
(1988) 01 AHC CK 0048

In the Allahabad High Court

Case No : Civil Misc. Writ No. 16012 of 1987 & Civil Miscellaneous Writ No. 16012 of 1987

Mukund Chand

APPELLANT

Vs

District Agriculture Officer and Fertilizer Registering Authority
and Another

RESPONDENT

Date of Decision : 18-01-1988

Acts Referred:

Citation : (1988) 1 AWC 579

Hon'ble Judges : Ravi S. Dhavan, J

Bench : Single Bench

Advocate : Rakesh Ranjan Agarwal, for the Appellant;

Final Decision : Allowed

Judgement

Ravi S. Dhavan, J.—The Petitioner, M/s. Mukund Chand, is a partnership firm, which is engaged in the business of selling fertilizer. It was granted a licence under the Fertilizer Control Order, 1985, hereinafter referred to as the Order, which is otherwise issued under the Essential Commodities Act, 1955. The licence is for whole sale trade in fertilizer. The firm is registered under the aforesaid order against registration No. 132-27/53 dated 21-9-1971. The registration was renewed on 25 April, 1986 for a period of three years to be effective till 24 April, 1980. The licence to deal with fertilizer has been cancelled and this has occasioned the filing of the present writ petition.

2. The District Agricultural Officer through his Inspector, caused an inspection to be made at the premises of the Petitioner on 21 November, 1986. Of a lot of fertilizer bags, 129 in number, and a consignment which had been received according to the inspection note "last year", the charge against the Petitioner's firm is that whereas in accordance with the stipulations of the order the super phosphate composition ought to be 16%, upon examination at the laboratory, it was revealed that it was only 14.6%. Upon this the Petitioner firm received a show cause notice alleging that it has contravened Clause 19 of the Order. The

firm was requested to explain why the consignment has a potency value of 14.64% instead of the specific value of 16%. The show cause notice is dated 21st February, 1987.

3. The Petitioner firm submitted its reply on 18 March, 1987 pointing out to the District Agricultural Officer, Respondent No. 1, that it was not guilty of any misdemeanour in the conduct of its business under the licence. It was pointed out that the consignment had been received more than a year before the inspection had been carried out and that the consignment was lying intact in the stitched bags exactly as it had been received from the manufacturer in the Punjab. On these facts there is no issue on record. The explanation of the Petitioner firm was not accepted by the District Agricultural Officer and by his order of 24 March, 1987, the licence of the Petitioner to deal with fertilizer was cancelled and the Petitioner firm was required to dispose of its stock in the next thirty days.

4. The Petitioner filed an appeal before the Director of Agriculture, the appellate authority under Clause 32 of the Order, aforesaid. The appellate authority endorsed the order of the District Agricultural Officer and on 4 August, 1987 the appeal was also dismissed. This left the Petitioner firm without a licence to deal with fertilizers and consequently and inevitably the cessation of its business.

5. The record reveals that the negligence in the manner in which the inspection had been caused, the State Respondents were responsible.

6. The power to cause an inspection has been prescribed and an inspection which is to be carried in accordance with the procedure laid down will be a valid inspection. But, if the inspection itself violates the conditions of the procedure, then the result is a nullity. This is precisely what has happened in the present case. A reading of the Government Order issued by the District Agricultural Officer dated 4 November, 1986 is merely for the purpose to help the dealers or the traders in maintaining the quality of fertilizers so that should they receive merchandise from the manufacturer, which is not of merchantable quality or reasonably fit for use, it can be dealt with in accordance with law. To this extent the State helps the dealer or trader to have the sample analysed. It puts an obligation on the trader or retailer that within twenty-four hours of the arrival of a consignment, the trader or dealer ought to contact the Inspector for the purposes of drawing a sample. Speed itself is the essence of the matter, regard being bad to the fact that the consignment which is to be analysed is fertilizer, a commodity which is otherwise a chemical and liable to change its quality upon the vagaries of nature. If the instructions of the State Government put an obligation on the trader that within twenty-four hours of the arrival of a consignment an effort would be made to have a sample drawn for analysis, then the State cannot escape the obligation of taking note of the urgency to cause an inspection to be made as far as possible within the time within which a dealer is to report the arrival of the consignment. The consignment in question, even the inspection note records, was received by the Petitioner firm "last year". Thus,

atleast the obligation set in the State Government Order dated 4 November, 1986 could not apply retrospectively. Causing an inspection after one year is making a mockery of the instruction which the State Government has issued. The entire exercise of the inspection, in question, was an exercise in futility.

7. The illegalities in the manner in which the inspection was carried out or the sample was analysed does not stop here.

8. Clause 30 of the order causes an obligation upon the State that the sample of the fertilizer would be sent to the laboratory within a period of seven days from the date of its being taken. Clause 30 (1) in reference to the context reads:

30. (1) Where sample of a fertilizer has been drawn, the same shall be despatched, along with a memorandum in Form K to the Laboratory for analysis within a period of seven days from the date of its drawal.

9. In the present case the sample was drawn on 21st November, 1986. The sample was sent for analysis along with a letter of Joint Agricultural Officer, Region Gorakhpur, reference 3338 dated 6 December, 1986. The sample was sent 15 days after it had been drawn. This sample was, thus, worthless and could not be acted upon in the laboratory for analysis in terms of Clause 13 of the Order. This is another illegality in the manner in which the sample had been drawn.

10. The illegality of the manner in which the sample was taken, continues. The inspection note of 21 November, 1986 records that the stock position of the Petitioner firm was of 129 bags. In accordance with Schedule II of the Order, aforesaid, and in reference to the table, regard being had to the stock, samples are to be drawn from a certain number of bags. Schedule II, in reference to the context is as below:

(c) Selection of bags for sampling.

11. The number of bags to be chosen from a lot shall depend upon the size of the lot as given in the table below:

Lot size (No. of bags) No. of bags to be selected for sampling

N	N	Less than 18	1	10-100	2	100-200	3	200-400	4	400-600	5	600-800	6
		800-1000	7	1000-1300	8	1300-1600	9	1600-2000	10				

The Petitioner comes within the requisite stock of 100-200 bags, for which the samples are to be drawn from three bags. In the present case the sample was drawn from only one bag. This was a blatant illegality. The facts which have been narrated above are such as are discernable from the record.

12. The appeal itself was an exercise in futility as the appellate authority would not see the irregularities in inspection, draw of samples and the analysis. The error or omissions of procedure were manifest and apparent from the record.

13. An illegal inspection and an illegal exercise in picking the sample resulted in

the cancellation of the licence of the Petitioner and cessation of his business for the last 10 months. The powers which were to be exercised by the office of the District Agricultural Officer were done so arbitrarily, and against the procedure prescribed. This Court, thus, considers it appropriate to allow this

petition with special costs. This Court hereby directs that the inspection of 21 November, 1986 was irregular and illegal, the reasons for which have already been given in this judgment. The record of this inspection is quashed. The rest, must then, fall and fail.

14. This Court hereby issues a writ of mandamus directing the Respondent No. 1 to treat the licence of the Petitioner firm in continuity as if it had never been cancelled unless, if it was meant to be cancelled on any other count which is not the subject matter of this writ petition. A cost of Rs. 500/- is granted against the State of Uttar Pradesh and the Respondent No. 1, to be paid to the Petitioner firm within a period of one month from the date of a certified copy of this judgment being placed before the Respondent No. 1.

15. The petition is, thus allowed.