

SUPREME COURT OF INDIA

State of Punjab

Vs.

Guno Majra Cooperative Agriculture Service Society Ltd.

(V.N. Khare and Doraiswamy Raju JJ.)

29.03.2000

ORDER

1. The only question that arises in this appeal is whether the Agriculture Service Society is a 'dealer' within the meaning of Clause (2)(f) of Fertiliser (Control) Order, 1985 (hereinafter referred to as the 'Order') for the purposes of Clause (7) of the said Order. Clause (2)(f) and Clause (7) of the Order read as under:

Clause (2)(f) 'dealer' means a person carrying on the business of selling fertilisers, whether wholesale or retail (or industrial use), and includes a manufacturer and a pool handling agency carrying on such business and the agents of such person, manufacturer or pool handling agency;

Clause (7)

Dealers to be registered - No person, including a manufacturer, a pool handling agency, (a wholesale dealer, a retail dealer and an industrial dealer) shall offer for sale or carry on the business of selling fertilisers at any place except under and in accordance with the terms and conditions of a certificate of registration granted to him under Clause 9:

Provided that a State Government may, by notification in the Official Gazette, exempt from the provisions of this Clause any person selling fertilisers to farmers in such areas and subject to such conditions as may be specified in that notification.

2. A perusal of Clause (2)(f) and Clause (7) of the Order shows that any person carrying on the business of selling of fertilisers has to obtain a certificate of registration which is to be granted under Clause (9) of the Order. The respondent is the Agriculture Service Co-operative Society and is registered under the Punjab Co-operative Societies Act, 1961. The Society has its own registered bye-law. The appellants herein required the respondent Society to obtain a certificate of registration under Clause (7) of the Order. This was disputed by the respondents. Under such circumstances, the respondents filed a petition under Article 226 of the Constitution before the Punjab and Haryana High Court and the same was allowed, and it was held that since the respondent Society is not carrying on any business in fertilisers, therefore, the Society is not required to obtain a certificate of registration. Under such circumstances, the appellants are in appeal before us.

3. It is not disputed that the respondent society is the Agriculture Service Society and it has got its own bye-law. The members of the Society are agriculturists, who require manure, fertilisers and implements for cultivation. The object for which the respondent Society was formed is to render

service to its members for carrying out agricultural activities. One of the objects of the Society, as indicated in the bye-law, is to make arrangement for supply of agriculture requirements for its members as well as to supply manure, fertilisers, improved seeds, insecticides and other production requisites with a view to promote increased agricultural production. Another object of the Society is to give loans and also to give manure, fertilisers and improved seeds to its members on credit on 'no profit no loss' basis. Under the bye-law, it is not permissible for the respondent Society to sell fertilisers in open market or to anybody else other than its members. From the aforesaid functions of the Society it is apparent that there is no commercial or business activity involved when the Society distributes and supplies fertilisers to its members. The purpose for which the Society has been formed is to help its members in the matter of cultivation. In fact, fertilisers purchased by the Society is for supply and distribution to its members and not for any commercial or business activity. In the absence of any business activity, the respondent Society could not be said to be a 'dealer' within the meaning of Clause (2)(f) of the Order and, therefore, they were not required to take licence under Clause (7) of the Order. We are in agreement with the views taken by the High Court.

4. For the aforesaid reasons, we do not find any merit in this appeal. It is accordingly dismissed. There shall be no order as to costs.