

(2009) 10 AHC CK 0132

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 4162 (M/S) of 2008

Audhyonik Utpadan Sahkari
Samiti Limited

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision: Oct. 28, 2009

Hon'ble Judges: Ritu Raj Awasthi, J

Final Decision: Dismissed

Judgement

Ritu Raj Awasthi, J.

Heard learned counsel for the petitioner as well as learned Standing Counsel for the State and perused the record.

2. The present writ petition has been filed challenging the orders dated 04.10.2007 & 19.05.2008 passed by District Agriculture Officer, Bahraich and order dated 31.07.2008 passed by Director, Agriculture, Lucknow, whereby the license for purchase and sale of IFFCO fertilizer among its member under Fertilizer (Control) Order, 1985 has been cancelled and the appeal preferred against the said cancellation order has been rejected by the appellate authority i.e. Director, agriculture.

3. On the basis of the fact mentioned in the writ petition, the learned counsel for the petitioner has submitted that the petitioner's society is registered society under horticulture and food processing department, U.P. w.e.f. 23.10.2000. It was granted license on 04.12.2006 for purchase and sale of IFFCO fertilizer amongst its members under Fertilizer Control order, 1985 which was valid till 03.12.2009. As per the government policy the cooperative societies are given preferential supply of fertilizers in order to facilitate its members/farmers. During the sowing season there is scarcity of fertilizer and the private fertilizers traders try to sell the fertilizers at higher rates.

4. One Surjeet Singh s/o Babu Ram Singh r/o village Kundasar, i.e. area of operation of the petitioner's society is Accountant in the office of the Opposite Party No.3 in connivance with two of his close relatives namely Mathuresh Kumar and Akhilesh Kumar, who are the private fertilizer traders instigated the District Agriculture Officer/notified authority under the Fertilizer (control) Order, 1985 district Bahraich to make the inspection in the petitioner's shop on 07.08.2007 who malafidely and forceably took the samples of Zinc High (Penagon) from a sealed and packed packet brought by nephew of the secretary of the petitioner's society for sowing the same in his paddy field. The Opposite Party No.3 without applying with the procedure prescribed in schedule II of the Fertilizer (control) order, 1985 took the samples and sent the same for testing.

5. Latter on by letter dated 05.09.2009 a show cause notice was issued to the petitioner's society mentioning therein that the said sample does not contain appropriate percentage of composition of fertilizer which clearly goes to show that sub standard fertilizer is being sold by the petitioner. The petitioner's society was required to submit its explanation/reply within 15 days.

6. The secretary of the petitioner's society submitted the explanation on 21.09.2007 before the Opposite Party No.3 but without properly considering the explanation and without considering the fact that the Zinc in question does not relate with the stock of the petitioner's society in a very illegal, arbitrary and cursory manner passed the order on 04.10.2007 cancelling the license of the petitioner's society.

7. Against the said order dated 04.10.2007, petitioner's society preferred an appeal under clause 32A of the Fertilizer (control) Order, 1985 before the Opposite Party No.2 who is the appellate authority. The appellate authority while considering the prayer for interim relief of the petitioner's society by order dated 05.02.2008 directed for retesting of the second sample and meanwhile stayed the operation of the cancellation order dated 04.10.2007. It is further submitted that the Opposite Party No.3 in spite of pendency of the aforesaid appeal, again by order dated 19.05.2008 cancelled the petitioner's license, although such an order was uncalled for and without jurisdiction.

8. It is contended by the counsel for the petitioner that the appellate authority by order 31.07.2008 has rejected the appeal without properly considering the grounds taken in the memo of the appeal and without taking into consideration the relevant fact that the notified authority i.e. Opposite Party No.3 while taking the alleged sample failed to adhere to the procedure prescribed for the same in schedule II of Fertilizer (control) order, 1985 and intentionally left the important and necessary particulars unfilled in "Form J" prescribed under the Fertilizer (control) order, 1985 rendering the whole analysis and test of the sample unauthentic and illegal. The opposite parties had also failed to consider that the alleged sample was taken from the sealed and packed bag which did not belong to petitioner's stock and therefore the petitioner cannot be held responsible for any deficiency found in the sample.

9. The learned Standing Counsel on the basis of the averments made in the counter affidavit submitted that on 07.08.2007 the District Agriculture Officer, Bahraich during the course of his field inspection took the sample of Micro Nitrates/Zinc from the shop of the petitioner and the same was sent for analysis to the laboratory and after analysis it was found that the fertilizer was substandard. The petitioner was given full opportunity by way of show cause notice dated 05.09.2007 to submit his explanation and in pursuance thereof the notified authority under the Fertilizer (control) Order, 1985 i.e. District Agriculture Officer, Bahraich, considering the entire material on record cancelled the license of the petitioner's society.

10. It is further submitted that the appellate authority while granting the interim relief by staying the operation and effect of the order dated 04.10.2007 had also exceeded to the request of the petitioner to get reanalysis of the second sample which was kept with the petitioner. The petitioner was directed to provide the second sample for reanalysis. The second sample duly sealed was received by the District Agriculture Officer and sent to the Joint Director of Agriculture (fertilizer) U.P., Lucknow who thereafter sent it for analysis to a laboratory situated outside the U.P. The reanalysis of the second sample and guard sample was got done from the laboratory situated at Karnal (Haryana) and the report was received in the office of the Opposite Party No.3 on 05.05.2008. As per the said report of the reanalysis of the sample, fertilizer was again found to be substandard. The appellate authority thereafter considering the entire material on record and after affording opportunity of hearing to the petitioner by order dated 31.07.2008 had dismissed the appeal and affirmed the order dated 04.10.2007 passed by the notified authority. In view of the aforesaid facts the learned Standing Counsel vehemently submitted that the writ petition deserves to be dismissed.

11. It is the admitted case of the parties that an inspection was made on 07.08.2007 by the District Agriculture Officer, Bahraich at the shop of the petitioner and samples of fertilizer available at the shop were taken for analysis. As per the procedure prescribed three samples were taken from the same bag of the fertilizer out of which one sample after getting it sealed was left with the licensee and two samples were taken away by the authorities for analysis. It is also admitted fact that after filing of the appeal by the petitioner against the cancellation order, the sealed sample which was left with the petitioner/licensee, in pursuance of the order dated 05.02.2008 was handed over by the petitioner for reanalysis.

12. There is no dispute so far as the sample of the fertilizer and their analysis is concerned. The petitioner in the writ petition has alleged that the then District Agriculture Officer deliberately with mala fide intention under the influence of one Sri Surjeet Singh who wanted to help his close relatives namely Mathuresh Kumar and Akhilesh Kumar, private fertilizer traders, had visited the petitioner's centre/shop on 07.08.07 and forceably took the samples from the sealed bag which did not belong to the petitioner as it was brought by the nephew of the secretary of

the petitioner's society for his personal use. The petitioner has not impleaded any person by name in the writ petition and the assertion with regard to the malafide made in the writ petition are vague and does not make out a clear case of malafide or arbitrariness against the authorities who had made routine field inspection of the shop of the petitioner's society and taken the sample of the fertilizer for analysis. No explanation has been given by the petitioner as to why the bag of the fertilizers which did not belong to the petitioner's society were kept at the centre/shop of the society from where the sale of IFFCO fertilizer was made to the members of the society. It is unbelievable that the bag of fertilizer at the sale centre/shop was not meant for sale and belonged to some other person who had kept it for his personal use.

13. The learned counsel for the petitioner had tried to impress upon that the District Agriculture Officer while taking the sample of the fertilizer had deliberately and intentionally did not adhere the procedure prescribed for drawing a sample for analysis as provided in Schedule II of the Fertilizer (control) order, 1985 and left the important and necessary particulars unfilled in "Form J" rendering the whole analysis result of the alleged sample unauthentic and illegal. Even if it is believed to be true that the "Form J" prescribed under the Fertilizer (control) Order, 1985 for drawing the sample for analysis was left incomplete by the competent authority while taking the sample of the fertilizer at the petitioner's shop, it will not render the entire analysis and test of the sample of fertilizer illegal and unauthentic specially in view of the fact that when there is no dispute with respect to the content of the sample and in the reanalysis of the second sample the deficiency in fertilizer was against found.

14. So far as the order dated 19.05.2008 passed by the District Agriculture Officer, during the pendency of the appeal is concerned it is evident from the records that the report of the reanalysis of the second sample and the card sample was received by the District Agriculture officer through the letter dated 05.05.2008 of the Joint Director of Agriculture (fertilizer), U.P., Lucknow. The District Agriculture Officer thought it proper to pass a fresh order cancelling the license of the petitioner in exercise of his powers under section 31(2) of the Fertilizer (control) Order, 1985, although it was of no consequence as the license of the petitioner was already cancelled by order dated 04.10.2007 and the appeal against the said order was already pending.

15. The records reveal that on the analysis the sample of fertilizer taken from the centre/shop of the petitioner was found deficient and thereupon a show cause was issued to the petitioner. Upon the consideration of the reply of the petitioner the license of the petitioner was cancelled by the notified authority. Thereupon the petitioner had preferred an appeal before the Director Agriculture. As it appears from Annexure No.9, the petitioner in appeal made a request for examination of second sample and also for stay of order under appeal. The appellate authority

stayed the operation of the order of the Opposite Party No.3 subject to the petitioner's depositing the second sample. In compliance of the order of the appellate authority, the petitioner deposited the sample which was sent for analysis out of U.P. However, the said sample was also found deficient/substandard. The appellate authority considering the relevant material facts including the fact that second sample in reanalysis was also found deficient had dismissed the appeal. The appellate authority had also provided an opportunity of hearing to the petitioner. As such from the above facts it is very much clear that the petitioner was given full opportunity by the opposite parties.

16. The learned counsel for the petitioner in support of his contentions has relied upon the decision passed in the case of Santosh Kumar vs. State of U.P. and others, 2001 (44) ALR 839. In that case the court had held that it is mandatory to record the reasons for cancellation of the license and non consideration of the explanation and nonrecording of the reasons would render the cancellation order bad in the eyes of law. The said decision is of no assistance to the petitioner as Opposite Party No.3 while passing the order of cancellation has passed a reasoned order after considering the reply submitted by the petitioner in this regard.

17. In view of the aforesaid facts, I am of the considered opinion that the order passed by the authorities cancelling the license for purchase and sale of fertilizer of the petitioner and the appellate order are just and proper and do not require any interference by this Court. The writ petition is devoid of merit and is liable to be dismissed, it is hereby dismissed. No order as to costs.