

Before Hon'ble Jawahar Lal Gupta, J.

M/S JYOTI CHEMICAL & FERTILIZERS, PATIALA ROAD,
SAMANA & ANOTHER,—*Petitioners*

versus

STATE OF PUNJAB & OTHERS,—*Respondents*

Civil Writ Petition No. 58 of 1989

1st November, 1991

Constitution of India, 1950—Arts. 226/227—Fertilizer Control Order, 1985—Clause 30—Whether clause 30 of Control Order is directory or mandatory in nature—Sample to be tested within a period of 60 days—Failure in complying with mandatory provisions to vitiate proceedings.

Held, that the Control Order is aimed at ensuring quality of fertilizer. Violation of the provision of the Control Order entails penal consequences. Variation of 1 per cent can entail serious punishment. It is only fair that those who administer this law are also required to comply with it in its letter and spirit. Taking the totality of circumstances into consideration. Clause 30(2) embodies a mandatory provision. Admittedly, the sample was not analysed within the specified limit. The provision of clause 30(2) was thus violated.

(Para 11)

Bahal Singh Malik, Advocate, for the *Petitioners*.

T. S. Dhindsa, A.G., Punjab, for the *Respondents*.

JUDGMENT

Jawahar Lal Gupta, J.

(1) Clause 30 of the Fertilizer (Control) Order, 1985 (hereinafter referred to as the 'Control Order) *inter alia* provides that "the laboratory shall analyse the sample and forward the analysis report in Form L within 60 days from the date of receipt of the sample in the laboratory to the authority specified in the said memorandum". Is this provision mandatory or directory ? This is the short question that arises for consideration in this case. A few facts may be noticed.

(2) Petitioner No. 1 is a manufacturer of fertilizers. It produces Zinc Sulphate. Petitioner No. 2 is the dealer. It is averred that petitioner No. 1 is very particular about the quality control and in the last four years hundreds of samples taken by the various inspectors have been found to be of requisite standard. Lists of these have been appended as Annexures P. 4 and P. 5 with the writ petition. A sample was also taken on December 2, 1985 from two different dealers. The sample taken from petitioner No. 2 was not properly taken inasmuch as the seals were loose and it was also not analysed within the mandatory statutory period of 60 days prescribed under Clause 30. As a result a variation of 1 per cent was found on the analysis of the sample. A copy of the Chemical Analysis Report dated February 19, 1986 has been appended as Annexure P. 1 with the writ petition. On the basis of this report, an F.I.R. No. 26 dated April 3, 1988 was recorded and a challan dated November 19, 1988 was put up. Copy of the F.I.R. has been appended as Annexure P. 2 and that of the challan as Annexure P. 3 with the writ petition. Through this writ petition the petitioners have challenged the F.I.R. as also the challan. A two-fold contention has been raised. It has been averred that the sample having not been tested within the prescribed time of 60 days the entire proceedings are vitiated. The provision making the dealer liable as contained in Clause 19 of the Control Order has been challenged as being unconstitutional.

(3) A written statement has been filed on behalf of the respondents. It has been *inter alia* averred that the sample was taken and analysed in accordance with the provisions of the Control Order. The averment that the seal on the sample was loose has been specifically denied. It has been admitted that "the sample was analysed beyond the period of 60 days which was analysed in 76 days." It has been averred that the provisions of Clause 30 prescribing the time limit for analysing the sample of fertilizer are not mandatory but only directory. It has been further averred that the provision in Clause 19 making the dealer liable is absolutely legal and valid. Reliance in this behalf has been placed on the decision of a Division Bench of this Court in C.W.P. No. 4109 of 1978 (*M/s Satpal & Sons v. Chief Agricultural Officer and others*) decided on November 20, 1978.

(4) I have heard Mr. Bahal Singh Malik learned counsel for the petitioners and Mr. Tejinder Singh Dhindsa for the respondents. Mr. Malik has contended that Clause 19 of the Control Order making the dealer liable is absolutely arbitrary and violative of Articles 19

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and 21 of the Constitution. He has further contended that the sample having not been analysed within the prescribed period of 60 days, the entire proceedings initiated on the basis of the report of chemical analysis are vitiated. Mr. Dhindsa on the other hand has placed a strong reliance on the judgment of the Division Bench in the case of M/s Satpal & Sons (supra) to contend that the provision contained in Clause 19 is absolutely legal and valid. He has further contended that a fertilizer like Zinc Sulphate has a shelf life of more than a year and the provision in Clause 30 of the Control Order is merely directory and not mandatory.

(5) So far as the contention regarding the validity of Clause 19 of the Control Order is concerned, the matter is concluded by the decision of the Division Bench in M/s Satpal & Sons case (supra) The Division Bench was dealing with the validity of the order suspending the licence for sale of fertilizer on the ground of contravention of the provisions of Fertilizer Control Order of 1957. It was found that the provisions of Clause 13 (1) (a) of the Control Order had been violated. While dealing with the matter, the Bench observed as under :—

“It has been urged by Mr. Sibal on behalf of the petitioner that in strict sense in which criminality has to be understood, the petitioner was innocent, in that what he sold was what he had directly received from the manufacturer ; therefore one who can be considered at fault is the manufacturer and not the petitioners, who merely possessed the fertilizer in the condition he received which was in a factory stitched bag from which sample had been taken by the Inspector in question.

The provisions of clause 13 (1) (a) of the order in question, in our opinion, imposes a strict liability on the dealer and he cannot be heard to say that the fault was that of the manufacturer or the wholesaler or somebody else from whom he received the commodity. Hence the authority concerned will be within the law to cancel the licence in the event of proved contravention of the said provisions of the Order if this can be done under the provisions of law Clause 17 marks no distinction of the kind suggested by the petitioner which envisages that if the licence-holder is found to have contravened any provisions of Order, his licence can be cancelled, whether by that licence he was

authorised to sell and possess the fertilizers as well. The malady of selling sub-standard fertilizers is rampant and the Courts have to take a rather strict view in the matter.”

(6) In view of the above opinion of the Division Bench, I cannot hold that the provision contained in Clause 19 is arbitrary or illegal.

(7) This brings me to the consideration of the second point raised in the case. It has to be examined as to whether or not the provision contained in Clause 30(2) of the Control Order is directory or mandatory. Inevitably, a reference to clause 30 is essential. It reads as under :—

“30. Time limit for analysis, and communication of result.—

- (1) Where sample of a fertilizers has been drawn, the same shall be despatched, along with a memorandum in Form K to the laboratory for analysis within a period of seven days from the date of its drawal.
- (2) The laboratory shall analyse the sample and forward the analysis report in Form L within 60 days from the date of receipt of the sample in the laboratory to the authority specified in the said memorandum.
- (3) The authority to whom the analysis report is sent under sub clause (2) shall communicate the result of the analysis to the dealer/manufacturer/pool handling agency from whom the sample was drawn within 30 days from the date of receipt of the analysis report of the laboratory.”

(8) A perusal of the above provision shows that a sample of a fertilizer has to be despatched for analysis to the laboratory “within a period of 7 days from the date of its drawal.” Under Clause 2, the report of analysis has to be forwarded “in Form L within 60 days from the date of receipt of the sample in the laboratory to the authority specified in the said memorandum”. Under Clause 3, the report has to be communicated to the dealer or the manufacturer etc. within 30 days of its receipt. It is thus evident that the provision lays down a time limit for analysis and communication of the result. Each of the three steps viz. the forwarding of the sample to the

laboratory; of the report of analysis to the authority and the communication of the result to the dealer or manufacturer etc. is required to be performed within specified time limits. The provision is couched in language which is imperative. Default in any one of the three steps can upset the wholetime-table. The language is clearly suggestive of laying down a mandatory time limit at every stage.

(9) Further, it is also pertinent to notice that in each of the subclauses of Clause 30, the word "shall" has been used. It is clearly postulated that the sample "shall be despatched", "the laboratory shall analyse" and the "authority shall communicate the result of the analysis". It is true that in certain cases 'shall' can mean 'may'. However, keeping in view the context and the objective, which is sought to be achieved, I am reluctant to interpret the word 'shall' to mean may.

(10) It is the admitted position that no limit had been prescribed in the Fertilizer Control Order of 1957. It was introduced only in Control Order of 1985. The reason, as suggested in the written statement, was that the step has been taken "to improve the functioning of the Fertilizer Testing Laboratories, which previously used to take 1-2 years for analysis of samples as no period for this purpose was prescribed under the Fertilizer Control Order, 1957." The fact that the original provisions did not contain a time limit and that it was specifically introduced to prevent delay in the analysis of the samples is also suggestive of the fact that the Central Government was keen on ensuring that the entire operation from the date of the drawal of the sample to the communication of the final result must be performed within the specified period. If the provision is read in the manner as suggested on behalf of the respondents, the very purpose of introducing time limit would be defeated. Clause 13 would in its entirety become wholly nugatory. The purpose for which it has been introduced would be completely defeated. As a result, it would not be necessary to forward the sample to the laboratory for analysis within a period of seven days from the date of its drawal. Nor would it be essential for the laboratory to analyse the sample and forward the report within the period of 60 days. Furthermore, the authority would be at liberty to take its own sweet time to forward the report of analysis to the dealer or the manufacturer. Such a course of action would in my opinion be contrary to the very objective with which Clause 30 was brought on Statute Book.

(11) The Control Order is aimed at ensuring quality of fertilizer. Violation of the provision of the Control Order entails penal

consequences. Variation of 1 per cent can entail serious punishment. It is only fair that those who administer this law are also required to comply with it in its letter and spirit. Taking the totality of circumstances into consideration, I am of the view that Clause 30 (2) embodies a mandatory provision. Admittedly, the sample was not analysed within the specified limit. The provision of clause 30 (2) was thus violated.

(12) It is no doubt correct that the shelf life of the fertilizer can be more than one year. This, however, is of no consequence in the context of the question that arises in the present case. A sample can be taken even two months prior to the expiry of the shelf life of the fertilizer. There is no provision in the Control Order which makes it mandatory for the dealer to dispose it of within one year. In such a case, even if the sample has been taken within a period of less than one year from the date of manufacture of the fertilizer, the delay in analysis can cause prejudice to the dealer or the manufacturer.

(13) In view of the above, I am clearly of the opinion that the report at Annexure P. 1 does not meet the mandatory requirement of Clause 30 of the Control Order. Consequently, the prosecution of the petitioners in pursuance to the F.I.R. at Annexure P. 2 and the challan at Annexure P. 3 cannot be sustained. These are quashed. The writ petition is allowed. However, the parties are left to bear their own costs.

J.S.T.

Before Hon'ble G. S. Chahal, J.

THE STATE OF PUNJAB,—*Petitioner.*

versus

VINOD KUMAR,—*Respondent*

Crl. R. No. 385 of 1991

27th March, 1992

*Narcotic Drugs & Psychotropic Substances Act, 1985—Section 21—
Recovery of intoxicant tablets—Tablets contained Barbiturate—
Psychotropic substance—Meaning of.*