

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

205

CWP-15453-2017
Date of decision:15.11.2023

THE JODHPUR COOP AGRICULTURE SERVICE SOCIETY LTD

.....Petitioners

VERSUS

STATE OF PUNJAB AND ANR

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. M.S. Kang, Advocate
for the petitioner.

Mr. Teevar Sharma, Asst. A.G. Punjab.

VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present writ petition is to the Show Cause Notice Annexure P-2 dated 11.07.2016 issued by respondent No.2 as well as the order dated 06.06.2017 (Annexure P-8) whereby the respondents have been conveyed about their liability to be punished for commission of offences under Clause A and B of the Fertilizer Control Order, 1985 which is punishable under the Essential Commodities Act, 1955.

Counsel for the petitioner contends that the petitioner is a Cooperative Society and as per the bye-laws, the said Society makes arrangement for the supply of agriculture requirement of its members

such as manure, fertilizer, improved seeds, insecticides and other production requisites with a view to promote increased agriculture production and to provide consumption loans to the non-agriculturist members, the Cooperative Society procures fertilizer, seeds, insecticide etc. from the dealers for the mutual benefit of the members. They are hence neither the dealers nor distributors and do not sell fertilizers, seeds, insecticide etc. to non-members. It is more in the nature of a joint purchase for the mutual benefit of the members of the said society. It is contended that since the petitioner-Agriculture Service Society is not a Dealer with the meaning of Clause-(II) (f) of the Fertilizer (Control) order, 1985 for the purposes of Clause-7, hence, they cannot be held criminally liable for a sub standard fertilizer manufactured and distributed by some fertilizer company and its authorized distributor/dealer. It is further contended that the issue has already been considered by the Hon'ble Supreme Court in the judgment of ***“State of Punjab versus Guno Majra Co-operative Agriculture Service Society Limited”*** reported as ***2000 (9) SCC 210*** as well as by a Division Bench of this Court in ***LPA No. 364 of 2017*** titled ***“State of Punjab and another versus the Grangam Multipurpose Coop. Agricultural Service Society Ltd.”*** decided on 11.10.2018. The said view was also followed in the judgment of ***“The Sikanderpur Cooperative Agriculture Multipurpose, Service Society Ltd. versus State of Punjab and another”*** bearing CWP- 30645 of 2018 decided on 12.09.2023.

Counsel for the respondent-State, however, contends that the respondents had sought clarification from the Ministry in this regard

and a review petition bearing Civil No. 908 of 2000 had been filed in the above said case of ***“State of Punjab versus Guno Majra Co-operative Agriculture Service Society Limited”***. A clarification has been issued by the Government of India, Ministry of Agriculture to the fact that the State Government would not be prohibited from taking any other administrative action.

Counsel for the petitioner has no objection to any administrative action being conveyed to them in terms of the Essential Commodities Act and/or the Fertilizer Control Order.

The State counsel could not dispute the applicability of the above said judgments on any other aspect. It is fairly conceded that the Show Cause Notice as well as the order relates to initiation of criminal proceedings against the petitioner-Society and that the same would be hit by the ratio of the judgments referred to by the counsel for the petitioner. The present petition is accordingly allowed in terms of the judgment of Hon'ble Supreme Court in the matter of ***“State of Punjab versus Guno Majra Co-operative Agriculture Service Society Limited”***; the Division Bench judgment of this Court in the matter of ***“State of Punjab and another versus the Grangam Multipurpose Coop. Agricultural Service Society Ltd.”*** bearing ***LPA No. 364 of 2017*** vide judgment dated 11.10.2018 and in the matter of ***“The Sikanderpur Cooperative Agriculture Multipurpose, Service Society Ltd. versus State of Punjab and another”*** passed in CWP- 30645 of 2018 vide judgment dated 12.09.2023.

The present petition is accordingly allowed. The Show cause notice dated 11.07.2016 and the order dated 06.06.2017 are hence

set aside. The respondent-State may if so advised, take appropriate administrative action in accordance with the clarification so accrued.

(VINOD S. BHARDWAJ)
JUDGE

NOVEMBER 15, 2023

Vishal sharma

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No