

(2022) 01 GAU CK 0032

In the Gauhati High Court

Case No : Interlocutory Application (Civil) Of 139, 140 Of 2022, Writ Petition (Civil) No. 4268, 4475, 4619 Of 2021

State Of Assam and 4 Ors.

APPELLANT

Vs

Barapujia Samabai Samity Ltd And 27 Ors

RESPONDENT

Date of Decision : 13-01-2022

Acts Referred:

Food Security (Assistance To State Govt.) Rules, 2015 — Rule 5
National Food Security Act, (NFSA) 2013 — Section 22(4)(d), 39(2)(e)

Citation : (2022) 01 GAU CK 0032

Hon'ble Judges : Manash Ranjan Pathak, J

Bench : Single Bench

Advocate : A Sarma, B Kaushik

Final Decision : Disposed Of

Judgement

1. Heard Mr. D. Saikia, learned Advocate General, Assam assisted by Mr. D. Nath, learned Senior Govt. Advocate, Assam for the applicants and

Mr. A. Sarma, learned counsel for the opposite parties/writ petitioners of WP (C) No. 4475/2021, WP (C) No. 4268/2021 and WP (C) No.

4619/2021.

2. Petitioners of WP (C) No. 4475/2021 are the Gram Panchayat Samabay Samities/Co-operative Societies of the District of Nagaon whereas writ

petitioners of WP (C) No. 4268/2021 are such samities of Morigaon District and writ petitioners of WP (C) No. 4619/2021 are such societies of the

District of Darrang. All such petitioner societies are registered co-operative societies under the Assam Co-operative Societies Act, 1949 and the

Assam Co-operative Societies Rules, 1953 and are regulated by the State statute and rules. The petitioner societies are in the field of lifting and

distribution of PDS articles under the Essential Commodities Act, 1955 and also the Assam Public Distribution of Articles Order, 1982.

3. Following the enactment of National Food Security Act, 2013 (NFSA, in short). The State Govt. in respect of distribution of food grains followed

that the Food and Civil Supplies Department allocates the food grants which the Societies are required to lift from the respective Godowns of Food

Corporation of India and thereafter, the fair price shop dealers within the territorial jurisdiction of such societies take their allocation for distribution

amongst the consumers. In that process the Handling Commission is distributing commission in the ration of 70:30 i.e., 70 % for the fair price dealers

and 30% for such GPSS/Co-operative Societies.

4. The Central Govt. in exercise of power conferred under Section 39 (2) (e) read with Section 22 (4) (d) of the NFSA formulated the Food Security

(Assistance to State Govt.) Rules, 2015 after consultation with the respective States under the NFSA Scheme.

5. It is stated by the petitioners that they fall under the special category and therefore, entitled to receive a margin of Rs. 143/- per quintal and

transportation cost of Rs. 100/- per quintal in respect of the rice lifted by them under the NFSA Scheme.

6. The State Govt. in the Food, Civil Supplies and Consumer Affairs (A) Department vide Notification No. FSA.81/2019/Pt.III.2014 dated 23.02.2016

enhanced the rate of profit margin to GPSS/Societies and Fair Price Shops at Rs. 143/- per quintal in the ration of 70:30 (Rs. 100.10 per quintal Fair

Price Shops and Rs. 42.90 per quintal to GPSS/Co-operative Societies) w.e.f. 01.12.2015 and that the said process have been followed.

7. The State Govt. by its Cabinet decision dated 30.06.2021 have taken a different stand to the extent that from the financial year 2021-22, the

GPSS/Co-operative Societies will not be paid the handling margin money and accordingly the State Govt. in its Food, Civil Supplies and Consumer

Affairs Department vide order no. FSA.81/2009/Pt.-III/312 dated 13.07.2021 informed the Director of Food, Civil Supplies and Consumer Affairs

Department, Assam that the Fair Price Shop Dealer's margin shall be payable at the rate of Rs. 143/- per quintal of rice to FPSS dealer only for

carrying out distribution of food grains to NFSA beneficiaries as per said 2015 rule from the financial year 2021-22 and that no part of the FPSS

dealer's margin shall be payable to GPSS/LAMPS/WCCS from the financial year 2021-22.

8. It is stated by the petitioners that the Central Govt. released an amount of Rs. 75,28,00,548/- for the State of Assam as central assistance for

additional food grains allocated by the Govt. of India Pradhan Mantri Garib Kalyan Anna Yojna (PMGKAY). In terms of the same the concerned

authorities in the Food, Civil Supplies and Consumer Affairs Department prepared the statements showing the District wise Commission Bill for

central assistance. With regard to such Commission Bill of central assistance for the period from April 2020 to November 2020 pertaining to Nagaon

District, the amount is of Rs. 4,81,17,987/-, for Morigaon District for the same period is Rs. 2,47,88,993/- and for Darrang District, it is Rs.

2,35,01,861/-. Petitioner stated that as they have lifted the food grains during the same period April 2020 to November 2020, they are entitled for

commission amount of 30% during that period and for Nagoan District such commission of 30% of the amount Rs. 4,81,17,987/- is Rs. 1,44,35,396.10;

30% commission of Morigaon District for Rs. 2,47,88,993/- is Rs. 74,36,697.90 and such 30% commission of Darrang District for Rs. 2,35,01,861/- is

Rs. 70,50,558.30.

9. As the respondents in the Food, Civil Supplies and Consumer Affairs Department decided to release entire profit of Rs. 143/- per quintal to the FPS

dealers without giving any share of the same to the petitioner Societies at the ratio of 70:30 for the period from April 2020 to November 2020 from the

Central Govt.'s fund of Rs. 75,28,00,548/-. The petitioner have approached this Court in the present petitions praying amongst others for setting

aside the order dated 27.07.2021 passed by the Director of Civil Supplies and Consumer Affairs Department, Assam issued under no.

SA.14/2020/PMGKAY/14 whereby all the Deputy Commissioners of State as well as the Principal Secretaries of the Autonomous Councils were

directed to release the central assistance towards Intra-State movement and FPS Dealer's margin under PMGKAY for the said period of April

2020 to November 2020 in terms of statements prepared that it did not include any share for the petitioner Societies in their respective Districts of the

State and to pay them 30% commission at the ratio of 70:30 noted above for said period of April 2020 to November 2020 from the said central

assistance with the interim prayer not to release 30% of such commission amount, i.e. Rs. 4,81,17,987/-for Nagoan District and Rs. 70,50,558.30 for Darrang District.

10. Vide interim order dated 07.09.2021, this Court in WP (C) No. 4475/2021 directed the Deputy Commissioner, Nagaon not to release 30% share of Rs. 143/- per quintal to the FPS dealers of Nagaon District towards distribution of food grains allocated by Govt. of India PMGKAY out of the entire share for the period from April 2020 to November 2020, which is still in force.

11. On 14.09.2021, this Court in WP (C) No. 4619/2021 passed an interim order directing Deputy Commissioner, Darrang not to release 30% share of Rs. 143/- per quintal to the FPS dealers of Darrang District towards distribution of food grains allocated by Govt. of India PMGKAY out of the entire share for the period from April 2020 to November 2020 and the said interim order is still in force.

12. However, with regard to WP (C) no. 4268/2021 pertaining to Morigaon District presently there is no interim order in force.

13. The State Govt. have preferred I.A.(C) no. 139/2022 in WP (C) no. 4475/2021 and I. A. (C) no. 140/2022 in WP (C) no. 4619/2021 praying to vacate the orders dated 31.08.2021 as well as 14.09.2021 passed in those WP(C) Nos. 4475/2021 and 4619/2021 respectively.

14. As agreed by the parties all the writ petitions and interlocutory applications have taken up together for consideration.

15. Mr. Saikia, learned Advocate General of the State by placing the notification dated 17.08.2015 issued by the Ministry of Consumer Affairs and

Food Public Distribution in the Department of Food and Public Distribution that pertains to aforesaid 2015 Rules placed before the Court that as per

Rule 5 of said 2015 rules, it is the duty of the State Govt. to take delivery of food grains under Targeted Public Distribution System from the designed

Depots (the Godowns of FCIs) to ensure its delivery through their authorised agency up to the door step of Fair Price Shops and to ensure its supply

to entitled persons and households at prices specified in the schedule therein.

16. Placing Rule 6 of the said 2015 rule, Mr. Saikia submitted that it is the Central Govt. who assists the State Govt. to meet the expenditure incurred

by it on intra-State movement, handling of food grains and margins paid to Fair Price Shop dealers for distribution of food grains allocated for the

entitled persons and households.

17. Mr. Saikia, learned Advocate General further placed before this Court that Rs. 143/- per quintal is to be paid to the Fair Price Shop dealer as the

margin money of the allocated food grains by the Central Govt. under Targeted Public Distribution System from Central Pool and Rs. 100/- per quintal

for intra-State movement and handling with regard to special category State including Assam.

18. Mr. Saikia therefore submitted that Rs. 143/- per quintal is for the FPS Dealers but earlier the State Govt. took a decision to part the said amount

at the rate of 70:30 of said Rs. 143/- per quintal i.e. Rs. 100.10 per quintal Fair Price Shops and Rs. 42.90 per quintal to GPSS/Co-operative Societies

w.e.f. 01.12.2015. It is stated from record that the Central Govt. have deducted an amount of Rs. 111.15 crores that was paid to GPSS/Co-operative

Societies as handling charge for transportation of the food grains @ Rs. 42.90 per quintal from the share of FPS dealers since December 2015 to the

financial year 2018-19 being in not conformity with said 2015 Rules. Mr. Saikia submitted that as the State Govt. in its Food, Civil Supplies and

Consumer Affairs (A) Department earlier passed the said notification dated 23.02.2016 in violation of said 2015 Rules, the State Cabinet accordingly

took a fresh decision in June 2021 to give Rs. 143/- per quintal to the FPS Dealers as per their entitlement under 2015 Rules. In this regard Mr. Saikia

stated that the FPS dealers were complaining since long as they were not paid Rs. 143/- per quintal of their share in terms of the said 2015 Rules and

the Cabinet appropriately took the decision in its meeting in June 2021 following the 2015 Rules.

19. The State Govt. in its Food, Civil Supplies and Consumer Affairs Department in their applications stated that because of the stay orders dated

31.08.2021 as well as 14.09.2021 passed in those WP(C) nos. 4475/2021 and 4619/2021 respectively, certain amount are lying unspent at all level in

the Bank of Implementing Agencies and in terms of the communication of the Govt. of India in the Ministry of Consumer Affairs and Food Public

Distribution, Department of Food and Public Distribution 25.05.2021, that specified that due to showing of unspent balance in the Bank accounts of the

Implementing Agencies in PFMS of the State, in terms of instruction of Ministry of Finance, release of funds towards Central Assistance to State of

Assam towards intra-State movement and handling of food grains and Fair Price Shop Dealer's margin to distribution of food grain under

PMGKAY, the Central Govt. could not release such fund to the State due to showing of such unutilized amount. As such the State Govt. prayed for

release of such amount by vacating and/or modifying the stay orders dated 31.08.2021 and 14.09.2021 noted above.

20. Mr. D. Saikia, learned Advocate General also submitted that the petitioner Societies shall receive their respective share out of Rs. 143/- noted

above for the said period from April 2020 to November 2020 in terms of the earlier policy decision of the Govt.

21. Mr. Sarma, learned counsel appearing for opposite parties/writ petitioners submitted that they should be paid the 30% of Rs. 143/- per quintal in

terms of the 70:30 ratio as per the policy decision of the State Govt. and since they have already completed the work like lifting and transporting the

food grain for the said period of April 2020 to November 2020 and if the stay orders are vacated, they may not be paid the amount as per their

entitlement for the said period. It is seen that the earlier policy decision of the State Govt. in distributing the share of Rs. 143/- per quintal or rice in the

ratio of 70:30 for the FPS Dealers and the GPSS/Co-operative Societies was in force since 01.12.2015, as noted above and the Cabinet in June 2021

took a fresh decision giving effect from the financial year 2021-22 giving entire Rs. 143/- per quintal of rice to FPS Dealers in terms of the said 2015

Rules.

22. On being enquired, Mr. Saikia, learned Advocate General submitted that as the decision has been taken or giving 100% share of Rs. 143/- per

quintal to the FPS dealers in terms of the Rule 2015 from the financial year 2021-22, the petitioners i. e., the concerned GPSS/Co-operative Societies

of the WP (C) nos. 4475/2021, 4268/ 2021 and 4619/2021, shall be entitled towards such handling work of lifting and transportation charges that was

prevalent during the period from April 2020 to November 2020.

23. Considering the entire aspect of the matter and on hearing the parties, these writ petitions are disposed of directing the State Govt. in the Food,

Civil Supplies and Consumer Affairs Department to release the 30% share of Rs. 143/- per quintal of rice i.e., Rs. 42.90 per quintal payable for the

period from April 2020 to November 2020 to the petitioners for such handling of

work for lifting and transportation of the food grains from the FCI

godowns as noted above, which they have actually done for the said period. Such amount shall be paid by the State respondents in the Food, Civil

Supplies and Consumer Affairs Department to the petitioner GPSS/Co-operative Societies on or before 28.02.2022 as per their entitlement on due

verification of such handling work done by them, as noted above.

24. With the above observations and directions, the writ petitions and the connected interlocutory applications stand disposed of.