

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Cr1.M.C.2020/2008 and Cr1.M.A.8852/2009

National Agricultural Co-Operative
Marketing Federation of India Ltd..... Petitioner

! Through: Mr.A.K. Thakur with
Mr.Anesh Paul, Advocates
Versus

\$ State & Ors. Respondents

^ Through: Mr. Manoj Ohri, Addl.P.P.
For the State.

* **CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

: **V.K. JAIN, J.(ORAL)**

1. This is a petition u/s 482 of the Code of Criminal Procedure for quashing FIR No.77/2008 registered at P.S. Keshav Puram. Petitioner No.1 is National Agricultural Co-operative Marketing Federation of India Ltd. (hereinafter referred to as "NAFED"), and petitioners No. 2 to 4 are employees of petitioner No.1. A perusal of the FIR shows that a joint team of police officials and the officials of Food and Supplies

Department visited the premises/godown of NAFED situated at A-4-8, Lawrence Road Industrial Area, Delhi where petitioner No.2, Sushil Kumar Sharma met them. They carried out physical verification of foodgrains and pulses lying inside the godown and found 6721 quintals of foodgrains and pulses in the warehouse and 3258 quintals of foodgrains and pulses in the cold storage. Mr. Sushil Kumar Sharma produced the acknowledgment given to concerned private parties for the goods kept in the cold storage but no acknowledgment was given for the goods kept in the warehouse on the ground that acknowledgment/receipt book was out of print.

2. The case of the respondent is that the petitioners contravened Clause 3 and 4 of Order No.F.3(2)/77-F&S(P&C) dated 22nd September, 1977 issued u/s 3 of Essential Commodities Act. The relevant clause of the aforesaid order, *inter alia*, read as under:-

“3.Display of Prices of Articles:- Unless the price is already displayed on the article itself or its container packet or wrapper or required to be displayed in a particular form and manner under any other law for the time being in force, every dealer shall display the price of every article included in Schedule-I in his shop in any one of the following manners:-

- (a) By affixing or tagging a label to each article;
- (b) By writing the price in ink on each article;
- (c) By putting a placard at the place where one or more of the same articles are kept;
- (d) In such other manner as may be specified by the Commissioner from time to time;

Provided that unless otherwise directed by the Commissioner it shall be deemed sufficient for purposes of this clause if one card or placard, as the case may be, is displayed in front of each stock of an article and if an article is stored in the shop, the display of price on all such articles in store need not be made if price on one or more of the same article is displayed in the shop.

Provided further that in case of fresh stock received by a dealer, the price in terms of this clause shall be displayed by him within 48 hours from the time of receipt of the article in his shop or before any article from such fresh stock is offered for sale, whichever is earlier.

4. Display of stocks of Articles:- Unless, where the stocks of any article is required to be displayed in a particular form and manner under any other law for the time being in force, every dealer shall, before commencement of business on any day, display conspicuously on a stock board as near to the entrance of his business premises as possible in legible and bold letters, the stock position of each article included in schedule-II by writing therein the words "available" against each article in stock and the words "not available" against each of those not in stock."

3. The learned Addl.P.P., who is assisted by the IO, SI S.P. Singh of Police Station Anti Hoarding Cell of Delhi Police states that the petitioners had contravened clauses 3 and 4 of the aforesaid order by

not displaying the prices of articles kept in the warehouse in terms of Clause 3 of the Order and by not displaying the stock possession in terms of Clause 4 of the Order.

4. A bare perusal of the term 'dealer' given in clause 2(c) of the aforesaid order would show that it applies only to a person or a firm which carries on directly or otherwise the business of selling, supplying or distributing any article for cash or for deferred payment or for commission, remuneration or other valuable consideration 'in a shop'. Article has been defined in Clause 2 (a) to mean an essential commodity included in the schedule. There is no averment anywhere in the charge-sheet or in the FIR that NAFED was carrying on, directly or indirectly the business of selling, supplying or distributing any essential commodity included in the schedule to this order for cash or for deferred payment or for consideration.
5. Definition of the expression 'shop' given in clause 2(g) of the Order would show that it includes any business premises where articles are kept for sale but does not include a godown or a warehouse used separately for bulk storage. There is no allegation either in the FIR

or in the charge-sheet or any of the documents annexed to the charge-sheet that the foodgrains etc. kept in the warehouse of petitioner No.1 were meant for sale from the premises of NAFED, petitioner No.1. These foodgrains admittedly belonged to private parties and were kept in the warehouse of NAFED for storage purpose. They were meant for sale but not at the premises of NAFED. They were to be sold from the premises of the dealers to whom the foodgrains belonged. It is respondent's own case that these foodgrains had been kept in the warehouse of petitioner No.1. Therefore, the warehouse of NAFED where these foodgrains had been stored cannot be said to be shop within the meaning of the Clause 2(g) of the aforesaid order.

6. Since neither NAFED, is a 'dealer' within the meaning of Clause 2(c) nor the warehouse of NAFED is a shop as defined in Clause 2(g) of the aforesaid order, neither Clause 3 nor Clause 4 applies to the foodgrains which had been stored in the warehouse of petitioner No.1. It would be appropriate to re-iterate here that Clause 3 provides for display by "dealer" in respect of the article kept in the "shop" and since neither NAFED is a dealer nor its warehouse is a shop

within the meaning of aforesaid order, clause 3 does not apply. Similarly, Clause 4 applies to a dealer in respect of the articles which have been kept in the business premises. As NAFED is not a “dealer” within the meaning of clause 2(c) nor the warehouse was a business premises for the purpose of sale of even foodgrains articles, clause 4 of the order also does not apply.

7. For the reasons given in the preceding paragraphs, even if all the allegations made in the charge-sheet and the documents annexed to the charge-sheet are taken as correct, no contravention of the aforesaid order on the part of any of the petitioners is made out. The proceedings initiated against the petitioners cannot be continued and are liable to be quashed. Accordingly, FIR No.77/2008 registered at P.S. Keshav Puram against the petitioners and the proceedings arising therefrom are hereby quashed.

(V.K.JAIN)
JUDGE

NOVEMBER 27, 2009
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