

GAHC010050972017



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/7134/2017

BARALIMARI S.S. LTD. and 23 ORS.
REP. BY ITS CHAIRMAN, JIBAN CHANDRA BORA, VILL- GERUA, P.O-
GERUA GAON, P.S- BURHAGAON, DIST- MORIGAON, PIN- 782121, ASSAM

2: BURABURI S S LTD
REP. BY ITS CHAIRMAN MD. SAIDUL HAQUE
S/O- A K MAHAMMAD HUSSAIN
VILL AND P.O- KURANIBORI
P.S- MAYONG
DIST- MORIGAON
PIN- 782411
ASSAM

3: JAGIROAD S S LTD
REP. BY ITS CHAIRMAN
RANJIT KR. DEY
NEAR RLY GATE
JAGIROAD
P.O- JAGIROAD
DIST- MORIGAON
PIN- 782410
ASSAM

4: PAVAKATI S S LTD
REP. BY ITS CHAIRMAN KAMAL SINGH DEKA
VILL- PAVAKATI
P.O AND P.S- BHURAGAON
DIST- MORIGAON
PIN- 782121
ASSAM

5: BHURAGAON S S LTD
REP. BY ITS CHAIRMAN MD. SAFIJUDDIN
S/O- HAFIZUDDIN MORAL

VILL- BALIDUNGA
P.O AND P.S- BHURAGAON
DIST- MORIGAON
PIN- 782121
ASSAM

6: DHUMKURA S S LTD
REP. BY ITS CHAIRMAN
MD. NOOR HUSSAIN
S/O- LATE HAJI KITAB ALI
VILL- CHENIMARI
P.O- DHUMKURA
P.S- LAHARIGHAT
DIST- MORIGAON
PIN- 782127
ASSAM

7: PUB UTTARKHOLA S S LTD
REP. BY ITS CHAIRMAN NABAJYOTI DAS
VILL AND P.O- BANGALOHARA
P.S- DHARAMTUL
DIST- MORIGAON
PIN- 782412
ASSAM

8: LAHORIGHAT GPSS LTD
REP. BY ITS CHAIRMAN
ABDUL RAZAK
P.O- DOTIALBARI
P.S- LAHORIGHAR
DIST- MORIGAON
PIN- 782127
ASSAM

9: BAGHORA GPSS LTD
REP. BY ITS CHAIRMAN
KHAGEN BORDOLOI
S/O- LATE KHADIRAM BORDOLOI
VILL NO.2 GUNAMARA
P.O- AZARBARI
DIST- MORIGAON
PIN- 782105
ASSAM

10: JAGIBHAKATGAON S S LTD
REP. BY ITS CHAIRMAN RAJIB KR. MEDHI
VILL- CHATABORI
P.O- BORKULAI

P.S- JAGIROAD
DIST- MORIGAON
PIN- 782411
ASSAM

11: GHAGUA MONIPUR SS LTD
REP. BY ITS CHAIRMAN PRITHIBIR BARDOLOI
P.O- MANIPUR
P.S AND DIST- MORIGAON
PIN- 782105
ASSAM

12: BHURBHANDHA SS LTD
REP. BY ITS CHAIRMAN KHITESWOR BORA
S/O- BIDYA RAM BORA
VILL- BAKORIGAON
P.O- BHURBANDHA
P.S AND DIST- MORIGAON
PIN- 782104
ASSAM

13: MOIRABARI S S LTD
REP. BY ITS CHAIRMAN ABDUL RAHMAN
VILL- BHELOUGUR
P.O- MOIRABARI
P.S- BHELOUGURI
DIST- MORIGAON
PIN- 782126
ASSAM

14: BARANGABARI S S LTD
REP. BY ITS CHAIRMAN INDESWAR BORA
S/O- LATE GAHAN BORA
VILL- BARANGABARI
P.O- KOMORAGURI
P.S AND DIST- MORIGAON
PIN- 782105
ASSAM

15: MORIGAON W/S CONSUMERS CO-OP STORES LTD
REP. BY ITS CHAIRMAN TILAK CHANDRA BORA
VILL- PHULBARI
WARD NO.4
P.O AND P.S- MORIGAON
DIST- MORIGAON
ASSAM

16: NAGABANDHA S S LTD

REP. BY ITS CHAIRMAN RAJAB ALI
S/O- HAJI JANAB ALI
VILL AND P.O- BOROIMARI
P.S- LAHARIGHAT
DIST- MORIGAON
PIN- 782104
ASSAM

17: HABI BARANGABARI S S LTD
REP. BY ITS CHAIRMAN BUBUL NATH
S/O- SRI NIRAL CH NATH
VILL AND P.O- HABIBARANGABAN
P.S- MIKIRBHETA
DIST- MORIGAON
PIN- 782106
ASSAM

18: GAGALMARI S S LTD
REP. BY ITS CHAIRMAN JAHUR ALI
VILL- FALIAMARI HABI
P.O- SANDAKHAITI
P.S- MAYONG
DIST- MORIGAON
PIN- 782121
ASSAM

19: JALUGUTI S S LTD
REP. BY ITS CHAIRMAN JULHASH ALI
S/O- LATE MASROF ALI
VILL AND P.O- TAKUNABARI
P.S- MIKIRBHETA
DIST- MORIGAON
PIN- 782104
ASSAM

20: BAGHJAP S S LTD
REP. BY ITS CHAIRMAN BRAJANATH DEKA
VILL- BAGHJAP
P.O- JAGI BHAGATGAON
P.S- JAGIROAD
DIST- MORIGAON
PIN- 782411
ASSAM

21: SILPUKHURI S S LTD
REP. BY ITS CHAIRMAN JIABUR RAHMAN
VILL AND P.O- SILPUKHURI
P.S- MIHIRBHETA

DIST- MORIGAON
PIN- 782123
ASSAM

22: CHARABAHI S S LTD
REP. BY ITS CHAIRMAN JANTI NATH
P.O- CHARAIBAHI
P.S- MIHIRBHETA
DIST- MORIGAON
PIN- 782106
ASSAM

23: LOCHANBORI S S LTD
REP. BY ITS CHAIRMAN ANOWAR HUSSAIN
VILL- LOCHANBORI
DIST- MORIGAON
PIN- 782127
ASSAM

24: MAYONG KAMPUR S S LTD
REP. BY ITS CHAIRMAN
DIPAK SAIKIA
VILL- MAYONG
P.O AND P.S- MAYONG
DIST- MAYONG
PIN- 782411
ASSA

VERSUS

THE STATE OF ASSAM and 4 ORS.
REP. BY THE PRINCIPAL SECRETARY, FOOD , CIVIL SUPPLIES AND
CONSUMER AFFAIRS DEPTT., DISPUR, GUWAHATI- 781006

2:THE COMMISSIONER AND SECRETARY
FOOD CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPARTMENT
DISPUR
GUWAHATI- 06

3:THE DEPUTY SECRETARY
FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPTT
DISPUR
GHY- 06

4:THE DEPUTY COMMISSIONER
TINSUKIA

5:THE UNION OF INDIA
REP. BY THE SECRETARY
MIN OF CONSUMER AFFAIRS
FOOD AND PUBLIC DISTRIBUTIO

Advocate for the Petitioner : MR.D SARMA

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 16-08-2023

There is no representation on behalf of the writ petitioners today on call. On previous date of listing *i.e.* 10.02.2020, the petitioners' counsel was found absent.

2. The writ petition is preferred assailing Clause-7(11) and Clause-7(12) of the Targeted Public Distribution System (Control) Order, 2015. Clause-7(11) and Clause-7(12) read as under:-

“7(11) The State Government shall devise suitable mechanism for transportation of foodgrains from the Corporation godown to the intermediate godown and the door-step delivery of the foodgrains to the fair price shop:

Provided that the State Government may also transport foodgrains directly to the fair price shop from the Corporation godown and ensure its door-step delivery to the fair price shop.

7(12) The State Government shall furnish a report on quarterly basis to the Central Government regarding door-step delivery in the format at Annex-III.”

3. Mr. S.R. Baruah, learned Jr. Govt. Advocate, Assam appearing for the respondent Nos. 1 to 4 has referred to a common Judgment and Order dated 21.09.2017 passed in a batch of writ petitions including W.P.(C) No. 6647/2015, to submit that the subject-matter

of the present writ petition appears to be rendered infructuous in the light of the observations made in the said Judgment. He has drawn attention of the Court to paragraphs 21 and 22 of the said Judgment, a copy of which has been annexed to the writ petition as Annexure-E.

4. Paragraphs 21 and 22 of the Judgment and Order [supra] read as under:-

“21. Clauses 7(11) and 7 (12) of the Order of 2015 goes to show that the State Government has been given the liberty to devise suitable mechanism for transportation of foodgrains from the Corporation's godown to the intermediate godown and make door-step delivery of the foodgrains to the fair price shops. Sub clauses (11) and (12) of Clause 7 will be relevant for the purpose of this case and therefore, are quoted herein below for ready reference:-

“(11) The State Government shall devise suitable mechanism for transportation of foodgrains from the Corporation godown to the intermediate godown and the door-steps delivery of the foodgrains to the fair price shop:

Provided that the State Government may also transport foodgrains directly to the fair price shop from the Corporation godown and ensure its door-step delivery to the fair price shop.

(12) The State Government shall furnish a report on quarterly basis to the Central Government regarding the door-step delivery in the format at Annex-III.”

22. A combined reading of section 24(2) of the NFSA 2013, section 3(2)(d) of the Act of 1955 as well as clauses 8(3) of the Order of 2015 leaves no manner of doubt that it is State Governments that have been exclusively vested with the authority and jurisdiction for lifting and delivery of the foodgrains to the FPS. Clauses 7(11) and (12) have been inserted in the Order of 2015 so as to permit the State Government to devise appropriate mechanism of transportation for ensuring door-step delivery of the food grains to each of the FPS so as to fulfil the obligation cast under section 24(2) of NFSA. It will be significant to note here-in that there was no provision such as clause 7(11) and (12) in the Order of 2001, which has been replaced by the Order of 2015. It is thus distinctively clear that clauses 7(11) and (12) have been incorporated in the Order of 2015 so as to permit the State Governments to bring the operation of the existing PDS networks in alignment with the NFSA. Accordingly, by issuing the impugned NIT, the respondent No 4 has sought to appoint transporters for lifting and transportation of food grains in a two Tier system i.e. from the FCI depot to the WSCS/ GPSS

godown and from such godowns to the assigned FPSs.”

5. In view of the fact that there is no representation on behalf of the writ petitioners on two consecutive occasions and in view of the submission made by Mr. Baruah, learned Jr. Govt. Advocate, Assam in the aforesaid manner, this Court is persuaded to take the view that the petitioners are no longer interested to pursue this writ petition any further. Consequently, the writ petition is dismissed for non-prosecution. The petitioners are, however, at liberty to seek restoration of the writ petition in the event they have any surviving cause of action, by preferring appropriate pleadings.

JUDGE

GS

Comparing Assistant