
(2008) 12 AHC CK 0388
In the Allahabad High Court
Case No : Writ Petition No. 1679 (M/S) of 2006

Paradeep Phosphates Ltd.

APPELLANT

Vs

State of U.P.And Others

RESPONDENT

Date of Decision : 01-12-2008

Acts Referred:

Fertiliser (Control) Order, 1985 — Schedule 2 Part A

Citation : (2008) 12 AHC CK 0388

Hon'ble Judges : Rajiv Sharma, J

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Learned counsel for the petitioner submits that M/s Paradeep Phosphates Ltd. is a factory manufacturing fertilizers, namely, N.P.K., DAP & Urea etc. On 28th July, 2003, the District Agriculture Officer, Rae Bareilly inspected the godown of Sigma Buffer Stock and three samples were taken" from one lot of the fertilizer. First sample for analyzation was sent to the Fertilizer & Insecticide Control Laboratory, Alambagh, Lucknow and after analyzation, report was sent to the higher authority to take cognizance upon the report dated 2.9.2003. The said report was communicated to the petitioner by means of a letter dated 30.10.2003. Against the report, the petitioner preferred an appeal before the respondent No. 3/Deputy Director Agriculture (Fertilizer). On 11.11.2003, second sample was sent to the Fertilizer Inspector for sending the same to some other Laboratory for testing. In the meantime, on the basis of the first analysis report, Director of Agriculture restrained the petitioner from selling the DAP. On 2.9.2004, analysis report of the second sample was communicated to the petitioner in which Nitrogen was found 14.96% and Phosphates 45.57%. Since in testing the DAP was found substandard, stock of 400 MT of DAP was seized on 15.11.2004. Petitioner submitted representation praying for analyzing the third sample, which was given to him at the time of checking the stock at Sigma Buffer Godown, since there was variation in reports.

2. The State has filed its counteraffidavit and did not dispute the averments

made in the writ petition. However, it has been stated that the appellate authority has no jurisdiction for sending the third sample which has been collected to the laboratory for its analysis. It has also been stated that the sample has been collected three years back and in any case, if the same is being sent for analysis now, no positive result will come out. The composition of chemicals in the said Phosphates is not as per the standards prescribed and there was a variation of more than 18%, whereas the variation, which is being allowed is upto 10%.

3. In the rejoinder affidavit, it has been stated that the samples have not been collected as provided in the Schedule and further, the sample which has been drawn could hardly represent 100 MT quantity and as such, in the two reports, which too were contradictory, are per se illegal and against the procedure prescribed in the Fertilizer (Control) Order, 1985.

4. Heard learned counsel for the parties and perused order passed by the Appellate Authority as also the record.

5. As submitted by the petitioner's counsel, there is a procedure prescribed for drawal of samples of fertilizers in Schedule II Part A of the Fertilizer (Control) Order, 1985. Clause I of the said Schedule prescribes for General Requirements of sampling and comprises of subclauses (a) to (f). Clause 2 indicates for sampling from bagged material. Clause 3 is with regard to the drawal of samples from bags, whereas clause 5 is in respect of preparation of composite sample. Clause 6 deals with the preparation of test sample and reference sample. Sampling from the bulk fertilizers in ships, bulk carriers and bulk container has been mentioned in Clause 7. The relevant provisions of the clauses 2(c) and 6 (iv) of the Fertilizer (Control) Order, 1985 are reproduced as under:

2(c) Selection of Bags for Sampling. 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 Page)	No. of bags to be selected
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for sampling (N)	
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Less than 10	1
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10100	2
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100200	3
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200400	4
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400600	5
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600800	6
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8001000	7
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10001300	8
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13001600 9

16002000 10

(i) All the bags of a lot should be arranged in a systematic manner. Start counting from any bag randomly, go on counting as 1, 2, 3 upto r and so on, or being equal to the integral of N/n . Thus, every r th bag counted shall be withdrawn and all bags shall constitute the sample bags from where the sample is to be drawn for preparing a composite sample.

(ii) Sampling from big godowns/high stackings. If the procedure given in Para 2 (i)(c) is not possible to be adopted, the sample should be drawn from the randomly selected fertilizer bags from different layers, from top and from all open sides in zig zag fashion.

(iii) Sampling from small godowns. All the fertilizer bags of the same grade and type of each manufacturer though received on different dates shall be segregated and properly stacked. All bags of same grade and type of fertilizer manufactured by a particular manufacturing unit may be considered as one lot based on their physical conditions and the same shall be drawn as per procedure laid down in Paras 2 (i)(c) and 4.

(iv) Sampling from damaged stock. (a) In case of torn or lumpy bags, damaged fertiliser bags or sweepings, the stock should be arranged according to identifiable lots. From each lot the number of bags shall be selected as per procedure 2 (i)(c) if the bags allow the use of sampling probe conveniently, the samples should be drawn by sampling probe.

(b) In case it is not possible to use the sampling probe, the bags may be opened and fertilizer material mixed together uniformly by hammering the big lumps or putting pressure if required, and then samples drawn by using suitable sample device."

6 (iv) "One sample so sealed shall be sent to the Incharge of the Laboratory notified by the State Government under Clause 29 or Central Fertilizer Quality Control and Training Institute, Faridabad for analysis and the second given to the manufacturer or dealer or the purchaser, as the case may be. The third sample shall constitute the reference sample and shall be sent by the inspector to his next higher authority for keeping in safe custody for production in Court, if required."

6. In the instant case, the aforesaid procedure has not been followed and further, only three samples have been taken, whereas as per clause 2 (c) atleast four samples should have been taken as the total quantity of fertilizer is 400 MT. Clause 2 (c) specifically provides that the number of bags to be chosen from a lot shall depend upon the size of the lot and table has also been prescribed.

7. By means of clarification dated 24.11.2005, the Government of India has also clarified the provision of Clause 2 (c) in the case of fertilizer which are

manufactured in a continuous process (like urea, DAP & complexes, etc.) or batch size for batch fertilizers like (SSP & Fertilizer Mixtures etc.). The maximum quantity of the lot for manufacturers in case of formes have been indicated as 100 tonnes (or 2000 bags) or actual batch quantity in case of later under Para 2(i)(a) of Schedule II A. This is basically to ensure that the sample drawn from the quantity higher than that, corresponding larger number of samples should be drawn from the respective stock. Therefore, the quantity upto 100 MT or in case if is less than 100 MT, then in such cases actual quantity shall represent the sample.

8. In view of discussion, the writ petition is allowed and the order of the appellate authority is hereby quashed.