



2025:AHC:156207

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 98 of 1986

Santoo Lal And Others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	P.P. Srivastava
Counsel for Respondent(s)	:	A.G.A.

Court No. - 29

**RESERVED ON 28.8.2025
DELIVERED ON 4.9.2025**

HON'BLE ANISH KUMAR GUPTA, J.

1. Heard Sri Birendra Singh, learned counsel for the appellant no. 4, Sri Shiv Babu Dubey, learned counsel for appellant no. 2, Sri Rajesh Kumar, learned Amicus Curiae for the appellants and Sri S.K. Ojha, learned A.G.A.-I and Sri Satyendra Nath Tiwari, learned A.G.A. for the State.

2. The instant criminal appeal has been filed by the appellants being aggrieved by the judgement and order dated 6.1.1986 passed by Special Judge (E.C. Act), Banda in Special Case No. 6 of 1985 (State vs. Santoo Lal and others) whereby the appellants herein are convicted for the offence under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 for contravening order 3 of U.P. Foodgrains Dealers (Licensing and Restrictions on Hoarding) Order, 1976 made under the provisions of Section 3 of the Essential Commodities Act and were sentenced to undergo three and a half years imprisonment.

3. Briefly stated the facts of the prosecution case are that on 8.4.1985 at around 1 a.m., the Senior Marketing Inspector Sri C.P. Singh (P.W.1) along with Marketing Inspectors Sri Ram Singh, Sri Dadibal and Sri Jagdish Prasad as well as Kamdars Ganga Ram, Virendra Kumar and Ram Autar of his office went to Badausa for checking the illegal trade in essential commodities. They also took along with them Constable Munna Lal and at around 3 a.m. they checked truck no. CPA4247 in which 140

bags of Dal, Matar was found. At about 5 a.m. they signaled another truck coming from Atarra to stop for checking. The truck was stopped, however one person who was also on board on the said truck ran away from the spot. However, subsequently his name was disclosed by the other person as Krishna Dutta S/o Ram Nath resident of Badausa road Attarra, whereas three other persons, namely, Santoo Lal, Brij Bihari and Bhawani Din along with driver Ainuddin were present on the truck. On checking of the said truck it was found it was carrying 106 bags of rice. Out of which 42 bags containing 37 quintals of rice belonged to accused Santoo Lal, 33 bags containing 34 quintals of rice belonged to accused Krishna Dutta and accused Brij Bihari and 31 bags containing 30 quintals of rice belonged to accused Bhawani Din.

4. As per the prosecution case, they were carrying the consignment to Satna (Madhya Pradesh) but they did not possess the release order, Builty, cash memo, gate pass of Mandi Samiti and release certificate and had also not given to the State Government 60% levy on their consignment. None of them were in possession of license for sale, purchase, storage and carriage. These persons were engaged since long in the work of smuggling of rice and even the consignment loaded on truck was being carried for sale in black market.

5. The truck UGH 69, its driver Ainuddin and traders Santoo Lal, Brij Bihari and Bhawani Din were taken into custody and the truck with its entire load of rice was taken to firm Chandra Bhushan and Company at Badausa for weighing the rice. Weighing memo was prepared and samples were taken from all the bags. The sample was kept in two bags and one such bag was deposited in the police station as Exhibit 1. The entire load of rice was given in the supurdgi of Kishori Lal, the partner of firm M/s Chandra Bhushan and Company. The supurdginama was duly signed by Inspectors, Kamdars and witnesses and Kishori Lal and a report of the incident was lodged at the police station.

6. The truck, its drivers and the accused persons were brought to the police station-Badausa and they were handed over to the police along with samples of rice collected at the police station. The sample was deposited in the Malkhana and all the four accused persons were sent to

lockup. FIR was registered and thereafter the investigation of the case was handed over to A.S.I. Abad Ullah Khan, who after completion of the investigation submitted the charge sheet on 22.11.1985 against the appellants herein and driver Ainuddin. Subsequent thereto, sanction for prosecution was obtained from the District Magistrate which was issued by him on 22.5.1985 against the appellants for contravening the Order 3 (1 and 2) of the Uttar Pradesh Foodgrains Dealers (Licensing and Restrictions on Hoarding) Order, 1976 (hereinafter referred to as "Foodgrains Order, 1976") and Orders 3 and 4 of Uttar Pradesh Rice and Paddy (Levy and Regulation of Trade) Order, 1977 (hereinafter referred to as "Order, 1977") framed under Section 3 of the Essential Commodities Act, 1955 (hereinafter referred to as "the E.C. Act") constituting offence under Section 7 of the said Act.

7. In support of its case the prosecution examined P.W. 1-the complainant, Senior Marketing Inspector C.P. Singh; P.W. 2-Bhagwandas A.J.A Collectorate Banda, who was examined to prove the sanction; P.W. 3-Ram Prasad was examined to prove the documentation at the police station including the registration of FIR and P.W. 4- Kamdar Ganga Ram, as eyewitness of the entire process. In his statement under Section 313 Cr.P.C. accused Santoo Lal had stated that accused Krishna Dutta was also on board.

8. The defence has also led the defence witness Ram Nath as D.W. 1 who was the father of accused Krishna Dutta and uncle of accused Brij Bihari. He filed khatauni and khasra and told that he produces paddy in his farm. He had sent a few bags of rice for sale through accused Brij Bihari in the truck from Atarra to Karwi. His son Krishna Dutta had not gone with the consignment. Monis Ali is D.W. 2 had also filed khatauni and khasra and stated that accused Bhawani Din is his servant through whom he had sent a few bags of rice to Karwi for sale. Gaya Prasad (D.W. 3) had filed khatauni and khasra and stated that he had loaded 21 bags of rice produced by him in his own farm and was sending the same for sale at Karwi. Maiyadin (D.W. 4) had also filed Khatauni and Khasra and stated that he had produced paddy in his field out of which he had consigned 21 bags of rice in the said truck for Karwi for sale. All the defence witnesses have also told that they had made applications to the

District Magistrate for release of the consignment to them. After conclusion of the trial, the trial court has convicted and sentenced all the accused persons as aforesaid.

9. During the pendency of the instant appeal out of the four appellants, appellant no. 1-Santoo Lal and appellant no. 3-Bhawani Din have died and their appeal was abated vide order dated 31.7.2025. Thus, the instant appeal survives only on behalf of appellant no. 2-Brij Bihari and appellant no. 4-Krishna Dutta.

10. Pursuant to the order dated 31.7.2025 passed by this Court, the appellants no. 2 and 4 were arrested and sent to jail. Thus, the instant appeal is being heard on behalf of surviving appellants no. 2 and 4 as no application for continuation of appeal on behalf of appellants no. 1 and 3 is made in the instant appeal.

11. Learned counsel for the appellants submits that Ram Nath, father of the appellant no. 4-Krishna Dutta was an agriculturist who used to produce paddy in his farms. Khasra and Khatauni of the relevant years were produced on record thus, the appellants here were the farmers and were going to sell their agricultural produce to the market at Karwi. They were not involved in any business or dealership. Hence, they were not required to take any license or documentation with regard to sale of their own agricultural produce in the market. Even otherwise, levy of taxes is to be charged from the purchaser of the grains from the farmers and not from the farmers. Since they were not the dealers nor the businessman but were the farmers who are exempted within the definition of dealer as provided in Clause 2(c) of the Foodgrains Order, 1976.

12. Learned counsel for the appellants further submits that there is no evidence available on record to establish prima facie that the appellants herein were the dealers, traders or the businessmen for whom the provisions of Section 3 and 7 of the E.C. Act are applicable. Thus, it is submitted by learned counsel for the appellants that they have been wrongly convicted and sentenced by the trial court in the instant case, therefore, they seek their acquittal in the instant case.

13. Learned counsel for the appellant further submits that the appellants

herein belong to village-Pauhar and after going through a certain distance from the village at the main road, the road bifurcates into two where one road goes to Karwi Market and the other goes to Atarra Market. The distance from the bifurcation to the Karwi and Atarra Mandi is almost same. Therefore, no fault can be found if the farmers of village-Pauhar were going to sell their rice produced in their own agricultural field in the market at Karwi. There is no material on record to show that the appellants were carrying their agricultural produce to Satna, as has been alleged by the prosecution merely on the basis of apprehension without their being any foundational evidence available on record. It is further submitted by learned counsel for the appellants that since the appellants were the farmers and the rice carried by them was their agricultural produce, therefore, they were not liable to pay any levy as is being alleged by the prosecution.

14. Learned counsel for the appellants also relied upon the provisions of Section 9 and Section 17 of the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 and submits that those provisions are not applicable to a producer in respect of agricultural produce produced, reared, caught or processed by him . Otherwise also it is settled position of law that it is the purchaser who would be liable to pay the levy on the agricultural produce. For ready reference, Section 9 and 17 of the Uttar Pradesh Krishi Utpadan Mandi Samiti Adhiniyam, 1964 is reproduced below:-

“9. Effects of declaration of Market Area.—1) As from the date of declaration of an area as Market Area no Local Body or other person shall, within the Market Area, set up, establish or continue, or allow to be set up, established or continued, any place for the sale, purchase, storage, weighment or processing of the specified agricultural produce, except under and in accordance with the conditions of a license granted by the Committee concerned, anything to the contrary contained in any other law, custom, usage or agreement notwithstanding :

Provided that the provisions of this sub-section shall not apply to a producer in respect of agricultural produce produced, reared, caught or processed by him or to any person who purchases or stores any agricultural produce for his domestic consumption.

[Provided further that in case of direct purchase from farmers, to set up

collection/ aggregation centers in the proximity of the production area and for the private market yard, Director, Agricultural Marketing shall be the Licensing Authority for that market area.]

(2) No person shall, in a Principal Market Yard or nay SubMarket Yard, carry on business or work as a trader, broker, commission agent, warehouseman, weighman, palledar or in such other capacity as may be prescribed, in respect of any specified agricultural produce except under and in accordance with the conditions of a license obtained therefor from the Committee concerned.

[(3) The provisions of sub-sections (1) and (2) shall not apply in relation to any specified agricultural produce pledged or hypothecated in favour of a bank as security for any amount advanced by such bank.

Explanation— For the purposes of this sub-section, the word “bank” shall have the meaning assigned to it in the Uttar Pradesh Regulation of Money Lending Act, 1976.]

17. Powers of the Committee.—*A Committee shall, for the purposes of this Act, have the power to —*

(i) issue or renew licenses under this Act on such terms and conditions and subject to such restrictions as may be prescribed, or, after recording reasons therefor, refuse to issues or renew any such license ;

(ii) suspend or cancel licenses issued or renewed under this Act; Provided that before cancelling a license except on the ground of conduct which has led to the conviction of the licensee under section 37, the Committee shall afford reasonable opportunity to him to show cause against the action proposed ;

(iii) levy and collect, —

(a) such fees as may be prescribed for the issue or renewal of licenses ; and

(b) market fee which shall be payable on transactions of sale of specified agricultural produce in the market area at such rates, being not less than one percentum and 2[not more than two percentum] of the price of the agricultural produce so sold as the State Government may specify by notification, and development cess which shall be payable on such transactions of sale at the rate of half percentum of the price of the agricultural produce so sold, and such fee or development cess shall be realized in the following manner :-

(1) if the produce is sold through a commission agent, the commission agent may realize the market fee and the development cess from the purchaser and shall be liable to pay the same to the Committee;

(2) if the produce is purchased directly by a trader from a producer, the trader shall be liable to pay the market fee and development cess to the Committee ;

(3) if the produce is purchased by a trader from another trader, the trader selling the produce may realize it from the purchaser and shall be liable to pay the market fee and development cess to the Committee ;

Provided that notwithstanding anything to the contrary contained in any judgment, decree or order of any court, the trader selling the produce shall be liable and be deemed always to have been liable with effect from June 12, 1973 to pay the market fee to the Committee and shall not be absolved from such liability on the ground that he has realized it from the purchaser:

Provided further that the trader selling the produce shall not be absolved from the liability to pay the development cess on the ground that he has not realized it from the purchaser:

(4) in any other case of sale of such produce, the purchaser shall be liable to pay the market fee and development cess to the Committee ;

Provided that no market fee or development cess shall be levied or collected on the retail sale of any specified agricultural produce where such sale is made to the consumer for his domestic consumption only:

Provided further that notwithstanding anything contained in this Act, the Committee may at the option of, as the case may be, the commission agent, trader or purchaser, who has obtained the license, accept a lump sum in lieu of the amount of market fee or development cess that may be payable by him for an agricultural year in respect of such specified agricultural produce, for such period, or such terms and in such manner as the State Government may, by notified order specify:

Provided also that no market fee or development cess shall be levied on transactions of sale of specified agricultural produce on which market fee or development cess has been levied in any market area if the trader furnishes in the form and manner prescribed, a declaration or certificate that on such specified agricultural produce market fee or development cess has already been levied in any other market area.

[(c) User charge shall be levied and collected by the market committee in consideration to the rendered material or services in the principal market yard/sub-market yard/market sub-yard, as prescribed by the state government.]

[(iii-a) realize interest calculated in the manner prescribed in the bye-laws 7[at the rate prescribed in the Uttar Pradesh Trade Tax Act, 1948 for the unpaid amount of Trade tax] on the unpaid amount of market fee from the date immediately following the period prescribed for payment of market fee in the bye-laws ;]

(iv) operate and utilize the Market Committee Fund for all or any of the purposes of this Act ;

[(v) raise from the State Government or the Board or, subject to previous sanction by the Board, from any other Committee or a recognized financial institution, moneys required for discharging its functions under this Act ;]

[(v-a) advance loans to the Board on such terms and conditions as may be mutually agreed upon between the Board and the Committee;

(v-b) advance loans to any other Committee subject to previous sanction of the Director on such terms and conditions as the Board may determine ;]

(vi) employ, subject to the provisions of section 23, officers and servants of the Committee ;

(vii) appoint Sub-Committees, each consisting of two or more of its members, for exercising such powers, performing such duties and discharging such functions as may be assigned to them by the Committee ; and

(viii) exercise such other powers as may be prescribed.

[Explanation - For the purpose of clause (iii), unless the contrary is proved, any specified agricultural produce taken out or proposed to be taken out of a market area by or on behalf of a licensed trader shall be presumed to have been sold within such area and in such case, the price of such produce presumed to be sold shall be deemed to be such reasonable price as may be ascertained in the manner prescribed.]”

15. Per contra, learned A.G.A. for the State submits that since the appellants herein were carrying the rice for sale outside the state at Satna

which was not permissible and the allegation is that the appellants were involved in trading of rice for which no documentation was available with the appellants. Appellant no. 2 was apprehended at the time of inspection by the Inspector, however appellant no. 4 has escaped from the truck and he was named by the co-accused present, namely, Santoo Lal. Thus, prima facie case of violation of the provisions of the Foodgrains Order, 1976 as well as Order, 1978 framed under Section 3 of the E.C. Act is fully established and the appellants have been rightly convicted for the offence under Section 7 of the E.C. Act.

16. Learned A.G.A. further relying upon the definition of ‘dealer’ as provided in Clause 2(c) of the Foodgrains Order, 1976 submits that dealer means a person engaged in the business of purchase, sale or storage for sale of any one of the foodgrains in a quantity of five quintals or more at any one time or in a quantity of twenty five quintals or more of all foodgrains taken together. He has further relied upon the judgements of the Apex Court in **Rajinder Kumar Bansal and others vs. Municipal Committee and others, AIR 2021 SC 3903** and **Commissioner of Sales Tax vs. Sai Publication Fund, (2002) 4 SCC 57** and submits that business is used in Clause 2(c) is a very wide term and includes the agriculture as well. It is further submitted by learned A.G.A. that the term agriculture is also covered within the meaning of business. In support of his said submission, he has relied upon judgement of Madras High Court in **Ramashre Chandrakar vs. Dena Bank and Another, 1996 Company Cases 147**. Thus, learned A.G.A. submits that no interference is called for in the instant appeal and the appeal is liable to be dismissed.

17. Having heard the rival submissions so made by learned counsel for the parties, this Court has carefully gone through the records of the case.

18. In the instant case the crucial evidence is that of P.W. 1 C.P. Singh, who was the Senior Marketing Inspector, Atarra who had inspected and apprehended the truck, seized the rice and arrested the appellants. Therefore, it would be relevant to take a close look at the evidence of P.W. 1. He has supported the basic prosecution case that on 8.4.1985 he had formed a team and went for inspection at around 1 a.m. and at about 5 a.m. he found that one truck UGH 69 was coming from the side of Atarra

and was going towards Karwi and it was informed to him that the said truck was going towards Satna. As the truck stopped, one person ran away and escaped from the spot, however the persons boarding the truck, namely, Brij Bihari, Santoo Lal and driver Ainuddin told him that the person who has escaped from the spot was Krishna Dutta. He inspected the material loaded on the truck and found that it was rice. On the query made with the driver of the truck he told that he did not possess any release certificate, gate pass of the Mandi Samiti, Builty or license nor the same was in possession of the accused Brij Bihari, Santoo Lal or Bhawani Din. The said truck was taken by him to M/s Chandra Bhushan and Company and handed over the entire load of rice in the supurdagi of its partner-Kishori Lal. All the load of truck was unloaded and weighed, bags were counted and weighing memo was prepared. Signatures of the accused persons were obtained on the same. All the grains were handed over to Kishori Lal, the partner of the firm M/s Chandra Bhushan and Company at Badausa. Samples were taken and sealed. One sample was kept by the Inspector himself and one sample was sent to the police station at the time of lodging report of the instant case. He further submitted that the report was dictated by him and scribed by Kamdar Ganga Ram and whatever was dictated by him was written in the report. The report was also read over to other Inspectors and the persons present there and their signatures were obtained.

19. Total bags of rice was 106 which contained one quintal of rice each. 42 bags containing 37 quintals of rice belonged to Santoo Lal, 33 bags containing 34 quintals of rice belonged to appellant Brij Bihari and Krishna Dutta. The other 31 bags containing of 30 quintals of rice belonged to Bhawani Din. In the cross examination, on a specific question asked whether the license and gate pass of Mandi Samiti is required for the dealers of rice or the same is applicable to the farmers who grow the paddy in their field and go for selling the same in the market. He answered that whenever a farmer brings its produce to the nearest market, then he is not required to have the license. However, when a farmer after taking out the rice from the paddy go for selling the same in the market then the license is required. He further admits in the cross-examination a farmer can sell all his paddy produce in the nearest market or any other

market, however, he cannot trade in rice. He further stated in the cross-examination that if any farmer is getting the rice from their paddy and collecting the same in the house and however, he cannot sell the said rice without levy or license. When it was specifically asked to this witness on the basis of which law he has made this statement, he said that he is not aware of any law in this regard and he has not faced any such case earlier.

20. He again repeated that the farmer can sell the paddy and rice in the nearest market and if he does not get the proper price in the nearby market, then he can sell in the other market; however, the rice cannot be sold without payment of levy. P. W. 2 is the person who was working in the office of District Magistrate who had issued the sanction in the instant case and he has proved the sanction of prosecution issued by the District Magistrate.

21. P. W. 3 is the constable Ram Prasad who had gone along with the team of Inspectors. He is also just a formal witness. P. W. 4 is the Kamdar Ganga Ram working in the office of P. W. 1. He has also supported the story of prosecution, seizure and recovery of rice as well the same was being carried without any valid documents. He has also supported the weighing of the said rice and supurdagi of the same to one Kishori Lal. Thus, from the entire prosecution evidence, in the considered opinion of this court the prosecution has failed to prove the basic foundational facts as to whether the appellants herein were the dealers or the traders of rice. The entire evidence is silent about the said facts. Before proceeding further, it would be relevant to take note of the provisions of clause 2 (c) and clause 3 of the **Uttar Pradesh Foodgrains Dealers (Licensing and Restrictions on Hoarding) Order, 1976**, which reads as under:

“2. Definitions.—(c) “dealer” means a person engaged in the business of purchase, sale or storage for sale, of any one of the foodgrains in a quantity of five quintals or more at any one time or in a quantity of twenty five quintals or more of all foodgrains taken together, but does not include the Food Corporation of India or any other Corporation established by the Central or State Government for development of seeds or a person who—

- (i) stores any foodgrains produced by him by personal cultivation; and*
- (ii) does not engage in the business of purchase or sale of foodgrains;*

3. Licensing of Dealers and commission agents. —(1) *No person shall carry on business as a dealer or commission agent except under and in accordance with the terms and conditions of a license issued in this behalf by the licensing authority.*

(2) *For the purpose of this clause, any person who stores any foodgrains in quantity of five quintals or more of any one of the foodgrains or twenty-five quintals of all foodgrains taken together at any one time shall, unless the contrary is proved, be deemed to store the foodgrains for the purposes of sale.”*

22. Thus, from the definition of “dealer” as provided in clause 2 (c), it is apparent that dealer means a person engaged in the business of purchase, sale or storage for sale, of any one of the foodgrains in the quantity of five quintals or more at any one time or in a quantity of twenty five quintals or more of all foodgrains taken together, but does not include the Food Corporation of India or any other Corporation established by the Central or State Government and also excludes a person who stores any foodgrains produced by him by personal cultivation and does not engage in the business of purchase or sale of foodgrains. The case of the appellants herein is that appellants were the farmers and with regard to said fact ample evidence has been led by the defence that the father of appellant no. 4-Krishna Dutta was having the agricultural land and paddy was sown in their fields and paddy and rice was produced in their own field which was being carried for sale in the said truck to the nearby market at Karwi and appellant no. 2-Brij Bihari was carrying the same on the said truck. The Clause 3 of the Foodgrains Order, 1976 deals with licensing of dealers and commission agents and prohibits that no person shall carry on business as a dealer or commission agent except under and in accordance with the terms and conditions of a license issued by the licensing authority and Clause 3(2) thereof provides that any person who stores any foodgrains in quantity of five quintals or more of any one of the foodgrains or twenty-five quintals of all foodgrains taken together at any one time shall, unless the contrary is proved, be deemed to store the foodgrains for the purposes of sale.

23. Thus, from the aforesaid definition of “dealer” the farmers who produce the foodgrains in their own field are categorically exempted from

the definition of “dealer” and hence, they were not required to take any license as provided in Clause 3 of the Foodgrains Order, 1976.

24. The Order, 1977 was not in vogue on the date of incident i.e. 8.4.1985 as the same was replaced by the U.P. Rice and Paddy (Levy and Regulation of Trade) Orders, 1981. Thus, the sanction granted by District Magistrate under the Order, 1977, was not a valid sanction. Thus, the Court is not examining the violation of Order, 1977, as the same was not applicable.

25. The word “Business” is a very wide connotation and in its wider sense, it may include every human activity. In **Rajinder Kumar Bansal and others vs. Municipal Committee and others, AIR 2021 SC 3903**, the Apex Court has held as under:-

"9. The Full Bench of the High Court while deciding the said question, held as under :

“24. Wherever the word “business” is defined in a particular statute, it is to be given the meaning ascribed to it in that definition. The question whether the word “business” has been used in a narrower sense or in a larger sense arises in a case where no statutory definition of that expression has been given in the relevant piece of legislation. At page 164 of Aiyar's Law Lexicon of British India (1940 Edition), the word “business” in its larger sense has been stated to mean “an affair requiring attention and care; that which busies or occupies one's time, attention, and labour as his chief concern.” In the same passage the word “business” is mentioned to convey, in the narrower sense, “mercantile pursuits; that which one does for a livelihood; occupation; employment; as, the business of a merchant; the business of agriculture.” It has finally been stated that “the word ‘business’ is of large signification, and in its broadest sense includes nearly all the affairs in which either an individual or a corporation can be actors.” Referring to the larger sense of the word, it has again been stated at p. 165 that “business is that which engages the time, talents and interest of a man; it is what a man proposes to himself; what belongs to a person to do or see done, that is properly his business; and a person is bound either by the nature of his engagements, or by private and personal motives, to perform a service for another”.

31. *After carefully considering the law laid down in all the above cases, I am Inclined to hold:*

(1) That the word “business” is by itself not a word of art and is capable of being construed both in the wider as well as in the narrower sense depending on the context in which it occurs.

(2) Since the “landlord” within the meaning of Section 2(c) of the Act can include an individual as well as juristic person and there is no special restrictive definition of the word business in the Act, the expression “business” has been used in Section 2(f) of the Act (in the definition of “rented land”) as well as in Sections 13(3)(a)(ii) & (b) in the wider sense and not in the narrower sense.

(3) The word business in Section 2(f) and Section 13(3)(a)(ii) of the Act need not necessarily be commercial business carried on with a profit motive. The word includes within its scope a charitable business or a dealing in the interest of the public or a section of the public.

(4) The scope of the word “business” in the aforesaid provision of the Act is not controlled or coloured by the word “trade” occurring alongside it in Section 2(f) of the Act. Whereas every trade would be a business, the reverse of it is not true. Business is a genus, of which commercial and non-commercial business and trade are some of the species.”

(Emphasis Supplied)

26. In Commissioner of Sales Tax vs. Sai Publication Fund, (2002) 4 SCC 57, the Apex Court has held as under:-

“11. No doubt, the definition of “business” given in Section 2(5-A) of the Act even without profit motive is wide enough to include any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture and any transaction in connection with or incidental or ancillary to the commencement or closure of such trade, commerce, manufacture, adventure or concern. If the main activity is not business, then any transaction incidental or ancillary would not normally amount to “business” unless an independent intention to carry on “business” in the incidental or ancillary activity is established. In such cases, the onus of proof of an independent intention to carry on “business” connected with or incidental or ancillary sales will rest on the Department.

Thus, if the main activity of a person is not trade, commerce etc., ordinarily incidental or ancillary activity may not come within the meaning of "business". To put it differently, the inclusion of incidental or ancillary activity in the definition of "business" presupposes the existence of trade, commerce etc. The definition of "dealer" contained in Section 2(11) of the Act clearly indicates that in order to hold a person to be a "dealer", he must "carry on business" and then only he may also be deemed to be carrying on business in respect of transaction incidental or ancillary thereto. We have stated above that the main and dominant activity of the Trust in furtherance of its object is to spread message. Hence, such activity does not amount to "business". Publication for the purpose of spreading message is incidental to the main activity which the Trust does not carry on as business. In this view, the activity of the Trust in bringing out publications and selling them at cost price to spread message of Saibaba does not make it a dealer under Section 2(11) of the Act."

27. The Madras High Court in **Ramashre Chandrakar vs. Dena Bank and Another, (1996) 86 Company Cases 147** has held as under:-

"The word "business" is a word of indefinite import and has a very extensive and wide meaning. In a general sense, "business" means practically anything which is an occupation distinguished from some pleasure. It encompasses within its fold any venture in the nature of trade, commerce, manufacture or any profession, calling and vocation. The word "business" connotes some real substantive and systematic and organised course of activity with a definite purpose and object. It, therefore, turns out that all professions are business. The question, therefore, arises whether "agriculture" is a profession which falls within the ambit and scope of the word "business" or not so as to attract the application of the proviso attached to sub-section (1) of section 34 read with Explanation II thereof. As commonly understood "agriculture" means the science and art of cultivating the land and allied activities or conduct. The ultimate use of the produce from the land may not be human consumption. Even if it is used for trade or commerce, the land yielding the produce will be used for agricultural purposes. There may be a variety of activities which may well be styled as "agriculture". It, therefore, necessarily follows that agriculture will amount to a profession of cultivation which would fall within the meaning of "business".

According to Webster's Dictionary, the word "business" means employment, profession, vocation or any occupation for livelihood. In the same dictionary the word "agriculture" means the science and practice of the cultivation of the soil. Again, according to Shorter Oxford Dictionary, the word "business" means occupation, profession or trade and the state of being busily engaged in anything. In a general sense, it means action which occupies time, demanding attention and labour, serious occupation and work as opposed to pleasure or recreation or pastime. In the same Oxford Dictionary, the word "agriculture" means the science and art of cultivating the soil including the allied pursuits of gathering crops and rearing of livestock, tillage, husbandry and farming. It, therefore, necessarily, follows that "agriculture" will amount to a profession or cultivation of land which would fall within the meaning of "business". From the aforesaid discussion also, no other tenable meaning is discernible of the word "business" which will exclude the inclusion of "agriculture" within the meaning of a profession which ultimately means a business. In the case of CIT v. Raja Benoy Kumar Sahas Roy, AIR 1957 SC 768, it has been observed that "agriculture" in its root sense means ager, a field and culture, cultivation, cultivation of field which of course implies expenditure of human skill and labour upon land. Similarly, in the case of Barendra Prasad Ray v. ITO [1981] 129 ITR 295 (SC) it has been held that the word "business" is one of wide import and it means an activity carried on continuously and systematically by a person by the application of his labour or skill with a view to earning an income. Again, in Sodan Singh v. New Delhi Municipal Committee (1989) 4 SCC 155, their Lordships had an occasion to deal with the words and phrase like "profession", "occupation", "trade" and "business". It has been observed that the word "business" is a very wide term and would include anything which occupies the time, attention and labour of a man for the purpose of profit. It may include in its form trade, profession, industrial and commercial operations, purchase and sale of goods, and would include anything which is an occupation. It has been further held that the word "occupation" has a wide meaning such as any regular work, profession, job, principal activity, employment, business or a calling in which an individual is engaged. From the above discussions, it has to be held that agriculture is a profession which falls within the four

corners of the word "business" and if it is a business, it would be covered by Explanation II of the proviso to section 34(1) of the Code. Consequently, it would be open to the courts to award the contractual rate of interest or where there is no contractual rate the rate at which moneys are lent or advanced by nationalised banks in relation to the commercial transactions."

27. In State of Tamil Nadu and Another vs. Board of Trustees Of The Port Of Madras, (1999) 4 SCC 630, the following observations were made by the Apex Court:-

"16. The words "carrying on business" require something more than merely selling or buying etc. Whether a person "carries on business" in a particular commodity must depend upon the volume, frequency, continuity and regularity of transactions of purchase and sale in a class of goods and the transactions must ordinarily be entered into with a profit motive (Board of Revenue v. A.M. Ansari (1976) 3 SCC 512). Such profit motive may, however, be statutorily excluded from the definition of "business" but still the person may be "carrying on business".

17. Counsel on both sides cited various rulings before us, some relating to definition of "business" before the profit motive was excluded and some thereafter. Some rulings related to cases where the main transaction was "business" with profit motive while some were sales where it was not the motive. In some cases the sales were of subsidiary products. Cases where the main activities were not "business" were also cited. Cases where the transactions arose out of statutory duties were also cited and some were in connection with services rendered. Some were by governments. These various types of cases cited could appear to be somewhat overlapping, but in our view, if the principles on which they are based are kept in view, it can be seen that there is no such overlapping."

28. Thus, from the aforesaid judgements, it is apparent that the word "business" has a wider meaning which may cover each and every sphere of human activity but for the purposes of interpretation of the Foodgrains Order, 1976 the word "dealer" has been properly defined and in the definition of "dealer" the farmers have been expressly excluded from obtaining the license etc., for selling their agricultural produce in the market. Thus, from the aforesaid express exclusion the farmers cannot be

held to be liable for obtaining the license etc., while they were going to sell their agricultural produce in the market. Otherwise also, as per provisions of Sections 9 and 17 of Mandi Adhiniyam, 1964, the farmers are exempted from levy of any market fee etc.

29. Thus, from the entire scheme of the Act and the orders issued under the Act, the farmers who are cultivating their fields and producing rice are expressly excluded from the definition of dealer and there is no restriction for the sale of their agricultural produce in the nearby market or the adjoining markets, if they do not get optimum price in the nearby market. There is no evidence available on record even to prima facie establish that the appellants were the dealers or traders in rice or they were repeatedly involved in selling and purchasing the rice. Rather contrary to that, the defence has successfully led the evidence to establish that they were the farmers and they have sown the paddy in their field and the rice which they were carrying to sell in the nearby market at Karwi is their agricultural produce. Therefore, by no stretch of imagination, it can be held that the appellants herein were the dealers. Thus, the Regulations and Orders which were relied upon by the prosecution are not applicable against the appellants. Otherwise also, the Regulations with regard to levy and the taxes is to be paid by purchaser of such grains and not by the farmers who had produced those grains. Thus, when a farmer is going to sell his agricultural produce in the market, he is not required to carry any document with regard to his agricultural produce and the same is neither possible for him to obtain nor is required under law.

30. The Court has also gone through the judgement of the trial court concerned which is based on surmises and conjunctures wherein the trial court has tried to draw the conclusions by guessing the facts which were not led by the prosecution evidence. As to why the farmers had proceeded at 4:30 am from Atarra if the truck has to go only up to Karwi therefore, adverse inference has been drawn that the truck was being carried to Satna. This is without any evidence and unsustainable. The prosecution has not led any concrete evidence that the appellants were carrying the rice to any other market than Karwi which is admitted case of the appellants that they have produced the rice in their own agricultural fields and they were carrying it to the nearby market at Karwi to fetch a better

price. It is further settled position of law that the prosecution must stand on its own legs and cannot take benefit of any lapses on the part of defence, however the trial court on its own surmises and conjunctures has tried to draw conclusions against the appellants, which is impermissible in criminal jurisprudence. Therefore, in the considered opinion of this Court, the impugned judgement and order dated 6.1.1986 is not sustainable in the eye of law and the same is liable to be **set aside** and the appellants no. 2 and 4 are hereby acquitted of the offence under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 as there is no contravention on their part of Order 3 of U.P. Foodgrains Dealers (Licensing and Restrictions on Hoarding) Order, 1976 made under the provisions of Section 3 of the Essential Commodities Act.

31. For the aforesaid reason the instant appeal is **allowed** and the conviction and sentence awarded by the trial court, as aforesaid, is **set aside**. The appellants no. 2 and 4, who were arrested pursuant to the non-bailable warrant issued by this Court on 31.7.2025 are hereby directed to be released forthwith.

32. The State Authorities are directed to release the agricultural produce i.e. the rice which was seized by the Senior Marketing Inspector and handed over to one Kishori Lal be returned to the appellants. If the same has already been disposed of, then the State Authorities are directed to pay the current market price of the said agricultural produce. The current market price of the said agricultural produce which was seized in the instant case, shall be determined by the District Magistrate, Banda within two weeks from the date of receipt of certified copy of this order and the State Authorities shall pay the same to the surviving appellants no. 2 and 4 as well as to the legal heirs of appellants no. 1 and 3 within a further period of six weeks.

33. Lower court record be sent back to be consigned along with the copy of judgement for compliance.

34. Registrar (Compliance) shall also communicate this order to the concerned trial court for immediate release of appellant no. 2 and 4.

35. This Court further appreciates the able assistance provided by Sri

Rajesh Kumar, learned Amicus Curiae. Accordingly, an honorarium of Rs. 10,000/- be paid to him, as per rules.

(Anish Kumar Gupta,J.)

September 4, 2025
Kirti