

(2015) 03 CAL CK 0011
In the Calcutta High Court

Case No : Writ Petition Nos. 28017 and 28138 (W) of 2014

Manakamna Food Processing Pvt. Ltd. and Others	APPELLANT
Vs	
State of West Bengal and Others	RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226

Citation : (2015) 03 CAL CK 0011

Hon'ble Judges : Aniruddha Bose, J.

Bench : Single Bench

Advocate : Samaraditya Pal, Senior Advocate, Pradip Kumar Tarfdar, Joydip Sen, Sambuddha Dutta and Hemraj Adhikari, for the Appellant; Susovan Sengupta and Subir Pal, Advocates for the Respondent

Final Decision : Allowed

Judgement

Aniruddha Bose, J.—The department of Food and Supplies of the Government of West Bengal issued a notice on 4 September 2013 inviting applications from existing millers for empanelment of roller flour or chakki mills for conversion of wheat into fortified/wholemeal atta. The process of conversion involves crushing of wheat and fortification of such crushed wheat, with vitamins and minerals for supplying the same to the consumers through the public distribution system. The State Government, through its public distribution system has been supplying such fortified atta for some time now, having the crushing and fortification process undertaken through certain mills, with whom agreements were executed individually. There was no provision in the subsisting Control Orders regulating the process of crushing and fortification till 2013. The petitioners in these two proceedings claim to have been undertaking such process successfully from the year 2009. The petitioners in W.P. 28017 (W) of 2014 have two mills, in the districts of Purba Medinipur, 24-Paraganas (South), whereas the petitioners in W.P. No. 28138 (W) of 2014 have their mill in the district of Jalpaiguri. So far as the petitioners in W.P. 28017 (W) of 2014 are concerned, the subject of dispute

relates to their mill in the district of Purba Medinipur.

2. The West Bengal Public Distribution System (Maintenance and Control Order) 2013 for the first time introduced specific provision in regard to selection of flour mills for the purpose of such crushing and fortification work. Clause 37 of the 2013 Control Order stipulates:-

"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."

3. A guideline was issued under memorandum bearing number 2538-FS/FS/ Sectt./Food/13A-07/13 dated 3 September, 2013 by the Department of Food and Supplies, Government of West Bengal laying down, inter-alia, the eligibility criteria for the individual mills for undertaking such crushing and fortification work Clause 21 of this guideline, provides:-

"21. Any person who is 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 whole meal Atta/fortification of Atta Scheme converted from wheat under BPL/APL scheme under P.D.S." 4. The notice inviting applications, which I shall henceforth refer to as NIA specified the eligibility criteria as well as the documents which were required to be submitted along with the applications of individual millers. For the purpose of adjudication of these writ petitions, clauses 1 and 15 of the Technical Criteria stipulated in the NIA are relevant, and these two clauses provide:-

"Technical Criteria:-

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

...

...

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."

5. In both these proceedings, the petitioner No. 1 are incorporated companies, engaged in the business of, inter-alia, operating flour mills. The second petitioner in both the cases are their Directors. When I shall refer to the petitioners later in

this judgment, I shall primarily refer to the first petitioner of the two writ petitions, who had responded to the NIA seeking to be empanelled. I shall describe the petitioner No. 1 in W.P. No. 28017 (W) of 2014 as MFPL and the first petitioner in W.P. No. 28138 (W) of 2014 shall be referred to as MFML in short. Altogether 146 applications were received from the owners of different flour mills in West Bengal in response to the NIA from different districts, which included the petitioners.

6. The method of processing applications of individual millers was decided upon by the State Government by issuing different administrative orders. By an order bearing No. 2876-FS/Sectt/Food/4P-14/2013 dated 9th October 2013, decision was taken to form a State Level Tender Committee to consider and evaluate the individual applications. In the same Order, a district level committee was decided to be formed, who were to submit their report upon making physical inspection of respective mills on prescribed parameters. Such process was to include, inter alia, verification of packaging capacity, installed machineries, working of dozing machines etc. The format for inspection was stipulated by a notification dated 11th December 2013 bearing No. 3367-FS/Sectt/Food/4P-14/2013. The district level committees were actually constituted by another notification dated 13th December 2013, bearing No. 3393-FS/FS/Sectt/Food/4P-14/2013. Copies of these Orders and notifications have been annexed to the affidavits-in-opposition filed on behalf of the State respondents in both these proceedings.

7. A further notification, bearing No. 197-FS/Sectt/Food/4P-14/2013 dated 24th January 2014 was issued by the State Government dealing with the question of allocation of wheat to the selected mills. This notification specified:-

"The empanelment shall be based upon certain parameters which the mills have to fulfil before becoming eligible for any allotment of wheat for the purpose of conversion into flour. The actual allotment will depend on the quantum of flour to be distributed amongst the ration card holders, the area of distribution, distance from the flour mills/chakki mills, transportation charges, selection of godowns from where the wheat is to be lifted, availability of wheat at the given point of time, movement of rakes by FCI, scale of allocation to beneficiaries and a definite period under which the standard quality flour must be consumed.

The empanelment by itself would not lead to any claim by any flour mill/chakki mill as entitlement for allotment of wheat to the concerned mill. The allotment of wheat to a mill shall be done as per the decision of the Department based on the need for distribution of flour from time to time."

8. The panel was published on 5 July 2014 enlisting the successful applicants district-wise. Both the petitioners, however, were not included in the list of selected mills. In these writ petitions they question the legality of the decision of the selecting body rejecting their applications, resulting in their exclusion from the list of selected mills. In W.P. 28017 (W) of 2014 the petitioners had applied for empanelment from district of Purba Medinipur whereas the petitioners in W.P.

28138 (W) of 2014 applied for listing their mill in the panel from the district of Jalpaiguri. These two writ petitions have been taken up for hearing together and are being disposed of by a common judgment as the grounds on which the petitioners have assailed the rejection decision are broadly the same. There are certain distinguishing features in regard to the factual context of the two writ petitions, and the disclosed reasons for rejection appearing from records are different in these two cases. I shall address these aspects of the dispute individually in this judgment. The petitioners, however, claim that their mills fulfil the entire set of eligibility criteria laid down in the NIA, but were arbitrarily excluded from the list of empanelled mills.

9. In W.P. 28017 (W) of 2014, an empanelled miller from the district of Purba Medinipur, Haldia Agro Private Limited and one of its directors have got impleaded as party respondents. They claim to be interested in this proceeding, and according to them, as successful applicants, they have already been allocated wheat for undertaking the crushing and fortification process. They have approached this Court with apprehension that their share of allocation will get reduced if the petitioners are directed to be empanelled now, as allocation of wheat for the entire district has already been made to the empanelled mills. An addition to the list of mills would inevitably result in curtailment in allocation to the selected mills. The added respondents have otherwise supported the stand of the State Government rejecting the application of the petitioners. In my opinion, the applicants in the context of this case would have the locus to ensure that an ineligible miller is not selected, but in this case, contention of the petitioners is that they fulfil the eligibility criteria. To adjudicate on this dispute, I do not consider it necessary to deal in detail the case of the added respondents at the final stage of hearing. The question as to whether the petitioners are eligible or not would have to be decided upon on the basis of available records and the legal position and the State has to primarily defend their stand on this count. The case of the added respondents can only supplement the submissions made on behalf of the State. But on the aspect of possible reduction on quantum of allocation, in the event the petitioners are found to be otherwise eligible for being empanelled, I do not think the added respondents can have legally sustainable claim to retain the level of allocation which may be altered because of legitimate entry of another mill in the panel.

10. Similarly, in W.P. 28138 (W) of 2014, Shree Shyam Chemical Industry Roller Flour and Rice Mills, a firm and three of its partners have got impleaded as party respondents. They have also filed affidavit-in-opposition to the main writ petition. Their stand is similar to that of Haldia Agro Private Limited in the other writ petition. So far as the added respondents in W.P. 28138 (W) of 2014 are concerned, I take the view similar to what I have taken in relation to Haldia Agro Private Limited while examining their claim.

11. In W.P. 28017 (W) of 2014, four supplementary affidavits have been filed, affirmed on 19th December 2014, 7th January, 19th January and 21st January

2015 respectively. In the supplementary affidavits affirmed on 19th December 2014, 19th January 2015 and 21st January 2015 certain issues have been raised in relation to allocation of wheat during pendency of these proceedings which according to the petitioners are in breach of or contrary to the interim directions passed by this Court from time to time. For final adjudication of the writ petition I do not consider it necessary to deal with the allegations contained in these affidavits.

12. In the supplementary affidavit affirmed on 7th January 2015, the petitioners have sought to bring on record three documents. The first one is copy of a notice issued by the District Controller, (Food and Supplies), 24 Parganas (South) informing them in respect of their mill in that district to the effect that physical inspection by the district level committee would take place on 23rd December 2013. Contention of the petitioners is that the said inspection was arbitrarily preponed and the spot enquiry was held on 21st December 2013. The other two annexures which the petitioners seek to bring on record are copies of tax invoices dated 19th and 20th December 2013 pertaining to two packing machines and screw dosers. Submission of the petitioners in respect of these is that these two machines were in the process of installation at their unit in 24 Parganas (South), at which point of time the enquiry took place. The rejection of the applications of the petitioners in W.P. 28017(W) OF 2014 has taken place mainly on account of default in respect of their mill at 24 Parganas (South), and on the charge of using same documents for both the mills to satisfy the eligibility criteria.

13. Both these petitions have been contested by the State respondents by filing affidavits. The grounds of rejection have been dealt with in substance in paragraphs 8, 9 and 10 of the affidavit-in-opposition in the first writ petition, and the affidavit-in-opposition of the State respondents in the second writ petition also contain the same pleading in these paragraphs. It has been stated in these three paragraphs:-

"8. With regard to the statements made in paragraph 19 of the said application, I deny the statements made therein, which are contrary to the admitted records. In this regard I say that upon receiving the applications through e-tender from the intending flour/chakki mills all the applications were sent for enquiring to the District Enquiry Committee, nominated by the Government of West Bengal.

I say that the petitioner No. 1 is an Industrial group known as "Manakamana" having three roller flour mills in the District of Jalpaiguri, Purba Medinipore and South 24-Parganas with the following persons as its Directors-

(i) Manakamana Flour Mills Private Limited in Jalpaiguri District having following Directors:

(a) Durga Prasad Agarwala

(b) Uma Devi Agarwala

(c) Jagdish Prasad Agarwala

(d) Jhamku Devi Agarwal

(ii) Manakamana Food Processing Private Limited (unit-I) in Purba Medinipore District having following Directors:

(a) Naresh Kumar Agarwala

(b) Manoj Kumar Agarwal

(c) Naresh Kumar Agarwal

(iii) Manakamana Food Processing Private Limited (Unit-II) in South 24-Parganas District having following Directors:

(a) Naresh Kumar Agarwala

(b) Naresh Kumar Agarwal

The fact remains that the aforesaid three mills belongs to the same management which would be more evident from the letter dated 1st September, 2014 written on behalf of the petitioner No. 1 to the Hon''ble Minister-in-Charge, Food and Supplies Department.

Photostat copy of the letter dated 01.09.2014 is enclosed herewith and marked as Annexure "A-11".

9. it is stated that the aforesaid three flour mills submitted their applications through e-tender and the same has been forwarded to the respective District Inspection Committee for conducting enquiry and the same were conducted in the respective districts on 21.11.2013, 20.11.2013 and 21.11.2013. During the course of inspection of the Unit No. II of the petitioner No. 1 at South 24-Parganas on 21.12.2013 it was detected to the Enquiry Committee that the said unit has not any packaging machine in the mill premises although in their application they submitted that they have installed one Online Automatic Packaging machines in the mill. Apart from that at the time of scrutiny of the documents submitted with the application it was also detected that the petitioners have submitted same documents in respect of the both the units of the petitioner No. 1 situated in the District of Purba Medinipore as well as South 24-Parganas.

Photostat copies of the Tax Invoice against Lab Equipments and Chemicals, purchase of FFS machine and purchase of VFFS machine by the petitioner No. 1 for the first unit of Purba Medinipore, which was also shown as purchase against unit No. II of South 24-Parganas are enclosed herewith and marked As Annexure "A-12" collectively.

10. The fact remains that on final assessment of the applications of the petitioner No. 1 the answering respondents arrived at a conclusion that the petitioner No. 1 has indulged foul practice, misinformation, incorrect/duplicate vouchers, knowing

fully well that the status of machinery installed in the mill and thereby willfully tried to mislead the Government by such wrong information. Accordingly the Committee decided not to empanel any of the aforesaid three mills under the control of the said Manakamana Group as the management of the aforesaid mills are empanelled, the same would be harmful to the interest of the general public and public exchequer."

14. The basic charge against the petitioners resulting in rejection of the applications appears to be in relation to their available machinery, declarations made in that regard and the inter-connection pertaining to ownership of the three mills. Selection of such mills were being made district-wise, and barring clause 21 of the Guideline issued on 3rd September 2013, adopted in clause 15 of the NIA, no prohibition on a single entity making different applications for different districts has been brought to my notice by the learned counsel appearing for the respondents. The authorities thus have sought to invoke the restrictive provisions contained in the said two Clauses of the Guidelines and Technical Criteria contained in the NIA. The authorities have also found fault with use of some invoices pertaining to the petitioners in the first petition in relation to two of their mills at Purba Medinipur and South 24 parganas and copies of these invoices have been made annexure A12 to the State's affidavit-in-opposition.

15. The minutes of the meeting of the State level Committee which undertook the empanelment process has been produced before this Court by the learned counsel for the respondents. It is recorded in the minutes of the meeting, held on 19th February 2014:-

"In response, 146 applications were received at the close of the date of E.O.I. which was on 27.9.2013 and those were scrutinized by the Committee for checking the availability of basic documents in each application.

After scrutiny, the Committee found that one applicant Ramu Shamu Pvt. Ltd. could not upload even the application in Form-K and therefore, rejected the said application at the outset.

The balance 145 applications were, thereafter, referred to the respective district offices where a committee of three officers as notified under memo No. 3393-FS Dated 13.12.2013 were asked to conduct physical verification into each application as per parameters elaborated vide No. 2876-FS Dated 09.10.2013.

The respective district committees after due physical verification following the guidelines, submitted reports to the Departmental Committee at different points of time during the month of December, 2013 and January, 2014.

The Departmental Tender Committee sat for 10(ten) days on 21.11.2013, 23.11.2013, 27.11.2013, 04.12.2013, 04.01.2014, 18.1.2014, 25.01.2014, 01.2.2014, 08.2.2014 and 15.2.2014.

The Committee decided that the following basic and mandatory criteria are to be

fulfilled by the applicants for preliminary consideration for empanelment:

- i) Whether the mill has installed requisite machinery viz Screening/Cleaning machine, Milling machine and packaging machine.
- ii) Documents of ownership of the land.
- iii) Electric connection.

The Departmental Committee members went through each of the reports and after due evaluation of the reports, based on the criteria as decided by the committee and set out in the aforesaid Notification No. 2875-FS dated 9.10.2013, compiled a comparative picture of all the 145 applicants.

The broad-sheets, namely BS-I, BS-II and BS-III reflect the overall assessment of each application and the recommendation based on the evaluation.

BS-I (66 applications) is recommended for those mills which have satisfied the given parameters.

BS-II (24 applications) is placed as a suspended list where it has been found that they face some proceedings under different provision of Control Order/other Acts which have not been disposed of as yet, as per the information and apparent non-compliance of the conditions of the Tender Notice and/or requirement of further information from District Controllers. Reasons have been noted against each of the names mentioned in the list.

The Department may take a call depending on the nature of proceedings and their disposal before considering for empanelment.

BS-III(55 applications) lists the mills where the desired criteria has not been met and therefore, the Committee recommends rejection of any empanelment.

The Committee submits its report to the Department of Food and supplies through Joint Secretary (Establishment) in a sealed cover.

All the original applications with relevant documents have been sent in sealed covers to the Director, DDPandS for keeping in safe custody."

16. I do not consider it necessary to reproduce the content of the entire set of broad-sheets referred to in the said minutes. It would be sufficient if the entries relating to the units of the petitioners in these two writ petitions are examined to determine the legality of the decision on the part of the State respondents, which is assailed in these two proceedings. The relevant entries in the "Remarks" column of the broad-sheets reveal the basis of rejection of the applications of the petitioners:-

17. Mr. Samaraditya Pal, learned Senior Counsel has appeared on behalf of the petitioners in W.P. No. 28017 (W) of 2014 and Mr. Saktinath Mukherjee, learned Senior Counsel has argued the case of the petitioners in W.P. No. 28138 (W) of 2014. On the question of submitting the same tax invoices for both their units in

Purba Medinipur and South 24 Parganas, it is conceded by Mr. Pal that it was a mistake on the part of his clients. His submission on this count is that the relevant machines were available in the mill of his clients in Purba Medinipur at the material point of time, and on the basis of any deficiency in respect of another mill, the application of MFPL for their mill in the district of Purba Medinipur ought not to be prejudiced. His reasoning on this point is that applications were invited from mills situated in different districts of the State, and such applications were to be considered individually. It has also been submitted in course of hearing by Mr. Pal that the authorities have abandoned the process of selection of mills for the district of 24 Parganas (South) and a fresh empanelment process is likely to be introduced, which has been disputed by the respondents in course of hearing. But the rejection of the flour mill of MFPL located in the district of 24 Parganas (South) is not the subject of dispute in these two writ petitions. Thus, I do not consider it necessary to deal with that question in this judgment. Mr. Mukherjee has argued in relation to the ground of rejection of his clients as reflected in the broadsheet. His case is that MFML constitutes a distinct juridical entity, the petitioner No. 1 in W.P. 28138 (w) of 2014 being an incorporated company, and the said company could not be disqualified on account of any defects or shortcoming in the application of another company for empanelment from a different district. Both Mr. Pal and Mr. Mukherjee have submitted that none of their clients are distributors or dealers holding licences under the 2013 Control Order and neither Clause 21 of the Guidelines nor Clause 15 of the Technical Criteria could be invoked to disqualify them. They have also argued that the entire process resulting in their rejection is fraught with irregularities. The State in their affidavit have sought to introduce new grounds for rejection, different from the reasons disclosed by the State level Committee in the broad-sheets. This is impermissible, according to the petitioners. It is their case that legality of the decision has to be tested on the basis of reasons disclosed by the State level Committee in their recommendation, as no further deliberation on the part of the State which might have had taken place between the date on which the State level Committee had taken the decision and made their recommendation and the date on which the panel was published have been brought to the notice of this Court. The decision making process leading to their rejection, according to the petitioners is also flawed as the decision making authority went beyond the specified eligibility criteria to disqualify the petitioners and reject their applications. Further submission of the petitioners is that the action of the State respondents in altogether disqualifying the petitioners in respect of all their units for default, if any, made in respect of one of the applications, is disproportionate.

18. The respondents on the other hand, represented by Mr. Susovan Sengupta has sought to justify their stand in rejecting the applications of the petitioners. Their case is that the entire process was undertaken in a transparent manner. So far as the writ petitioners in W.P. No. 28017 (W) of 2014 is concerned, it was submitted by Mr. Sengupta that they had relied on identical invoices, both for

Purba Medinipur and for 24 Parganas (South) to substantiate their possession of packaging machines as also the "lab equipments" and other materials. Mr. Sengupta submitted that the mill of MFPL at 24 Parganas (South) did not have the packaging machine when inspection was made on 21st December, 2013 but on 24th December, 2013 the packaging machines were found on subsequent inspection. In course of submissions, it was hinted that MFPL tried to rely on the same set of machineries and equipments for both their units. It is the case of the respondents that the petitioners were indulging in falsehood by relying on the same set of papers as evidence of having one set of machineries, for two mills, and for these reasons no favour could be shown to them. Specific case of the respondents is that the petitioners in W.P. 28017 (W) of 2014 were indulging in fraudulent activities. Mr. Sengupta urged this Court not to exercise its discretion to entertain these writ petitions under Article 226 of the Constitution of India. The stand of the State respondents is that they had arrived at the decision not to empanel the writ petitioners considering the relevant factors and the Writ Court ought not to interfere with the decision taken by the administrative bodies which comes within their own domain. He has referred to the judgment of the Supreme Court in the case of Glodyne Technoserve Ltd. Vs. State of M.P. and Others, to contend that a bidder in a tender process is bound to disclose all the documents required to be submitted as per the specified criteria along with the application. The decision of the Supreme Court in the case of National Institute of Mental Health and Neuro Sciences Vs. Dr. K. Kalyana Raman and others, has been relied upon by him in support of his submission that a selection committee is not required to record the reasons for selection or non-selection of a candidate.

19. I shall first deal with the question as to whether I shall subject to judicial scrutiny the decision of the State respondents, as also the process of arriving at such decision, which are under challenge in these two proceedings, in exercise of the Constitutional Writ jurisdiction. I have been urged by the respondents not to exercise such jurisdiction for the reason I have already indicated, while recording in brief the submissions made on behalf of the respondents. The judgment of the Supreme Court in the case of Star Enterprises and Others Vs. City and Industrial Development Corporation of Maharashtra Ltd. and Others, is an authority for the proposition that the State in its commercial activities also has to operate within the ambit of "Rule of Law" and it would be impermissible on the part of the State to conduct its activities in that sphere arbitrarily. The obligation of the State to adhere to the mandate of the Article 14 of the Constitution of India has become so entrenched in our Constitutional jurisprudence that it does not really require support of any authority for the Constitutional Court to apply this principle in a judgment. Whether the State has adhered to the mandate of Article 14 or not would have to be examined through the judicial process only. The decision of the State respondents rejecting the applications of the petitioners thus is not altogether immune from judicial scrutiny. The level of scrutiny, however, would be subject to certain limitations, as laid down in different authorities.

20. I have also considered the submission of Mr. Sengupta, placing reliance on

the judgment reported in *Ramesh Chander Vs. State (Delhi Administration)*, . A selecting authority, whether considering the eligibility of applicants for public projects or public employment are not required to disclose the specific reason for including or excluding the candidates on the basis of pre-determined criteria. But when a rejected applicant questions his exclusion from a panel for not fulfilling the eligibility criteria, and makes out a case that eligibility criteria stood fulfilled in his case, then the selecting authority can be required by the Court to answer such allegations from the perspective of procedural fairness and proportionality. The decisions in the two cases cited by Mr. Sengupta are not authorities for a proposition of law making administrative decisions altogether immune from judicial scrutiny. Primarily two decisions guide the Courts on the question of judicial review of administrative actions. The first one is an English authority, *Associated Provincial Picture Houses Limited v. Wednesbury Corporation*, (1948) 1 K.B. 223 which has been followed in several judgments in this country. The other authority is a Constitution Bench Judgment of the Supreme Court in *State of Madras Vs. V.G. Row*, . The first decision of the Court of Appeal, which is the source of the legal phrase *Wednesbury Unreasonableness* deals with Court's power to review administrative action. It is laid down in this judgment:-

"It is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must 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 the matter that 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, you may have something so absurd that no sensible person could ever dream that it lay within the powers of the authority. WARRINGTON, L.J. I think it was, gave the example of the red-handed teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith. In fact, all these things largely fall under one head." In the Constitution Bench judgment of the Supreme Court in the case of *Union of India (UOI) Vs. H.C. Goel*, , broadly the same level of scrutiny has been mandated, in a case involving service related dispute. The decision of the Supreme Court in the case of *Om Kumar and Others Vs. Union of India*, specifically recognizes applicability of the *Wednesbury* principle in the Indian context.

21. While the *Wednesbury* principle deals with examination of the decision making process, and the quality of the decision itself, to a limited extent, to arrive at a finding as to whether the decision which has been taken is proper or not, judgment of the Constitution Bench of the Supreme Court in the case of *V.G. Row* (supra) is the lodestar authority. This decision dealt with the question as to what extent decisions of the State imposing some form of penal measure can be tested in a law Court. The Supreme Court held in the case of *V.G. Row* (supra):

This Court had occasion in *Dr. N.B. Khare Vs. The State of Delhi*, to define the scope of the judicial review under Cl. (5) of the Article 19 where the phrase "imposing reasonable restrictions on the exercise of the right" also occurs, and four out of the five judges participating in the decision expressed the view (the other judge leaving the question open) that both the substantive and the procedural aspects of the impugned restrictive law should be examined from the point of view of reasonableness; that is to say, the Court should consider not only factors such as the duration and the extent of the restrictions but also the circumstances under which and the manner in which their imposition has been authorised. It is important in this context to bear in mind that the test of reasonableness, wherever prescribed should be applied to each individual statute impugned, and no abstract can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition the prevailing conditions at the time should all enter into the juridical verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the Judges participating in the decision should play an important part and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have in authorizing the imposition of the restrictions, considered them to be reasonable.

(emphasis added)

22. Keeping these fundamental principles in mind I shall address the claims of the respective parties on the question of eligibility of the petitioners to be empanelled as flour mills in response to the NIA issued on 4th September 2013. So far as the question of rejection is concerned, it has been argued on behalf of the respondents that such decision was taken by the State level committee. In the case of the MFPL, the broad-sheet remark reveals that they have used the same vouchers as that of their mill in 24 Paraganas (South). From these broad-sheets, I find that while rejecting the application of the mill of the same petitioners in 24 Paraganas (South), this very reason was cited as one of the grounds for rejection. On behalf of the petitioners it was submitted that during physical enquiry there was no deficiency found on the aspect of possession of requisite machines by the petitioners in respect of their mill Purba Medinipur. The process of selection appears to have been rigorous and the selecting body did not take decisions solely relying on the disclosure made in the application along with the copies of the documents annexed to the application. There was to be physical inspection of the individual mills as well, as is evident from the content of the notification dated 11th December 2013. Even if the same set of documents was used in respect of two mills, in my opinion, having regard to the laid down

selection criteria, one of the applicants, who did not have the machineries as per stipulations could be disqualified, but not both the applicants. It is not the case of the respondents that neither of them had these machineries or the documents were fake or forged. In these proceedings, I am not judging the claim of the petitioners that dual use of such documents was mere mistake. But it appears to me to be admitted position that one set of documents pertaining to the machineries in the mill of MFPL at Purba Medinipur was genuine, and the existence of the machineries could be physically verified. In such a situation, the course which should have been adopted by the respondents was to assess the capacity of the machineries available there, and take independent decision pertaining to their mill located at 24 Parganas (south). This, in my view, is what a decision-making authority should have reasonably done, having regard to the above referred Guidelines and the NIA. The step the authorities have taken by effecting blanket cancellation of all the three units, while owners of two of the mills having separate juridical entity, in my opinion, constitute penal measure beyond the Guidelines or the NIA, and I shall deal with this aspect of the dispute later in this judgment.

23. I shall now address the issue of rejection of the application of the petitioners in W.P. 28138 (W) of 2014. The minutes of the meeting of the State level Committee does not disclose any discussion dealing with rejection of individual flour mills. The minutes record the criteria on the basis of which individual applications have been allowed or rejected and such decision appears to have been arrived at on the basis of remarks contained in the broad-sheets based on the evaluation made in respect of each application. So far as the mill involved in W.P. 28138 (W) of 2014 is concerned, the remarks column records that the same mill is in Purba Medinipur and 24 Parganas (South). I presume what was meant by the Committee while making such remark is that the same management had their mills in those two districts. Otherwise a mill, which in the given context means a building equipped with machineries for grinding grain into flour, cannot physically exist at three locations. It has to be different mills at different locations. Neither in the NIA nor in the Order of the department of Food and Supplies contained in the memorandum dated 3rd September, 2013 (Annexure AI to the affidavit in opposition in W.P. No. 28017(w) of 2014), there is any prohibition on the same owner of different mills applying for empanelment in different districts. The prohibition is in terms of Clause 21 of the Order dated 3 September, 2013, which has been reproduced in the earlier part of this judgment.

24. The same clause has been incorporated against serial No. 15 of the NIA. This clause prohibits a person who is proprietor or a partner or a director holding an M.R. Distributorship/dealership licence from applying for selection of his roller flour/Chakki Mills. Though in this clause it has not been specified under which provision of law such person ought to be holding distributorship or dealership licence, these forms of licences are issued at present under the above-referred 2013 Control Order, and its equivalent Order pertaining to urban areas. The Guidelines contained in the Order of 3rd September, 2013 also stipulates that

such Guidelines shall take effect in accordance with the provisions of the 2013 Control Order. For construction of this particular clause, I thus proceed on the basis that such licence of distributorship or dealership ought to have been held under the 2013 Control Order in order to attract the disqualification contemplated under the aforesaid clause. I would have avoided this exercise of construction of the aforesaid clause if such clause on a plain reading would have revealed its actual intention or effect. This clause however, suffers from constructional defect in that it has not been specified under which Control Order the distributorship or dealership licence ought to be held. It has also not been explained whether the person referred to in the clause would have to be a proprietor or partner of a firm or director of a company which would be holding such licence. The writ petitioners in both these proceedings have specifically submitted that they do not have any distributorship or dealership licence under the 2013 Control Order. No contrary stand also has been taken by the respondents. Thus, the prohibition contained in Clause 21 of the Guidelines or Clause 15 of the NIA does not apply to the petitioners. In the NIA applications have been invited from functioning roller flour mills/chakki mills and there is no disqualification prescribed in respect of a firm or a company having different flour mills in different districts from being an eligible applicant. Mr. Mukherjee referred to the decision of the Supreme Court in the case of Indowind Energy Ltd. Vs. Wescare (I) Ltd. and Another, in support of his submission that each incorporated company has a separate and distinct legal identity and mere fact that two companies may have common shareholders and common Board would not make them a single entity. In these proceedings, petitioners belong to a particular group. In fact, Mr. Sengupta has drawn my attention to certain correspondence undertaken by the petitioners themselves, a copy of which has been made Annexure "A11" to the affidavit-in-opposition where the petitioners have represented themselves as part of the same group. But so far as eligibility criteria is concerned, the question as to whether they belong to a single group or not is not of much relevance, as there is no specific prohibition on a single company applying from different districts, barring aforesaid clauses 21 and 15. For this reason, I do not think it would be necessary to consider the ratio of the judgment of the Supreme Court in the case of Indowind Energy Ltd. (supra). It is also not necessary in these proceedings to examine the question of independent identities of companies having common shareholders or directors or the applicability of the concept of group companies in the given factual and legal context. Now whether on applying the "group" concept, one entity could be subjected to penal measure for wrongs committed by another entity having common set of shareholders would give rise to another issue. I shall address that aspect of the controversy also in this judgment. But the fact remains that the petitioners in both these cases do not attract the disqualification prescribed therein.

25. In relation the remark of the State level Committee contained in the broad-sheet so far as W.P. 28138 (W) of 2014 is concerned, I do not think the same can

make MFML an ineligible applicant on that count alone. In the event the rejection of the applications of the writ petitioners were solely on the grounds as disclosed in the remarks column of the broad sheets, the decision to reject them would have come within the ambit of Wednesbury Unreasonableness. The rejection in such a situation would have been on matters which the selecting authorities ought to have excluded from consideration as those matters did not form part of the eligibility criteria on the basis of which decision was to be arrived at by the authorities. Actual decision, however, was not to be taken by the State level Tender Committee, but by the State Government. As pleaded in paragraph 4(i) of the affidavit-in-opposition of the State respondents in both these writ petitions, the mandate of the Tender Committee at the State level was to evaluate the applications and to submit their recommendation.

26. I have already observed that the reasons for disqualification of the petitioners as contained in the minutes of the State level Committee and spelt out in the broad-sheets is different from that stated in paragraph 10 of the affidavit filed on behalf of the State. In paragraphs 8 and 9, the reasons recorded in the broad-sheets relating to the two mills of the petitioners in W.P. 28017(W) of 2014 and the mill at Jalpaiguri of MFML have been elaborated. In paragraph 10, however, it has been stated that because of the flaws of the petitioners, which it appears relate to their mill located at 24 Parganas (south), the Committee had decided not to empanel any of the mills of the Manakamana Group. There is no instance of foul practice, supply of duplicate or incorrect vouchers or misinformation as regards MFML. The broad-sheets also do not record any such allegation in relation MFPL with regard to their mill at Purba Medinipur excepting that same set of vouchers was used for two mills. From these facts, conclusion becomes inevitable that these two mills were being excluded, inter alia, for default on the part of the unit of MFPL located at 24 Parganas (south).

27. Two questions arise as regards the action of the State outlined in paragraph 10 of the affidavit-in-opposition. First, when such decision was taken, and secondly, if such blanket penal measure is permissible or not, particularly when no opportunity of hearing was given to the petitioners before the authorities decided disqualify all the three mills because of the misdeeds referred to in that paragraph. Such decision on the part of the State authorities in effect deprive the petitioners the right to participate in business with the State in connection with their work of crushing and fortification of wheat, and entail adverse civil consequence. Before me, the minutes of the meeting of the State level Committees held on 19th February 2014 has been produced. The said minutes do not specifically record any decision taken for not empanelling any of the three mills of the Manakamana Group. In the aforesaid paragraph of the affidavit-in-opposition, the decision has been attributed to the Committee, and I presume the said reference is to the State-level Committee only, as no District Committee could have taken decision in relation to affairs of other districts. When an administrative body takes a decision, such decision cannot remain in the form of

inchoate mental state. Such decision must have physical manifestation, reflected in records, which may be a notification, order, recordal or endorsements made on the note-sheets. No such record has been produced. Nor such record has been referred to on behalf of the respondents in course of hearing. Even if I proceed on the basis that the State had fully adopted the decision of State level Committee, no decision as referred to in paragraph 10 of the affidavit-in-opposition appears to have had been taken by the State also. If that is the case, the reason disclosed in paragraph 10 of the affidavit-in-opposition cannot be accepted by this Court, as such reason has been introduced subsequent to institution of these proceedings. In a lis of this nature, statements contained in affidavit cannot supplement the materials available with or forming part of records.

28. I shall also consider now if because of flaw in one application, other applications, even if they originated from the same source could be rejected or not. Neither the Guidelines nor the NIA permits the authorities to take steps in respect of different applications of an applicant, if one of the two applications filed by the same applicant suffers from any invalidity, or is tainted because of use of false information. The selection process as specified is to be on the basis of individual mills fulfilling the eligibility criteria. In these two cases, the State level Committee has not found any deficiency on technical ground in relation to the two mills in Purba Medinipur and Jalpaiguri. So far as MKML is concerned, the reason for their disqualification, as recorded in the broad-sheet by the State Committee is that the "same mill is in Purba Medinipur and South 24 Parganas." I have already found this reasoning to be flawed. In the minutes of the meeting of the State level Committee held on 19th February 2014, the mill of the MKML has been clubbed together with 55 other applications, graded BS-III, and it has been recorded that these mills do not meet the desired criteria. I find this conclusion also to be unsustainable so far as the mill of the MKML is concerned, having regard to Clauses 21 and 15 of the Guidelines and the Technical Criteria respectively. In the case of MFPL, the comment of the State level Committee contained in the broad-sheet justifying their disqualification is that they used the same vouchers as in the case of their mill at 24 Parganas (South). In my opinion, which I have expressed in the preceding paragraphs, this is also inadequate ground to disqualify them as no specific case has been made out that the vouchers were fake, or that they did not have the machineries in Purba Medinipur. Rejection might have been justified if it was the case of the respondents that the mill did not have the requisite machineries in the district of Purba Medinipur. But that is not the stand of the respondents. Thus, applying the criteria laid down in the above referred Guidelines and the eligibility criteria specified in the NIA, I find the decision of the respondents to disqualify them and to exclude them from the panel of the selected mills to be unjust and not sustainable in law. In the decision making process leading to the rejection of the applications of the petitioners, factors have been taken into consideration which may appeal to a layman, but not relevant for rejecting the application of the

petitioners. The Guidelines which the decision making body was to follow does not permit taking these factors into consideration. In my view no person of ordinary prudence could have come to the conclusion that the mills of the petitioners in these two proceedings were ineligible for being empanelled on the basis of available materials, and the predetermined selection criteria. Applying the principle of Wednesbury Unreasonableness, the rejection decision contained in the minutes of the meeting held on 19th February 2014 so far as these two mills is concerned, cannot be sustained. I do not need to refer to the doctrine of proportionality while assessing the legality of the action of the respondents as the question of degree of penal measures adopted in these cases is not required to be further examined. I have found imposition of penalty itself to be improper and arbitrary in relation to the petitioners in these two writ petitions.

29. In their affidavits-in-opposition used in both these writ petitions, an additional ground for rejection of the applications of the petitioners has been referred to, beyond what is contained in the minutes of the meeting of the State level Committee and the broad-sheets carrying their remarks in respect of the individual mills. The respondents have disclosed that they have decided to reject the applications of all the three mills of Manakamna group because of dual use of the same set of vouchers etc., by MFPS in respect of two of their mills. So far as the selection process is concerned, the criteria was predisclosed and the authorities were empowered to accept or reject individual applications on a case to case basis. But by taking into consideration defects in respect of one application, which defect may even constitute a deliberate attempt to mislead the selection body, for the purpose of rejecting other applications, the authorities appear to have acted beyond their power. The terms of the Notice, the Guidelines or even the provisions of 2013 Control Order does not vest the State respondents with such power. Exercise of such power in that manner is akin to blacklisting, and for the purpose of blacklisting also, prior opportunity of hearing would have been necessary. I am not adjudicating here the question as to whether the respondents have such power to blacklist an errant miller or not. That issue is not in lis before me, but even if I were to assume they had such power, then also the principles of natural justice would have required compliance, and prior opportunity of hearing would have to be given. The stand of the State on this point, relying on the decision of the Supreme Court in the case of Dr. K. Kalyana Raman (supra) is that the selecting body is not required to record reason for excluding ineligible candidates from a selection process. But action of the State respondents in this case does not constitute exclusion of a candidate for not meeting the eligibility criteria. In this case the State is seeking to undertake penal measures beyond what is prescribed in the applicable Control Order or the Guidelines formulated for undertaking the selection process. The penal measures seek to implicate entities not directly charged with having committed any wrong, on the ground that they have common link or ownership structure. The ratio of the judgment in the case of Dr. K. Kalyana Raman (supra) is not applicable in the facts of this case. In relation to submissions made on the

part of the respondents relying on this authority, I have already observed that while a selecting body does not have the obligation to record reasons for including or excluding a candidate in a selection process on the basis of compliance of the eligibility criteria, if the excluded candidate later questions his exclusion in a Court of law, the selecting body may be required to disclose such reason by a judicial forum.

30. Having opined that the decision of the respondents to reject the applications of the petitioners in both these proceedings is not sustainable in law, I will have to decide the nature of relief the petitioners would be entitled to. Ordinarily, while dealing with issues of this nature arising out of faulty administrative or executive decision, practise of the Court exercising jurisdiction under Article 226 of the Constitution of India has been to remand the matter to the administrative body requiring them to take the decision afresh. The parameter within which such decision would be taken, or the legal principles that ought to be followed while taking such decision afresh can be laid down by the Court. But it has not been the judicial practise to issue a writ in the nature of mandamus requiring an administrative body or executive authority to take a particular pre-directed decision, on a subject which falls within the decision making domain of the administration. Mr. Pal, however, submitted that in exceptional circumstances, such a direction can be issued by the Court. On this point, he has relied on the judgment of the Supreme Court in the case of Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, , in which a direction of that nature was issued. He has also referred to three decisions of this Court delivered by Division Benches, in the cases of Sri Satyendranath Mondal Vs. Hindusthan Petroleum Corporation and Others, , State Transport Authority, W.B. and others Vs. Asis Kumar Roy and others, and Sree Jagadamba Coke Mfg. Enterprises and Others Vs. Union of India (UOI) and Others, , where such course was adopted. The petitioners have urged this Court, on the basis of the ratio of these authorities, to direct the respondents to recast the panel by including the mills of the petitioners in the respective districts, and to effect allocation of wheat to them following the prevailing system in respect of other empanelled mills in this respect.

31. The decision of the Supreme Court in the case reported in Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, lays down that in appropriate cases, the High Court has the jurisdiction to issue a writ of mandamus to direct a public authority to exercise its discretion in a particular manner. It has been held in this judgment:-

"There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant

considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion." 32. In the case of Sri Satyendranath Mondal (supra), an unsuccessful applicant, in respect of a retail outlet of an oil company had questioned the eligibility of the selected candidate. The unsuccessful applicant, who was the appellant in that proceeding occupied second position in the list. His writ petition was allowed, and the candidature of the selected candidate was invalidated. Appeals were filed against that judgment by the affected parties. A Division Bench of this Court directed the oil company to offer the appellant dealership of the retail outlet instead of remanding the matter to them for fresh consideration. The First Court had directed re-consideration of candidature of all the candidates. Similarly, in the case of Asis Kumar Roy (supra), a Division Bench of this Court found decision of the State Transport Authority refusing grant of permit to the writ petitioner illegal and confirmed the decision of the First Court requiring the authorities to issue offer letter to the writ petitioner for grant of permit. In the case of Sree Jagadamba Coke Mfg. Enterprises (supra) dispute arose on allocation of coal to coke oven plants by certain public sector coal companies. The Division Bench laid down the manner in which the public sector coal companies were to effect allocation of coal to the coke oven plants in a particular region. But in these two proceedings, I am not inclined to order empanelment of the petitioners straightaway, and direct allocation of wheat to them. Certain further enquiries, though minimal in nature would be necessary in my opinion before the respondents can be directed to empanel the petitioners' flour mills and allocate wheat to them for the purpose of crushing and fortification with nutrients. Such enquiry is being directed as a cautionary measure to ensure that the petitioners' mills conform to the requisite standard for the purpose of being empanelled.

33. I accordingly quash the decision of the respondents by which they have rejected the applications of the petitioners for empanelment in pursuance of the process initiated by the Notice Inviting Applications issued on 4th September, 2013.

34. In the case of the writ petitioners in W.P. 28138 (W) of 2014 I am of opinion that this is a fit case for directing the respondents to recast the panel pertaining to flour mills for the district of Jalpaiguri by including the first petitioner therein as one of the successful applicants, but before doing so it shall be permissible for the respondents to undertake a fresh spot enquiry to ascertain if the flour mill of

the petitioners still have the requisite machineries, as per disclosure made at the time of filing of the application. This enquiry could be undertaken without prior notice to the petitioners, but the enquiry shall be on any working day and during the working hours. If such spot visit reveals that the petitioners have the requisite machineries, then the petitioners shall be included in the panel. Allocation of wheat shall be made to them within a period of four weeks from the date of communication of this order and for that purpose if subsisting quota which have already been allocated to other empanelled mills are required to be revised, such revision shall be effected. The spot enquiry as directed shall be completed within a period of seven days from the date of communication of this order. If no such enquiry is made within the prescribed timeframe of seven days, then the authorities shall proceed with recasting the panel in the manner directed earlier. In the event such spot enquiry reveals any shortcoming in relation to availability of machineries, the petitioners shall be informed in writing of the result of such enquiry with particulars of such shortcoming within two working days from the date of visit. In such a situation, the petitioners would not be entitled to be empanelled.

35. So far as the writ petitioners in W.P. 28017 (W) of 2014 are concerned, the authorities shall undertake an exercise afresh by making a spot visit to the mill of the petitioners of Purba Medinipur for matching the machineries which were available on the date of physical inspection undertaken earlier with the machineries specified in the tax invoices disclosed in the application. If they correlate, and the mills still have these machineries, then they shall also be included in the panel of flour mills selected for the purpose of crushing and fortifying wheat meant for public distribution system in the district of Purba Mednipur. In this case this exercise of verification shall be undertaken within a period of two weeks from the date of communication of this order. Allocation of wheat shall be made to them within a further period of four weeks. The petitioners in W.P. 28017 (W) of 2014 shall be informed in writing on lapse of two weeks from the date of communication of this order the result of the exercise of matching the existing machineries with the machineries disclosed tax invoices, and also the existence of these machineries at present. If their machineries do not match with the disclosed invoices, the authorities would not be required to recast the panel, and the decision rejecting their application shall revive. In such a situation also, the petitioners shall be informed of their shortcoming along with particulars thereof within two working days from the date of spot visit for enquiry. I am issuing this direction as it has been submitted on behalf of the respondents in course of hearing that the petitioners in this proceeding sought to rely on same set of machineries in respect of two units of the petitioners in two districts, Purba Medinipur and 24 Parganas (south).

36. In the event the respondents want to take any penal measure against both the writ petitioners for supplying documents in duplicate or for not having machineries or equipments in respect of any of their mills, prior opportunity of hearing shall be given to the petitioners before taking any action on that basis.

In the given context, I do not accept the reason disclosed in paragraph 10 of the affidavit-in-opposition filed in both the writ petitions to be valid reason for rejecting the applications of the petitioners. I have already indicated why I hold so. I make it clear, however, that in this judgment I have not addressed the issue as to whether the respondents have the power to take such penal measures by making all the mills of the petitioners ineligible for the purpose of being empanelled for crushing and fortifying wheat.

37. Both the writ petitions stand allowed in the above terms.

38. There shall be no order as to costs.

39. Urgent certified photocopy of this order be made forthwith available to the parties if applied for, subject to compliance with all necessary requisite formalities.