

(2013) 09 AHC CK 0097

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 33720 of 2013

M/s. A.K. Mishra Fertilizer

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 26-09-2013

Acts Referred:

Citation : (2013) 10 ADJ 57 : (2014) 2 ALJ 282 : (2013) 100 ALR 900

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : R.P. Yadav, for the Appellant;

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard the learned counsel for the petitioner and the learned Standing Counsel. The petitioner is a dealer of fertilizers and holds a registration certificate to that effect. The District Agricultural Officer inspected the premises of the petitioner on 22nd December, 2012 and took two samples from a stitched bag for analysis of the quality of that fertilizer.

2. It transpires that the fertilizers was found to be sub-standard/adulterated and accordingly, a show-cause notice dated 28th January, 2013 was issued by the District Agricultural Officer to show-cause why the licence should not be cancelled as the fertilizer was found to be sub-standard. The petitioner submitted its reply contending that he had no role to play in the quality of the fertilizer and that the fertilizer as imported from abroad three months before and on account of the lapse of time the potency of the fertilizer may have dropped.

3. The District Agricultural Officer without considering the aforesaid reply cancelled the dealership of the petitioner. The petitioner preferred an appeal before the Director of Agriculture. During the pendency of the appeal, the second sample was also sent for analysis and again a report was submitted indicating that the fertilizer was of a sub-standard quality. The appeal was accordingly rejected. The petitioner, being aggrieved, has filed the present writ petition.

4. Having heard the learned counsel for the petitioner and the learned Standing Counsel at some length, the Court finds from the sample report that the Inspector had taken the sample of fertilizer from a sealed bag, if the fertilizer was found to be sub-standard on analysis, the liability, if any, can only be fastened on the manufacturer and not on the dealer, inasmuch as there is no allegation of transpiring of the stitching of the bags. Consequently, the tampering of the sealed bags by the petitioner does not arise.

5. In a similar controversy in *Girdhari Lal Hisaria % Girdhari Prasad Hisaria v. State of Bihar*, the Patna High Court in similar circumstances has quashed the impugned orders by judgment dated 6th September, 2012 passed in Criminal Misc. No. 17844 of 2011.

6. In the light of the aforesaid, the Court is of the opinion that if the bag was sealed from which samples were taken the question of tampering with the contents in that bag by the dealer does not arise and the sub-standard quality of the fertilizer has to be attributed to the manufacturer. In the light of the aforesaid, the Court is of the opinion that the cancellation of the licence of the petitioner was erroneous and cannot be sustained. The impugned orders are quashed. The writ petition is allowed.