

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.24100 of 2022

Ajoy Kumar Mishra

.... Petitioner
Mr. B.Pr. Das, Advocate

-versus-

State of Odisha and others

.... Opposite Parties
Mr. A. Behera, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

Order No.

Date of hearing: 11.11.2022

Date of order: 25.11.2022

04.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).

2. The above named petitioner, who is the proprietor of Small Scale Unit operating in the name and style of M/s. Glare Chemicals India' situated at Biragobindapur, Sakhigopal, Puri, is engaged in the business of manufacturing of organic fertilizers sell and supply of such fertilizers as a recognized dealer thereof under due permission since last 16 years. Further the petitioner has been granted licence to carry on business under the fertilizers (Inorganic, Organic or Mixed) (Control) Order, 1985 and he also hold valid ISO certificate.

3. The present writ petition has been filed by the petitioner with a prayer for a direction to the opposite parties to open the seal of the petitioner's unit by declaring the conduct of the opposite parties in sealing the entire factory premises by the opposite parties in contravention of statutory provisions.

4. The factual matrix of the petitioner's case, in gist, is that the

petitioner being a valid licence holder under the Control Order, 1985 has entered into contract with various Government agencies after came out successful in the tender process, however, aforesaid contract is valid up to 31.03.2023. While the petitioner was doing his business smoothly in a remote area of Puri district, on 11.09.2022, the Fertilizer Inspector (Opposite Party No.4) along with Tahasildar, Satyabadi (Opposite Party No.5) and the local police team came to the unit of the petitioner and collected two samples each of vermin compost and raw materials for vermin compost and one sample of Bio Fertilizer for testing purpose.

5. After samples were collected as stated in the previous paragraph, most surprisingly, the Opposite Party No.4 without having any authority directed for sealing of the petitioner's unit i.e. his factory, laboratory, godown, workers quarters and two trucks used for transportation. Due to such sealing, the unit was completely closed, the entry and exit was prohibited. Challenging such illegal conduct of the Opposite Party No.4, the present writ petition has been filed.

6. Heard Mr. Bikram Pratap Das, learned counsel for the petitioner along with Mr. Sangram Rath Advocate and Mr. A. Behera, learned Additional Standing Counsel for the State. Perused the records and the materials placed before this Court for consideration.

7. At the outset, Mr. Das, learned counsel appearing for the petitioner submitted that all of a sudden, the Opposite Party Nos.4 and 5 along with police team arrived at the unit of the petitioner without any prior notice and thereafter, samples were collected

instantly and pursuant to the order of Opposite Party No.4, the unit was immediately sealed. Mr. Das, learned counsel for the petitioner further submitted that the Opposite Party Nos.4 and 5 have acted in a most arbitrary manner and their conduct is a glaring example of colourable exercise of power vested in the local administration.

8. Learned counsel for the petitioner further submitted that the petitioner was never called upon to show-cause as to why any sort of allegation made against the petitioner personally or unit or products manufactured by him. Before collecting samples, no grounds whatsoever were ever intimated or disclosed to the petitioner. It is further contended by Mr. Das, learned counsel for the petitioner that although he does not dispute the power of the competent authority to collect samples and testing the products randomly to verify their standard. There is absolutely no reason or logic in going for sealing of the unit after mere collection of samples for testing of any vague allegation, if any such allegation actually exists.

9. Mr. Das, learned counsel for the petitioner further referring to Clause-28 of Fertilizers (Control) Order, 1985 submitted that Clause-28 confers the power on Fertilizer Inspector to the extent that the Inspector can draw sample, nature upon in search of premises where fertilizers manufactured stored or extracted or sell if he has reasons to believe the same is done contrary to the provisions of the order, and he can seize or tender any fertilizers in respect of which he has reason to believe of any contravention of any order has been committed or admitted to be committed. It is also submitted by learned counsel for the petitioner that neither under the provisions of the Essential Commodities Act nor under the Control Order, 1985 any such power vested in the fertilizers inspector to seal the entire

premises. He further contends that except collecting sample, the Fertilizer Inspector did not seize any article and as such did not prepare any seizure list and straight away without waiting for the report and further giving an opportunity of hearing to the petitioner sealed unit instantly. The said conduct according to Mr. Das, learned counsel for the petitioner is incomplete contravention of the act and the relevant rules.

10. It is further contended that the standard of the products or the raw materials can only be assessed or ascertained only after testing as done and analysis report is received from the recognized Government laboratory. Therefore, on mere collection of samples on some allegation, if any, the conduct of the Opposite Parties in sealing the unit straight away would amount to arbitrary exercise of power that too without any statutory backing and without having any authority to do so at that stage. He further contends that the cause of the illegal, arbitrary action of the Opposite Party Nos.4 and 5 a running unit of the petitioner this like idle for several months causing severe financial loss to the petitioner. Further the aforesaid closure of the unit as a result of arbitrary and highhanded action of the Opposite Party Nos.4 and 5 as put the petitioner in danger and black listed by the Government and its agencies for not completing the tender work within the stipulated period of time.

11. Per contra, learned Additional Standing Counsel appearing on behalf of the Opposite Parties, at the first instance, submitted that the authorities have collected the samples for verification of its standard, therefore, they have not done any illegality and they have not contravened any of the provisions in the Control Order. He further submits that the Opposite Party Nos.4 and 5 have sealed the unit as a

preventive measure, till the analysis report is received from the various Labs. When the matter was listed on 27.10.2022, considering the urgency of the matter, learned counsel for the State was directed to obtain instruction and accordingly, the matter was adjourned to 01.11.2022. On 01.11.2022, in course of hearing, learned counsel for the State upon instruction submitted that on allegations unit raided suddenly by the Department of Agriculture and District Administration on 11.09.2022 that too after getting information from reliable sources regarding marking, spurious products. He further submits that during raid, it was found 15 to 22 laboureres are engaged in pacing of Charcol dust into the bags and loading these bags into two trucks. It is further contended by learned Additional Standing Counsel for the State that statement of some of the witnesses in this regard has also been recorded and that the samples which were collected have been sent to the laboratory for testing. Accordingly, learned counsel for the State try to justify the conduct and the action of the Opposite Party Nos.4 and 5.

12. Learned counsel for the petitioner files a letter dated 11.09.2022 in Court today. On perusal of the said letter, it appears that the B.A.O.(Opposite Party No.5) has written letter to the I.I.C. Satyabadi Police Station wherein it has been stated that samples were collected from the stock by the designated Fertilizer Inspector, Satyabadi and the same were sent to laboratory for testing. However, it is more surprising even before it received analysis report, B.A.O.(Opposite Party No.5) has written to I.I.C. Satyabadi Police Station for registration of F.I.R. The said letter also reveals that the stocks have been seized and the premises were sealed by the staff thereby meaning the staff of I.I.C. Satyabadi Police Station.

However, the said letter does not reveal as to who is the authority that has ordered for sealing of the unit and under which provision of law.

13. A question was put to the learned Additional Standing Counsel appearing for the State as to whether in the Control Order there is exist any provision under which any of the designated authorities would seal the premises of the factory even before the analysis report is received. This Court is also examined the provisions of the relevant Control Order of the year 1985 under the said Control Order it was observed that there exists no provision to sealing of the entire unit. However, the Control Order, 1985 permits the competent authority to draw sample and to send the same for testing to the designated laboratory and at the same time, the stock can also be seized. Learned counsel for the State upon perusal of the provisions also agreed that there exists no provision for sealing of the unit at the stage of drawing sample. Otherwise also this Court is of the considered view that if such a power is to be given to the designated officer to be exercised at the stage of drawing sample on some allegation before testing the quality of the products and the veracity of the allegations made, the same would amount conferring form and properly power on the authority to harass the citizens power, it has been established their guilty of some offences. Further the same can never the intention of the legislation indicating law, rules and regulation as the same would not pass in the Article 14 of the Constitution of India.

Furthermore, to find out as to whether the Inspector has power to seal the unit of the petitioner, this Court examined clause 28 of the

relevant Control Order, 1985, which is extracted herein below:-

“28. Power of Inspector

(1) An inspector may, with a view to securing compliance with this Order:-

(a) require any manufacturer, importer, pool handling agency, wholesale dealer or retail dealer to give any information in his possession with respect to the manufacture, storage and disposal of any fertilizer manufactured or, in any manner handled by him.

(b) draw samples of any fertilizer in accordance with the procedure of drawl of samples laid down in Schedule II.

Provided that the inspector shall prepare the sampling details in duplicate In Form J, and handed over one copy of the same to the dealer or his representative from whom the sample has been drawn;

(ba) draw samples of any biofertilisers in accordance with the procedure of drawl of samples laid down in schedule III.

(bb) draw samples of any organic fertilizers in accordance with the procedure of drawl of samples laid down in schedule IV.

(bc) draw samples of any non-edible de-oiled cake fertilizer in accordance with the procedure of drawl of samples laid down in Schedule V;

(c) enter upon and search any premises where any fertilizer is manufactured/Imported or stored or exhibited for sale, if he has reason to believe that any fertilizer has been or is being manufactured/imported, sold, offered for sale, stored, exhibited for sale or distributed contrary to the provisions of this Order;

(d) seize or detain any fertilizer in respect of which

he has reason to believe that a contravention of this Order has been or is being or is [attempted] to be committed;

- (e) seize any book of accounts or documents relating to manufacture, storage or sale of fertilizers, etc. in respect of which he has reason to believe that any contravention of this Order has been or is being or is about to be committed;

Provided that the Inspector shall give a receipt for such fertilizers or books of accounts or documents so seized to the person from whom the same have been seized;

Provided that the books of accounts or documents so seized shall be returned to the person from whom they were seized after copies thereof or extracts there from as certified by such person, have been taken.

- (2) Subject to the proviso to paragraphs(d) and (e) of Sub-clause(1), the provisions of the Code of Criminal Procedure, 1973(2 of 1974) relating to search and seizure shall, so far as may be, apply to searches and seizures under this clause.

Provided also that the inspector shall give the stop sale notice in writing to the person whose stocks have been detained and initiate appropriate action as per the provisions of this order within a period of twenty one days. If no action has been initiated by the inspector within the said period of twenty one days from the date of issue of the said notice, the notice of stop sale shall be deemed to have been revoked.

- (3) Where any fertilizer is seized by an inspector under this clause, he shall forthwith report the fact of such seizure to the collector whereupon the provisions of sections 6A, 6B, 6C, 6D and 6E of the Act, shall apply to the custody, disposal and confiscation of such fertilizers.
- (4) Every person, if so required by an inspector,

shall be bound to afford all necessary facilities to him for the purpose of enabling him to exercise his powers under sub-cause(1).”

14. Having heard contentions raised by both the sides and upon careful analysis of facts and the legal provision, this Court is of the considered view that the conduct of the Opposite Party Nos.4 and 5 in sealing the entire premises of the petitioner’s unit is highly arbitrary barred in law and in contravention of the Control Order, 1985 and as such, any order directing sealing of the unit of the petitioner is hereby quashed and further opposite parties are directed to open the seal of the petitioner’s unit within a period of two weeks from the date of receipt of certified copy of this order.

15. Before parting, it is made clear that this Court without expressing any opinion, it is open for the competent authority to proceed in accordance with law and the Control Order and to take the same logically conclusion and while deciding the issue on merit, the authorities shall not influence by the observations made hereinabove.

16. With the aforesaid observation/direction, the writ petition stands disposed of.

Urgent certified copy of this order be granted on proper application.

(A.K. Mohapatra)
Judge