

**(2014) 11 CAL CK 0015****Calcutta High Court****Case No:** WP No. 28138(W) of 2014

Manakamna Flour Mills Pvt. Ltd.

APPELLANT

Vs

The State of West Bengal

RESPONDENT

**Date of Decision:** Nov. 7, 2014**Hon'ble Judges:** Aniruddha Bose, J**Bench:** Single Bench**Advocate:** Saktinath Mukherjee, Senior Advocate, Pradip Kumar Tarafdar, Joydip Sen, Sambuddha Dutta and Hemraj Adhikari, Advocate for the Appellant; Ashok Banerjee, Learned Advocate General, Susovan Sengupta, Subir Pal, Kalyan Kumar Bandopadhyay, Debabrata Saha Roy and Pingal Bhattacharya, Advocate for the Respondent**Judgement**

Aniruddha Bose, J.

The flour mill of the petitioner no. 1 was engaged for converting wheat into fortified atta for distribution among the beneficiaries belonging to below poverty line (BPL) segment of the population in the District of Jalpaiguri. This engagement was made on 10th April, 2007 and subsequently, the petitioners were allocated distributors who were tagged to the petitioner no. 1, through whom fortified atta was being made available to the consumers. At that point of time, there was no timeframe specified as regards the term of such engagement or allocation. Subsequently, an Order was issued by the department of Food and Supplies, Government of West Bengal bearing no. 901-FS/Sectt/Food/13-A-04/2012 dated 29 February, 2012 by which the validity of the subsisting orders, were specified to be up to three years from the date of issue of such order. This order stipulates:-

- "1) The validity of all the existing orders will be up to three years from the date of issue of this order. That mean flour mills mentioned in these orders will be allotted BPL wheat as per existing system until further order or after three years whichever is earlier.
- 2) However, performance of existing flour mills will be reviewed every six months and it shall be duty of all DCF & S to send performance reports of flour mills at the

end of every six months without fail.

3) If any irregularity comes to the notice of the department it is to be enquired into without any delay. And, if it is proved that serious irregularities has taken place on the part of any flour mill, allotment of wheat will be stopped forthwith and penal action will be taken as per nature of the offence.

4) Whenever any action is taken as per para 3 against any flour mill, the allotted wheat for that particular mill will be distributed among the other existing selected flour mills as per their capacity. In such cases, if required inclusion of new flour mills may be considered with prior approval of Government for smooth supply of fortified atta under TPDS."

2. On 4 September 2013, a notice under Memo no. 2550-FS was issued by the department of Food & Supply, Government of West Bengal inviting applications for selection of roller flour mill/chakki mill for conversion of wheat BPL/APL into fortified atta/wholemeal atta. Some of the relevant clauses specified in this notice are:-

"1. Installed machineries viz. Screening, Milling, Packaging (automatic online/automatic packaging machine) & dozing machines are in running condition at least for six months prior to the date of application for selection.

12. The selected Flour/Chakki Mill shall ensure Computerised infrastructure as per the agreement. 14. The selected Flour Mill/Chakki Mill must have adequate fire fighting devices duly certified by the Fire Services Department.

15. Any person as proprietor/partner/director holding a M.R. Distributorship/Dealership/Licence shall not be entitled to apply for selection of his Roller Flour/Chakki Mill in the above mentioned capacity under the Scheme of conversion of Wheat into Atta."

3. The eligibility criteria under the said notice is divided into two categories, (A) and (B). Under category "A", certain technical specifications have been laid down and under category "B" the documents which are required to be furnished at the empanelment stage have been referred to. The aforesaid four clauses come under category (A), being technical criteria. The petitioners participated in the empanelment process and a list of empanelled mills was published as annexure to an Order bearing no. 1561/FS/Sectt/Food/4P-14/2013 Pt. 1 dated 5 July, 2014 issued by the State Government. Altogether 80 flour mills have been empanelled. The mill of the petitioners, however, has not been included in this list. On 20 August 2014 another memo bearing no. 1987-FS/Sectt/Food/4P-14/13(P-1) was issued by the State Government primarily for the purpose of allocation of wheat to the empanelled mills. This order inter alia stipulates:-

"Now the empanelled mills vide dated 5 July 2014 need to be allocated wheat for conversion to fortified atta and therefore, those existing mills which are not empanelled will cease to get wheat on and form the date to be determined by the

Director of DDP & S but not later than 31 October 2014. Further, the agreement between the District controller of Food and Suppliers with the mills in the district shall stand terminated and the agreements entered into as may be advised by the director of DDP & S."

4. In this writ petition, the petitioners question their exclusion from the list of empanelled mills and seek invalidation of their existing agreement in terms of the order dated 20 August, 2014. The relevant clause of the said order has been reproduced in the preceding paragraph.

5. Mr. Mukherjee, learned Senior Counsel appearing on behalf of the petitioners has argued that the petitioner no. 1 fulfilled all the qualification or eligibility criteria and their exclusion has been illegal. Referring to the order of 29 February, 2012, he has submitted that the petitioner no. 1 would be entitled to allotment of BPL wheat up till 28 February, 2015, on which date the three year term lapses, and in such circumstances the order issued on 20 August, 2014 seeking to terminate the existing arrangement is illegal. He has also argued that the report of inspection, on the strength of which the petitioner no. 1 was disqualified, was not made available to the petitioners and on that count the order invalidating their existing arrangement is not sustainable, being in breach of the principles of natural justice. He also submitted that the petitioners were functioning so far without any blemish, and pressed for an interim order directing allocation stressing on the aspect of balance of convenience. It was also argued on behalf of the petitioners that minor irregularities ought to have been ignored by the authorities, and on this point he relied on a judgment of the Supreme Court in the case of [M/s. Poddar Steel Corporation Vs. M/s. Ganesh Engineering Works and others,](#)

6. Appearing on behalf of the respondents, Mr. Banerjee, learned Additional Advocate General has submitted that there is no requirement to provide inspection report to individual candidates while making empanelment of individual mills in an exercise of this nature. Such exercise falls purely within the administrative domain. He has also drawn my attention to Clause 15 of the notice dated 4 September, 2013 and submitted that the petitioner no. 1 ought to be disqualified since the same management has two mills in the districts of Purba Medinipur and 24-Paraganas (South). He has questioned the procedure through which the petitioner no. 1 was originally engaged and allocated wheat for fortification with vitamins and minerals before distribution. According to him, the earlier process was opaque and the State Government was seeking to introduce a transparent system for engagement of individual mills. He further submitted that both the petitioner no. 1 and their associated mill had used common vouchers pertaining to certain machineries, and all the documents were not filed at the time of filing of applications through electronic filing system. He also submitted that certain machines were not available. It is for these reasons, he argued, the petitioner no. 1 was not empanelled.

7. Mr. Bandopadhyay, learned Senior Counsel appeared in this matter on behalf of the added respondents and raised the point of delay at this stage. He submitted that added respondents had already been allocated certain quantity of wheat and even if the petitioners were permitted allocation, the quota of the added respondents ought not to be reduced.

8. In this order, which is being passed at the ad interim stage, I shall first examine the scope of jurisdiction of the Writ Court to enter into a dispute of this nature. There does not appear to be any Control Order pertaining to empanelment or engagement of flour mills for the purpose of enriching wheat meant for public distribution system. Clause 37 of the West Bengal Public Distribution System (Maintenance and Control) Order, 2013 however provides :-

"Power to regulate production of atta: The Government may prescribe, by notification, the method of selection of a flour mill/atta chakki to convert wheat into atta/fortified atta for a specific period of time, conversion ratio not being less than 90%.

After issue of necessary notification in this regard, application for converting wheat into atta/fortified atta shall be invited in form K along with affidavit as annexed to this control order."

9. The process for empanelment of the individual mills thus have been taken in pursuance of the aforesaid provision of the 2013 Control Order. The petitioners also have participated in the empanelment process without raising any dispute at the selection stage. At this stage I do not find any fault in the selection process per se.

10. On the question of breach of principles of natural justice, in my *prima facie* opinion, there is no need to give to each disqualified candidate reports of inspection on the strength of which they are disqualified in an empanelment process, undertaken on the basis of disclosed eligibility criteria. In the event a disqualified candidate questions the legality of the decision to disqualify him, then it would be within the jurisdiction of the Court exercising the power of judicial review to enter into that question. At this stage, as I have observed earlier, mainly three grounds have been shown as being the reason for disqualifying the petitioner no. 1. The first is their association with other mills. The second ground is of having common machineries, along with another applicant. Third is not having certain machines. Mr. Mukherjee has submitted that the petitioners have produced individual vouchers, and copies of these vouchers have been annexed at pages 76, 77, 79 and 121 of the writ petition. He has also submitted that the petitioners are not holding any MR. Distributorship or dealership licence as proprietor, partner or director in terms of clause 15 of the technical criteria. He also submitted that the petitioner no. 1 all along possessed the requisite machineries. A case has been made out by the petitioners in the circumstances for reexamination of the decision on their disqualification. At the same time, I am of the view that without giving an

opportunity to the respondents for filing affidavit, a mandatory direction requiring the authorities to allocate wheat to the petitioners ought not to be issued at this stage. That would constitute a mandatory order at the ad interim stage for allocating wheat to an applicant who has not been selected through the regular process.

11. So far as the first clause of the order dated 29 February, 2012 is concerned, the same, *prima facie*, does not stipulate unqualified validity of all the existing orders up to three years from the date of issue of the order. The second sentence of that clause provides that the flour mills mentioned in the order would be allotted BPL wheat as per the existing system until further order or after three years whichever is earlier. It appears, again *prima facie*, to me that the outer limit of the validity of the existing orders would be three years but this could be shortened by issuing independent orders. In any event the petitioners have not approached this court immediately on issue of the list of empanelled mills on 5 July, 2014 or on issue of the memorandum dated 20 August, 2014. In such circumstances, I do not think a case of mandatory interim order has been made out by the petitioners. Moreover the empanelment of flour mills in terms of the order dated 5 July, 2014 appears to be transient in nature, as the memorandum dated 5 July, 2014 specifies that the order shall not prevent in making fresh empanelment any time during the year.

12. Let affidavit in opposition be filed by 17 November, 2014. Reply by 21 November 2014. This matter shall be listed at 2.00 p.m. on 21 November, 2014. It is made clear that any allocation made to any other mill in the interim period shall be subject to the further direction in this proceeding, or final outcome of this case, as the case may be. It was also submitted at the time of hearing on behalf of the petitioners that even after 31 October 2014, allocation of wheat was being made to the petitioners. In this regard a copy of memorandum issued by the State Government dated 21 October 2014 bearing no. 2481-FS/Sectt/Food/4P-14/2013 (Pt-11) has been relied upon.

13. In the event the authorities have chosen to continue their allocation to the petitioners no. 1, that arrangement may continue. But so far as added respondents are concerned, their allocation shall not be disturbed in view of pendency of this proceeding or because of any order passed in this writ petition.