supplied bags against the

order had been satisfactory" and that the ancillary status had been given for supply of 1 lakh bags per month.

3. Subsequently on 06.01.2000, the new requirement was pressed against the petitioner for manufacturing and supplying laminated HDPE bags.

The petitioner through the director expressed its inability pointing out to the fact that a lamination plant was not viable for the resources of the

petitioner. It is brought through the record that there had been a meeting on 20.01.2000 between the representatives of the petitioner and the

respondents 1 and 2. The minutes of the meeting signed by the representatives showed that the petitioner had identified M/s HRK Laminators as

an industrial unit which is capable of supplying the requirements of all the ancillary units and which had sufficient lamination capacity. It appears that

a team had been constituted to examine whether M/s HRK Laminators could be associated for the work of entrustment of lamination and the

report recommended the ancillary status to M/s HRK Laminators, Panipat, for supply of laminated bags so long as they maintained the desired

quality as per the NFL specifications.

4. Quiet inconsistent with the report of the petitioner, the respondents had informed that no tender documents for procurement of HDPE bags

could be issued to the ancillary units till complete facilities were installed including the lamination plant. This was resisted through representations of

the petitioner that the original accreditation granted to the petitioner as an ancillary unit was for supplying of bags at certain numbers with some

specified quality and the super-added condition of laminating them was not in the scheme of consideration initially and which had also subsequently

explained to the NFL. The impugned order came to be passed on 09.11.2000 by the Chief Manager withdrawing the cancellation of the ancillary

status on the ground that the petitioner unit did not have the complete facilities.

5. The respondent is an instrumentality of State and their actions are bound to be tested on the touchstone of Article 14. Arbitrariness is anathema

to the constitutional framework of the equality precept and even in the grant of State largesse, a beneficiary has a right to insist that State action will

be visited by reasonableness and governed by relevant matters touching upon the decision. The Hon"ble Supreme Court underscored the

imperatives of testing State action in the matter of awarding contracts to be reasonable and fair in Tata Cellular Vs. Union of India, . If the

petitioner had been granted the ancillary status on the satisfaction secured by respondents 1 and 2 that the petitioner was capable of making the

supplies in terms of quantity and quality, it could not have been withdrawn by an additional requirement of having to supply laminated bags. This is

all the more relevant in the situation where the matter had been discussed in the meetings of representatives of the petitioner and the respondents 1

and 2 and a team of NFL had itself given a report that yet another industry had the necessary infrastructure and ability to do the lamination work.

The review of ancillary status undertaken by respondents 1 and 2 for alleged lack of complete facilities was bringing in new parameters which was

not set at the time when the ancillary status was accorded to the petitioner. The decision contained in the impugned communication is arbitrary and

it cannot stand judicial scrutiny. The impugned communication is, therefore, quashed and the petitioner shall be registered as an ancillary unit with

all the attendant benefits that he could secure through such status.

6. The writ petition is allowed in the above terms.

II. CWP No. 2469 of 2001

7. This writ petition is in respect of the same subject matter by another industrial unit. The reasoning adopted in the above case will apply with

equal force to this case as well. The writ petition in CWP No. 2469 of 2001 is also allowed on the same terms.