
(2016) 08 GAU CK 0062
In the Gauhati High Court
Case No : Writ Petition (C) No. 5791 of 2007

All Assam Modern Chakki Mill Association	APPELLANT
Vs	
State of Assam	RESPONDENT

Date of Decision : 04-08-2016

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2016) 5 GauLJ 361 : (2016) 4 GauLT 814

Hon'ble Judges : Mr. Arup Kumar Goswami, J.

Bench : Single Bench

Advocate : Mr. D. Majumdar, Senior Advocate and Mr. A.K. Talukdar, Advocate, for the Petitioner; Mr. J. Handique, GA, Mr. D.K. Mishra, Senior Advocate and Mr. A. Dutta, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

Mr. Arup Kumar Goswami, J.—This writ petition is filed challenging an order dated 07.09.2007 (Annexure-9) and a letter dated 16.10.2007, both under the signature of the Secretary to the Government of Assam, Food, Civil Supplies and Consumer Affairs Department, and praying for a direction to allot Public Distribution System (for short, "PDS") wheat to Modern Chakki Mills (for short, "MCMs") at par with Roller Flour Mills (for short, "RFMs"). The impugned order dated 07.09.2007 was passed pursuant to a judgement and order of this Court dated 23.02.2007 rendered in W.P. (C) 4000/2004 and W.P. (C) 4782/2004.

2. Petitioner No. 1 is a registered association of Modern Atta Chakki Mills having 125 members and the petitioner No. 2 is the Secretary of the petitioner No. 1 association. It is the case of the petitioners that prior to 1999, MCMs used to get allotment of 90% of the total allotment of PDS wheat for grinding and the RFMs used to get the balance 10% of the total allotment. In order to produce superior quality Atta for distribution under PDS, in terms of the Government notification dated 22.09.1989, the members of the petitioner association had also upgraded their respective Chakki Mills to conform to the requirement stipulated, fulfilment

of which alone entitled the Chakki Mills to receive PDS wheat for grinding. Pursuant to a policy decision taken by the Government of India to distribute whole wheat instead of Atta to the consumers under the PDS, allotment of whole wheat to both MCMs and RFMs was discontinued. However, the Government reverted back to the earlier system of distributing Atta to the consumers as the changed system did not prove to be successful and, consequently, the system of allotment of whole wheat to MCMs and RFMs for grinding was resumed. However, contrary to the earlier practise, allotment of whole wheat was totally stopped to MCMs and the entire quantity available for allotment was allotted to RFMs. Aggrieved, the petitioners approached this Court by filing a writ petition, namely W.P. (C) 4000/2004, praying for a direction to the respondent State authorities to allot PDS wheat to the MCMs on the basis of the practise prevalent prior to 1999.

3. As noticed earlier, by a judgement and order dated 23.02.2007, the writ petition was disposed of along with another writ petition, namely, W.P. (C) 4782/2004. During pendency of the aforesaid writ petitions, as it appears from the aforesaid judgement, allotment of wheat to MCMs was also started from the month of November, 2004. In the aforesaid writ petitions, while dealing with the petitioners' grievance that the allotment made to the MCMs was insignificant compared to the allotment made to RFMs, this Court observed that the Government would have to device appropriate measures so that MCMs can get allotment of a fair quantity of PDS wheat. Direction was also issued to the respondents to review the system and to take a decision so that the MCMs are not discriminated in the matter of allotment of PDS wheat and they are also provided with a fair quantity of PDS wheat at par with the RFMs. Liberty was given to the Government to impose such conditions as might be considered necessary towards allotment of PDS wheat to the MCMs. By the impugned order, in substance, based on the milling capacity of the RFMs, decision was taken to allot 78% of the total PDS wheat received by the State to the RFMs and 22% to the MCMs after making allotment for Tea garden workers and the Autonomous Councils of the State of Assam. The order also reflects that, at the time of passing of the order, the MCMs were getting allotment of 18% and the RFMs were getting 82% of the total allotment. Consequently, monthly allotment in favour of the RFMs in quantitative terms was reduced to 9554 Metric ton (MT) per month, being 78% of their total milling capacity, and the monthly allotment to MCMs was enhanced to 2695 MT, per month, which corresponds to 22% of their milling capacity. Certain conditions, as reflected in Annexure-A to the said order, were also imposed for consideration of allotment of PDS wheat to the MCMs. By the letter dated 16.10.2007 (Annexure-15), in response to the representation of the petitioner No. 1, certain relaxation in the requirements, as stipulated in Annexure-A, was granted.

4. Affidavit(s) had been filed by respondent No. 4 and respondent No. 7 to which reply affidavit(s) had also been filed by the petitioners. In response to an additional affidavit filed by the petitioners, respondent No. 7 also filed an additional affidavit.

5. I have heard Mr. D. Mazumdar, learned Senior counsel, appearing for the petitioners, and Mr. D.K. Mishra, learned Senior counsel, appearing for respondent No. 7. I have also heard Mr. J. Handique, learned State counsel, appearing for respondent Nos. 1 to 4.

6. Mr. D. Mazumdar, learned Senior counsel for the petitioners has submitted that the impugned order dated 07.09.2007 is contrary to the directions of this Court contained in the order dated 23.02.2007, specifically with regard to the direction that allotment to the MCMs should be at par with the RFMs. According to him, both the RFMs and MCMs should have been allotted the available PDS wheat for allotment on 50-50 basis and not as formulated in the impugned order. He submits that the allotment of PDS wheat on the basis of milling capacity, which is the foundation of arriving at the figures of 78% and 22% in respect of RFMs and MCMs, respectively, is not only arbitrary but is also irrelevant and the same was resorted only to deny equal allotment of PDS wheat to the MCMs. He has further submitted that the milling capacity of the RFMs was determined on the basis of the total production of Atta, Maida, Suji and Bran and if production of only Atta by RFMs was taken into consideration, their milling capacity would have been only 30%, corresponding to 58,502 MT, which is more or less equivalent to the milling capacity of the MCMs, which is 55,203 MT. Mr. Mazumdar has strenuously argued that RFMs produce Atta, Maida, Suji and Bran and, in the production process, inevitably all the aforesaid products are produced, the share of Atta being 30% of the products, as 100% conversion of wheat into Atta is not at all economically viable and, therefore, the milling capacity of the RFMs ought to have been assessed on the basis of production of Atta only. He has also drawn the attention of the Court to the inspection report dated 17.02.1987 at Annexure-12 of the writ petition. He has submitted that a number of members of petitioner No. 1 had already upgraded/modernised their mills by making considerable investment and, therefore, the conditions now imposed, besides being onerous are also unnecessary. He has contended that some of the items mentioned in Annexure-A, such as, plant shifters, packing systems, washer, etc., are not required for MCMs, but are required only for RFMs. He concludes his argument by submitting that the classification made on the basis of milling capacity for the purpose of allotment of PDS wheat has no nexus with the object sought to be achieved and the same being discriminatory, is violative of Article 14 of the Constitution of India. In support of his contentions, Mr. Mazumdar has relied upon the following judgements:

(1) *Asha Sharma v. Chandigarh Administration and Others*, reported in (2011) 10 SCC 86.

(2) *Uttar Pradesh Roller Flour Mills Association and Others v. Government of India and Others*, reported in (2007) 13 SCC 461.

(3) *Union of India and Another v. International Trading Co. and Another*, reported in (2003) 5 SCC 437.

(4) *Caroline Pala v. State of Meghalaya*, reported in 2013 (2) GLR 867.

(5) *Brij Mohan Lal v. Union of India and Others*, reported in (2012) 6 SCC 502.

7. Mr. D.K. Mishra, learned Senior counsel, appearing for respondent No. 7, submits that the contention advanced by the petitioners that the impugned order dated 07.09.2007 is contrary to the directions passed by this Court on 23.02.2007 inasmuch as allotment of PDS wheat to RFMs and MCMs were not made on 50-50 basis is wholly not tenable because there was no direction of this Court to allot PDS wheat to RFMs and MCMs on 50-50 basis and this Court had only directed that there should be a fair distribution of PDS wheat in between RFMs and MCMs and that such allotment should not be arbitrary. He submits that the milling capacity of RFMs as a whole is far greater in comparison to the milling capacity of MCMs and, therefore, the decision to distribute PDS wheat to RFMs and MCMs on the basis of milling capacity, as a matter of policy, cannot be faulted with. He submits that "at par" does not mean that the allotment has to be made on 50-50 basis. He also submits that RFMs can produce 91% Atta and, it is not correct as contended that in the process of production of Atta, inevitably Maida, Suji and Bran automatically are also produced restricting the production of Atta to only 30%. In this connection, he has drawn the attention of the Court to Annexure-12 of the writ petition. He further submits that neither RFMs nor MCMs can survive only banking on PDS wheat and, in the aforesaid context, the decision as rendered by the order dated 07.09.2007 deciding to allot PDS wheat on the basis of milling capacity does not warrant any interference. It is submitted that the contention advanced that the milling capacity of RFMs had not been correctly arrived at is a fallacious argument based on a palpably erroneous assumption that RFMs can produce only 30% Atta and, therefore, the submission that the milling capacity of RFMs is to be assessed at 30% does not merit acceptance. Further submission of Mr. Mishra is that the petitioners cannot demand PDS wheat without conforming to the conditions laid down as the conditions precedent for such allotment have been laid down in public interest for distributing superior quality of Atta to the people. In support of his submission, he relies on the following judgements:

(1) *U.P. Financial Corporation v. Gem Cap (India) Pvt. Ltd. and Others*, reported in (1993) 2 SCC 299

(2) *Dhampur Sugar (Kashipur) Ltd. v. State of Uttaranchal and Others*, reported in (2007) 8 SCC 418

(3) *The Vice-Chancellor, Utkal University and Ors. v. S. K. Ghosh and Ors*, reported in AIR 1954 SC 217

Mr. Mishra has also relied on Compact Oxford Thesaurus for the expression "on par with".

8. Mr. J. Handique, learned State counsel, has adopted the submission of Mr. Mishra and has submitted that no interference is called for with regard to the

impugned orders and the writ petition is devoid of any merit.

9. I have considered the submissions of the learned counsel for the parties and have perused the materials on record.

10. There are in total 83 RFMs and 203 MCMs in the State of Assam. At the time of passing the impugned order, out of the total allocation of PDS wheat to the State of Assam, the monthly allotment of PDS wheat to RFMs was 10,069 MT, and to MCMs was 2,180 MT and, apart from RFMs and MCMs, PDS wheat was also allotted to different tea garden workers and Autonomous Councils etc. The State, at the relevant point of time, was receiving about 18,697 MT of wheat for allotment under PDS. The monthly milling capacity of the 83 numbers of RFMs was worked out as 1,95,005 MT and that of the 203 numbers of MCMs at 55,203 MT and, thus, the total monthly milling capacity, combining that of RFMs and MCMs works out to be 2,50,208 MT. Therefore, 18,697 MT works out to be, as recorded in the order, approximately, 7.50% of the total milling capacity of 2,50,207 MT and, so, it is rightly observed in the aforesaid order dated 07.09.2007 that neither the RFMs nor the MCMs can be dependent solely of PDS wheat for their viable operation and survival. It is also noted in the said order that at the time of passing of the order, RFMs were receiving 82% and the MCMs were receiving 18% of the total wheat allocated under PDS.

11. In the order of this Court dated 23.02.2007, passed in WP(C) 4000/2004 and W.P. (C) 4782/2004, emphasis was laid that a transparent policy be adopted in the matter of supply of PDS wheat and that MCMs are not discriminated and that they are also provided with fair quantity of PDS wheat "at par" with the RFMs. It was not the direction of this Court that both RFMs and MCMs are to be allotted PDS wheat on 50-50 basis but the direction was that the allotment should be rational, reasonable and fair.

12. In U.P. Financial Corporation (supra), the Apex Court observed as follows:

"The obligation to act fairly on the part of the administrative authorities was evolved to ensure the Rule of Law and to prevent failure of justice. This doctrine is complementary to the principles of natural justice which the Quasi-Judicial Authorities are bound to observe. It is true that the distinction between a quasi-judicial and the administrative action has become thin, as pointed out by this Court as far back as 1970 in A.K. Kraipak & Ors. v. Union of India & Ors, AIR 1970 S.C. 150. Even so the extent of judicial scrutiny/judicial review in the case of administrative action cannot be larger than in the case of quasi-judicial action. If the High Court cannot sit as an appellate authority over the decisions and orders of quasi judicial authorities it follows equally that it cannot do so in the case of administrative authorities. In the matter of administrative action, it is well known, more than one choice is available to the administrative authorities; they have a certain amount of discretion available to them. They have "a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be

preferred" (Lord Diplock in *Secretary of State for Education v. Tameside Metropolitan Borough Council*, 1977 AC 1014 at 1064). The Court cannot substitute its judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, can the Court intervene. To quote the classic passage from the judgment of Lord Greene MR in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation*, (1948) 1 KB at 229.

"It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with the discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably". Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority."

13. In *The Vice-Chancellor, Utkal University* (supra), the Apex Court had observed that it is not the function of Courts of law to substitute their wisdom and discretion for that of the persons to whose judgement the matter in question is entrusted by the law.

14. In paragraphs 61 and 68 of *Dhampur Sugar (Kashipur) Ltd.*, the Apex Court observed as follows:

"61. The State and its instrumentality has also power to change policy. The executive power is not limited to frame a particular policy. It has untrammelled power to change, re-change, adjust and readjust the policy taking into account the relevant and germane considerations. It is entirely in the discretion of the Government how a policy should be shaped. It should not, however, be arbitrary, capricious or unreasonable.

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68. But as already discussed earlier, a Court of Law is not expected to propel into the uncharted ocean of Government Policies. Once it is held that the Government has power to frame and reframe, change and re-change, adjust and readjust policy, the said action cannot be declared illegal, arbitrary or ultra vires the provisions of the Constitution only on the ground that the earlier policy had been given up, changed or not adhered to. It also cannot be attacked on the plea that the earlier policy was better and suited to the prevailing situation."

15. In *Asha Sharma* (supra), the Apex Court observed that while acting under

Article 226, the High Court does not sit and/or act as an appellate authority over the orders/actions of the subordinate authorities/tribunals. Its jurisdiction is supervisory in nature. One of the main objectives of this jurisdiction is to keep the Government and other authorities and tribunals within the bounds of their respective jurisdiction. The High Court must ensure that while performing this function it does not overstep the well recognised bounds of its own jurisdiction.

16. The decision of the Apex Court in Uttar Pradesh Roller Flour Mills Association (supra), wherein certain directions were given by the Apex Court for following certain modalities, was rendered in the wake of allegation of alarming increase in diversion of food stock meant to be supplied under PDS. The same is not an issue in the present writ petition.

17. In International Trading Co. (supra), the Apex Court reiterated that Article 14 of the Constitution applies to matters of Government policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional.

18. In Brij Mohal Lal (supra), which is relied upon by Mr. Mazumdar, the Apex Court, while dealing with the question as to whether the courts should or should not interfere with the policy decision, observed and summed up the tests as follows:

"100. Certain tests, whether this Court should or not interfere in the policy decisions of the State, as stated in other judgments, can be summed up as:

(i) If the policy fails to satisfy the test of reasonableness, it would be unconstitutional.

(ii) The change in policy must be made fairly and should not give impression that it was so done arbitrarily on any ulterior intention.

(iii) The policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc.

(iv) If the policy is found to be against any statute or the Constitution or runs counter to the philosophy behind these provisions.

(v) It is de hors the provisions of the Act or Legislations.

(vi) If the delegate has acted beyond its power of delegation."

19. In Caroline Pala (supra), this Court had the occasion to refer to Brij Mohal Lal (supra).

20. There can be no two opinions that it is the indispensable sine qua non for the administrative authorities to act fairly. In the realm of administrative decisions, a number of alternatives or choices may be available to the administrative authorities out of which a particular course of action or option is adopted. An element of discretion is always available to the administrative authorities but that discretion has to be exercised on the touchstone of reasonableness, fairness and

relevant considerations. It is only when the action of the administrative authority is guided by considerations other than relevant or bona fide or when it is unfair or unreasonable, or when relevant considerations have been omitted to be taken into consideration and irrelevant considerations have been taken into consideration, it will be permissible for the courts to intervene. The wide concept of Article 14 is founded in fairness in action by the State. Non-arbitrariness in essence and substance is the heart and soul of fair play, which is the cornerstone of Article 14 of the Constitution. The court cannot substitute its judgement for the judgement of administrative authorities in other cases. Formulation of policy is essentially a function of the State and how a policy should be shaped will depend upon an overall assessment including available resources. If the assessment is arrived at after a proper classification on a reasonable basis, it will be not open for the courts to interfere with such decisions taken on policy decisions.

21. In the instant case, while the learned Senior counsel for the petitioners had criticised the allocation of PDS wheat to RFMs and MCMs on the basis of milling capacity, the petitioners did not provide any clue about other alternative options that may have been available to the Government.

22. The expression "on par with" is defined in Compact Oxford Thesaurus as "as good as, comparable with, in the same class/league as, equivalent to, equal to, on a level with, of the same standard as". RFMs and MCMs are two different types of mills with different milling capacity. There is fundamental difference in the entities of RFMs and MCMs in themselves and, therefore, in the circumstances of the case, "at par" or "on par with" will have to be understood to mean that allotment to RFMs and MCMs will have to be comparable.

23. In view of the above discussions, the allotment of PDS wheat on the yardstick of milling capacity cannot be said to be having no relevance in the formulation of policy. No two classifications have been created as contended by Mr. Mazumdar. Milling capacity is the norm applied both in respect of RFMs and MCMs. This Court is also unable to accord with the submission of Mr. Mazumdar that milling capacity of RFMs has been wrongly evaluated. Annexure-12 of the writ petition, which is an Inspection Report, goes to show that 91% whole Atta had been produced in respect of PDS wheat and, therefore, the very foundation of the argument of Mr. Mazumdar that because of the configuration of the machinery of the RFMs, inevitably Atta, Maida, Suji and Bran are simultaneously produced, has no merit. The choice is available with RFMs to produce whole Atta or to produce Maida, Suji, Refined Atta, Bran, etc., and, therefore, there is no infirmity in arriving at the milling capacity of the RFMS. The State of Assam receives a fixed quota towards allotment of PDS wheat and based on the parameter of milling capacity, percentage of allotment of PDS wheat to be made to RFMs and MCMs is worked out. The allotment made to RFMs based on their milling capacity is comparable and proportionate with the allotment made to the MCMs based on their milling capacity and, therefore, I am of the considered

opinion that there is no violation of the directions of this Court dated 23.02.2007.

24. It appears from the pleadings in Misc. Case No. 4/2008, which was disposed of on 27.03.2008, that pursuant to an order dated 16.10.2007, a W.T. Message was issued on 16.11.2007 allowing the MCMs three months' time to fulfil the requirements as imposed in the order dated 07.09.2007. By an order dated 27.03.2008, while fixing the matter on 24.04.2008 for final hearing, the order dated 16.11.2007 was suspended and supply of PDS wheat to the MCMs was allowed to be continued. Subsequently, by an order dated 13.05.2008, the interim order passed on 27.03.2007, was continued and, on 06.06.2008, the interim order was directed to be continued. It appears that the members of the petitioner association are receiving PDS wheat till date without fulfilling the conditions imposed in Annexure-A to the letter dated 07.09.2007, some of which were dispensed with by order dated 16.10.2007 (Annexure-15). In that view of the matter, it is considered appropriate to give liberty to the petitioners to file a fresh representation, within a period of two months from to-day, with regard to the conditions imposed in Annexure-A to the letter dated 07.09.2007. The respondents are directed to have a fresh look in the matter with regard to the necessity or otherwise of the conditions imposed.

25. In view of the above discussions, this Court is not inclined to interfere with the impugned order dated 07.09.2007.

26. The writ petition is disposed of in terms of the above observations and directions. Until a decision is taken by the Secretary to the Government of Assam, Food, Civil Supplies and Consumer Affairs Department, on the representation to be filed by the petitioners in terms of the direction given hereinbefore, supply of PDS wheat will be continued to the members of the petitioner association.

27. No costs.