

(2010) 04 GAU CK 0015

Gauhati High Court (Agartala Bench)

Case No: Writ Petition (C) No. 234 of 2009

Matilal and Gouri Food and
Storage Pvt. Ltd.

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision: April 12, 2010

Acts Referred:

- Companies Act, 1956 - Section 4, 70
- Constitution of India, 1950 - Article 14, 225, 226, 229

Citation: (2010) 2 GLD 629

Hon'ble Judges: T. NK. Singh, J

Bench: Single Bench

Advocate: S. Talapatra and D. Bhattacharjee, for the Appellant; S.M. Chakrabarty and T.D. Majumder, for the Respondent

Final Decision: Allowed

Judgement

T. NK. Singh, J.

By this writ petition, the petitioner, a company registered under the Companies Act, 1956 is seeking the public law remedy, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, for quashing the impugned memorandum being No. F.5-5(1)-DF/2007-08, dated 4.7.2009 under which the writ petitioner is directed to deposit an amount of Rs. 7,22,750/- (Rupees seven lakh twenty-two thousand seven hundred fifty) only in favour of the Director, Food, Civil Supplies & Consumer Affairs, Tripura, Agartala by D.D/Cheque under non-operable collection account within ten days from the date of receipt of the memorandum; and also for quashing memorandum No. F.5-5(1)-PP (PD)/DF/2007-2008 dated 31.7.2009 for rescinding the agreement executed in between the Government in FCS & CA Deptt and M/s. Matilal & Gouri Food & Storage Pvt Ltd. Badharghat, Agartala on 11.12.2007 for not depositing the amount of Rs. 7,22,750/- (Rupees seven lakh twenty-two thousand seven hundred fifty) within the stipulated period; and also for

declaration that the petitioner is entitled to compensation for loss as accrued from the wrongful action of the respondent and also that respondents are bound to make compensation as would be determined by this Court.

2. Heard Mr. S.Talapatra, learned senior counsel assisted by Mr. D. Bhattacharjee, learned Counsel for the petitioner and also Mr. S.M. Chakraborty, learned senior counsel assisted by Mr. T.D. Majumder, learned Counsel appearing for the State respondents.

3. FACTUAL BACKGROUND:

The writ petitioner is a company registered under the Companies Act, 1956 laying RF Mills of up to date and latest technologies, its capacity of quality production is said to be incomparable in the State of Tripura. On technical verification and consideration of capacity of production and also with object of ensuring fair and equitable distribution of wholemeal atta to the consumers through the fair price shops within the available stock from time to time, the respondents out sourced the conversion and in supersession of all previous Memoranda issued the Memorandum No. F5-5(1)-DF/2003 (Part) dated 5.10.2004 providing monthly distribution of wheat to (1) M/s. Matilal & Gouri Food & Storage Pvt. Ltd. Madhuban, Agartala Dist., West Tripura, (the petitioner), (2) The Pioneer Roller Flour Mills AIRport Office, N.S. Road and (3) The Tripura Flour Mills, Dharamnagar, Agartala for conversion into wholemeal atta subject to proportionate reduction in case of inadequate availability of stock on PDS. Under the said memorandum dated 5.10.2004, in order to simplify the procedure and simultaneously to bring about more transparency in the supply/distribution mechanism of PDS wheat/wholemeal atta under the PDS network, the State with the sole objective of ensuring fair equitable distribution of wholemeal atta to the consumers through FP shops within available stocks from time to time issued procedural guidelines in supersession of earlier memorandum for information and strict compliance by all concerned with immediate effect until further orders. Under the said memorandum dated 5.10.2004 allotment of wheat out of PDS quota shall be made as far as practicable on the 1st working day of each month for the present by the DFCS & CA in favour of the General Secretary, Tripura Naijya Mullyer Dokan Parichalak Samity (in short TNMDPS) Sub-Division-wise and Roller Flour Mill-wise subject to availability of stock with FCI and State Government godowns. Further based on the monthly allotment of 2.500 MT of wheat to the Sub-Divisions and the actual monthly production capacity of the R.F. Mills, R.F. Mill wise monthly distribution of wheat for conversion into wholemeal atta on the accounts of the SDMs/O.C., ARA through TNMDPS, subject to proportionate reduction in case of inadequate availability of stock on PDS A/c shall be as follows:

(a) Matilal &

Gouri Food & Storage Pvt. Ltd., 1700 MT (approx)

Badharghat

(b) Pioneer Roller

Flour Mills - 600 MT (approx)

Airport,

(Office N.S. Road)

(c) The Tripura

Flour Mills, - 200 MT (approx)

Dharamnagar Total- 2,50 MT

The TNMDPS shall arrange conversion of wheat into wholemeal atta for meeting requirement of West & South Tripura Districts (including Gandacharra, Ambassa & Kamalpur Sub-Divisions of Dhalai District as per monthly allotment order of the DFCS & CA through Matilal & Gouri Food & Storage Pvt. Ltd. and Pioneer Roller Flour Mills as specified in the allotment order in favour of the two Mills. And the TNMDPS shall have to deposit by 3rd working day of the month of allotment the cost of what @ Rs. 680/- (Rupees six hundred eighty) only per quintal against monthly allotment of wheat and in the matter of lifting, grinding of wheat and filially positioning of wholemeal atta at the FP Shops for distribution to the card holders @ Rs. 8.50 per kg for the wholemeal atta, following time frame shall also be adhered to by the TNMDPS, Roller Flour Mills and all concerned:

(a) Lifting of wheat by the TNMDPS from central stores Agartala and in transit godowns Dharamnagar which should start in truck loads on and from the working day succeeding the day of obtaining delivery orders should be completed by the TNMDPS latest by 7 days and 3 days respectively for the last consignment last truck load, o/c, central stores, A.D. Nagar and Dy.Director (Food) Dharamnagar shall also deliver within the said time frame.

(b) Crushing of wheat for conversion into wholemeal atta shall be undertaken by the R.F. Mills from the clay succeeding the day of the first consignment of physical lifting of individual truck load as into the mill premises from the central stores Agartala transit godown Dharamnagar as the case may be by the TNMDPS. Matilal and Gouri Food and Storage Pvt. Ltd. would take 14 days (approx) to crush 1700 MT wheat @ 120 MT per day. Planeer Roller Flour Mills would take 12 days to crush 600 MT of wheat into wholemeal atta. Finally Tripura Flour Mills Dharamnagar would take 2 days time to crush wheat into wholemeal atta. In other words crushing of the last truck load of wheat out of each monthly allotment of wheat as above by the R.P. Mills shall be completed within the 20th day of the month of allotment of wheat.

(c) It would be a two way traffic system. There would be inflow of wheat into the N.F. Mills as input through TNMDPS from State Government godowns on one hand and outflow of wholemeal atta as output through TNMDPS for supply and delivery to the

F.P. shops every day since day one of crushing of wheat into wholemeal atta on the other based on first in first out method.

(d) In the process as stated in the above enhancements TNMDPS shall start positioning wholemeal atta in the F.P. shops across the State of Tripura from the 2nd week onwards of the month of allotment of wheat itself. 100% positioning of wholemeal atta in F.P. shops after lifting the same from R.F. Mills shall be completed by TNMDPS all over the State within the 24th day of the month of allotment of wheat at the latest. In case of north and Dhalai District (excluding GNC, ABS & KMP Sub-Divisions) the positioning wholemeal atta at the F.P. Shops shall be completed in full by the TNMDPS by the 15th day of the month allotment.

(e) SDMs/O/C.ARA ensure distribution of wholemeal atta to the ration holders within the 4th week of the month of allotment of wheat in case the wholemeal atta of the Tripura Flour Mills DMN distribution to the ration holders through EP. shops shall start from 3rd week of the month of allotment of wheat which should be completed within the month of wheat allotment itself.

(f) Therefore in the above time frame 100% distribution of wholemeal atta to card holders through F.P. shops within the month of allotment of wheat shall be assured by all concerned positively and without fail.

Further, under the said office memorandum dated 5.10.2004 the TNMDPS shall furnish utilization report of wholemeal atta to the concerned SDMs/O/C, ARA as per the annexure Format No. 1 within the last working day of the month of allotment of wheat by the DFCS & CA. And also the concerned SDMs/O/C, ARA shall submit quarterly report within 3rd week of 1st month of the next quarter in respect of lifting, positioning etc. of wholemeal atta at FP Shops for distribution and also that the stock of wholemeal atta may be disposed off by the individual F.P. Shop Dealers after 15 days of the succeeding month of the month of allotment of wheat, if the stock is not sold within the time frame subject to prior permission and guidance of the respective SDMs/O/C, ARA by way of free sale at Government approved price. Any deviation/violation/evasion of the above prescribed procedure shall attract the penal provision of law in force.

4. The procedural guideline, as contained in the memorandum dated 5.10.2004, was further revised by memorandum No. F.5-5(4)-DF/2005 dated 7.10.2005 without changing the quota determined for the RF mills in regard to monthly distribution of wheat for conversion in the wholemeal atta on the PDS A/c subject to proportionate reduction in case of inadequate availability of stock on PDS A/c. It is stated that the said guidelines are still in force and covering the field for the purpose till date inasmuch as the appropriate authority did not change the procedural guidelines for supply/distribution of wheat/wholemeal atta through PDS network in the State of Tripura.

Airport, (Office N.S. Road)

(c) The Tripura

Flour Mills, - 117 MT (approx)

Dharamnagar 1200 MT

(ii) The Tripura Flour Mills, Dharamanagar shall arrange grinding of allotted quantity of what as specified in the monthly allotment order of the DFCS & CA for conversion into best quality wholemeal atta at the ratio of 3% refraction loss as specified by the Government of India for meeting the requirement of North & Dhalai Districts (except for Gandhacharra, Ambasa & Kamalpur Sub-Divisions).

(iii) Matilal & Gouri Food & Storage Pvt. Ltd., Badharghat and Pioneer Roller Flour Mills AIRport shall arrange grinding of allotted quantity of wheat as specified in the monthly allotment order of DFCS & CA for conversion into best quality wholemeal atta at the ratio of 3% refraction loss as specified by the Government of India for meeting the requirement of West & South Tripura District (including Gandhacharra, Ambassa & Kamalpur Sub-Divisions).

(iv) The Tripura Flour Mills, Dharamnagar shall pre-deposit by the 3rd working day of the month of allotment, cost of wheat @ 751/- per quintal against the monthly allotment of the wheat in respect of North & Dhalai Districts (excluding Gandhacharra, Ambasa & Kamalpur Sub-Division of Dhalai District) to the Office of the SDM, Dharamnagar i.e. into the Non-operable A/C (Food Credit) of DFCS & CA under the disposal of SDM, Dharamnagar in C.S. Form No. 21 as per prescribed procedure. SDM, Dharamnagar, in turn, on receipt of payment shall issue D.O. of wheat on DD (E) DMN by the 4th working day of the month of allotment.

(v) Matilal & Gouri Food & Storage Pvt. Ltd. and Pioneer Roller Flour Mills, Agartala shall pre-deposit by 3rd working day of the month of allotment, the cost of wheat @ Rs. 751/- per quintal against monthly allotment of wheat in respect of West & South Tripura Districts (including Gandhacharra, Kamalpur & Ambasa Sub-Divisions of Dhalai District) to the Office of the O/C, ARA i.e. into the Non-operable A/C (Food Credit) of DFCS & CA under the disposal of O/C, ARA in C.S. Form No. 21 as per prescribed procedure. The O/C, ARA, in turn, on receipt of payment, shall issue Delivery Order of wheat on O/C Central Stores, A.D. Nagar, Agartala by the 4th working day of the month of allotment.

(vi) The stock of wholemeal atta as per allotment shown against each. Sub-Division shall have to be lifted from the concerned flour Mills godowns by the nominees of SDMs as selected by the concerned SDMs in consultation with the respective Sub-Divisional Level Supply Advisory Committees. The SDMs in consultation with the concerned Sub-Divisional Supply Advisory Committees, will select viable Primary Marketing Co-op. Society/Societies Ltd. as the Sub-Division-wise/Block wise nodal

agency within its respective area of operation for distribution of wholemeal atta. In Agartala Municipal areas, the Officer-in-Charge, Agartala Rationing Authority may directly look after the issue of distribution, of wholemeal atta.

(vii) The Ex-Mill price of wholemeal atta has been fixed at Rs. 879.00 per quintal while the uniform retail price of wholemeal atta through out the State has been fixed at Rs. 9.00 per kg. The same may be increased/decreased subject to increase/decreased of issue price of wheat/any other components required for the purpose.

(viii) In the process, the Sub-Divisional nominees may lift the stock, of wholemeal atta from the R.F. Mills on pre-deposit of value @ Rs. 879/- per quintal. The transportation cost for lifting of the stock from R.F. Mills to the Sub-Divisions by the concerned Sub-Divisional nominees, may be reimbursed at actuals subject to maximum of Rs. 35.00 per quintal whichever less on preferring bills to the concerned SDMs. In addition, the Sub-Divisional nominees may be allowed service charge @ Rs. 20/- per quintal. The transportation cost and service charges may be reimbursed by the SDMs to the Sub-Divisional nominees on preferring bills by the concerned nominees out of contingency A/C under Food Credit system on preferring claims by the concerned nominees. Specimen copy for preferring bills by the nominee(s), F.F. Shop Dealers, fund required by the SDMs/O/C, ARA and monthly expenditure Statement are enclosed at Annexures-A, B, C & D.

(x) The F.P. Shop dealers shall ensure lifting of the stock of wholemeal atta from the godowns of the Sub-Divisional nominees on pre-deposit of value @ Rs. 879/- per quintal on their own transport arrangement. The transport cost from the Sub-Divisional nominee godown/R.F. Mills godowns, as the case may be, to FP Shops shall be reimbursed at the existing approved rate of the Department by the concerned SDMs on preferring bills by the FP Shop Dealers as per proforma enclosed at Annexure-B. The F.P. Shop dealers shall distribute wholemeal atta to the card holders at the existing scale and at the uniform retail issue price of Rs. 9.00 per kg. (in which the F.P. Shop dealers shall get dealers commission @ Rs. 0.21 per kg. i.e. Rs. 21.00 per quintal).

(xi) Individual R.F. Millers shall have to enter into an Agreement/MOU with the State Government for lifting of wheat from FCI/State Government Transit godowns and supplying/delivery of wholemeal atta to the Dealers/Sub-Divisional nominees as per sub-allocation made by the O/C, ARA/SDMs within the month itself for which it would be allotted.

(xii) RF Mills shall have to furnish the value as one time not less than 2% of the total cost of wheat of monthly sub-allocation as a token of security by way of TDR in favour of the State Government before entering into an Agreement. The modalities of the Agreement is enclosed at Annexure-E.

(xiii) In the matter of lifting, grinding of wheat and finally supply of wholemeal atta to the FP Shops for distribution to the card holders, the following time frame shall be adhered to by the R.F.Mills and all concerned.

(a) Lifting of wheat by the R.F. Mills from Central Stores, Agartala and Transit godowns, Dharamanagar, which should start in truck loads on and from the working day succeeding the day of obtaining Delivery Orders, should be completed by the R.F. Mills latest by 7 days for the last consignment/last truck load, O/C, Central Stores and Dy. Director (Food), DMN shall also arrange delivery within the said time to the concerned R.M. Millers.

(b) Crushing of wheat for conversion into wholemeal atta shall be undertaken by the R.F. Mills from the day succeeding the day of the first consignment of physical lifting of individual truck loads into the mill premises from the Central Stores, A.D. Nagar, Agartala/Transit godowns, DMN as the case may be. The whole works of lifting of wheat from Government godowns, grinding of wholemeal atta shall have to be completed by the R.F. Mills within 20th day of the month of allotment of wheat.

(c) As part of two way traffic system, there would be inflow of wheat into the R.F. Mills from the State Government go-downs on one hand and out flow of wholemeal atta is output through the selected nominees/F.P. Shop dealers of the SDMs/O/C, ARA for supply and delivery to the F.P. Shops every day since day one of crushing of wheat into wholemeal atta based on first in first out (FIFO) method.

(d) SDMs shall ensure lifting of wholemeal atta from the RF Mills through their selected nominees and storing the same at their (i.e. nominees") respective godowns and its delivery to the F.P. Shop Dealers for distribution to the ration card holders within 4th week of the month of allotment of wheat. Similarly, the O/C, ARA shall ensure lifting of wholemeal atta by the FP Shop Dealers direct from the R.F. Mills for distribution to the ration card holders within 4th week of the month of allotment of wheat.

(e) Therefore, in the above time frame 10% distribution of wholemeal atta to card holders through F.P. Shops within the month of allotment of wheat shall be ensured by all concerned positively and without fail.

(xiii) The concerned R.F. Mills shall furnish report in regard to lifting of wheat from State Government godowns, delivery of wholemeal atta to the nominees/F.P Shop dealers of the respective SDMs/OC, ARA within the last working day of the month of allotment of wheat to the DFCS & CA as well as concerned SDMs/O/C ARA (in prescribed proforma vide Annexure-F).

(xiv) The concerned SDMs/O/C, ARA shall submit quarterly report within 2nd week of 1st month of the next quarter in respect of lifting, positioning etc. of wholemeal atta at F.P. Shops for distribution to the card holders of their respective Sub-Divisions/AMC areas to the DFCS & CA as per proforma at Annexure-G.

(xv) The concerned SDMs/OC, ARA may extend the validity period for lifting of wholemeal atta by the consumer card holders from their respective F.P. Shops beyond one month period of allotment of wheat ordered by the DFCS & CA but not exceeding 15 days as and when required as a standing arrangement and the same procedure may be repeated in the next following month. In this process, if there is balance stock in the F.P. Shops on the last day of the extended period, the said balance stock shown as opening stock for the month in question shall be adjusted by proportionate reduction of monthly quota of that month. Such cases of undisposed stock should be brought to the notice of the DFCS & CA by the concerned SDMs/O/C, ARA so that proportionate reduction in monthly allocation of wheat for the SDMs/O/C, ARA concerned can be made for that month in question by the Directorate.

(xvi) Allocation of wheat to the R.F. Mills shall be discontinued or suspended or reduced for a particular month/months against particular Sub-Division(s) by the DFCS & CA, if specific recommendation for suspension/discontinuation/reduction of allotment is received from any SDM/O/C, ARA in case of failure in lifting/positioning of wholemeal atta to the nominees godowns/F.P. Shop dealers in a particular month/allocation or any such valid reason.

(xvii) The concerned SDMs/O/C, ARA shall arrange wide publicity locally about distribution of wholemeal atta to the consumer card holders through PDS network for awareness of the consumer card holders of the respective Sub-Divisions.

(xviii) The above arrangement/procedure shall be subject to review by the DFCS & CA/Government from time to time in exigencies of the public service.

6. From the agreement dated 11.12.2007 and the said Office Memorandum dated 21.11 2007 it is clear that the petitioners shall furnish report in regard to lifting of wheat from the State Government godown, delivery of wholemeal atta to the nominees/F. P. Shop dealers of the respective SDMs/OC, ARA within the last working day of the month of allotment of wheat to the DFCS & CA as well as concerned SDMs/O/C, ARA in prescribed format. The allotment of wheat to the petitioners shall be discontinued or suspended or reduced for a particular month/(s) against the particular Sub-Division by the DFCS & CA, if specific recommendation for suspension/discontinuation/reduction of allotment is received from any SDM/O/C, ARA in case of failure in lifting/positioning of wholemeal atta to the nominees god owns/F.R Shop/dealers. The concerned SDMs/O/C, ARA shall arrange wide publicity locally about distribution of wholemeal atta to the consumer card holders through PDS network for awareness of the consumer card holders of the respective Sub-Divisions.

7. It is stated that as per the terms and conditions in the procedural guidelines, the writ petitioner has been furnishing monthly statements and making communications regarding stock maintenance in the Mill. Under the said agreement

dated 11.12.2007 and Office Memorandum dated 21.11.2007 it is clear that the petitioner was mandated to furnish report in regard to lifting of wheat from the State Government godown, delivery of wholemeal atta to the nominees/F.R Shop dealers of the respective SDMs/OC,ARA within the last working day of each month of allotment of wheat to the Director, Food, Civil Supplies & Consumer Affairs as well as concerned Sub-Divisional Magistrates or Officer in-charge, Agriculture and Rationing Authority. It is alleged that the respondent/writ petitioners used to fail to furnish such stock returns at the end of the month and thereafter verbal complaints were there from different levels to authority regarding irregular delivery of wholemeal atta from the petitioner and such complaints were aired, in the review meeting with members of Fair Price Shops, Labour Vigilance Committee as well as with the meeting of the Sub-divisional nominees. Accordingly, it is alleged that the Sub-Divisional Magistrate, Bishalgarh, Tripura (West) made a preliminary inquiry against the petitioner's functioning under the jurisdiction Bishalgarh Sub-Division. As the SDM, Bishalgarh, submitted inspection report dated 25.11.2008 against the writ petitioner to the respondent No. 2, Director of Food, Civil Supplies & Consumers Affairs, Government of Tripura that the petitioner had violated the rules and also that:

(1) the stock of wheat and the stock of flour were not stacked in a countable position in the said godown.

(2) as per rough estimate that were taken in consonance of the flour mill Manager viz. Ranjan Das, was found to be 6857 bags, however (each hag has a capacity of 50 kgs.).

(3) that on inspection, it was found that the godown had no stock of its own other than PDS wheat. However, the inspection team. observed ongoing production of Privatized "COOK WELL" brand flour. This could not be ruled out of an indication that PDS wheat was being diverted into private production of the Mill.

Accordingly, the petitioner was asked to explain the reasons to the said report i.e. Memo No. F.5-5/1-DF/2007-08 dated 8.12.2008 of respondent No. 2, Director of Food, Civil Supplies & Consumers Affairs, Government of Tripura. Upon receipt of the reply to the show-cause notice from the writ petitioner, it was decided to constitute a committee for detailed investigation into the matter concerning with the petitioner. Accordingly, respondent No. 2, Director of Food, Civil Supplies & Consumers Affairs, Government of Tripura had constituted a committee vide Memo No. F.5-5(1)-DF/2009 (P-II) dated 6.2.2009 for investigation against the Mill of the present writ petitioner, under the Chairmanship of one State Civil Service Officer i.e. Controller of Stores & Distribution of the Directorate of Food, Civil Supplies and Consumer Affairs, Agartala. The said committee after detailed inquiry submitted report against the writ petitioner to respondent No. 2, Director of Food, Civil Supplies & Consumers Affairs, Government of Tripura, on 5.3.2009 that there were serious irregularities committed by the petitioner by violating terms and conditions

of the agreement dated 11. 12.2007 and the said Memorandum dated 21.11.2007. The said report dated 05.03.2009. reads as follows:

Subject: Report on Inspection of M/s. Matilal & Gouri Food & Storage Pvt. Ltd.

Sir,

In reference to your Memo No. F.5-. 5(1)-DF/2009 (P-II) dated 6th February, 2009 1 along with the other members of Committee have visited the Premises of M/s. Matilal & Gouri Food & Storage Pvt. Ltd., Madhuban on 7.2.2009, 10.2.2009 and 12.2.2009 and verified records/Registers relating to allotment of wheat, delivery of Atta, Cash Memos and Physical Stock meticulously and the report is as follows:

1. ALLOTMENT OF WHEAT AND LIFTING THEREOF

M/s. Matilal & Gouri Food & Storage Pvt. Ltd. (in short The Miller) had been allotted 11950.5 MT wheat and the Miller lifted 11459.0 MT. But the Miller did not lift Quota of allotment for the month of January, 2009 as there was balance 568.670 MT (as per Miller statement) what remained in their possession. We have also verified the physical stock as on 12.2.2009 and found so far ok.

2. QUANTITY OF WHOLEMEAL ATTA PRODUCED

Quantity of wholemeal atta produced against allotted wheat (11459.000 MT) is 11115.230 MT.

3. QUANTITY OF WHOLEMEAL ATTA DELIVERED TO SDMs NOMI-NEES/F.P. SHOP IN EACH MONTH AND THE BALANCE STOCK ETC.

The quantity of wheat allotted to the Miller for the period from December, 2007 to January, 2009 and delivery thereof is given below in table form. Since the allocation of wheat for the month January, 2009 has not been lifted by the Miller the same is not taken into account.

| Quantity of wheat allotted | Refract ion Loss @ 3% | Attn to be delivered | Attn actually delivered | Balance | Actual balance availab le with the Miller |
|----------------------------------|-----------------------------|-------------------------|-------------------------------|---------|--|
| 11459.000 | 343.770 | 11115.230 | 11013.155 | 102.075 | 101.915 |

But on verification of invoices and statement of daily sale furnished by the Miller (enclosed) and utilization certificate furnished by the SDM it transpires that there is discrepancies in both the cases i.e. less delivery of Atta to the Nominees. In respect

of verification of cash memos a quantum of 399.20 MT found supplied less and in respect of their statement we found 437.48 MT less supply. However, if we based upon Cash Memos then it is revealed that 399.20 MT PDS Atta has not been delivered to the nominees rather the Miller misappropriated that quantity Atta for his personal gain. A comprehensive statement giving details is enclosed for ready reference.

It may be mentioned here that Labourers of the Mill are paid on monthly basis and their payment does not depend on quantum of work. There are no record available from which it can be ascertain or cross-checked the quantity of Atta delivered and labour payment is made thereof.

4. VERIFICATION OF CASH MEMOS/DELIVERY TO THE SDMS AND SIGNATURE OF THE RECIPIENTS

Cash Memos and registers/records relating to delivery have been verified dully and on the basis of that verification the table in para 3 is prepared.

In respect of signature of the recipients, we found signatures in the Cash Memos but the signatures were not authenticated by the Sub-Division. The Miller failed to provide authenticated signatures of SDMS nominees against which delivery have been made. Though he stated that Nominees do not come to lift their quota normally rather truck drivers are put their signature on behalf of Nominees.

5. DETAILS REPORT ON DISPOSAL OF BRAN AGAINST ALLOCATION OF WHEAT DURING DURGA PUJA, 2008

223.00 MT bran was produced during Puja (October) '08 allotment. Out of which 125.0 MT has been sold to Tripura Cooperative Milk Producers Union Ltd. The cooperative has lifted 10 1.866 MT of bran up to 20.2.2090 and the rest is lying with the Mill (statement enclosed).

Balance 98.0 MT of bran has been sold out to private parties by Mill authorities. In this regard Director of Animal Resources Deptt, has complained vide letter No. F.44/DDFC/FMP/RKN/07(V-I) dated 18.2.2009 that they had prayed for 100.0 MT bran but the same was not supplied by the M/s. Matilal & Gouri Food & Storage Ltd. The Mill authorities have provided a copy of letter addressed to Director, Animal Resources Deptt to make payment for 100 MT of bran within 15 days. As per Millers" person since they have not deposited money within 15 days they have sold out the bran in open market without obtaining prior permission of Director, Food, Civil Supplies and Consumer Affairs. But the system is not , that a Government department would deposit value of bran first then the bran will be supplied. The Miller has to supply the bran on requisition and after that Bill would be preferred.

As per instruction issued inter alia vide memo No. F.5-5(3)-Df/2008-09 dated 26.8.2008 S1. No. 4 the entire quantity of bran shall have to be sold at the Government approved rate of Rs. 510/- as per demand of the consumers and to

Animal Resource Development Department, Tripura Co-operative Milk Producers" Union Ltd. and private Firms through normal trade channel. Further, 9th September, 2008, Director, FCS & SA has issued a letter vide No F.5-5(3)-Df/2008-2009 directing the Miller to supply wheat bran to Tripura Milk Producers" Union. But the Miller by showing mere excuse (issuing a letter for depositing value of bran) sold cut the remaining quantity in open market though he could not show any document to whom and at which rate the bran was sold out to open market. Therefore, the Miller violated, the instruction of the Authority as well as condition of agreement executed. on 11.12.2007 with Under Secretary, FCS &, CA Deptt and sold out 98.0 MT wheat Bran in Open Market at high rate Rs. 11.0 per Kg. for personal gain.

In conclusion it is revealed from the inspection that M/s. Matilal & Gouri Food & Storage Pvt. Ltd. has misappropriated 399.2 MT PDS Atta and 98.0 MT Bran from the period from December, 2007 to January, 2009.

Besides, the Committee has suggested that the following measures are to be taken for streamlining the process of lifting, grinding and supply of whole meal Atta/Maida/Suji/Bran by the RF Mills:

1. Time frame for lifting grinding and delivery of wheat and Attn are to be strictly followed as per directive of DFCS. The concerned Area Inspector should ensure the same.
2. Specific time frame may be provided for each Nominee for lifting Atta.
3. Signature of SDM's nominee duly attested by SDM should be available at the Mill and no one other than nominee or duly authorized his representative (signature duly attested) may be allowed to lift from the Mill. The RF Mill should keep Cash Memos allotment wise/month and Sub-Division wise for ready reference and in the interest of proper inspection.
8. The basic allegations as per report dated 5.3.2009 against the writ petitioner are that; (a) 399.2 MT PDS Atta have not been delivered to the nominee, rather the Miller misappropriated the said quantity of PDS Atta for their personal gain, (b) signatures in the cash memo were not authenticated by the Sub-Division nominee of SDMs of the concerned Sub-Division, and (c) 98.0 MT Bran has been sold out to private parties by the Miller on higher rate for their personal gain without obtaining permission from the appropriate authority.
9. On receipt of the said report dated 5.3.2009, Director of Food, Civil Supplies & Consumers Affairs, Government of Tripura, respondent No. 2, issued showcause notice being No. F.5-5(2)-DF/2007-08 dated 7.5.2009 asking the petitioner to explain reasons to the allegation and assertion mentioned in the show cause. For easy reference, the show cause dated 07.05.2009 is quoted hereunder:

SHOW-CAUSE NOTICE

Whereas, a team of food officials of the Directorate of Food,. Civil Supplies and Consumer Affairs, Bishalgarh Sub-Division and O/O of the O/C, ARA, Agartala Rationing Authority led by CS & D have inspected the R.F. Mill of M/s. Matilal & Gouri Food & Storage Pvt. Ltd. Badharghat on 7.2.2009, 10.2.2009 and 12.2.2009 and the team has submitted an enquiry report on the inspections on 05.03.2006:

AND

Whereas, as per report of the team, it is found that M/s. Matilal & Gouri Food & Storage Pvt. Ltd., Badharghat had been allotted 11,950.5 MD of wheat during, the period from December, 2007 to January, 2009 and the Miller lifted 11,459.0 MT during the said material period and thus the Miller did not lift the quota of allotment for the month of January, 2009 as there was balance of 568.670 MT wheat in their possession (as per Miller's statement) though the miller has suppressed the fact by not submitting the true and correct monthly returns of stock to this office in time as per Agreement;

AND

Whereas, as per record available during physical verification of the said Mill, M/s. Matilal & Gouri Food & Storage Pvt. Ltd., Badharghat, the quantity of wheat allotted and its delivery in the form of wholemeal atta to the nominees of SDMs/O/C, ARA for the period from December, 2007 to January, 2009 are as follows:

(Figs. in MT)

| Quantity of wheat allotted (January, 2009 has not taken into account) | Refract ion loss @ 3% | W/atta to be delivered | W/atta actually delivered | Balance | Actual balance available with the Miller |
|---|-----------------------|------------------------|---------------------------|---------|--|
| (1) | (2) | (3) | (4) | (5) | (6) |
| 11459.000 | 343.770 | 11115.123 | 11013.155 | 102.075 | 101.915 |

AND

Whereas, according to the said enquiry report, it appears on verification of Invoices and Statements of the daily sale as furnished by the miller and utilization certificates furnished by the SDMs that there is discrepancies in both cases, i.e. less delivery of atta to the nominees to the extent of 399.20 MT w/atta as per cash memos issued

and on the other hand there is 437.48 MT less supply as per statement of the Miller;

AND

Whereas, based on aforesaid cash memos (issued by the Miller), it is revealed that 399.20 MT PDS atta has not been delivered to the nominees rather the Miller mis-appropriated the said quantity of PDS atta for his personal gain;

AND

Whereas, during inspection, it was also found that signatures in the cash memos were found but the signature were not authenticated by the Sub-Divisional nominees or SDM of the concerned Sub-Division and the Miller failed to provide documents for authentication recipient signatures by the SDM/SDMs nominees against which delivery were made;

AND

Whereas, during inspection, it was also found that 223.38 MT bran was produced against allotment for Puja Festival (October) 08. Out of which, 125.0 MT has been sold to Tripura Coop Milk Producers Union Ltd. though they lifted only 101.866 MT of bran upto 20.2.2009, and the balance 98.0 MT of bran has been sold out to private parties by mill at higher rate for his personal gain without obtaining permission from the appropriate authority;

AND

Whereas, it is revealed as per enquiry report that M/s. Matilal & Gouri Food & Storage Pvt. Ltd. has misappropriated 399.2 MT of atta and 98.0 MT bran for the period from December, 2007 to January, 2009 violating the terms and conditions of the allotment order as well as agreement executed on 11.12.2007 in between Government of Tripura and the Miller. A copy of the said inspection report is also enclosed.

Now, M/s. Matilal & Gouri Food & Storage Pvt. Ltd., Badharghat is, therefore, asked to explain the reason as to why (i) further allotment of wheat shall not be discontinued and (ii) appropriate legal action should not be taken against him for misappropriation of PDS wheat/atta violating the terms and conditions as laid down in the allotment orders of PDS wheat as well as in the agreement. Mis reply should reach this office within 10 (ten) days from the date of receipt of this show-cause notice, otherwise ex parte decision will be taken against the Miller.

10. In response to the show-cause notice dated 7.5.2009, the writ petitioner submitted reply dated 16.5.2009 to the said show cause, stating inter alia, that the charges for less delivery of 399.200 MT PDS atta is quite derogatory and also not correct. And in fact nominees of the respondents failed to lift full allotted quota of wholemeal atta and as a result 437.280 MT (not 399.200 MTW/atta as shown in your notice) less delivery to your nominees of the respondent does not mean that the

less delivered quota was misappropriated. And nondelivery of quota of wholemeal atta lying with the petitioner was carried forward as balance stock and it was brought to the notice of respondent No. 2, Director of Food, Civil Supplies & Consumers Affairs, Government of Tripura. The responsibility of less distribution of wholemeal atta rest on the nominees of respondents and writ petitioner cannot be held responsible in any manner and as such, allegation of misappropriation is absolutely mala fide with oblique purpose.

Regarding allegation of sale of 9.08 MT bran the petitioner explained that after giving notice to the Director of Animal Resource Department on 3.10.2008 for the purpose of mitigating loses, bran was sold to the private parties at the rate of Rs. 510.00 per quintal which is approved rate of respondents through business channel following the terms and conditions of the agreement dated 26.8.2008. Under the said reply, the petitioner also categorically denied that the petitioner had failed to maintain proper records for less delivery of the wholemeal atta to the Sub-divisional nominees, which alleged to have caused deprivation of their quota of wholemeal atta to huge number of consumer card holders. It is also stated that the said 9.08 MT wheat bran was sold at the approved rate to the private parties through normal business channel in compliance of the memorandum of the Government of Tripura, Director, Food, Civil Supplies & Consumers Affairs No (3) DF/2008-09 dt. 26.8.2008, condition No. 4 of which states that the entire quantity of other by-products, such as bran (18%) and resultant atta (25%) shall have to be sold at the Government approved rate of Rs. 510/-and Rs. 710/- per qtl. respectively as per demand of the consumers and to Animal Resource Development Deptt., Tripura Cooperative Milk Producers" Union Ltd. and Private Firm through normal trade channel. They shall have to maintain separate books of accounts for the purpose and furnish the details of delivery of bran and resultant atta made to them to the Directorate. The Animal Resource Development Deptt, in response to the said letter of the petitioner dated 3.10.2008 informed the petitioner under letter being No. F.44/DDFC/FMP/RKN/2007 dated 19.11.2008 that the department of ARD, Government of Tripura is surprised to receive the said letter dated 3.10.2003 and that the Government Department did not have any system for giving advance. In the past many companies like the petitioner had supplied wheat bran and then submitted bills for the payment and therefore, requested the petitioners to make arrangement for supply of 100 MT of wheat bran in phased manner without any further delay and assure that as soon as bill is submitted payment shall be made within thirty days. Again the Director, ARD, Government of Tripura under his letter dated 18.02.2009 informed the Director of Food, Civil Supplies & Consumers Affairs, Government of Tripura, respondent No. 2 that because of non-supply of wheat bran by the petitioner in spite of request for supply of the wheat bran under the letter of the Director of ARD dated 8.9.2008 and also reminders, department has serious problem in manufacturing animal feed by the Feed Mixing Plant at R.K. Nagar, and also accordingly, requested the department of Food, Civil Supplies and Consumer Affairs, to look into the matter to initiate

necessary action against the petitioner. The State respondents after considering the said reply of the writ petitioner dated 16.5.2009 to the said show-cause notice dated 7.5.2009 and also the said report of the Committee dated 5.3.2009, relevant records and materials had issued memorandum being No. F.5-5(1)-DF/2007-08 dated 4.7.2009 to deposit an amount of Rs. 7,22,750/- (Rupees seven lakh twenty-two thousand seven hundred fifty) for the profit not below an amount of Rs. 5,78,200/- against the petitioner for selling 98 MT of wheat bran at higher price in the open market not below the rate of Rs. 11.00 per kg. instead of selling at FCS&CA Deptt. approved rate of Rs. 5.10 per kg. to the Director, ARDD, Government of Tripura, and also penal amount of Rs. 1,44,550/- being 25% of the said differential cost of Rs. 5,78,200/- for committing the offence in violation of the agreement. For easy reference the impugned memorandum dated 4.7.2009 reads as follows:

No. F.5-5(1)-DF/2007-08 4.7.2009

MEMORANDUM

The undersigned is directed to inform that a team of food officials of the Offices of the Director, FCS & CA alongwith officials of SDM (Food), Bishalgarh and O/C, Agartala Rationing Authority led by Controller of Stores & Distribution has inspected the R.F. Mill of M/s. Matilal & Gouri Food & Storage Pvt. Ltd. Badharghat repeatedly on 7.2.2009, 10.2.2009 and 12.2.2009 and the team has submitted enquiry report on 5.3.2009 indicating certain irregularities.

2. Thereafter, a Memorandum vide No. F.5-5(2)-DF/2007-08 and 7.5.2009 was issued upon the Prop. of M/s. Matilal & Gouri Food & Storage Pvt. Ltd. asking thereby to show cause on the irregularities committed by the said firm as detected by the inquiry team.

3. Accordingly, the Prop. of M/s. Matilal & Gouri Food & Storage Pvt. Ltd. has submitted the reply of show-cause notice to the Directorate on 16th May, 2009 and the same has been examined thoroughly and carefully from this end.

4. It appears on examination of reply of show-cause notice dated 16.5.2009 that the said Proprietor of the firm has failed to explain the reasons satisfactorily to the following irregularities:

(i) Non-submission of valid documents of authorised/authenticated recipient(s) of stock of wholemeal atta from the R.F. Mill on behalf of the respective Sub-Division and failure to maintain proper record thereof.

(ii) Less delivery of wholemeal atta to the Sub-Divisional nominees in deviation of monthly sub-allocation order(s) issued by the authority from time to time.

(iii) Non-delivery of wholemeal atta as per monthly sub-allocation order(s) and depriving thereby huge number of consumer card holders by way of non-submitting true and correct monthly stock return(s) within scheduled time violating the

standing instructions of the authority.

(iv) Non-delivery of 98 MT wheat bran to the Director, Animal Resource Development Department (ARDD) @ Rs. 5.10 per kg. and selling the same to private parties at higher market rate of Rs. 11.00 per kg. to derive personal gain without obtaining prior permission of the competent authority and also violating the standing instruction.

5. After careful examination of the enquiry report and reply of the show-cause notice furnished by the firm as indicated above as well as records in file, it is revealed clearly that the proprietor, M/s. Matilal & Gouri Food & Storage Pvt. Ltd., Badharghat has wilfully violated the terms and conditions of the Agreement as executed between the parties as well as the standing instructions of the authority contained in the procedural guidelines and monthly sub-allocation orders as communicated from time to time by the Director, FCS&CA, Tripura.

6. The proprietor, M/s. Matilal & Gouri Food & Storage Pvt. Ltd., Badharghat deserves penal action for committing irregularities as indicated above. The only selling of 98 MT wheat bran at higher price in the open market not below the rate of Rs. 11.00 per kg. instead of selling at FCS&CA Deptt. approved rate of Rs. 5.10 per kg. to the Director, ARDD, the proprietor, M/s. Matilal & Gouri Food & Storage Pvt. Ltd., Badharghat has gained personal profit not below an amount of Rs. 5,78,200/- as difference money, for which he has neither intimated nor obtained any prior permission from the authority. As such, the proprietor of the said firm shall have to pay Rs. 5,78,200/- being the differential cost of 98 MT wheat bran for selling in open market at higher rate instead of selling to the Director, ARDD at Government approved rate. Moreover, as a part of disciplinary measures, the Prop. of M/s. Matilal & Gouri Food & Storage Pvt. Ltd. shall have to pay a penal amount of Rs. 1,44,550/- being 25% of the differential cost of Rs. 5,78,200/- for committing the offence in violation of the Agreement.

7. The undersigned is now, therefore, directed to convey that the proprietor of M/s. Matilal & Gouri Food & Storage Pvt. Ltd., Badharghat is ordered to deposit the amount of Rs. 7,22,750/- (Rupees seven lakh twenty-two thousand seven hundred fifty) only being the differential amount of Rs. 5,78,200/- and the penal amount of Rs. 1,44,550/- being 25% of the said differential amount in favour of the Director, Food, Civil Supplies & Consumer Affairs, Tripura, Agartala by DD/Cheque under non-operable collection account within 10 (ten) days from the date of receipt of this memorandum.

8. The Prop. of M/s. Matilal & Gouri Food & Storage Pvt. Ltd. is also hereby warned for recurrence of such violation/omission in future. In case of failure on the part of the Prop. to deposit the penal amount of Rs. 7,22,750/- within the stipulated period, monthly allocation of wheat in favour of the said firm shall be ceased automatically.

11. By subsequent impugned communication or/Memorandum No. F.5-5(1)-DF/2007-08, the said agreement dated 11.12.2009 executed in between the Government of Tripura in FCS&CA Deptt. and M/s. Matilal & Gouri Food & Storage Pvt. Ltd., Badharghat has been rescinded with immediate effect for the failure on the part of the writ petitioner to deposit the said amount of Rs. 7,22,750/- within the stipulated period and also that the monthly allocation of wheat in favour of the petitioner shall be ceased automatically, hence the present writ petition.

12. The learned Counsel appearing for the respondents, at the very outset of the hearing has questioned the maintainability of the present writ petition for the reason that the matter in dispute in the present writ petition is of civil right arising on the breach of the contract or/breach of the agreement dated 11.12.2007 and as such, proper remedy would be the civil suit inasmuch as the remedy sought for in the present writ petition shall not come under the public law remedy which can be enforced by this Court by invoking its jurisdiction under Article 226 of the Constitution of India.

13. To the contra, Mr. S. Talapatra, learned senior counsel appearing for the petitioner strenuously urged that the remedy seeking in the present writ petition comes under the public law remedy inasmuch as the actions of the respondents for distributing PDS item to the eligible card holders is an essential element of public duties to the public and violation thereof shall cause failure on the part of the State respondents to discharge its public duties. Therefore, it is the case of the petitioner that the essential points to be decided in determining the maintainability of the present writ petition are if the relief sought for in the present writ petition comes within the public law realm, and also the public duty of the State respondents is involved in making PDS items available to the eligible card holders of the State of Tripura.

14. It is fairly well settled that unless the action challenged in the writ petition pertains to discharge of public function or public duty by authority, the Court shall not entertain the writ petition which does not involve the performance of the public function or public duties. Therefore, the core question to be considered in deciding maintainability of the present petition is as to whether the State respondents discharge its public function or public duties in distributing PDS item to the eligible card holders of the State of Tripura, through a contract or/agreement dated 11.12.2007 between the present petitioner and Director of Food, Civil Supplies & Consumers Affairs, Government of Tripura.

15. It is also equally well settled that public law remedy under Article 226 of the Constitution of India is to issue not only the prerogative writs provided therein but also any order or direction to enforce any of the fundamental rights and "for any other purpose". The distinction between public law and private law remedy by judicial adjudication is gradually getting marginalized and obliterated. For a public law remedy enforceable under Article 226 of the Constitution of India, the action of

the authority needs to fall in the realm of public law. The question requires to be determined in each case. However, it may not be possible to generalise the nature of the action which would come either under public law remedy or private law field nor is it desirable to give exhaustive list of such actions.

16. The Apex Court in [Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others](#), held that unlike private parties the State while exercising its power discharging its function acts indubitably, as is expected by it, for public good and in public interest, It is also held (AIR p. 551, para 28) that "Even assuming that it is necessary to import the concept of presence of some public element in a State action to attract Article 14 and permit judicial review, we have no hesitation in saying that the ultimate impact of all actions of the State or a public body being undoubtedly on public interest, the requisite public element for this purpose is present also in contractual matters. We, therefore, find it difficult and unrealistic to exclude the State actions in contractual matters, after the contract has been made, from the purview of judicial review to test its validity on the anvil of Article 14."

17. The Apex Court in DFO v. Ram Sanahi Singh (1973) 3 SCC 864 : (SCC p. 865, para 4) held that : "By that order he has deprived the respondent of a valuable right. We are unable to hold that merely because the source of the right which the respondent claims was initially in a contract, for obtaining relief against any arbitrary and unlawful action on the part of a public authority he must resort to a suit and not to a petition by way of a writ. In view of judgment of this Court in [K.N. Guruswamy Vs. The State of Mysore and Others](#), there can be no doubt that the petition was maintainable, even if the right to relief arose out of an alleged breach of contract where the action challenged was of a public authority invested with statutory power." (emphasis supplied)

18. The Apex Court in [Air India Statutory Corporation, etc. Vs. United Labour Union and others \[overruled\]](#), that "The legal right of an individual may be found a contract or a statute or an instrument having the force of law. For a public law remedy enforceable under Article 226 of the Constitution, the action of the authority needs to fall in the realm of public law - be it a legislative act of the State, an executive act of the State or an instrumentality or a person or authority imbued with public law element. The question requires to be determined in each case. However, it may not be possible to generalise the nature of the action which would" come either under public law remedy or private law field nor is it desirable to give exhaustive list of such actions. As held by this Court in [The Calcutta Gas Company \(Proprietary\) Ltd. Vs. The State of West Bengal and Others](#), that if the legal right of a manager of a company is denuded on the basis of recommendation by the Board of Management of the company, it would give him right to enforce his right by filing a writ petition under Article 226 of the Constitution. In [Mulamchand Vs. State of Madhya Pradesh](#), this Court had held that even though the contract was void due to noncompliance of Article 229, still direction could be given for payment of the amount on the doctrine

of restitution u/s 70 of the Act, since the State had derived benefit under the void contract. The same view was reiterated in [State of West Bengal Vs. B.K. Mondal and Sons](#), and in [The New Marine Coal Co. \(Bengal\) Private Ltd. Vs. Union of India \(UOI\)](#), . In [Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd.](#), , a direction was issued to release loan to the respondent to comply with the contractual obligation by applying the doctrine of promissory estoppel. In [Mahabir Auto Stores and others Vs. Indian Oil Corporation and others](#), contractual obligations were enforced under public law remedy of Article 226 against the instrumentality of the State. In [Kumari Shrelekha Vidyarthi and Others Vs. State of U.P. and Others](#), contractual obligations were enforced when public law element was involved. Same judicial approach is adopted in other jurisdictions, namely, the House of Lords in *Gillick v. West Norfolk and Wisbech Area Health Authority* 1986 AC 112, wherein the House of Lords held that though the claim of the plaintiff was negated but on the anvil of power of judicial review, it was held that the public law content of the claim was so great as to make her case an exception to the general rule. Similarly in *Roy (Dr.) v. Kensington and Chelsea and Westminster Family Practitioner Committee* (1992) AC 624 the House of Lords reiterated that though a matter of private law is enforceable by ordinary actions, a Court also is free from the constraints of judicial review and that public law remedy is available when the remuneration of Dr. Roy was sought to be curtailed. In [LIC of India and Another Vs. Consumer Education and Research center and Others](#), this Court held that each case may be examined on its facts and circumstances to find out the nature and scope of the controversy. The distinction between public law and private law remedy has now become thin and practically obliterated."

19. This Court (incidentally T.N.K. Singh, J.) in [A. Angoubi Singh Vs. State of Manipur and Others](#), held that requirement of discharging obligation by the State Government to the public to act fairly, justly and reasonably is extended even in contractual matters and on failure of the State to discharge its obligation, the writ petition, by the aggrieved party to enforce a contractual obligation to the State is maintainable.

20. The Apex Court in [ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others](#), held that:

12. The learned Counsel appearing for the first respondent, however, submitted that this Court has taken a different view in the case of [Life Insurance Corporation of India Vs. Escorts Ltd. and Others](#), wherein this Court held : (SCC p. 344, para 102)

If the action of the State is related to contractual obligations or obligations arising out of the tort, the Court may not ordinarily examine it unless the action has some public law character attached to it. Broadly speaking, the Court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to private law field. The difficulty will lie in demarcating the frontier between the public law domain and the private law field. It is impossible to draw the

line with precision and we do not want to attempt it. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the action and a host of other relevant circumstances. When the State or an instrumentality of the State ventures into the corporate world and purchases the shares of a company, it assumes to itself the ordinary role of a shareholder, and dons the robes of a shareholder, with all the rights available to such a shareholder. There is no reason why the State as a shareholder should be expected to state its reasons when it seeks to change the management, by a resolution of the company, like "any other shareholder.

(Emphasis supplied)

13. We do not think this Court in the above case has, in any manner, departed from the view expressed in the earlier judgments in the case cited hereinabove. This Court in the case of [Life Insurance Corporation of India Vs. Escorts Ltd. and Others](#), proceeded on the facts of that case and held that a relief by way of a writ petition may not ordinarily be an appropriate remedy. This judgment does not lay down that as a rule in matters of contract the Court's jurisdiction under Article 226 of the Constitution is ousted. On the contrary, the use of the words "Court may not ordinarily examine it unless the action has some public law character attached to it: itself indicates that in a given case, on the existence of the required factual matrix a remedy under Article 226 of the Constitution will be available. The learned Counsel then relied on another judgment of this Court in the case of [State of U.P. and others Vs. Bridge and Roof Co. \(India\) Ltd.](#), wherein this Court held (SCC p. 31, para 21):

Further, the contract in question contains a clause providing inter alia for settlement of disputes by reference to arbitration. The arbitrators can decide both questions of fact as well as questions of law. When the contract itself provides for a mode of settlement of disputes arising from the contract, there is no reason why the parties would not follow and adopt that remedy and invoke the extraordinary jurisdiction of the High Court under Article 226. The existence of an effective alternative remedy-in this case, provided in the contract itself is a good ground for the Court to decline to exercise its extraordinary jurisdiction under Article 226.

14. This judgment again, in our opinion, does not help the first respondent in the argument advanced on its behalf that in contractual matters remedy under Article 226 of the Constitution does not lie. It is seen from the above extract that in that case because of an arbitration clause in the contract, the Court refused to invoke the remedy under Article 226 of the Constitution. We have specifically inquired from the parties to the present appeal before us and we have been told that there is no such arbitration clause in the contract in question. It is well known that if the parties to a dispute had agreed to settle their dispute by arbitration and if there is an agreement in that regard, the Courts will not permit recourse to any other remedy without invoking, the remedy by way of arbitration, unless of course both the

parties to the dispute agree on another mode of dispute resolution. Since that is not the case in the instant appeal, the observations of this Court in the said case of [State of U.P. and others Vs. Bridge and Roof Co. \(India\) Ltd.](#), are of no assistance to the first respondent in its contention that in contractual matters, writ petition is not maintainable.

15. The learned Counsel then contending that this Court will not entertain a writ petition involving disputed questions of fact relied on a judgment of this Court in case of [State of Bihar and Others Vs. Jain Plastics and Chemicals Ltd.](#), wherein this Court held : (SCC p. 218, para 7)

7. In our view, it is apparent that the order passed by the High Court is, on the face of it, illegal and erroneous. It is true that many matters could be decided after referring to the contentions raised in the affidavits and counter-affidavits, but that would hardly be a ground for exercise of extraordinary jurisdiction under Article 226 of the Constitution in case of alleged breach of contract. Whether the alleged non-supply of road permits by the appellants would justify breach of contract by the respondent would depend upon facts and evidence and is not required to be decided or dealt with in a writ petition. Such seriously disputed questions or rival claims of the parties with regard to breach of contract are to be investigated and determined on the basis of evidence which may be led by the parties in a properly instituted civil suit rather than by a Court exercising prerogative of issuing writs.

21. The Apex Court in [Binny Ltd. and Another Vs. V. Sadasivan and Others](#), held that (para 29 SCC):

Thus, it can be seen that a writ of mandamus or remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against the private wrongs. It is used for enforcement of various rights of the public or to compel public/statutory authorities to discharge their duties and to act within their bounds. It may be used to justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution, However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but nevertheless, there must be the public law element in such action.

22. This Court, keeping in view of the decisions of the Apex Court as well as this Court, discussed above, has given anxious consideration of mind, as to whether the

actions of the State respondents for making PDS item available to the eligible card holders of the State of Tripura are imbued with public law elements, and is of considered view that such actions of the State respondents are to fail in the realm of public law remedy. In the result, the present writ petition seeking the relief, stated above, will come under the public law remedy enforceable under Article 225 of the Constitution of India.

This being the situation, this Court is of considered view that the present writ petition is maintainable.

23. On careful perusal and consideration of the elaborate pleadings of respective parties, more particularly, the impugned memorandum dated 4.7.2009 and 31.07.2009, it is clear that the facts in dispute between the parties are as to whether or not there were:

(i) Non-submission of valid documents of authorized/authenticated recipient(s) of stocks of wholemeal atta from the R.F. Mill on behalf of the respective Sub-Division and failure to maintain proper record thereof.

(ii) Less delivery of wholemeal atta to the Sub-Divisional nominees in deviation of monthly sub-allocation order(s) issued by the authority.

(iii) Non-delivery of wholemeal atta as per monthly sub-allocation order(s) and depriving thereby huge number of consumer card holders by way of non-submitting true and correct monthly stock return(s) within scheduled time violating the standing instructions of the authority.

(iv) Non-delivery of 98 MT wheat bran to the Director, Animal Resource Department (ARDD) @ Rs. 5.10 per kg and selling the same to private parties at higher market rate of Rs. 11.00 per kg to derive personal gain without obtaining prior permission of the competent authority and also violating the standing instruction.

24. The Apex Court in [State of Orissa Vs. Dr. \(Miss\) Binapani Dei and Others](#), (AIR para 6, p. 1270) held that "...Under Article 226 of the Constitution the High Court is not precluded from entering upon decision on questions of fact raised by the petition. Where an enquiry into complicated questions of fact arises in a petition under Article 226 of the Constitution before the right of an aggrieved party to obtain relief claimed may be determined, the High Court may in appropriate cases decline to enter upon that enquiry and may refer the party claiming relief to a suit. But the question is one of discretion and not of jurisdiction of the Court. In the present case the question in dispute was about the regularity of the enquiry and the High Court was apparently of the view that the question whether the State acted arbitrarily did not raise any question of investigation into complicated issues of fact. No interference with the exercise of the discretion of the High Court is, therefore, called for."

25. The Apex Court in [Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot and Others](#), held that "...A writ petition under Article 226, it needs to be emphasised, is essentially different from a suit and it would be incorrect to assimilate and incorporate the procedure of a suit into the proceedings of a petition under Article 226. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right of relief, questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is no doubt discretionary, but the discretion must be exercised on sound judicial principles. When the petition arise complex questions of fact, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute should not appropriately be tried in a writ petition, the High Court may decline to try a petition [see [Smt. Gunwant Kaur and Others Vs. Municipal Committee, Bhatinda and Others](#),]. If, however, on consideration of the nature of the controversy, the High Court decides, as in the present case, that it should go into a disputed question of fact and the discretion exercised by the High Court appears to be sound and in conformity with judicial principles, this Court would not interfere in appeal with the order made by the High Court in this respect."

26. The Apex Court in ABL International Ltd. and Anr.'s case (supra) (SCC para 16, p. 567) held that "A perusal of this judgment though shows that a writ petition involving serious disputed questions of facts which requires consideration of evidence which is not on record, will not normally be entertained by a Court in the exercise of its jurisdiction under Article 226 of the Constitution of India. This decision again, in our opinion, does not lay down an absolute rule that in all cases involving disputed questions of fact the parties should be relegated to a civil suit. In this view of ours, we are supported by a judgment of this Court in the case of [Smt. Gunwant Kaur and Others Vs. Municipal Committee, Bhatinda and Others](#), where dealing with such a situation of disputed questions of fact in a writ petition this Court held : (SCC p. 774, paras 14-16)

14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit in reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be

justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.

15. From the averments made in the petition filed by the appellants it is clear that in proof of a large number of allegations the appellants relied upon documentary evidence and the only matter in respect of which conflict of facts may possibly arise related to the due publication of the notification u/s 4 by the Collector.

16. In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed question of fact. The High Court has jurisdiction to determine questions of fact, even if they are in dispute and the present, in our judgment, is a case in which in the interest of both the parties the High Court should have entertained the petition and called for an affidavit-in-reply from the respondents, and should have proceeded to try the petition instead of relegating the appellants to a separate suit.

27. The Apex Court in [D.K. Basu Vs. State of West Bengal](#), held that "The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the Courts too much, as the protector and custodian of the indefeasible rights of the citizens. The Courts have the obligation to satisfy the social aspirations of the citizens because the Courts and the law are for the people and expected to respond to their aspirations. A Court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the Court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family.

28. This Court, keeping in view the decisions of the Apex Court, discussed above/regarding disputed question of facts in a writ proceedings, has given anxious consideration of mind in the given case, and is of considered view that this Court is not deprived of its jurisdiction to entertain the present writ petition under Article 226 of the Constitution of India, merely because in considering the petitioner's right the question of facts may have to be determined and also that the doctrine of relating the aggrieved party to the remedies available in civil law limits the role of this Court too much inasmuch this Court has an obligation to satisfy the social aspirations of the citizen of India and also that this Court is the protector and custodian of the indefeasible rights of the citizens.

29. For the foregoing reasons, the Secretary/Joint Secretary to the Government of Tripura, Food, Civil Supplies & Consumer, Affair, Department, Agartala, is directed to

make an injury as to whether there were:

(i) Non-submission of valid documents of authorised/authenticated recipient(s) of stock of wholemeal atta from the R.F. Mill on behalf of the respective Sub-Division and failure to maintain proper record thereof;

(ii) Less delivery of wholemeal atta to the Sub-Divisional nominees in deviation of monthly sub-allocation order(s) issued by the authority from time to time;

(iii) Non-delivery of wholemeal atta as per monthly sub-allocation order(s) and depriving thereby huge number of consumer card holders by way of non-submitting true and correct monthly stock return(s) within scheduled time violating the standing instructions of the authority; and

(iv) Non-delivery of 98 MT wheat-bran to the Director, Animal Resource Development Department (ARDD) @ Rs. 5.10 per kg. and selling the same to private parties at higher market rate of Rs. 11.00 per kg. to derive personal gain without obtaining prior permission of the competent authority and also violating the standing instruction;

by giving opportunity to the concerned parties i.e. the Director of Food, Civil Supplies & Consumers Affairs, Government of Tripura, respondent No. 2 and the petitioner to put up their respective case and produce oral and documentary evidence in support of their cases and also by giving opportunity of personal hearing, if necessary.

It is made clear that the whole exercise for conducting inquiry and report should be completed within a period of 3 (three) months from the date of receipt of certified copy of this order. It is also further directed that basing on the said inquiry report the State respondents may take appropriate decisions and in case, the inquiry report is in favour of the writ petitioner, the said Agreement dated 11.12.2007 between the writ petitioner and the Government of Tripura, Food Civil Supplies & Consumers Affairs Department shall be implemented. Pending disposal of the inquiry, State respondents shall allot wheat for the amount mentioned in the said Agreement on monthly basis in favour of the writ petitioner provisionally for necessary conversion to wholemeal atta and also for distribution of the wholemeal atta as per the terms and conditions mentioned in the said Agreement, subject to the result of the said inquiry report.

30. For enabling the Secretary/Joint Secretary, Government of Tripura Food, Civil Supplies & Consumer Affairs Department, Agartala to conduct the inquiry as per order of this Court, the impugned memoranda dated 4.7.2009 and 31.7.2009. are hereby set aside.

The writ petition is disposed of with the above observations and directions.