courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 08/11/2025

(1999) 04 GAU CK 0015

Gauhati High Court

Case No: Civil Rule No"s. 4198, 4200, 4201, 4202 and 4203 of 1995

Navajyoti Modern Atta Mills and Others		APPELLANT
	Vs	
F.C.I. and Others		RESPONDENT

Date of Decision: April 1, 1999

Acts Referred:

- Constitution of India, 1950 - Article 14

Citation: (1999) 1 GLT 574

Hon'ble Judges: D.N. Chowdhury, J

Bench: Single Bench

Advocate: B. Dutta, O.P. Bhati and B.C. Das, for the Appellant; A. Hazarika and H.N. Sarma, for the Respondent

Judgement

D.N. Chowdhury, J.
Civil Rule No. 4200/95, Civil Rule No. 4201/95, Civil Rule No. 4202/95, Civil Rule No. 4203/95 and Civil Rule No. 4198/95, all these five cases are taken up together for hearing as it involves common question of law and facts as well. Issue raised in these petitions relates to the reimbursement of the Road Transport Charges or subsidy.

2. The Petitioners are the nominees nominated by the Government of Assam in respect of PDS quota of Wheat for the purpose of obtaining delivery thereof from the Respondent No. 1, the Food Corporation of India, hereinafter referred to as the FCI, for milling and distributing the same according to the instructions and directions of the Government of Assam. As per the nomination the Government of Assam is entitled to a certain quota of wheat per month from the FCI for the public distribution system and such quota is distributed amongst the nominees through out the State of Assam as allotted by the State Government subject to the capacity of the nominees and availability of wheat. On such allotment by the Government of Assam, the respective allottees have to deposit the value thereof to the FCI and on deposit of the value, the latter, in its turn, issues delivery order

indicating the quantity from where it has to be taken delivery of and the time within which the delivery is to be taken. According to the Petitioners, for the delivery of the allotment by the Government of Assam, the bills were passed and paid to the Assam Government by means of account payee cheques drawn in favour of Deputy Commissioner/Director of Food & Civil Supplies. While DCs have been accepting the payment of Road Transportation Charges in respect of Atta and Chakki Mills, the Director of Food & Civil Supplies, Assam, Guwahati, returned the cheques sent to him against payment of Road Transportation Charges bill on the plea that the Director is not maintaining any Bank Account to regulate the transactions. The Respondent No. 1, FCI, also referred to a discussion held on 18.6.94 in a meeting that took place in the Chamber of the Minister of Assam for Food & Civil Supplies. The said meeting was attended by the representatives of the Respondent No. 1/FCI, the State Government including the Director of Food & Civil Supplies and the representatives of the Roller Flour Mills, wherein, amongst others, the following subjects were also discussed and worked-out:

That Roller Flour Mills representatives also brought to the notice of the Minister that in some cases the FCI officers insisted on furnishing and undertaking to the effect that the nominees would not claim in reimbursement of transportation cost even when it is admissible. SRM, FCI agreed to look into such cases as their was no instruction from him to obtain such undertaking.

The question of finding a way out for disbursement of cheques and reimbursement of the transportation cost due to the nominees by the FCI also came up for discussion. It was suggested that the Deptt. Should move the Finance Deptt. for allowing the D.C.s and Directors to open Bank Account to facilitate deposit of the cheques received from the FCI on account of the reimbursement of the amount to the nominees.

3. One of the grievance of the Petitioners is that at the time of issuing release orders, the officials of the Respondent No. 1, in a most illegal fashion embedded a note to the effect that the Petitioners would not claim for the reimbursement of the road transport charges. The aforesaid undertaking was involuntary, so much so, that the Petitioners due to constraint and coercion, had to yield to the pressure tactics of the instrumentalities of the Respondent No. 1 and gave such an undertaking. The Petitioner, therefore, knocked the doors of the Court for the reimbursement of their lawful dues and redressal of their lawful demand.

4. The Respondent No. 1 in the affidavit, did not seriously dispute about the entitlement of the Petitioners pertaining to the road transportation charge. Though in their affidavit, the FCI referred to the undertaking given by the Petitioners on their own accord not to claim reimbursement of the road transportation charge, the communication of the Regional Office, FCI dated 4.10.94, referred to in the Affidavit-in-reply of the Petitioners, contradicts the claim of the FCI.

5. Mrs Binaya Dutta, the learned Counsel appearing on behalf of the Petitioners, submitted that the impugned actions of the Respondents in holding back the lawful dues of the Petitioners are arbitrary, discriminatory and capricious and, therefore, violative of the equality clause enshrined in Article 14 of the Constitution of India.

6. Countering the plea of Estoppel and Waiver raised by the Respondent No. 1, Mrs Dutta referred to the own stand of the Respondent No. 1 reflected in the minutes of the discussions dated 18.6.94, as well as the own document of the Respondent No. 1 cited in its communication dated 4.10.94, and submitted that the said plea is not sustainable in law. Mrs Anima Hazarika, the learned Counsel for the Respondent No. 1, opposed the petition and roundly relied upon the Affidavit on behalf of the Respondent. Mrs Hazarika, the learned Counsel for the Respondent No. 1 also placed all the connected records. Mrs Hazarika, the learned Counsel, did not seriously dispute the legal proposition that the burden of proving the ingredients of the plea of Waiver and Estoppel lies on the party claiming estoppel. The learned Counsel save and except the stand of the Respondent referred to in the Affidavit, could not cite any material from the records pointing to any representation of the Petitioners in clear and unambiguous terms upon which the Respondent relied and in good faith acted to its detriment. The State Government did not file any Affidavit, nor did it take any steps of whatever manner, to appraise the Court about its stand in any manner despite numerous adjournment granted by the Court to the State Government to make its stand clear.

7. From the materials on record, the entitlement of the Petitioners for the reimbursement of the transportation cost from the FCI is unerringly established. The FCI did not dispute the same, in fact, times without number, the FCI made its position clear to the State Government to disburse the transportation cost through the State Agency and in fact, cheques were issued to the Director of Supplies to the effect. The records of the discussions held on 18.6.94 in the chamber of the Minister for Food & Civil Supplies, removed all doubt. A conscious decision was taken and suggested the Department to move the Finance Department for allowing the D.C.s and Director to open Bank Account to facilitate deposit of cheques received from FCI on account of reimbursement of transportation cost and subsequent disbursement of the amount amongst the nominees. The meeting accordingly entrusted the Food & Civil Supplies Department to take the necessary follow-up action. The above decision was strictly in conformity with the policy of reimbursement enunciated by the Central Government as reflected in the letter of the Ministry of Food, Deptt. of FP & D, Krishi Bhavan, New Delhi, hearing No. 179(5)/90-PY.I dated 31.10.90, communicated by the Deputy Secretary of the Food Ministry, Deptt. of EP&D, Krishi Bhavan, New Delhi.

8. On the facts and circumstances of the case, the plea of estoppel of the FCI cannot be accepted. There is also no controversy on the rate of the reimbursement. There is not even any bonafide difference of opinion on the issue. What was required and necessary was the will power of the concerned authority and to work-out a decision on behalf of the State Government. Needless to state that it is absolutely within the domain of the

administration in the matter of discharging its lawful duties. The administration is conferred with a discretion but in the system under which we live, there is no such unfettered discretion. Holders of the Public Offices are entrusted with public duties to be exercised in the public interest alone. Public Offices are held in trust for the people. Fairness in action is the core issue, - one is to act with discretion and not with indiscretion. As alluded earlier, in presence of the parties, the Respondent took a decision on the issue of disbursement of the Road Transport Charges which created a legitimate expectation on the Petitioners. It will amount to abuse of the discretion when the authority disregard unfairly or acts contrary to the legitimate expectations of the citizen. When an assurance or decision is changed, the case of the party ought to be given full and serious consideration as to whether there is any over-riding public interest justifying its departure. A public authority has a duty to act fairly and reasonably with consistency in its dealing with the public, and when the authority acts contrary to its earlier decision unfairly, it amounts to the misuse of the power. As indicated earlier, the authority found out a workable formula as far back as in 1994 and the FCI decided to make the payment through the Director of Food and Civil Supplies and for that purpose, a conscious decision was taken in the Minister''s Chamber in the meeting presided over the Minister, by all concerned including the State Government to open a Bank Account in the name of the Director/DCs to facilitate deposit of Cheques received from FCI on account of reimbursement of transportation costs. Materials on record do not indicate that the decision was ever changed, nor was any valid reason shown as to why the aforesaid decision was not implemented. The materials only reveal sheer inaction and inertia of the administration. Inaction and inertia not only breeds despair but it also generates contempt. Inaction without more is not tantamount to Choice. It will not be out of place to recall the statement of Batten, J.D. made before the New York American Management Association, as far back as in 1963, - "Don''t confuse activity with results. You may put in forty hours'' work a week, but what does the Company get out of it?". When measured in terms of time, about five years have elapsed and a simple decision of opening a Bank Account is yet to be achieved/executed on obtaining financial concurrence; what is the insurmountable impediment pertaining to the matter of statecraft in executing the decision is difficult to fathom. The facts and circumstances only reveal a sad story of indolence and inactivity.

9. In the facts and circumstances of the case, the Respondents Nos. 2 and 3, the Director of Food and Civil Supplies, Govt. of Assam, Guwahati, and the State of Assam, respectively, are directed to take prompt action either by opening a Bank Account in the name of the Director as reflected in the decision dated 18.6.94 taken in the Meeting held in the Minister''s Chamber, or in for any good reason, the Respondents are not in a position to open the Account in the name of the Director of Food & Civil Supplies, they must take immediate measures to authorise some other competent officer of the State Government to open the Bank Account in order to facilitate deposit of the cheques received from the FCI on account of the reimbursement of the transportation costs and subsequent disbursal of the amount to the nominees.

10. The Chief Secretary to the Govt. of Assam, is accordingly directed to take the minimum measure in consultation with the Finance Department to comply with the order of the Court within fifteen days from the date of receipt of certified copy of this order. The Chief Secretary to the Govt. of Assam shall monitor the matter and see that the order of this Court is complied with.

11. In view of the exasperating torpidity on the part of the Respondents Nos. 2 and 3, I impose a cost of Rs. 2,000.00 (Rupees two thousand) only on the Respondents Nos. 2 and 3, which is to be deposited with the Registrar General of this Court. On deposit of the said amount of the cost with the Registrar General, he shall utilize the said sum for the Guwahati Blind School, Basistha, in a suitable manner.

12. It would be open for the State Government to realise the said amount of the cost, from the erring officials.

13. The writ petition is allowed to the extent indicated.