

CWP No.1780 of 2013

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.1780 of 2013
Date of decision:30 .10.2015**

M/s Roshan Lal Prem Chand

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Vijay K. Jindal, Advocate,
for the petitioner.

Mr. V. Ramswaroop, Addl. A.G., Punjab.

Mr. Ajay Pal Singh, Advocate, for
Mr. A.K.Sharma, Advocate, for respondent No.4.

Rakesh Kumar Jain, J.

The petitioner is running a fair price shop since the year 1985-86. He had earlier filed CWP No.6047 of 2009 for payment of margin money and transportation charges for distribution of Wheat and Dal under the Atta Dal Scheme. The said writ petition was disposed of on 22.04.2009 with the following order:-

“Notice of motion to respondents No.1 to 3 only.

Mr. G. S. Attariwala, Additional Advocate General, Punjab,
accepts notice.

In view of nature of order which I propose to pass, there is no necessity to seek any counter-affidavit from the official respondents and/or to issue notice to rest of the respondents.

The petitioners are depot holders and are running fair price shops for the sale/purchase/storage of essential commodities under the Public Distribution System. They seek a mandamus for payments of 'margin money' and 'transportation charges' for distribution of wheat and dal under the 'ATTA DAL SCHEME'.

The aforesaid claim is founded upon the government policies, copies of which have been appended as Annexures P-2, P-7, P-8 and P-10. The petitioner's grievance is that they have represented the respondents several times and also served them with legal notices dated 19.01.2009 (Annexure P-9) and 16.03.2009 (Annexure P-11) but no action for the release of the afore-mentioned reliefs has been taken so far.

Having heard learned counsel for the parties and considering the nature of relief sought in this writ petition, but without expressing any views on the petitioner's claim, I deem it appropriate to dispose of this writ petition with a direction to respondent NO.2-Director Food, Civil Supplies and Consumer Affair Department, Punjab, to consider and dispose of the petitioner's claim regarding payment of 'margin money' and 'transportation charges', under the 'ATTA DAL SCHEME' and if they are found entitled, release the same within a period of four months from the date of receipt of certified copy of this order.

Let a copy of this order be given dasti on payment of usual charges.”

Pursuant to the aforesaid order, the Department of Food and Supplies passed the order dated 02.09.2009 in the following terms:-

- “1. Under Atta Dal Scheme Atta and Dal can not be separated. Under this Scheme Rs.15/- per Qtl. as transportation charges and Rs.6.60/- per Qtl. as Margin money are already being paid on Dal. Atta and Dal Scheme to be two separate commodities but it is single scheme of the State Government. There is no justification to pay Margin money and transportation charges at two different places under one scheme.
2. The benefits of Atta Dal scheme is being given to the lowest class of the society. Any increase by any means/method

will prima facie effect the prices of the commodities by which the object of the scheme would be frustrated.

3. The allotment of depot to the depot holders is being done with their consent on their application. If any depot holders does not find this business profitable, he can surrender the depot.

4. Under clause 5(i) of the public distribution system (licencing and control) orders, 2003 prices of public distribution commodities is to be fixed by the Government of Punjab itself. Therefore, the financial benefits which are being given under Atta-Dal scheme are approved by the Finance Department of the State Government.”

The petitioner challenged this order by way of another CWP No.14597 of 2009, which was disposed of on 19.10.2011 with the following order:-

“1. The petitioners, who are fair price depot holders claim margin money and transportation charges for wheat, which is supplied at Atta Dal Scheme. The grievance is that the margin money of Rs.6.60 per quintal, which is afforded to Dal only is not extended for wheat.

2. This Court had an occasion to deal with a related subject in M/s Zamindara Oil Store Rampura Phool Vs. State of Punjab in C.W.P. No.779 of 2010 dated 14.07.2011 where I have stated as follows:-

".....While the Government in its policy provided for subsidized rates as a measure of fulfillment of a constitutional directive under Para IV of the Constitution for effective redistribution of all economic wealth and to ensure schemes for alleviation of poverty, a depot-holder cannot be compelled to share the charity that the Government may have in its policy. The depot-holder has not asked for the charity. On the other hand, he seeks for recovery of charges actually incurred and it shall not avail to the State to contend that they are not getting any funding from the Central Government as regards for the same. On the other hand, in the schemes the State shall provide adequate allocations to take care of the contingencies of claims at the instance of every depot-holder."

3. When the grievance was brought before this Court through a writ petition in C.W.P. No.6047 of 2009, this Court had directed

that a representation shall be made to the State and they will take a decision through a speaking order. Now the speaking order has been issued, which is challenged by this writ petition, saying that the scheme is intended for poor persons and that the depot holders are not expected to make profit. However, since wheat and dal are supplied in gunny bags and they are retained by depot holders themselves, the cost of bags themselves would defray the expenses incurred for transportation and take care of the margin money payable. I had asked the learned counsel for State to take instruction whether the bags, which are allowed to be retained by the depot owners could be returned to the State and paid the said cost to the depot owners for compensating them for margin money and transportation charges. Now the learned counsel for the State Sh. Navdeep Sukhna says that the Government is not prepared to take back the bags. Evidently it means that the alleged cost of each bag which the State contended would be worth Rs.24/-, which is supposed to cover the expenses, cannot be a true contention. If the Government is not prepared to take the bags, it is not appropriate for them to state that the cost of the bags will cover the expenses.

4. As this Court has already expressed, it is very well for the State to have a charitable disposition and provide for grain at subsidised rates for BPL families. Such a charity cannot be forced on any of the depot holders. The margin money is not at all times a full component of profit. It would include even the expenses incurred for running the shop. Same way, transportation expense is not an element of profit but it is an actual amount incurred by a depot holder for securing the grains to the depot. It will be unfair to cast that burden on the depot holder. It is not possible for this Court to determine the actual infrastructural cost that may necessary for storing the grains, which is supplied under the Scheme and the actual amount that would be incurred for transportation. It may be a wrong estimation to cite the same rates which are specified for dal to be directed to pay for wheat as well. The State shall again look into the matter and pass an appropriate order, which is fair and just, in the light of observations made above.

5. The respondent No.1 shall take a decision within 6 weeks taking

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note of the observations made above. The writ petition is disposed of.”

It is pertinent to mention here that the LPA against this order was also dismissed.

Pursuant to the aforesaid order, the respondent has passed the order dated 06.11.2012, rejecting the representation/demand made by the petitioner. Hence, the present petition has been filed for quashing the order date 06.11.2012 and for issuance of a direction to the respondents to hold the petitioner entitled to margin money and transportation charges for distribution of Wheat and Dal under the Atta Dal Scheme.

On 19.05.2014, an interim order was passed by this Court, which reads as under:-

“Vide order dated 19.10.2011 passed in CWP No. 14597 of 2009, this Court had considered the prayer made by the petitioner with regard to payment of margin money and transportation charges for the wheat, which was being supplied in 'Atta Dal Scheme' to the weaker sections of society. This Court had further considered the stand of the respondent(s) and had come to a conclusion that even if the State had allowed the depot holders to retain gunny bags that would not compensate them for making the necessary transportation charges for wheat, which was being supplied for the scheme intended for poor persons. It was specifically observed that the depot holders were not expected to make any profit. At the same time, they were not expected to do charity for providing grain on subsidised rate for BPL families. The scheme has to be carried out by the State authorities.

It is not being disputed by the respondents that there are three other schemes, which are being implemented by the State i.e. Antodaya Anna Yojna, Distribution of articles to BPL Families and distribution of articles of APL Families. For carrying out the said schemes, necessary transportation charges are being paid to

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the depot holders. Details of such charges are given as under:-

Sr. No.	Name of the Scheme	Details of the benefits given to Depot Holders- Wheat/Rice etc.	Amount
1	Antodaya Anna Yojna	Loading/Unloading, Margin Depot Holder	6.18 per qtl. 11.00 per qtl.
2	Distribution of articles to BPL Families	Margin Depot Holder Transportation Charges	11.0 per qtl. 6.18 per qtl.
3	For distribution of articles of APL Families	Margin Depot Holder Transportation charges	11.00 per qtl. 6.18 per qtl.
	Revised rate under APL Scheme w.e.f. 13.01.2009	Margin and transportation charges payable to Depot Holders	25.00 per qtl.

Keeping in view the fact that once the State has taken a decision to make payment of transportation charges and margin money for the above said three schemes, then why a different stand has been taken with regard to implementation of the 'Atta Dal' Scheme.

Vide order dated 06.11.2013 (Annexure P-13), the respondents have refrained from granting transportation charges to the depot holders on account of the fact that it will result into a heavy financial burden on the Government.

It has been informed that LPA against the order dated 19.10.2011 passed by this Court, has been dismissed.

Keeping in view the fact that vide aforesaid order, a direction was given to the respondents to assess the cost of transportation and not to reject the claim of the depot holders on the ground that it will result in financial burden on the Government, a direction is given to the respondents to decide this issue afresh while keeping in view the rates, which have been fixed by the State Government in the above stated three schemes.

The petitioner is having his depot in District Bathinda. The respondents shall also give information as to how much amount has been given to the petitioner with respect to the above said three

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schemes.

Adjourned to 28.11.2014.”

On 13.10.2015, counsel appearing on behalf of the State had also sought time to seek instructions about the payment of margin money and transportation charges to the petitioner for the period 2006 to 2013 but an affidavit has been filed on 19.10.2015 of the District Food and Civil Supplies Controller, Bathinda, on behalf of respondents No.1 to 3, in which it is stated thus:-

“In this connection it is stated that BPL Wheat, AAY Wheat, APL Wheat & under Atta Dal Scheme (Wheat & Pulses) has been lifted by the petitioner. From the above said articles under APL Wheat, the margin money & transportation charges are already deducted from the cost of wheat. Therefore, question of paying margin money does not arise. Like wise under Atta Dal Scheme, as per Govt. Guidelines Margin money & transportation charges is being paid on only the quantity of Pulses (Dal), which is already deducted from the cost of Pulses (Dal). Hence, there is no question arise for the payment of margin money & transportation charges on atta dal scheme lifted quantity.

Under BPL Wheat & AAY Wheat, no margin money & transportation charges is being paid to the petitioner because he has not claimed any amount in this regard to this office. As per Hon'ble Punjab & Haryana High Court's order from 2006 to 2013 the lifted quantity of BPL Wheat & AAY Wheat by the petitioner is 213.12 Qtls. The total payable amount of margin money & transportation charges on 213.12 Qtls. @ 17.18 per Qtls. is amounting Rs.3661.40.”

Counsel for the petitioner has argued that the depot holder has to comply with all the norms/instructions issued by the State Authorities under the Essential Commodities Act, 1955 and also under the Punjab Public Distribution System (Licensing and Control) Order, 2003. The

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petitioner has to display the information, on daily basis, of the stock available, stock distributed, timing of opening and closing of Fair Price Shop etc. etc. He has to pay for loading and unloading of the commodities brought to his depot/Fair Price Shop, has to spend on labour for distribution of Wheat/Atta under the Atta Dal Scheme. He has to also maintain satisfactory health of the stocks all the times and also to maintain record of beneficiaries under the said Scheme. It is further submitted that under the Antodaya Anna Yojna Family Scheme, Government has fixed transportation charges as well as margin money, which is similarly fixed for the Above Poverty Line Families and Below Poverty Line Families Schemes for distribution of Wheat/Atta/Rice for which the transportation charges as well as margin money is being paid by the Government. It is also submitted that the respondents are even paying the margin money and transportation charges for Dal under the Atta Dal Scheme but they are denying it for Wheat on the ground that it pertains to the Atta Dal Scheme, whereas the petitioner/depot-holder has to procure Wheat and Dal separately and distribute the same separately as against 1 Kg. of Dal, the petitioner has to distribute 7 Kgs. of Wheat and since the procurement of Wheat is more than that of Dal, therefore, the respondents are denying to give margin money and transportation charges on Wheat on the ground that it would incur heavy expenses, which is totally unreasonable and unwarranted stand of the State.

On the other hand, counsel for the respondents has argued that after coming into force of the National Food Security Act, 2013 (hereinafter

referred to as the “Act”), which has been implemented in the State w.e.f. 01.12.2013, all the categories like APL, BPL and AAY, operative before this Act, have been abolished and even the Atta Dal Scheme of the State Government is now covered under the Act. There are only two categories of ration card holders i.e. AAY and Priority House Hold and Atta Dal Card holders are now Priority Card Holders.

It is also submitted that the provisions regarding the payment of margin money and transportation charges has been incorporated in Section 22 of the Act, which reads thus:-

“**22.(1)** The Central Government shall, for ensuring the regular supply of foodgrains to persons belonging to eligible households, allocate from the central pool the required quantity of foodgrains to the State Governments under the Targeted Public Distribution System, as per the entitlements under section 3 and at prices specified in Schedule I.

(2) The Central Government shall allocate foodgrains in accordance with the number of persons belonging to the eligible households identified in each State under section 10.

(3) The Central Government shall provide foodgrains in respect of entitlements under sections 4, 5 and section 6, to the State Governments, at prices specified for the persons belonging to eligible households in Schedule I.

(4) Without prejudice to sub-section (1), the Central Government shall,—

- (a) procure foodgrains for the central pool through its own agencies and the State Governments and their agencies;
- (b) allocate foodgrains to the States;
- (c) provide for transportation of foodgrains, as per allocation, to the depots designated by the Central Government in each State;

- (d) provide assistance to the State Government in meeting the expenditure incurred by it towards intra-State movement, handling of foodgrains and margins paid to fair price shop dealers, in accordance with such norms and manner as may be prescribed by the Central Government; and
- (e) create and maintain required modern and scientific storage facilities at various levels.”

It is further submitted that the Government of India has constituted a committee to determine the cost for payment of margin money and transportation charges but the said committee has still not arrived at any conclusion and as such, no decision regarding it can be taken by the State Government as the cost fixed by the Government of India will be applicable throughout India, including the State of Punjab. It is further submitted that the petitioner had lifted wheat under the three schemes from the year 2002-03 to 2013-14, which is also depicted from the following chart:-

<i>Sr. No.</i>	<i>Year</i>	<i>BPL Wheat</i>	<i>AAY Wheat</i>	<i>APL Wheat</i>
1	2002-03	309.17	0	35
2	2003-04	522.85	0	0
3	2004-05	175.27	29.3	94
4	2005-06	0	8.8	0
5	2006-07	0	7.94	0
6	2007-08	0	35.63	10
7	2008-09	0	35.93	203
8	2009-10	0	36.49	135
9	2010-11	0.33	32.7	0
10	2011-12	0	30.5	0
11	2012-13	0	25.2	0
12	2013-14	0	8.4	155
	Total	1007.62	250.89	632

According to the respondents, since the cost of margin money and transportation charges has already been deducted from the cost of the

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wheat lifted by the petitioner under the APL scheme, therefore, the question of paying margin money and transportation charges under that scheme does not arise and as regards the other schemes, namely, AAY & BPL Schemes, it is submitted that the petitioner has not claimed any amount on account of margin money and transportation charges.

It is further submitted that even under the Atta Dal Scheme, as per the guidelines of the Government, the margin money and transportation charges are being paid only on the quantity of Pulses/Dal, which has also been deducted from the cost of Pulses/Dal and hence, there is no question of payment of margin money and transportation charges on the quantity of Wheat/Atta under the Atta Dal Scheme.

I have heard learned counsel for the parties and examined the available record.

The issue involved in this case is regarding the payment of margin money and transportation charges on Wheat/Atta which is being distributed by the petitioner/depot holder under the Atta Dal Scheme. There is no denial to the fact that the petitioner/depot holder has to deposit the entire amount on account of Wheat and Dal stocks which is required by him for the purpose of distribution. The Wheat and Dal are supplied to the petitioner/depot holder who has to comply with all the norms/instructions issued by the State Authorities under the Essential Commodities Act, 1955 and also under the Punjab Public Distribution System (Licensing and Control) Order, 2003. The petitioner has to discharge his duties for the distribution of Wheat and Dal in the same manner while complying with the

instructions on daily basis with regard to availability of stock, stock distributed, timing of opening and closing of Fair Price Shop etc. etc. Besides this, the petitioner is also distributing the essential commodities under the Antodaya Anna Yojna Family Scheme (AAY), Below Poverty Line Family Scheme (BPL) and the Above Poverty Line Family Scheme (APL) for which he has to pay for transportation of the essential commodities from the godowns of the respondents/agencies and has to pay for loading and unloading as well besides spending on the labour for distribution of Wheat/Atta under the Atta Dal Scheme. He has to maintain the health of stocks at all the time and record of the beneficiaries in regard to their entitlement as well. The respondents have stated that after coming into force of the Act, w.e.f. 01.12.2013, all the categories like APL, BPL and AAY, operative before this Act, have been abolished and even the Atta Dal Scheme of the State Government is now covered under the Act. There are only two categories of ration card holders i.e. AAY and Priority House Hold which include Atta Dal Card holders as well.

Section 22(4) of the Act clearly provides for transportation charges and margin money on the foodgrains to the depots designated by the Central/State Governments but according to the respondents, the Central Government has not taken any decision so far about the margin money and transportation charges. However, it is admitted that the petitioner has been given advantage of transportation charges and margin money under the APL Scheme and would have also been given the same benefit under the AAY and BPL Schemes had it been claimed by the petitioner? It is also not

denied that the petitioner is being paid transportation charges and margin money on Pulses/Dal but strangely enough, the said benefit is not being extended to the petitioner on Wheat/Atta on the ground that it would also be covered in the payment of transportation charges and margin money on Pulses/Dal because it is a part of the Atta Dal Scheme.

The logic of the respondents is really fantastic and does not appeal to reason. Pulses/Dal and Wheat/Atta are two separate commodities which are being distributed under the Scheme which is known as Atta Dal Scheme and the petitioner has to lift/procure both the commodities separately in which the extent of procurement of Wheat/Atta is much more larger than the Pulses/Dal and are being transported separately, therefore, the respondents cannot adjust the payment of transportation charges and margin money paid to the petitioner on account of procurement of Pulses/Dal with the procurement of Wheat/Atta and hence, the action of the respondents in this regard is totally arbitrary and unreasonable, being violative of Articles 14 and 19(1)(g) of the Constitution of India. The respondents may keep on claiming from the Central Government the amount which is to be paid to the petitioner towards margin money and transportation charges on Wheat/Atta but so far as the petitioner is concerned, he is definitely entitled to transportation charges and margin money on Wheat/Atta separately from the transportation charges and margin money being paid on Pulses/Dal, though under the Atta Dal Scheme.

In view of the aforesaid discussion, the present writ petition is hereby allowed and the respondents are directed to pay transportation

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charges and margin money to the petitioner on Wheat/Atta being procured and distributed by the petitioner under the Atta Dal Scheme, within a period of three months from the date of receipt of certified copy of this order.

October 30, 2015

*vinod**

(Rakesh Kumar Jain)
Judge