

Before Arun B. Saharya, C.J. & V.K. Bali, J

STATE OF PUNJAB & OTHERS—Appellants

versus

JAWAHAR LAL MALHOTRA—Respondent

L.P.A. No. 1244 OF 1991

7th December, 2001

Essential commodities Act, 1955—Ss. 6-A, 6-B, 2(ia)—Fertilizers (Control) Order, 1985—Cls. 7 & 11—Irregularities in the business of stocking & sale of fertilizers—Confiscation of the seized stocks & cancellation of the certificate of registration of petitioner's firm—Definition of 'Collector' as given in S. 2 (ia) of the 1955 Act includes an SDO if authorised by the Collector to perform the functions and exercise the powers under the 1955 Act—No illegality in the jurisdiction of the S.D.O.(C) exercising the powers of the Collector—Order of confiscation passed without giving a show cause notice to the petitioner as required u/s 6-B—Ld. Single Judge rightly setting aside the order of confiscation—Petitioner in possession of two unauthorised godowns and also unauthorisedly selling some items without getting the permission from the authority—Violation of the provisions of the 1985 Order—Order of the Licensing Authority cancelling the registration certificate of the petitioner and order of the appellate authority dismissing the appeal of the petitioner held to be perfectly valid and in order.

Held, that the definition of 'Collector' as given in S 2(ia) of the 1955 Act also includes Sub Divisional Officer, if authorised by the Collector to perform the functions and exercise the powers of the Collector under the Act of 1955 and in the order pertaining to confiscation of goods, there is a clear mention of delegation of power of Collector to the Sub Divisional Officer (Civil), Samrala. Not only that the SDO(C) could exercise the powers of Collector, the Collector could delegate his powers to the SDO(C) and, indeed, such powers had been delegated to the officer, who passed the order.

(Para 10)

Further held, that the language employed in Section 6-B of the 1955 Act provides no exception whatsoever in giving notice in writing informing the concerned person the grounds on which it is proposed to confiscate any essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance and in giving an opportunity of making a representation in writing. On that ground alone and without going any further in the matter, the contention of learned State counsel that in unusual or emergent circumstances, issuance of notice or giving opportunity of making a representation can be dispensed with, has necessarily to be repelled.

(Para 12)

Further held, that in the order cancelling the registration certificate of the petitioner, the Chief Agricultural Officer-cum-Registration Licensing Authority mentioned that the petitioner was maintaining four godowns including a shop in Khamano Mandi for the purpose of sale/storage of fertilizers and insecticides etc. as against the two sanctioned by the department in the registration certificate dated 17th February, 1987. In the order, it was also observed that a thorough hearing was also provided to the petitioner and in this way his statement duly signed by him and oral arguments at the time of hearing the case had been considered. It was established that the petitioner was engaged in illegal business of stocking unauthorised fertilizers with two unauthorised godowns which were not under and in accordance with the certificate of registration for sale of fertilizer and, thus violated clause 7 of the Fertilizer Control Order, 1985. Therefore, the findings of learned Single Judge, while invalidating the order of cancellation of registration certificate, cannot possibly sustain.

(Paras 18 & 21)

S.C. Sibal, Addl. AG (Pb.) with S.K. Bhatia, DAG (Pb.) for
the appellant.

JUDGMENT

V.K. BALI, J.

(1) Jawahar Lal Malhotra, respondent in this appeal and petitioner in the original lis, proprietor of M/s Punjab Khad Depot,

Dana Mandi, Khamano, District Ludhiana, dealing in fertilizers, through Civil Writ Petition No. 3364 of 1991 successfully challenged orders dated 30th June, 1990 passed by the Sub Divisional Officer (Civil), Samrala, District Ludhiana, authorising the 4th respondent-Shamsher Singh to confiscate the seized stocks as also order dated 6th August, 1990 cancelling certificate of registration passed by the third respondent as also order dated 26th November, 1990 dismissing his appeal against order dated 6th August, 1990, as his writ petition, filed on that behalf, was allowed by learned Single Judge on 9th July, 1991. In addition to setting aside orders aforesaid, petitioner was also held entitled to market price of the confiscated stock along with interest @18% from the date of sealing/seizure, viz, 27th June, 1990 till the date of actual payment. He was also held entitled to extension of his licence by an equivalent span of time of his registration certificate as also penal costs on that account. Petitioner was further held entitled to costs of Rs. 5000 which were ordered to be paid personally by Shri Ajit Singh Pannu, Sub Divisional Officer (Civil), Samrala and Shri Shamsher Singh, 4th respondent. It is this order of learned Single Judge that has been challenged by the State of Punjab and others in this Letters Patent Appeal filed under Clause X of the Letters Patent.

(2) Brief facts giving rise to Civil Writ petition No. 3364 of 1991 filed by Jawahar Lal Malhotra (here-in-after referred to as petitioner'), as projected in the petition, reveal that he was carrying on the business of stocking and sale of fertilizers in retail under the firm's name and style M/s Punjab Khad Depot at Khamano, Tehsil Samrala, District Ludhiana. He was granted a registration certificate as required under the provisions of the Fertilizer Control Order, 1985 (here-in-after referred to as the 'Control Order') which was valid upto 16th February, 1990. This certificate was further got renewed from the third respondent and was valid upto 16th February, 1993. It has been the case of petitioner that while applying for the Fertilizer Registration Certificate, he had mentioned in the application, in the prescribed form, the details of the premises where he was to carry on the business of stocking and sale of fertilizers as also the details of godown wherein he proposed to stock the fertilizers. According to the terms and conditions of the Fertilizer Registration Certificate the holder of the certificate had, from time to time, report to the Registering Authority any change in the premises of sale depot and godown

attached to the sale depot. Accordingly, no prior permission of the registering authority was required for any change in the premises if and when there was any change, except that it was required to be reported to the Registering Authority. It has further been the case of the petitioner that petitioner's firm continued to carry on the business of fertilizers in the original sale premises and also the godowns which was the place for stocking of fertilizers under the said certificate of registration and no change in the premises was ever made. petitioner was also carrying on the business of the sale and stocking of insecticides. He had obtained a licence in the name of the said firm for stocking and sale of insecticides under the provisions of the Insecticides Act, 1958 and Insecticides Rules, 1973. Petitioner was stocking insecticides in a godown under the said insecticides sales and stocking licence granted by the Licensing Officer under the Insecticides Act, 1958. Shamsher Singh-4th respondent was In-charge of Khamano area and it is stated that he was inimical to the petitioner on account of his refusal to accept his illegal demands. Further, Shamsher Singh was involved in an electricity theft case and he was penalised by the electricity board for which he demanded money from the petitioner as a loan which he paid and on asking for return, the inspector became more vindictive towards him. On 26th June, 1990, Shamsher Singh along with another person, styling himself to be Fertilizers Inspector from the office of the Registering Authority, Ludhiana and few police constables, visited the business premises of the petitioner and checked the stock of fertilizers and took away with them the registers and other account books concerning the sale of fertilizers without giving any receipt or without following the procedure as prescribed under the law. Again on 27th June, 1990 the fourth respondent and other members including the police constables raided the business premises of the petitioner and asked him to take out BHC from the insecticide godown and bring the same to the shop and they took the sample of four brands of fertilizers from the shop and godowns of the petitioner and one of the godowns, where fertilizer was lying, was sealed illegally and without any reasonable cause. Shamsher Singh also took away ten quintals of zinc sulphate from the business premises of the petitioner illegally while the other stock in the godown was sealed by him without any reasonable cause and on account of his biased attitude. He did not give any receipt of the stock register and other documents taken into custody while searching the business premises of the petitioner. No seizure memo was prepared nor any receipt was issued

to the petitioner for ten quintals of zinc sulphate which was taken away by the 4th respondent. Petitioner then received a show cause from the third respondent asking him to explain the alleged irregularities reported against him by the 4th respondent, as a result of his checking the business premises of the petitioner on 26th/27th June, 1990. A copy of the show cause notice dated 10th July, 1990 is Annexure P-1. The allegations levelled against the petitioner in the show cause notice were as follows :—

- “1. You have two godowns without sanctioned licence.
2. Out of the above godowns, you have stored fertilizers without addition in one godown, e.g., ferrous sulphate and zinc sulphate.
3. You had not hung licence outside your shop.
4. There was no notice board regarding rate list and stock position.
5. No farshi Kanda was kept for proper weighing the fertilizers”.

(3) It is the case of petitioner that he duly explained the position vide his reply dated 23rd July, 1990. He also explained the background leading to 4th respondent making false and fabricated report against him. He also brought to the notice of the Chief Agriculture Officer that the Agriculture Officer, Machhiwara had inspected his business premises and had found the rate list and weighing scale perfectly in order and further that report given by the 4th respondent was mala-fide with an intention to harm him and ruin his business by sealing the godown. Subsequently, he appeared before the Chief Agriculture Officer, Ludhiana for personal hearing and explained in detail the actual position and reiterated that for the reasons mentioned by him, Shamsher Singh had made a false and fabricated report alleging irregularities mentioned in the show cause notice. However, he received communication, Annexure P-3 from the Chief Agricultural Officer, whereby registration of petitioner's firm was cancelled. It is further the case of petitioner that 4th respondent, in connivance with the first respondent, illegally and without giving any opportunity of hearing and without even any show cause notice to him, procured order from the first respondent on 30th June, 1990

vide which the fertilizer lying in the godown, that was sealed, was confiscated.

(4) All the four respondents entered defence and in the joint written statement that came to be filed on their behalf, cause of petitioner was seriously opposed. It was, inter alia, pleaded that the petitioner had contravened the terms and conditions of the Control Order. He had kept two unauthorised godowns and had also kept unauthorised fertilizer. The unauthorised fertilizer of petitioner was sealed and then confiscated by the 4th respondent with the orders passed by the SDO (Civil), Samrala dated 30th June, 1990. As per the complaint made by the 4th respondent to the third respondent, prosecution against petitioner had been launched on the basis of complaint forwarded to the Senior Superintendent of Police, Ludhiana vide letter dated 23rd November, 1990 under Section 7/12-AA of the Essential Commodities Act, 1955 (hereinafter referred to as the 'Act of 1955'). There is no need to give further details of the written statement at this stage as we shall make mention of same as and when required in the context of submissions that have been made before us or for that matter while dealing with the findings returned by the learned Single Judge that have since been challenged in this appeal by the State.

(5) Before we may proceed to determine the controversy centred around the order, impugned in the writ petition, it would be appropriate to mention that Ajit Singh Pannu, SDO (Civil), separately challenged order of learned Single Judge in so far as it pertained to payment of costs of Rs. 5000 LPA No. 1349 of 1991 was allowed on 12th November, 1991. Operative part of the said order reads thus :—

“We are of the opinion that there appears to be no justification in awarding costs against the appellant. We, therefore, allow this appeal and set aside the portion of the order of learned Single Judge whereby the appellant has been made to pay personally a costs of Rs. 5000. There shall, however, be no order as to costs in this appeal.”

(6) Adverting now to the impugned orders, in as much as in sequence of time, order, Annexure P-4, was the earliest, validity of same came to be discussed by learned Single Judge first and it is thereafter that other two orders cancelling registration certificate of

petitioner's firm and dismissal of appeal carried against the said order, came to be discussed in the impugned judgment. While dealing with the order, Annexure P-4, pertaining to confiscation of goods that were lying in the sealed godown, it was held that the power of confiscation could be exercised by the Collector of district alone and further that there was no power of delegation. Order, Annexure P-4 was passed by Mr. Ajit Singh Pannu, Sub Divisional Officer (Civil) Samrala, who was not the District Collector. The Collector had no jurisdiction to delegate his functions to the SDO(C) and order of delegaton, if any, was wholly without jurisdiction, further held the learned Single Judge. On the basis of Section 6-B of the Act of 1955, it was also held that order of confiscation came to be passed without giving a show cause notice to the petitioner and, thus, could not be sustained on that ground as well.

(7) Mrs. S.K. Bhatia, learned Senior DAG, Punjab, representing the appellant-State vehemently contends that the twin findings of learned Single Judge, invalidating order, Annexure P-4, can not possibly sustain. With regard to order being without jurisdiction, i.e., having been passed by an authority not so authorised, it is the contention of learned counsel that in the order, Annexure P-4 itself it has been clearly mentioned that SDO(Civil), Samrala was exercising the powers of Collector under Section 2(iia) of the Act of 1955 as delegated to him by the District Collector, Ludhiana vide his endorsement No. 48048-48060/MA dated 28th June, 1990. That apart, what would really clinch the issue is the definition of 'Collector' that has been given in Section 2(iia) of the Act of 1955, which includes an Additional Collector and such other officer, not below the rank of Sub Divisional Officer, as may be authorised by the Collector to perform the functions and exercise the powers of Collector under the Act. The definition of 'Collector' was not looked into and it is only by making a reference to Section 6-A, dealing with confiscation of essential commodities that learned Single Judge returned a finding that it is the Collector alone who had jurisdiction to confiscate an essential commodity. The contention of learned counsel pertaining to invalidity of order of confiscation on the ground of giving no opportunity to the petitioner is only that it was a case of emergency and unusual circumstances and in such an event there was no need to issue show cause notice to the petitioner and further that he has since not been prejudiced in any manner.

(8) After hearing learned counsel representing the State-Appellant and, we may mention here that no one has put in appearance on behalf of the petitioner despite service, we are of the firm view that whereas the first contention of learned counsel has merit and, thus, deserves to be accepted, there is no merit at all in the second contention of learned counsel, noted above. While dealing with the power of SDO(C) to pass the order, Annexure P-4, pertaining to confiscation, learned Single Judge reproduced Section 6-A and held as follows :—

“Under the provisions of Section 6-A, the Parliament in its wisdom, has conferred the power to order confiscation only on the Collector of the District. There is no power of delegation. The order at Annexure P-4 even if interpreted in the manner suggested by the respondents as an order of confiscation it was admittedly passed by Mr. Ajit Singh Pannu, Sub Divisional Officer (Civil), Samrala. He was not the District Collector. The power under Act vested in the Collector of the District and not in the SDO(Civil). The Collector had no jurisdiction to delegate his functions to the SDO (Civil). The order of delegation, if any, was wholly without jurisdiction. The order passed by SDO (Civil) was also totally without jurisdiction. It was passed by an authority not empowered to pass it. The mandatory provisions of Section 6-A were completely violated. It is well settled that if the legislature has vested the power in a particular authority, it has to be exercised by that authority alone and none else. This principle has been completely violated in the present case. The order at Annexure P-4 is, thus, total without jurisdiction and is vitiated on that account alone”.

(9) The observations of learned Single Judge, as extracted above, in our view, can not sustain as it is only Section 6-A which was examined with a view to find out the competence of an authority passing order, Annexure P-4. It appears, definition of ‘Collector’ as given in Section 2(iia) of the Act of 1955 was not brought to the notice of learned Single Judge. Section 2(iia) reads thus :—

“Collector” includes an Additional Collector and such other officer, not below the rank of Sub Divisional Officer,

as may be authorised by the Collector to perform the functions and exercise the powers of the Collector under this Act.”

(10) The definition of ‘Collector’ also includes Sub Divisional Officer, if authorised by the Collector to perform the functions and exercise the powers of the Collector under the Act of 1955 and as mentioned above, in order, Annexure P-4, there is a clear mention of delegation of power of Collector to the Sub Divisional Officer (Civil), Samrala vide letter dated 28th June, 1990. There is no need at all to further deal with this issue as, in our view, the definition of ‘Collector’ provides a complete answer. Not only that the SDO(Civil) could exercise the powers of Collector, the Collector could delegate his powers to the SDO(Civil) and indeed, in the present case, such powers had been delegated to the officer, who passed the order, Annexure P-4.

(11) The second contention of learned counsel, noted above, has no merit in view of mandate contained in Section 6-B of the Act of 1955, which reads as follows :—

“6-B :-Issue of show-cause notice before confiscation of essential commodity:—

- (1) No order confiscating any (essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance), shall be made under section 6-A unless the owner of such (essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance) or the person from whom it is seized :—
 - (a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance).
 - (b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation ; and
 - (c) is given a reasonable opportunity of being heard in the matter.

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- (2) Without prejudice to the provisions of sub-section (1), no order confiscating any animal, vehicle, vessel or other conveyance shall be made under section 6-A if the owner of the animal, vehicle vessel or other conveyance proves to the satisfaction of the Collector that it was used in carrying the essential commodity without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the animal, vehicle, vessel or other conveyance and that each of them had taken all responsible and necessary precaution against such use).
- (3) No order confiscating any essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance shall be invalid merely by reason of any defect or irregularity in the notice given under clause (a) of sub-section (1), if , in giving such notice, the provisions of that clause have been substantially complied with”.

(12) The language employed in Section 6-B, reproduced above, provides no exception whatsoever in giving notice in writing informing the concerned person the grounds on which it is proposed to confiscate any essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance and in giving an opportunity of making a representation in writing. On that ground alone and without going any further in the matter, the contention of learned State counsel that in unusual or emergent circumstances, issuance of notice or giving opportunity of making a representation can be dispensed with, has necessarily to be repelled.

(13) Order of cancellation of registration certificate, Annexure P-3, was quashed by learned Single Judge, primarily on the ground that there was no material before the concerned authorities to hold that petitioner was in possession of two godowns, other than those for which licence had been granted to him. For arriving at the conclusion aforesaid, learned Single Judge examined the show cause notice given to the petitioner and reply filed by him. While dealing with the reply, which came to be filed by the petitioner, it was observed that the petitioner specifically alleged that respondent No. 4 had ill-will against him as he had failed to meet his demands for money. With regard

to charge pertaining to petitioner having two godowns without sanctioned licence, petitioner had specifically stated that the said charge was false and baseless and further complained against the lack of details on that behalf in the show cause notice. He also specifically mentioned that the godown which was illegally sealed by the Inspector was duly mentioned in the licence No. 42/128 issued on 17th February, 1987 and that he had no other godown in his possession, except godown No. 44 which was inspected and sealed by the Inspector. This godown No. 44, he further stated, was duly entered in his original licence No. 128/42 issued on 17th February, 1987. Learned Single Judge then examined the order passed by respondent No. 3 wherein, inter-alia it has been mentioned as under :—

“That on 27th June, 1990, Shri Shamsher Singh, Fertilizer Inspector, Khamanon Block Machhiwara District Ludhiana inspected your business premises situated in the Grain Market Khamanon Mandi in the presence of Shri Shamsher Singh Fert. Inspector (Enforcement) Ludhiana and Satnam Singh Ankhy, Agriculture Officer, Ludhiana and found that you had unauthorisedly stored for sale of Ferrous/Sulphate and Zinc Sulphate bearing manufacturing name as detailed given below :—

Sr. No.	Name of materials and brand	Qty.	
		Bags	Kg.
1.	Ferrous Sulphate (Om)	43 x 10	4.30 Qtls
2.	-- (Om)	21 x 20	4.20 ”
3.	-- (Om)	13 x 15	6.50
4.	-- (Rourkela Brand)	32 x 50	16.00
5.	-- (Rourkela Brand)	13 x 10	1.30
6.	-- (Sher Brand)	3 x 20	0.60
7.	Zinc Sulphate (Zincfed Brand)		10.00

That as per Registration Certificate No, 42/128 issued to you by the Department, you were not authorised to sell/store the above mentioned brands of fertilizers which were found at your business premises.”

xx xx xx xx

The undersigned had issued you a show cause notice bearing No.2766 dated 10th July, 1990 and on your request again given you the date for explanation of your position dated 17th July, 1990 vide which you were directed to explain your position. A thorough hearing was also provided to you at that time. In this way your statement duly signed by you and oral arguments at the time of hearing of the trial case has been considered. It was established that you were engaged in illegal business of stocking unauthorised fertilizer with two unauthorised godown which were not under and in accordance with your certificate of Registration for sale of fertilizer and thus violated clause 7 of the Fert. Control Order 1985. Therefore, your certificate of registration to sale of fertilizer is hereby cancelled with immediate effect. However, you may dispose off your existing stocks (except confiscated stocks mentioned in detail above) within 30 days of the issue of these orders.”

(14) In so far as appellate order, Annexure P-6 is concerned, same then came for discussion by learned Single Judge. The observations made in the appellate order, as mentioned below, were taken into consideration :—

“After hearing the appearing parties at length and perusing the evidence placed before me, I am fully convinced that the firms depot was checked properly as per procedure, samples drawn properly, stock sealed with proper authority and proper hearing was afforded to the appellant firm.

The appellant firm is also guilty of having four godowns instead of two permitted by the licensing authority. Thus, two godowns were kept illegally.

The appellant firm was dealing in Ferrous Sulphate and zinc sulphate of Om Brand Rourkela Brand, Sher Brand and Zinkfed Brand without getting its endorsement (Permission) from the Licensing Authority which is also a violation of Fertilizer Control Order/Terms and conditions of dealer Registration certificate.

In view of my above discussion, I find no force in the appeal, as such the appeal of the appellant firm deserves to be dismissed and is hereby dismissed. The order of the Licensing Authority dated 6th August, 1990 is held to be justified in cancelling the dealer's registration certificate of the appellant firm".

(15) After taking into consideration the material, as fully detailed above, it was held that

"a perusal of the impugned order, Annexre P-3, shows that the petitioner's certificate of registration has been cancelled on the ground that he was "engaged in illegal business of stocking unauthorised fertilizers with two unauthorised godowns, which were not under and in accordance with the certificate of registration for sale of fertilizer and thus violated clause 7 of Fertilizer (Control) Order, 1985". Even in the Appellate order the finding is that the petitioner was guilty of having four godowns instead of two permitted by the Licensing Authority as also that he was dealing in various commodities of different brands, which was in violation of the Fertilizer (Control) Order and the terms and conditions stipulated in the registration certificate. So far as the charge in relation to the two godowns is concerned, the categorical case pleaded by the petitioner is that the fertilizers was stocked in godown No. 44. This was the godown which was sealed by respondent No. 4. This position was stated by the petitioner categorically in his reply to the show cause notice. This assertion of the petitioner as made by him in his reply to the show cause notice has not even been dealt with by any of the authorities. Even in the writ petition, the petitioner has stated that he had a licence for the

sale of insecticides which were stocked in the godown under the Insecticides Act. The factum of the petitioner having stocked insecticides in separate godown has not been disputed. It has only been asserted that the petitioner's licence was cancelled as defect was found in the samples taken from the firm on 27th June, 1990. Be that as it may, a perusal of the record shows that neither in the notice to show-cause nor in the order the particulars of the unauthorised godowns have been given. Further, the assertion of the petitioner that the fertilizers were stocked in godown No. 44 has not been controverted or found to be false in any of the impugned order. Even at the time of hearing nothing could be pointed out to show that the fertilizer was found to be stocked in premises other than those mentioned in the certificate of Registration. A perusal of the certificate at Annexure R-1 shows that godown Nos. 44 and 69 were the premises for the stocking and sale of fertilizers. It has not been held or found that the petitioner was not stocking or selling the fertilizers in godown Nos. 44 and 69. That being so, the orders of the authorities are untenable insofar as the finding with regard to the unauthorised godowns is concerned".

(16) On the basis of provisions of clause (8) of the Control Order relating to submission of application in Form "A" for registration, it was held that—

“the applicant has to mention the name of products handled and the name of source of supply of fertilizer. Further more, under clause (9) the certificate of Registration has to be given in Form B. In this Certificate the type of fertiliser and source of supply have to be mentioned. Relying on these provisions, Mr. Malhotra contends that the brand name is neither required to be mentioned in the application nor is it mentioned in the certificate of registration. A perusal of the certificate of registration issued to the petitioner in the present case shows that the description of the fertilizer and the source of supply alone have been mentioned. By way of illustration, it

may be mentioned that Urea, DAP, CAN by N.F.L. have been mentioned. Similarly, super phosphate by Varindra Agro, Multi-Tech Agro Chem and Oriental have been mentioned. The brand name of the produce has nowhere been specified. That being so, the observation in the order at Annexure P-3 that the petitioner was engaged in illegal business of stocking of unauthorised fertilizer on the ground that he had not been granted permission to sell Ferrous sulphate of 'Om Brand' and Zinc Sulphate of Zincfed etc. is wholly contrary to the provisions of the Control Order. Similarly, finding of the appellate authority that "the appellant firm is dealing in Ferrous Sulphate and Zinc Sulphate of Om Brand, Rourkela Brand, Sher Brand and Zincfed Brand without getting the endorsement (permission) from the Licensing Authority which is also a violation of Fertiliser Control Order/terms and conditions of dealer Registration Certificate" in my view are misconceived. It has not been found that the particular fertilizer had not been procured from the permitted sources. In this view of the matter, I am of the opinion that both the orders are based on an assumption, which is not tenable in law".

(17) Commenting upon the appellate order, it was further held that "the petitioner even in his reply to the show-cause notice as also the appeal had raised various grounds which have not been considered by the respective authorities. By way of illustration, it may be mentioned that specific allegation with regard to demand of money by respondent No. 4 had been made. This has not been considered at all by the authorities. It was a matter which deserved to be looked into. Even in the writ petition these allegations have been repeated. Respondent No. 4 has not cared to file an affidavit to deny these allegations. In this situation, the suggestion that the raid was prompted by extraneous consideration does not appear to be wholly without any basis".

(18) Mrs. Bhatia, learned Sr. D.A.G., Punjab, vehemently contends that none of the findings of learned Single Judge, as reproduced above, and on the basis of which alone, orders, Annexures P-3 and P-6, came to be set aside, can possibly sustain. Seriously

challenging the findings of learned Single Judge pertaining to petitioner being in possession of two more godowns, regarding which he had obtained no licence and the material that was available before the department on that count when the impugned orders were passed, our attention has been first drawn to the show-cause notice, Annexure P-1 which, of course, only mentions in ground No. 1 that the petitioner had two godowns without sanctioned licence. In the reply that came to be filed to the show-cause notice aforesaid, petitioner stated that no number of godown or their location etc., of which he was found in possession, without there being any entry in the licence, has been disclosed in the letter. The godown that was in possession and that was checked and sealed by the Inspector along with other staff, is entered in the original licence dated 17th February, 1987. The maps etc. of this godown and the shop were submitted at the time of applying for licence and this licence was subsequently renewed upto 16th February, 1993. No other godown was in his possession except godown No. 44 which was inspected and sealed by the Inspector and that this godown No. 44 was duly entered in the original licence No. 128/42 dated 17th February, 1987 which was subsequently renewed by the office. In the order, Annexure P-3, the Chief Agricultural Officer-cum-Registration-Licensing Authority mentioned that the petitioner was maintaining four godowns including a shop in Khamano Mandi for the purpose of sale/storage of fertilizers and insecticides etc. as against the two sanctioned by the department in the registration certificate dated 17th February, 1987. In the order aforesaid, it was also observed that a thorough hearing was also provided to the petitioner and in this way his statement, duly signed by him and oral arguments at the time of hearing the case had been considered. It was established that the petitioner was engaged in illegal business of stocking unauthorised fertilizers with two unauthorised godowns which were not under and in accordance with the certificate of registration for sale of fertilizer and, thus, violated clause 7 of the Fertilizer Control Order, 1985.

(19) After referring to the show cause notice, reply and order, Annexure P-3, counsel further contends that there is no averment made in the writ petition that because of non-mention of number or location of the two unauthorised godowns, wherein petitioner might be illegally stocking the fertilisers etc., he was prejudiced in any way in giving reply to the show-cause notice. Further, in the written

statement that came to be filed by the respondent, it was specifically averred that even at the time of application made for granting the licence, in Addition to Shop No. 69, Grain Market, Khamano, godown No. 44 was also recorded and further that petitioner was holding unauthorised godown Booth Nos. 36 and 58 in Khamano Mandi which were not allowed by the Department of Agriculture. That the petitioner was using unauthorised godowns, mentioned above, was amply corroborated by the affidavits given by the owners of the godowns which were being used for stocking of fertilizers by the petitioner. Copies of these affidavits are Annexure R-3, and R-4 with the written statement. Affidavit, Annexure R-3, has been sworn in by Hardev Singh, A.S.I. retired, wherein it is stated that he was owner of Booth No. 36, New Grain Market, Khamano Mandi. Front side of the said godown opens towards Punjab & Sind Bank and in rear side there is Water tank of the market Committee. Booth No. 35 belongs to Gupta General Store and Booth No. 37 belongs to Ram Chand Cloth Merchant. He further stated that he had let out this booth on monthly rent of Rs. 135 for the past one and half years to Shri Jawahar Lal son of Shri Kundan Lal, owner of Punjab Khad Depot, Khamano and he had received the rent from Jawahar Lal on 22nd day of each month in cash and this booth is still on rent with Jawahar Lal, who is running his Khad business therein. Annexure R-4 is the affidavit of Ram Kishan of even date wherein it is stated that he is owner of Booth No. 58, Khamano Mandi. After giving the location and description of the godown aforesaid, he further stated that he had let out this booth No. 58 to Jawahar Lal, proprietor of Punjab Khad Depot, Khamano on rent and Jawahar Lal runs his Khad depot in it. He further stated that w.e.f. 15th July, 1990 Jawahar Lal had vacated it. The counsel further contends that these specific averments made in the written statement with supporting documents were not controverted as no replication came to be filed in this case.

(20) From the records of the case, that were made available during the course of arguments, counsel also refers to admission of petitioner at the time when his godowns were inspected on 26th/27th June, 1990. The petitioner admitted in writing on the said date that he was in possession of four godowns wherein items mentioned in the said writing, were lying which he promised shall not be sold till further orders.

(21) After hearing the learned State counsel on the question of charge against the petitioner pertaining to that he was in possession of two godowns unauthorisedly, where he had stocked for sale fertilizer and insecticides etc., we are of the view that the findings of learned Single Judge, that have been extracted above, while invalidating the order of cancellation of registration certificate can not possibly sustain. No doubt, the number and description of the two godowns that were in unauthorised possession of petitioner, were not mentioned in the show-cause notice, nor is there a mention of the same in the impugned order, that came to be challenged before the learned Single Judge, but the material showing that he was in unauthorised possession of two grounds, regarding which he had not obtained any licence, was available before the department when order cancelling registration certificate was passed.

(22) Petitioner, it may be recalled, had in his possession two godowns, regarding which he had admittedly obtained the licence. This fact shall also be clear from Annexure R-1 when he was issued licence valid upto 16th February, 1990. Location of the sale depot, as mentioned in the said licence, is 69, Grain Market, Khamano Mnadi. In the same very licence, godown No. 44 came to be added,—*vide* endorsement dated 17th July, 1987. The licence aforesaid was issued to the petitioner on 17th February, 1987. The charge, as referred to above, against the petitioner was that he was in possession of four godowns, out of which two godowns were such for which he had obtained no licence. Even though, as mentioned above, insofar as number and location of the godown are concerned, same were not mentioned either in the show-cause notice or in the order that came to be passed, however, before order, Annexure P-3 cancelling his registration certificate came to be passed, the department had before it two affidavits, Annexures R-3 and R-4 which were given by the owner of godowns on 1st August, 1990. The matter does not rest there as available before the department was also admission in writing made by petitioner himself and the said admission came to be made about on the very day his godown was sealed. Admission made by the petitioner is in Punjabi and when translated into English, its relevant part reads as under :—

“It is requested that I have four godowns in Khamano Mandi and in all these four godowns, the following

fertilizers and insecticides have been stored and till further orders passed by you, I shall not sell the same.”

(23) There is then a mention of thirteen items that were lying in the godowns of the petitioner. In the context of material, mention whereof has been made above, it shall be pertinent to examine the pleadings on the issue of petitioner being in possession of four godowns, out of which two were unauthorised. Petitioner stated in his petition that while applying for the Fertilizer Registration Certificate, he had mentioned in the application in the prescribed form, the details of the premises where he was to carry on the business of stocking and sale of fertilisers and also the details of godowns wherein he was supposed to stock the fertilizers. According to the terms and conditions No. 4 of the Fertilizers Registration Certificate No. 42/128, it was stipulated that “the holder of the certificate shall, from time to time, report to the Registering Authority any change in the premises of sale depots and godowns attached to the sale depot”. Accordingly, no prior permission of the registering authority was required for any change in the premises if and when there was any change except that it was required to be reported to the said authority. Be that as it may, the petitioner’s firm M/s Punjab Khad Depot, Khamano continued to carry on the business of fertilizers in the original sale premises and also the godowns which was the place for stocking of fertilisers under the said certificate of registration and no change in the premises was ever made. These averments have been made in paras 4 and 5 of the writ petition. In para 24, while pleading grounds challenging the impugned order, Annexure P-3, it was further stated by the petitioner that he had, during the course of hearing of the appeal, made a submission that he was also carrying on the business of stocking and sale of insecticides/pesticides and weedicide and for that he had been granted a licence under the provisions of the Insecticides Act, 1968. It was also submitted that the learned Registering Authority had erred in law to consider the godown of the petitioner under the insecticides, stocking and sale licence, as unauthorised godown under the Fertilizer Control Order, 1985 or the violation of the terms and conditions of the Fertilizer Registration Certificate No. 42/128. It was also explained that since no fertilizer had been stored in the pesticide godown, it was wrong and illegal to consider that godown to be attached with the Registration Certificate No. 42/128.

(24) In the reply that came to be filed by respondents 1 to 4 it has been averred that before cancellation of his registration certificate, petitioner was holding retail licence No. 42/128. At the time of application made for granting licence petitioner had mentioned business premises as Shop No. 69, Grain Market, Khamano and got addition of godown No. 44 to this retail licence later on by depositing fee on 15th May, 1987 and, thus, according to the licence, he was holding two godowns. He was in unauthorised possession of two godown Nos. 36 and 58 which were not allowed by the department of Agriculture for fertilizers and which was a violation of Clauses 7 and 11 read with Forms A and C of the Fertilizer Control Order, 1985. It was further pleaded that the version that petitioner was using two unauthorised godowns was corroborated by affidavits given by owners of the said godowns which were used by petitioner for stocking and selling of fertilizers. Copies of these affidavits were annexed with the written statement, as mentioned above, as Annexures R-3 and R-4. It was then averred that petitioner never informed the department about the use of these two godown Nos. 36 and 58, which were unauthorisedly used by him for storing and selling the fertilizers. Hence he was holding two unauthorised godowns in addition to the godowns regarding which he had obtained licence.

(25) It has been through out the case of department that godowns of petitioner were inspected because of a complaint filed by number of persons dated 25th June, 1990, Annexure R-7. In the complaint aforesaid, it has been mentioned that petitioner, who is proprietor of M/s Punjab Khad Depot at Khamano Mandi, is selling adulterated fertilizer and other insecticides in the grain market. He had four godowns in the Grain Market itself in which he does the black marketing business. He does not issue any receipt after selling the fertilizer and insecticides. A request for checking of shops and taking of samples of fertilizers and insecticides had been made in the complaint aforesaid which came to be filed by the farmers of the locality. It has also been the case of the department that the activities of petitioner in selling adulterated items was highlighted by the Press as well. The English version of an extract of a Punjabi Tribune dated 30th June, 1990 has been annexed with the written statement as Annexure R-12. It is mentioned in the news item aforesaid that the Indian Farmers Union in Khamano Mandi circle, hundreds of workers of the area and President Bhupinder Singh gheraoed four godowns in Grain

Market, Khamano in which, according to them, owner of Punjab Fertilizers Depot, Shri Jawahar Lal had stored mixed fertilizers and insecticides. After gherao by the President and others, the matter was brought to the notice of S. Ajmer Singh Lakhwal, President of B.K.U., Punjab, who brought this matter to the notice of the Deputy Commissioner, Ludhiana. The Deputy commissioner in turn sent the officers of agriculture department to Khamano Mandi for taking immediate action. They came and took samples of fertilizer and medicines and sealed the fertilizers of second/inferior quality. It was further mentioned that there is very much publicity of this matter that owner of aforesaid depot is selling mixed fertilizers and medicines for long time and he was also involved in a case of fertilizer scandal and further that hundreds of workers of Khamano area were protesting under the supervision of S. Surjit Singh, Vice- President, Balwinder Singh, Bhupinder Singh President and Baba Bachan Singh Mushkabad and further that officers of the Agriculture Department were cooperating with the India Farmers Union perfectly.

(26) The averments made in the written statement with supporting documents were as such never controverted by the petitioner as no replication came to be filed. Not only that, there is no specific averment in the writ petition that petitioner was not in unauthorised possession of two godown Nos. 38 and 58. From the existing material available on records of this case as the departmental record that has been made available to us during the course of arguments, it is quite clearly made out that the petitioner was indeed in possession of two godowns regarding which he had no licence and further that all through petitioner was conscious of the fact that he was in possession of four godowns, two out of which were not authorised. In that scenario, there was no question of his being prejudiced for non-mentioning of number of such godowns in the show cause notice or order, Annexure P-3.

(27) Once, findings of learned Single Judge pertaining to keeping in his possession two unauthorised godowns, are reversed, there will be no need at all to go into the other grounds mentioned in the show cause notice but, inasmuch as the learned State Counsel has taken us through the records of the case, in her endeavour to show that petitioner was guilty of other allegations made in the show cause notice made against him, we would like to deal with the same as well.

(28) The other allegation made against the petitioner in the show cause notice, Annexure P-1 reads thus :—

“Out of the above godowns, you have stored fertilizers without addition in one godown, e.g., ferrous sulphate and zinc sulphate”.

(29) Learned State counsel vehemently contends that the petitioner violated clause 7 of the Fertilizer (Control) Order, 1985 as he had unauthorisedly stored for sale Ferrous Sulphate and Zinc Sulphate of Zinced Brand manufactured by the Northern India Chemical Industries, Chandigarh. In fact, application for selling Ferrous Sulphate of Om Brand and Zinc Sulphate of ‘Zinced Brand’ was pending with the authorities and yet the petitioner started selling the fertilizers and consequently his certificate of registration was cancelled by the Chief Agricultural Officer, Ludhiana,—*Vide* order dated 6th August, 1990. During the inspection carried out by Shri Shamsher Singh, Agriculture Inspector, on 27th June, 1990, the petitioner’s firm was found to have unauthorisedly stored Ferrous Sulphate and Zinc Sulphate of Zinced brand. As per certificate of registration No. 42/128 issued by the Agriculture Department, petitioner was not authorised to store Ferrous Sulphate of any brand and Zinc Sulphate of Zinced Brand. At the time when premises of petitioner were inspected by Shamsher Singh, he was having the certificate of registration, Annexure R-2 and in pursuance of this certificate, there was no authorisation to the petitioner to store Ferrous Sulphate of any brand including Om Brand. It was further the case of department that in view of the above circumstances, the cancellation of registration certificate of petitioner was justified as he was indulging in illegal business of stocking unauthorised fertilisers whereas the finding of learned Single Judge is that the brand name of fertilizer need not be mentioned and further that only source of supply had to be disclosed. Insofar as stocking of Ferrous Sulphate is concerned, it is the case of department that no authorisation for stocking Ferrous Sulphate was given and, therefore, the question of its source of supply or its manufacturer or that of brand name was absolutely irrelevant and stocking of Ferrous Sulphate fertilizer of any brand from any source was in violation of the provisions of the Fertilizer (Control) Order, 1985. Insofar as storing of Zinc Sulphate of Zinced brand is concerned, it has been the case of department that in terms of Form A, appended to the Fertilizer (Control) Order, 1985, which is the form for applying to obtain a certificate of

registration, the applicant has to disclose the source of supply. In form A, column 3 of para 7 requires the applicant to disclose the source of supply and its para 8 requires the applicant to attach certificate(s) of source from the supplier(s) indicated under column 3 of Sr. No. 7. Similarly, the proforma of application for renewal of the certificate of registration is given in Form C which requires the applicant to disclose the fertilizer in which the applicant was carrying on the business of selling and the name(s), of manufactures(s), the commodity, brand(s), State Government(s) and wholesale dealer(s), whom they represent are to be stated. Besides, Forms A and C require an applicant to enclose a certificate of source from the manufacturer(s), commodity brand(s), State Government(s) and wholesale dealer(s) whom they represent and intended to represent or from whom the fertilizers would be obtained by them. The definition of "Certificate of Source" has been given in clause 2(b) of the Fertilizer (Control) Order, 1985 which reads as under :—

"Certificate of source" means a certificate given by a State Government, Commodity brand, manufacturer, pool handling agency or, as the case may be, wholesale dealer indicated therein, the source from which fertilizer for purpose of sale, is obtained".

The stand of the State, as reflected above, is in tune with the averments made in the written statement. The same, in our view, was primarily that the petitioner had stored Ferrous Sulphate of Om Brand and Zinc Sulphate of Zincfed for which he had no valid authorisation. Learned Single Judge, while invaliding order, Annexure P-3, however, held that certificate of registration issued to the petitioner shows that the description of fertilisers and the source of supply alone have been mentioned and further that brand name of the product has not been specified therein. That being so, it was further held that the observation in the order at Annexure P-3 that the petitioner was engaged in illegal business of stocking of unauthorised fertilizer on the ground that he had not been granted permission to sell Ferrous sulphate of Om Brand and Zinc Sulphate of Zincfed etc. is wholly contrary to the provisions of the Control Order. While dealing with the findings of appellate authority that the petitioner was dealing in Ferrous Sulphate and Zinc Sulphate of Om Brand, Rourkela Brand, Sher Brand and Zincfed Branch without getting the endorsement

(permission) from the Licensing Authority, which is also violation of Fertilizer (Control) Order/terms and conditions of Dealer Registration Certificates, same were held to be misconceived.

(30) The findings of learned Single Judge, as mentioned above and as reproduced in the earlier part of judgment, in our view, can not sustain. Petitioner, in our view, was not authorised to sell the items mentioned in the show cause notice. Ferrous Sulphate and Zinc Sulphate, petitioner was not authorised to sell as the same were not mentioned in his licence, Annexure R-2. The Fertilizer (Control) Order, 1985, which has since been issued under the Act of 1955, by virtue of clause 7, requires dealers to be registered. The same reads thus :—

“No person, including a manufacturer, a pool handling agency wholesale dealer and a retail 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”.

(31) A person desirous of obtaining a certificate of registration has to make an application by virtue of clause 8 of the Order of 1985. This application has to be made in Form ‘A’. Third proviso to clause 8 provides that where fertilizers are obtained for sale from different sources, a certificate of source from each such source has to be furnished. Columns 5 (xi) and 7 of form ‘A’ appended to the Order of 1985 are as follows :—

“5(xi) Name of source of supply of fertilisers 7. Give the details of the fertilisers to be handled”.

(32) Form ‘B’ pertains to certificate of registration to carry on the business of selling fertilizers as a wholesale/retail dealer in the State. Third and fourth columns of the said form pertain to type of fertilizers and source of supply. From the provisions of Order of 1985 and the various forms that deal with making of an application for grant of certificate of registration etc. clearly show that not only that an applicant has to disclose the source from where he has to obtain fertilizers but he has also to name the type of fertilizers that he has

to deal in and the said source and type of fertilizer have to be mentioned in the certificate of registration issued to him. As mentioned above, the case of the department has always been that the petitioner was not authorised to store or sell Ferrous Sulphate of Om Brand and Zinc Sulphate of Zincfed brand. This assertion of the department, in our view, was established on records of the case. We have already mentioned that in the registration certificate issued to the petitioner, type of fertilizers dealt in by him have not been mentioned. What shall, however, clinch the issue is letter dated 27th June, 1990, Annexure R-8, addressed to the Sub Divisional Magistrate by the Fertilizers Inspector informing him that some unauthorised fertilizers, details whereof have been given, were lying in the unauthorised godowns of M/s Punjab Khad Depot. In the items mentioned in the letter aforesaid, Ferrous Sulphate and Zinc Sulphate with their quantity have also been mentioned. Still further, petitioner himself admitted in the writ petition filed by him that he had made an application for addition of fertilizers in the registration certificate including the one not added in it vide his application dated 14th June, 1990 and that the fertilizers that were requested to be added included the one manufactured by M/s National Fertilizers, Fertichem India, Shivalik Fertilizers including ferrrous sulphate, zinc sulphate and were all approved and authorised material for sale in the State of Punjab, yet the Chief Agricultural Officer arbitrarily withheld the addition of various fertilizers. The pleadings do contain an admission by the petitioner that Ferrous Sulphate and Zinc Sulphate, by the time raid came to be conducted on the premises of the petitioner, had since not been included in his registration certificate. In para 20 of the petition, it was further stated that the Chief Agriculture Officer, Ludhiana had returned the registration certificate No. 42/128 through Shamsher Singh Agriculture Inspector on 26th June, 1990 on which only one fertilizer had been endorsed and no reasons, whatsoever were given for not adding other fertilizers for which a request in the prescribed manner had been made by the petitioner on 14th June, 1990

(33) From perusal of the averments made in paragraphs 19 and 20 of the writ petition, a finding has to be returned that by the time premises of the petitioner were raided, he did not have a valid licence to store or sell Ferrous Sulphate or Zinc Sulphate, subject

matter of charge against him. He had filed the application aforesaid seeking permission to add the fertilizers on 14th June 1990 and the raid was conducted on his premises on 27th June, 1990. 20 Quintals of Ferrous Sulphate and 6000 Kgs. of Zinc Sulphate came to his godowns on 26th June, 1990 and 27th June, 1990 respectively as would be clear from the documents shown to us, forming part of the records maintained by the department. 20 bags of Ferrous Sulphate, each containing 25 Kg., also came to the godowns of the petitioner on 12th June, 1990. From the over-whelming material that was available before the department, a finding has to be returned, which would be in tune with the averments made in the written statement filed on behalf of respondents 1 to 4 that petitioner was indeed dealing in Ferrous Sulphate and Zinc Sulphate, for which he had no authorisation. That being the position, findings of learned Single Judge, as reproduced above, while invalidating order, Annexure P-3, have to be set aside.

(34) Dealing now with the only one godown of petitioner having been sealed and consequences thereof, as mentioned by learned Single Judge, suffice it to mention that it was not the case of petitioner before the department that only one godown was sealed. Further, a perusal of Annexure R-8 dated 27th June, 1990 would show that the Fertilizer Inspector had sealed the godowns and not godown. Insofar as allegations of *mala fide* and findings thereon by learned Single Judge are concerned, we may mention that all that has been stated in the petition is that Shamsher Singh, Agriculture Inspector, In-charge of Khamano area was inimical to the petitioner on account of his refusal to accept his illegal demands. It is then stated that the said Inspector was involved in an electricity theft case and he was penalised with the electricity board for which he demanded money from the petitioner as loan which petitioner paid and on asking for return, the Inspector became more vindictive towards the petitioner. A joint reply on behalf of the respondents 1 to 4 came to be filed. The 4th respondent arrayed in the writ petition is Shamsher Singh, Agriculture Inspector. In the corresponding para of the written statement, the averments made in the petition to the effect aforesaid have been denied and it has further been mentioned that there was a complaint against the petitioner from the farmers, Annexure R-7. No such theft case, as

reported in the petition, had ever been registered against the Agriculture Inspector. Even otherwise, it had no relevance to this case and further that the allegations made by the petitioner were baseless and after thought. From the very nature of allegations made in the petition, the same do appear to be an after thought. If Shamsheer Singh, Agriculture Inspector was inimical towards the petitioner, on account of his having refused to accept his illegal demands, there was no question for the Inspector to have demanded money from the petitioner to pay it to the Electricity Board and the petitioner obliging the Inspector. The allegations scanty, as they are, were refuted in the written statement jointly filed by the respondents. Further, as mentioned above, the raid came to be conducted on account of a complaint that was lodged against the petitioner by number of farmers of the area and the same was at the instance of the Deputy Commissioner, Ludhiana inasmuch as number of persons brought to his notice the illegal activities indulged in by the petitioner. Large quantity of fertilizers was found in possession of petitioner. Same, in our view, could not have been planted by the Inspector-respondent No. 4. In our view, there was hardly any material brought on records of the case, on the basis of which a finding of *mala-fide* could be returned against the 4th respondent. It may be reiterated at this stage that the Letters Patent Appeal filed on behalf of the Sub-Divisional Officer (Civil), Samrala, who too was directed to pay the costs, has since been allowed.

(35) In view of the discussion made above, we are of the view that this appeal deserves to succeed, even though partly. Order, Annexure P-4, confiscating fertilizers, Ferrous Sulphate and Zinc Sulphate etc., has since rightly been set aside by learned Single Judge inasmuch as petitioner was not given any opportunity of hearing in the matter. Orders, Annexures P-3 and P-6 are found to be perfectly valid and in order. Same are, thus, sustained. Judgment of learned Single Judge, quashing these orders, is set aside. In our view, it is not a case which ought to have been allowed with costs. To that extent as well, judgment of learned Single Judge shall stand set aside.

(36) This appeal is partly allowed, in the manner indicated above, with no orders as to costs