
(1959) 12 AHC CK 0012
In the Allahabad High Court
Case No : Civil Misc. Writ No. 2060 of 1959

Sia Ram

APPELLANT

Vs

District Agriculture Officer, Sultanpur and Another

RESPONDENT

Date of Decision : 02-12-1959

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1961 All 92

Hon'ble Judges : Jagdish Sahai, J

Bench : Single Bench

Advocate : J. Swarup and G.K. Sahai, for the Appellant; Laxmi Saran and Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Jagdish Sahai, J.—The petitioner has filed this writ petition under Article 226 of the Constitution of India on the allegation that he had been selling fertilisers (including ammonium sulphate and urea) in Sultanpur for ten years next preceding the date of filing of the petition. On 29th of March 1957 the Government of India declared fertilisers, both inorganic as well as organic as also mixed, as essential commodities under the Essential Commodities Act. On 23-4-1957 the Government of India issued the Fertilizers (Control) Order of 1957 (hereinafter called the Order) u/s 3 of the Essential Commodities Act, 1955.

On 30th of December 1958 the U. P. Government ordered that from 1st of February 1959 no person shall carry on the business of selling fertilizers except under a licence and in accordance with its terms and conditions. The District Agriculture Officer was appointed the licensing authority. In pursuance of the aforesaid order of the State Government the petitioner made an application for a licence to sell fertilizers in Form A as prescribed under para 6 of the Order. The licensing authority granted a licence to the petitioner to sell fertilisers except pooled fertilisers in the State subject to the terms and conditions prescribed in the said licence.

The petitioner applied to the Assistant Registrar, Co-operative Societies, Sultanpur, for 100 bags of ammonium sulphate but the same was refused. On 3rd of August 1959 the District Agriculture Officer, Sultanpur, informed the petitioner that he could not sell ammonium sulphate, urea and ammonium sulphate nitrate as the licence granted to him did not include the same. It is further alleged by the petitioner in the petition as also in the affidavit filed in support of it that he had been selling these varieties of fertilisers for a long time past and in case he is not allowed to sell them he would lose his business and suffer irreparable loss and injury.

On these facts the petitioner has prayed for the issue of a writ of Certiorari or such other suitable writ, direction or order of like nature quashing the notice dated 3-8-1959 issued by the District Agriculture Officer to the petitioner prohibiting him from selling ammonium sulphate, urea and ammonium sulphate nitrate. There is also a prayer for the issue of a writ of mandamus commanding the respondents to supply to the petitioner "the fertilisers in accordance with the rules for supply."

2. A counter affidavit sworn by Sri Ali Sher Khan, District Agriculture Officer, Sultanpur, has been filed on behalf of the respondents. It is not necessary to mention all the allegations made in this counter affidavit and I am mentioning only the material ones. It is stated that the distribution and supply of pooled fertilisers which consist of ammonium sulphate, ammonium sulphate nitrate and urea due to scarcity of stock are controlled by the Government of India and they release the stock of these materials according to the demands of the State Government.

The State Government have appointed the Prantiya Co-operative Federation, Ltd., and the U. P. Co-operative Cane Union Federation, Ltd., as their agents for the distribution of these chemical fertilisers on certain conditions. The sale of Chemical fertilisers is restricted to the genuine cultivators including vegetable growers, horticulturists and farmers within the State limit and as these fertilisers are controlled they cannot reach the hands of market dealers without pool measure, It is also alleged in the counter affidavit that for the reasons mentioned above the licence which was given to the petitioner did not permit the sale of pooled fertilisers.

It is also alleged that under U. P. Government notification No. 12871/XII-A748/57 dated 30-12- 1958 an appeal lies to the Director of Agriculture, U. P., against the order of the licensing authority. It is further alleged that inasmuch as the petitioner did not file an appeal his petition should be rejected. In the counter affidavit it is also mentioned that vide FU/FO 825C/13206 dated 30-8-1959 the Deputy Director, Fertilisers and Manures, U. P., informed the licensing authority that no licence for pooled fertilisers should be issued to private Individuals.

3. No rejoinder affidavit has been filed to this counter affidavit. A supplementary

counter affidavit was also filed by Sri Ali Sher Khan. It is stated in this supplementary counter affidavit that the Government of India have issued the following orders in connection with the distribution of pooled fertilisers:

(i) The Government Order No. F. 13-15-/52-M from Government of India, Ministry of Food and Agriculture (Agri.) New Delhi.

(ii) The Government Order No, F. 2-6/57-M.A. Government of India, Ministry of Food and Agriculture, (Department of Agriculture), New Delhi.

(iii) The Government Order No. F 2-5/57-MA/2, from the Government of India, Ministry of Agriculture, New Delhi.

(iv) The U. P. Government Order No. A5354/1 XIIA-10(33) 52. True copies of these orders have been filed as annexures to the supplementary affidavit. It is also alleged that the U. P. Government by an order dated 11th August, 1958, had approved on the recommendation of the Director of Agriculture the appointment of the Prantiya Co-operative Federation, U. P., Lucknow, and the Co-operative Cane Unions Federation, Lucknow, as the two additional agents to the State Government besides Messrs. Imperial Chemical Industries (India) Ltd.. for distributing pooled fertilisers. A copy of this order has been filed and marked as annexure D.

4. I have heard Mr. Jagdish Swarup and Gopi Krishna Sahai for the petitioner and Mr. Lakshmi Saran the learned Additional Junior Standing Counsel for the respondents. Two submissions have been made by Mr. Jagdish Swarup. The first submission is that there is no provision in the order for excluding certain fertilisers from the licence. The second submission is that in any case the expression "pooled fertilisers" has not been defined in the Order and it is not known as to what that expression means. Therefore, the condition that the petitioner should not sell pooled fertilisers is impossible to be observed and in any case the licensing authority could not mention such a vague expression in the licence.

5. I will take the first submission of the learned counsel first. Para 5 of the Order runs as follows:

"With effect from such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall carry on the business of selling fertilisers except under and in accordance with the terms and conditions of a licence granted to him under this Order,"

It is clear from this provision that a person can carry on the business of selling fertilisers only in accordance with the terms and conditions of a licence granted to him. It is contended that the licence mentions only four conditions which are as follows:

(1) This licence shall be displayed in a prominent and conspicuous place in a part of the business premises open to the public.

(2) The licensee shall comply with the provisions of the Fertilisers (Control) Order, 1957 and the notifications issued thereunder for the time being in force.

(3) The licence shall come into force immediately and be valid upto the 31st December, 19.., unless previously cancelled or suspended.

(4) The licensee shall from time to time report to the licensing authority any change in the premises where he carried on his business of selling fertilisers.

It is contended that none of the conditions mentioned above related to the exclusion of the pooled fertilisers from the licence. In my opinion this argument is not correct. The licence clearly mentions that the petitioner shall not sell pooled fertilisers. It is therefore, not correct to say that it is not one of the terms or conditions of the licence that the licensee shall have no right to sell pooled fertilisers. The mere fact that the four conditions of the licence reproduced above have been given at a separate place from the condition in the body of the licence itself that pooled fertilisers will not be sold by the licensee does not make it any-the-less a condition or term of the licence.

In this connection learned counsel for the petitioner has submitted that even if it be held that one of the conditions or terms of the licence was that pooled fertilisers shall not be sold such a term or condition could not be imposed because the Order does not permit the imposition of such a term or condition. There is no provision in the Order which mentions the conditions or terms which can be imposed. Para 5 of the Order, in my opinion, gives the licensing authority complete freedom to impose any reasonable term or condition and so long as the condition is not arbitrary, unjust or unreasonable the right of the licensing authority to impose that condition cannot be challenged.

It is an administrative order and any condition which is in the interests of the general public and which is not inconsistent with the Order can in my opinion be reasonably imposed. In the case of *London County Council v. Bermondsey Bioscope Co.* 1911 80 LJ KB 141 it was held by Lord Alverstone, C. J., and Pickford and Avory, JJ., that a County Council in issuing a licence u/s 2 of the Cinematograph Act, 1909, is entitled to insist that the licence shall contain a condition prohibiting the opening of the premises on Sundays, Good Friday and Christmas day.

The argument that was advanced before the English Court was that the condition prohibiting the opening of the premises on Sundays, Good Friday and Christmas Day was ultra vires because all that the Cinematograph Act intended was to secure the safety of the public and therefore, considerations which were not directly related to the security of the public could not be the basis of conditions imposed on the licensee. This argument was repelled and there being nothing in the Cinematograph Act restraining the licensing authority to impose such restrictions it was held that the condition was intra vires and not ultra vires. In my opinion that case is a good authority for the facts before us also. I, therefore, overrule the first submission of the learned counsel.

6. Coming to the second submission it is true that the expression "pooled fertilisers" has not been used in the Order though it is current in government departments. It cannot also be denied that it is a term of art which has got a special meaning. That being so it is quite possible that the petitioner found it difficult to know as to what that expression meant and what he was restrained from selling. That however would not in my opinion justify the conclusion that the condition itself was void.

It was open to the petitioner to have ascertained from the licensing authority as to what that expression meant and which fertiliser he was expected not to sell. It is not open to a licensee to accept a licence but to avoid the conditions to which the licence is subject. The licence and the conditions go together and the conditions cannot be separated from the licence. Learned counsel has not cited before me any authority or any statutory provision to justify the conclusion that if an unfamiliar term is used in one of the conditions of the licence that condition is void.

If the petitioner could not understand as to what the expression "pooled fertilisers" meant and was therefore, unable to work under the licence he could either have asked for a clarification from the licensing authority or could have refused the licence. In any case before he came to this Court he knew what fertilisers he was not expected to sell. The counter affidavit shows that the restrictions on the sale of pooled fertilisers have been made in the interests of the general public as available quantities of those fertilisers are very small. I am, therefore, unable to agree with the learned counsel for the petitioner that because the expression "pooled fertilisers" has been used in one of the conditions of the licence the condition itself is void.

7. It may also be observed that no one has got an absolute right to get a licence. In the case of *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, it was held by the Supreme Court that nobody can claim a permit under the Motor Vehicles Act as of right. In my opinion the same is true of a licence under the Order. Para 7 of the Order runs as follows:

""7. Grant and refusal of licences -- (1) The licensing authority may for reasons to be recorded refused to grant a licence to any applicant and shall furnish him with a copy of the order so passed.

(2) Where an application for a licence is not refused under Sub-clause (1), the licensing authority shall grant the applicant a licence in form "B". The licensing authority has therefore, discretion under the law to refuse a licence to a particular person. Of course that discretion has to be exercised reasonably and the reasons for refusing the grant of the licence have got to be recorded. Para 18 of the Order provides a right of appeal against an order refusing to grant or renew a licence and against some other orders also. Therefore, the person who is refused a licence can file an appeal against the order refusing to grant it and the appellate authority may, in a suitable case, grant a licence itself.

Therefore though there is a provision requiring the recording of the reasons on the part of the licensing authority refusing to grant a licence and there is also an appeal provided against that order, the order is nonetheless an administrative order and the person who applies for the licence has got no absolute right to obtain it. There is no provision in the Order giving a right of appeal or revision against the imposition of conditions by the licensing authority. Therefore the scheme of the Order seems to be that it is open to a licensing authority to impose reasonable restrictions and it is clear that the power of the licensing authority in that connection is nowhere defined. In my opinion the legal position is that the petitioner has got no absolute right to the licence and he has to either accept or refuse it on the conditions on which it is issued to him. I therefore, find no force in this petition on merits.

8. I am also of the opinion that even if there had been merits in the petitioner's case a writ of certiorari as prayed by him could not have been issued. It was held by the Supreme Court in the case of *The State of Bihar Vs. D.N. Ganguly and Others*, that it is not proper to quash an administrative order by means of a writ of certiorari and the proper writ to issue in such a case is that of mandamus. Before a writ of mandamus is issued this Court must be satisfied that the petitioner approached the licensing authority and other authorities under the Order for the redress of his grievance. It does not appear that he did so. In that view of the matter also the petitioner would not have been entitled to any writ, direction or order from this Court.

9. The petition is accordingly dismissed but I direct the parties to bear their own costs.