

(2007) 02 GAU CK 0020

Gauhati High Court

Case No: None

All Assam Modern Chakki Mill
Association and Another

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision: Feb. 23, 2007

Citation: (2009) 4 GLR 444 : (2007) 2 GLT 876

Hon'ble Judges: Biplab Kumar Sharma, J

Bench: Single Bench

Judgement

B.K. Sharma, J.

The prayer made in both the writ petitions is for a direction to the respondents to allot PDS wheat to the Modern Chakki Mills on the basis of the prevalent practice as was existing prior to 1999. The writ petitions have been heard together and are being disposed of by this common judgment and order.

2. While the first writ petition being W.P. (C) 4000/2004 has been filed by registered Association, namely All Assam Modern Chakki Mills Association representing its members, the second writ petition being W.P. (C) No. 4782/2004 has been filed by an individual who is the owner of the Atta Chakki Mill in the name and style of M/s. Shree Khatawat Oil Mill.

3. The facts leading to filling of the instant writ petition are as follows:

4. The Modern Atta Chakki Mill used to receive 90 per cent of the total allotted quantity of PDS wheat, while the remaining 10 per cent was allotted to Roller Flour Mills. Such a practice was prevalent till 1999. Pursuant to the policy decision of the Govt. of India under PDS scheme, whole wheat and not atta was distributed to the consumers. With the introduction of such a system the earlier practice of allotment of whole wheat both to the Modern Atta Chakki Mills and Roller flour Mills was stopped.

5. The aforesaid system of distribution of whole wheat to the consumers did not bring the desired result and the scheme became unsuccessful. In such a situation the Govt. reverted back to the old system of distributing atta to the consumers in 2001. However, unlike earlier prevalent system of allotting PDS wheat to the Modern Chakki Mills, the entire quantity of PDS wheat was allotted to Roller Flour Mills. In this connection, the petitioners have annexed Annexure-E order dated 31.05.01 by which it was only Roller Flour Mills which were allotted with the whole wheat.

6. The petitioners have referred to Annexure-F Office Memorandum introducing the new policy for setting up a Chakki Mills for milling of PDS wheat. According to the petitioners pursuant to the said Office memorandum as well as upon receipt of instruction from the Govt., Modern Chakki Mills have been upgraded/modernized as it was made condition precedent by the Govt. that unless the mills were not modernized/upgraded, the allotment of PDS wheat would be stopped.

7. It is the grievance of the petitioners that in spite of revival of the earlier system of distribution of PDS wheat, they have not been allotted the quota of PDS wheat for grinding. This has compelled the petitioners to procure wheat from the open market at a rate which far higher than that of PDS wheat. It is the further grievance of the petitioners that although the Modern Chakki Mills have not been allotted with the quantity of PDS wheat, but the Roller Flour Mills have been favoured with uninterrupted quota of supply of wheat at subsidized rate. The petitioners made time to time representations before the authorities, but the same failed to evoke any response.

8. Referring to Annexure-G communication dated 4.1.02 issued by the Secretary to the Govt. of Assam, Food and Civil Supplies Department to the Director of Food and Civil Supplies, the petitioners have contended that by the said communication although a direction was issued not to allot wheat to the Modern Chakki Mills, but no reasons for such denial were assigned. According to the petitioners such attitude on the part of the State Govt. in the concerned department is contrary to the Central Govt. guidelines. Referring to the purported CBI enquiry in respect of allotment of PDS quota, it is the case of the petitioners that such CBI enquiry cannot be the ground to deprive the PDS wheat to the Modern Chakki Mills and that the same also pertains to Roller Flour Mills.

9. It is in the aforesaid circumstances the petitioners has involved the writ jurisdiction of this Court for the aforesaid direction. The petitioners in W.P. (C) No. 4000/2004 have filed an affidavit on 2.3.05 bringing it on record that the respondents have in the meantime started allotment of wheat to Modern Atta Chakki Mills in some of the Districts. However, such allotment, according to the petitioner is insignificant. In the additional affidavit filed by the petitioners on 24.11.05, they have referred to the orders of this Court. passed in earlier writ proceeding pertaining to the decision of the State Govt. to distribute whole wheat and not atta to the consumers. The petitioners have also referred to certain intra

departmental communications in support of their claim for allotment of PDS wheat to the Modern Chakki Mills.

10. In the affidavit in opposition filed by the respondent No. 3 an allegation has been made against the Modern Chakki Mills owners. According to the respondent No. 3, confidential report has been received by the department that the Modern Chakki Mills failed to participate adequately in fair distribution of wheat which led to CBI enquiry. According to the said respondent most of the Modern Chakki Mills failed to lift the allotted quota of wheat at the fixed price. In paragraph 21 of the affidavit, it has been stated that the Govt. is ready to consider the allotment of PDS wheat to Modern Chakki Mills as and when reports are received from the jurisdictional Deputy Commissioner/Sub-Divisional Officer. In paragraph 28, it has been stated that allotment of wheat to Modern Chakki Mills has already been started since November, 2004 through District/Sub-Divisional authorities.

11. The petitioners in W.P. (C) No. 4000/04 has filed an affidavit in reply to the affidavit in opposition filed by the respondent No. 3. In the reply affidavit, it has been pointed out that the related CBI enquiry not only concerns to the Modern Chakki Mills, but it concerns to all the Roller Flour Mills and Chakki Mills in Assam. In this connection, they have referred to Annexure-14 letter dated 19.11.01 issued by the Additional Deputy Commissioner, Cachar who is in charge of Food and Civil Supplies, Silchar. It has been contended by the petitioners that merely because the CBI enquiry is pending, the authorities cannot deprive the Modern Chakki Mills from getting the fair quota of wheat. They have contended that since the license in respect of the Modern Chakki Mills have been renewed regularly, a purported CBI enquiry cannot be deprived of the PDS wheat. The petitioners have also denied the allegation of not lifting the PDS quota. According to them the allotment was made only to Roller Flour Mills and not to the Chakki Mills.

12. I have heard Mr. P.C. Barpujari, learned Counsel for the petitioners in W.P. (C) No. 4000/2004 as well as Mr. P. Sharma, learned Counsel in W.P. (C) No. 4782/2004. I have also heard Ms. R. Chakraborty, learned State counsel representing the respondents.

13. There is no dispute that the Modern Chakki Mills were allotted with PDS wheat to the tune of 90 per cent of the total quantity prior to introduction of new scheme in 1999 about which a mention has been made above. Although the scheme did not work satisfactorily and the respondents have reverted back to the old system, but it is the grievance of the petitioners that unlike the prevalent practice prior to 1999, the respondents have totally done away with the system of allotment of PDS quota of wheat to the Modern Chakki Mills. It is on record that the respondents have made allotment of the PDS wheat only to the Roller Flour Mills.

14. In the affidavit filed by the petitioners on 2.3.05, it has been brought on record that in some of the Districts, the Modern Chakki Mills have been allotted with PDS

wheat. But on perusal of documents what has transpired, is that the wheat allotted is minimal. As regards the plea of the respondents that CBI enquiry was pending against Modern Chakki Mills, I am of the considered opinion that a pending enquiry cannot be a ground to deprive the Modern Chakki Mills from getting fair quantity of PDS wheat. It is on record that such enquiry is also pending against Roller Flour Mills. On the other hand, departmental authorities have also renewed licenses of the Modern Chakki Mills. Thus, unless licenses are suspended and/or cancelled, the Modern Chakki Mills are entitled to fair consideration for allotment of PDS wheat. If the Roller Flour Mills can be given fair quantity of PDS wheat, the principle of fair distribution in the Govt. department demands that the Modern Chakki Mills shall also be considered for fair allotment of PDS wheat.

15. In the counter affidavit filed by the respondent No. 3, it has been stated that Govt. is prepared to consider the case of the Modern Chakki Mills in the event of receipt of report from the jurisdictional Deputy Commissioner/Sub-Divisional Officer. It has also been stated that allotment of wheat to Modern Chakki Mills have already been started since November, 2004 through Deputy Commissioner/S.D.O. However, the grievance of the petitioners is that the quantity of PDS wheat allotted to Modern Chakki Mills is insignificant and does not help in survival of the Modern Chakki Mills. I have gone through the allotment orders and what has transpired is that although Modern Chakki Mills have been allotted with PDS wheat in some of the Districts, but the same is negligible.

16. As regards the plea of the respondents that the Govt. is prepared to consider the case of the Modern Chakki Mills upon receipt of the reports from the jurisdictional Deputy Commissioner/S.D.O., suffices it to say that appropriate devices will have to be adopted by the authorities so that the Modern Chakki Mills are not deprived of the PDS allotment of wheat. The Govt. in the Food and Civil Supplies department will have to adopt a fair policy of distribution of PDS wheat so that the Modern Chakki Mills shall also get the fair quantity of PDS wheat. From the materials on record what has transpired is that inspite of revival of the earlier scheme, the prevalent practice being followed upto 1999 has not been revived. It is true that it is for the authority to decide as to what should be the quantity of PDS wheat to be allotted to the Modern Chakki Mills. But at the same time, the decision of the Govt. cannot be arbitrary and/or irrational. It will have to be rational, reasonable and on the principle of transparency and fair play. In the matter of public distribution system, it is always desirable that a transparent policy is adopted and no group should feel that it has been deprived of the fair consideration.

17. Considering the matter in its entirety, I am of the considered opinion that the petitioners have been able to make out a case requiring interference of this Court. Accordingly, the writ petitions are disposed of with a direction to the respondents to review the present system and then to take a decision so that the Modern Chakki Mills are not discriminated in the matter of allotment of PDS wheat and they are also

provided with fair quantity of PDS wheat at par with Roller Flour Mills. The respondents will also be entitled to impose such conditions as may be necessary towards allotment of PDS wheat to the Modern Chakki Mills.

The follow up action which is now required to be taken by the respondents, shall be so carried out as expeditiously as possible preferably within three months from today.

18. With the above directions, both the writ petitions are disposed of. There shall be no order as to costs.