
(1998) 12 AHC CK 0042
In the Allahabad High Court
Case No : C.M.W.P. No. 5052 of 1995

Vinay Kumar, Avadhesh Kumar

APPELLANT

Vs

District Agriculture Officer/Fertilizer Registration Authority,
Jaunpur

RESPONDENT

Date of Decision : 09-12-1998

Acts Referred:

Citation : (1999) 1 AWC 6

Hon'ble Judges : R.K. Singh, J;B.K. Roy, J

Bench : Division Bench

Advocate : Rakesh Ranjan Agrawal, for the Appellant;

Final Decision : Dismissed

Judgement

B.K. Roy and R.K. Singh, JJ.—The prayer of the petitioner-firm, who has sued through its partner Avadhesh Kumar, is to command respondent No. 1 to decide its application dated 25.1.1996, as contained in Annexure-2 to the writ petition.

2. The perusal of the document appended as Annexure-1 shows as follows. In furtherance of the directions made by the Collector of the District Jaunpur (i) the Additional District Agriculture Officer, Jaunpur, (ii) the Pargana Magistrate. Machhlishahr and (iii) the Additional District Magistrate (Revenue), Jaunpur, on 21.7.1994 inspected the premises of the petitioner during which Stock Register, Distribution Register, licence, etc. was not produced nor was the Stock Board exhibited and accordingly recommended penal action against the petitioner. Taking into account the seriousness of the irregularities vide Office Order No. 1812 dated 22.7.1994, the licence of the petitioner was suspended u/s 31 of the Fertilizer Control Order, 1985 and the petitioner was asked to file its show-cause along with the relevant record within one week of that order, which was despatched by Registered Post No. 767 dated 28.7.1994 which was refused to be accepted by the proprietor of the petitioner-firm. Thereafter vide Officer Letter No. 2389 dated 17.8.1994, a reminder was sent giving a further opportunity for filing of the show-cause and the records within three days, still neither the show-

cause was filed nor were the documents produced. On the directions of the District Magistrate on 14.11.1994, the Pargana Magistrate and the Up-Sambhagiya Krishi Prasar Adhikari. Machhlishahr re-inspected the Sale Centre of the petitioner during which its proprietor was present but again the relevant records were not produced by the proprietor of the firm. On the recommendation of the Pargana Magistrate that as the firm is illegally continuing to sell fertilizer and thus a strong penal action be taken, vide Office Letter No. 3082 dated 16.11.1994 another notice was given to the firm that if it fails to file show-cause within one week, then registration certificate shall be cancelled. The said letter also had no effect on the Proprietor of the firm nor was any show-cause filed on behalf of the petitioner. On 4.1.1995 during review of the Fertilizer Control, the Pargana Magistrate apprised the illegal trade of fertilizer by the petitioner-firm to the Collector. Jaunpur and strongly recommended for cancellation of the registration certificate of the firm in the aforementioned backdrop. In this context, after thorough consideration, the District Magistrate/Chairman, Fertilizer Co-ordination Committee, Jaunpur directed for cancellation of the registration certificate of the firm. Accordingly, the District Agriculture Officer/Fertilizer Control Authority. Jaunpur cancelled with immediate effect the registration certificate of the petitioner-firm under the provisions of the Fertilizer Control Order, 1985 directing the petitioner firm to dispose of the available stock in its sale centre within 30 days/one month with a warning that if it is found to violate the said order in that event all available stock will be seized.

3. Vide Annexure-2 Avadhesh Kumar Gupta, prayed for recalling the order dated 19.1.1995 (as contained in Annexure-1) on the grounds, inter alia, that no notice was served on him nor had he received any notice dated 28.7.1994 or 17.8.1994 or 16.11.1994 ; that he was not handed over the recommendation and the directions referred to in the order aforementioned ; that fertilizer certificate has been cancelled without giving him adequate opportunity of hearing ; that in many cases the Hon"ble High Court and the Hon"ble Supreme Court had held that the Officer, who has passed an ex parte order, has got competence to nullify his ex parte order, even if such power has not been mentioned appending copy of the judgment of this Court in Dinesh Chandra Upadhyay v. Passenger Tax Officer 1986 UPTC 837 . He also prayed for giving him a photostat copy of the recommendations and thereafter an opportunity of hearing and pass orders.

4. Mr. Rakesh Ranjan Agrawal. learned counsel appearing in support of this writ petition, contended that since the order dated 19.1.1995 passed by respondent No. 1 as contained in Annexure-1 was violative of principle of natural justice and, accordingly, a direction be issued to respondent No 1 to dispose of the petitioner's application as contained in Annexure-2. He also contended that vide order dated 23.2.1995 the Bench directed the respondents to file an affidavit stating as to how the service of show-cause dated 16.11.1994 and 28.7.1994 was effected on the petitioner since it joins issue on the question of service of notices on it but that direction has not been complied and hence this writ petition be allowed.

5. Mr. P. K. Bisaria, learned standing counsel appearing on behalf of the respondents, on the other hand contended, that true it is that no counter has been filed but there being presumption of correctness and regularity of the official acts the onus was on the petitioner firm to rebut it by bringing sufficient materials on the record viz. by appending the certificate, if any, granted by the Post Office concerned that no such registered letter or any letter was served on it or its partners and that onus not having been discharged by the petitioner firm the writ petition deserves to be dismissed. He further contended that the firm has moved this Court through only one of its partners Avadhesh Kumar who alone has sworn an affidavit to support the facts stated in the writ petition and the other partner of the firm has not come to support the case set-forth by the petitioner and thus no reliance be placed on the self-serving statement of the deponent.

6. We find merit in the contentions of Mr. Bisaria and accept them. From the order dated 19.1.1995, it is clear that notice by Registered Post was sent but refused to be accepted. This refusal means service. Several other notices were also served on it. There is a statutory presumption of correctness and regularity of the official acts. Accordingly, the onus to prove that the proprietor/partner of the firm has not received notices was on him. Since the notices were despatched by registered post, it was imperative on the part of the petitioner to produce before this Court a certificate from the concerned post office that such a registered notice was not delivered to the petitioner firm and/or its Proprietor/ Partner and/or to categorically state that the note made by the postal peon that the proprietor of the firm refused to accept the notice was incorrect. We wanted to know from Mr. Agrawal as to in which paragraph of the writ petition or the application dated 25.1.1996. this fact has been categorically stated. He states that it is a fact that such a statement has not been made either in the writ petition or in the application as contained in Annexure-2. We have extracted the plea taken by one of the partners in paragraph 2 earlier. We find merely vague allegations therein.

7. The application was filed by Avadesh Kumar Gupta without stating as to whether he is filing it in the capacity of the proprietor or partner of the petitioner firm M/s. Vinay Kumar Avadhesh Kumar. No affidavit has been attached along with the said application so as to rebut the statutory presumption in regard to correctness and regularity of the official acts.

8. The facts stated in the order dated 19th January, 1995 speak for themselves. It is not the case of the petitioner anywhere in the writ petition that those facts have been incorrectly stated.

9. Non-filing of any counter-affidavit by the respondents, in the peculiar facts and circumstances as mentioned above, is of no help to the petitioner and we are not inclined to rely on the affidavit sworn by one of the partners of the petitioner-firm, which contains self-serving statements. The interim order is also of no help to the petitioner.

10. Accordingly, we are of the view that the petitioner is not entitled to the relief claimed for.

11. In the result, this writ petition is dismissed.

12. The office is directed to handover a copy of this order to Sri Bisaria within one week for its communication to the respondents.