

**(1998) 08 AHC CK 0125**

**Allahabad High Court**

**Case No:** C.M.W.P. No. 23641 of 1998

Anupam Khad Bhandar

APPELLANT

Vs

State of U.P. and others

RESPONDENT

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**Date of Decision:** Aug. 6, 1998

**Acts Referred:**

- Constitution of India, 1950 - Article 19(1)
- Fertiliser (Control) Order, 1985 - Section 28(1)

**Citation:** (1998) 4 AWC 442 : (1998) AWC 442

**Hon'ble Judges:** D.K. Seth, J

**Bench:** Single Bench

**Advocate:** Sunil Ambwani, for the Appellant;

**Final Decision:** Disposed Of

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### **Judgement**

D.K. Seth, J.

On a raid conducted in the shop of the petitioner stock of D.A.P. Fertilisers was detained or seized on 31.12.1997. A first information report was lodged on 24.3.1998 and stop sale notice was Issued on 26.3.1998, to which the petitioner submitted his reply on 28.3.1998. It is alleged by Sri Sunil Ambwani, learned counsel for the petitioner that while detaining and seizing the particular stock, the authority has completely sealed the petitioner's shop. It is also alleged that the petitioner is also dealing in other material and there were stock of fertilisers other than seized. The said seizure was conducted on the ground that the materials were of sub-standard. According to him, the other stocks were not seized or detained. Referring to paragraph 28 of the Fertilizers (Control) Order, 1985, the petitioner submits that Section 28 does not empower the authority to seal the shop or prevent the petitioner from carrying on his business or trade and thereby to take away from him the right to carry on business or trade as guaranteed under Article 19(1)(g) of the Constitution. He does not question the seizure of the stock alleged to be of sub-standard, which according to him, may be proceeded with under the provisions

of law as are applicable in respect thereto. It will be open to the petitioner to defend his cause and to take all such objections as are available under law in case proceedings are initiated against him. He confined his submissions only to the extent that the petitioner's right to carry on trade or business cannot be taken away by sealing the shop and in respect of the stocks other than the stock, which has since been detained. He further contends that unless within 21 days of the detention or seizure, proceeding is initiated, no further proceeding can be initiated thereafter. The stop sale notice only can be issued within 21 days from the date of detention or seizure. On expiry of 21 days from the date of seizure or detention, no action can be taken by the respondents, therefore, the notice of stop sale is invalid.

2. Sri Ambwani, learned counsel for the petitioner further submits that even after the issue of notice to stop sale, no proceeding has been initiated within 21 days. Therefore, the stop sale order shall also be deemed to have been revoked. On these grounds, he claims that the writ petition should be allowed by quashing the order of stop sale as well as seal should be withdrawn and he should be permitted to carry on his business.

3. Sri K. R. Singh. Teamed standing counsel, on the other hand, contends that 21 days embargo provided in the third proviso to Section 28 (1) of the Fertilisers (Control) Order, 1985, is confined only to initiation of proceedings after the issue of notice of stop sale. It has no manner of application in respect of initiation of proceeding from the date of detention or seizure or otherwise. Secondly, he contends that by virtue of Section 28 (1) (d), the Inspector is empowered to seize or detain the fertilisers in respect of which he has reasons to believe that contravention of the order is being committed. Thus as soon the Inspector is of the opinion that there is any likelihood of any breach of the said order, he can seal the shop and prevent the owner from transaction of business of whole stock. Therefore, there is no infirmity in the order and the writ petition should be dismissed.

4. I have heard Sri Sunil Ambwani, learned counsel for the petitioner and Sri K. R. Singh, learned standing counsel at length.

5. Section 28 (1) (d) empowers an Inspector to seize or detain any fertilisers in respect of which he might have reasons to believe that contravention of the said order has been or was being or is about to be committed. Thus, the very expression used in clause (d) indicates that power of the Inspector is confined to the stock in respect of which he has reasons to believe that there would be breach of the said order or any breach has been or is being or is about to be committed. In the present case, it has not been alleged by the Inspector that in respect of the stock (other than the stock seized), available in the shop, he has reasons to believe that breach has been committed or any breach is being or is about to be committed. On the other hand, the allegation is that a particular stock of D.A.P. was of sub-standard, and sample of which were drawn for chemical examination. Thus a particular stock of a particular kind of fertilizers have been seized or detained. From the impugned

order, Sri Singh has not been able to show that other stock other than the stock which has been seized or detained. Is within contemplation of the Inspector that any breach is about to be committed within meaning of clause (d). In case the stock other than which has been seized or detained are not within contemplation of the Inspector to be seized or detained, in that event clause (d) cannot be attracted. The seizure or detention can be effected only in respect of a particular stock in respect of which the Inspector has reasons to believe that there might have been breach of the said order. Since specific stock has been detained, there is no authority vested in the Inspector to detain or seize any stock other than the stock seized or detained. If no such power is vested in the Inspector then, there is no authority to seal the shop. Even it is assumed that he has power to seal the stock but that should be for a very temporary period in order to enable him to take appropriate steps in respect of completing the formalities of seizure or detention as provided within the ambit of the said order or rules, or law as is prescribed. It cannot be a general power to seal the shop for an indefinite period. May be in aid of seizure or detention but that too for a very limited and temporary period which cannot be extended Indefinitely for completing the seizure or detention in accordance with law as prescribed.

6. In the present case, seizure was effected on 31.12.1997. The seal is continuing even till today. By no stretch of imagination, it can be said that even within this period, it was not possible to complete the formalities of seizure or detention within this period.

7. Admittedly, the petitioner has a stock other than the stock already seized. In respect of which no seizure or detention order has been passed nor it is in contemplation of the Inspector, as is apparent from the record itself and it has not been so shown by Sri Singh and, therefore, there is no justification for keeping the shop under seal.

8. Therefore, the action on the part of respondents keeping the shop sealed and preventing the petitioner from carrying on the business, is an encroachment of his rights, guaranteed under Article 19(1)(g) of the Constitution. Therefore, such an action cannot be supported.

9. In that view of the matter, the respondents are directed to remove the seal of the shop and allow the petitioner to carry on his business in respect of stock other than the stock which has been seized after making proper inventory and completing all formalities of detention or seizure, if there is any, within 24 hours from removing the seal so that the petitioner may carry on his business or trade within 24 hours of removal of the seal. Such seal is to be removed within three days of receipt of copy of this order.

10. Let a writ of mandamus do issue accordingly to the above extent. Let a writ of certiorari do issue to the extent of quashing the order sealing the whole shop without affecting the detention or seizure of the stock by the impugned order.

11. So far as the question with regard to stop sale notice is concerned, at this stage it is not necessary to be gone into and this point shall be kept open in view of the facts that prima facie it appears that the embargo of 21 days is in respect of initiation of the proceeding after issue of the stop sale notice and not in respect of stop sale notice itself. It does not appear to operate as limitation from the date of seizure. However, the above observations are tentative only for the purposes of observing that at this stage this point is not necessary to be gone into. The question of stop sale or initiation of proceeding will be governed by law prescribed on the subject and the respondents are free to proceed in accordance with law. It would also be open to the petitioner to defend his cause and to take all such objections as are available to him under law, treating this question open for both the parties.

12. With the above observation the writ petition is disposed of. There will, however, be no order as to costs.