GAHC010162552020

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

Case No. : WP(C)/4802/2020

M/S MANASA INDUSTRIES
A PROPRIETOR FIRM HAVING ITS MILL UNIT AT BIJNI TOWN, DIST CHIRANG BODOLAND TERRITORIAL REGION, ASSAM, REPRESENTED BY ITS PROPRIETOR SRI NITAI SAHA, AGED ABOUT 69, SON OF LATE MANORANJAN SAHA, RESIDENT OF PANBARI ROAD, WARD NO. 2, PO BIJNI, DIST CHIRANG, BTR, ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY , FOOD , CIVIL AND SUPPLIES DEPARTMENT AND CONSUMER AFFAIRS DEPARTMENT, GOVT. OF ASSAM, DISPUR GUWAHATI 781006, ASSAM

2:THE BODOLAND TERRITORIAL COUNCIL
REPRESENTED BY THE PRINCIPAL SECRETARY
BODOLAND TERRITORIAL REGION
BODOFA NWGWR
KOKRAJHAR
783370
KOKRAJHAR
BTR ASSAM

3:THE SECRETARY
FOOD
CIVIL SUPPLIES DEPARTMENT AND CONSUMER AFFAIRS DEPARTMENT
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783370
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GOVT. OF ASSAM
BHANGAGARH
GUWAHATI 781007

5:THE COUNCIL HEAD OF DEPARTMENT

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6:THE GENERAL MANAGER (REGION)
FOOD CORPORATION OF INDIA

REGIONAL OFFICE
PALTAN BAZAR
GUWAHATI 781008
ASSAM

7:THE AREA MANAGER

FOOD CORPORATION OF INDIA

BONGAIGAON DISTRICT OFFICE
BONGAIGAON
ASSAM 783380

8:M/S PLYWOOD INDIA R. F MILL
CHIRANG

HAVING ITS MILL UNIT AT KUKUMARA
DHALIGAON
783385 CHIRANG
BTR ASSA

Advocate for the Petitioner : MR D DAS

Advocate for the Respondent : GA, ASSAM

Linked Case : WP(C)/4811/2020

M/S ROSE VALLEY MODERN CHAKKI MILL
A PROPRIETOR FIRM HAVING ITS MILL UNIT AT KADAMGURI
PO GOSAIGAON
DIST KOKRAJHAR
BODOLAND TERRITORIAL REGION ASSAM
REPRESENTED BY ITS PROPRIETOR SRI GUNESWAR BASUMATARY
AGED ABOUT 48 YEARS
SON OF SRI SURNA BASUMATARY
RESIDENT OF VILLAGE KADAMGURI
PO GOSAIGAON
KOKRAJHAR BTR ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY
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CIVIL AND SUPPLIES DEPARTMENT AND CONSUMER AFFAIRS DEPARTMENT
GOVT. OF ASSAM
DISPUR GUWAHATI 781006 ASSAM

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DHALIGAON
783385
CHIRANG
BTR
ASSAM

Advocate for : MR D DAS
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 7 ORS

Linked Case : WP(C)/4835/2020

M/S SANJARANG MODERN ATTA CHAKKI MILL
A PROPRIETORSHIP FIRM HAVING ITS MILL UNIT AT J D ROAD
WARD NO. 05
KOKRAJHAR
BODOLAND TERRITORIAL REGION
ASSAM
REPRESENTED BY ITS PROPRIETOR SRI CHARANSING BASUMATARY
RESIDENT OF RABINDRA NAGAR
WARD NO. 3
PO KOKRAJHAR
BTR
ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY
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HAVING ITS MILL UNIT AT KUKUMARA
DHALIGAON
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BTR
ASSAM

Advocate for : MR D DAS
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 7 ORS

Linked Case : WP(C)/4809/2020

M/S MODERN ATTA CHAKKI MILL PANERY SAMABAY SAMITTEE LTD
A CO OPERATIVE SOCIETY REGISTERED UNDER THE COMPANIES ACT..1949
PANERYHAT
DIST UDALGURI BODOLAND TERRITORIAL REGION
ASSAM
REPRESENTED BY ITS SECRETARY SRI GOPINATH GHOSH
AGED ABOUT 68 YEARS
SON OF LATE AMULYA CH. GHOSH
RESIDENT OF PANERYHAT
PO PANERYHAT
DIST UDALGURI BTR
ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY
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783385 CHIRANG
BTR ASSAM

Advocate for : MR D DAS
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 7 ORS

Linked Case : WP(C)/4808/2020

M/S JOYMATI HUSKING MILL
A PROPRIETOR FIRM HAVING ITS MILL UNIT AT KADAMTOLA

DIST KOKRAJHAR
BODOLAND TERRITORIAL REGION
ASSAM
REPRESENTED BY ITS PROPRIETOR SRI PRIYANATH BRAHMA
AGED ABOUT 52 YEARS
S.O LATE DIJENDRA NATH BRAHMA
KADAMTOLA
PO TITAGURI
DIST KOKRAJHAR
BTR
ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY
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CIVIL AND SUPPLIES DEPARTMENT AND CONSUMER AFFAIRS DEPARTMENT
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DHALIGAON
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CHIRANG
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Advocate for : MR D DAS
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 7 ORS

Linked Case : WP(C)/4804/2020

M/S SHREE ANNAPURNA INDUSTRIES
A PROPRIETOR FIRM HAVING ITS MILL UNIT AT VILLAGE ALEKJHAR
PO BARAMA
DIST BAKSA

BODOLAND TERRITORIAL REGION ASSAM REPRESENTED BY ITS
PROPRIETOR SRI BABUL CH. DAS @ BABUL DAS
AGED ABOUT 49 YEARS
SON OF LATE MAHENDRA NATH DAS
RESIDENT OF VILLAGE ALEKJHAR
PO BARAMA
DIST BAKSA
BTR
ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS
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Advocate for : MR D DAS
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 7 ORS

BEFORE

HON'BLE MR. JUSTICE SUMAN SHYAM

15.12.2020

Heard Mr. D Das, learned senior counsel assisted by Mr. HK Nath, learned counsel appearing for the writ petitioners in this batch of writ petitions. I have also heard Mr. D Saikia, learned senior counsel assisted by Mr. S Bora, learned Standing Counsel, BTC, Mr. BK Singh, learned Standing Counsel, FCI appearing for the FCI authorities and Mr. S Banik, learned counsel appearing for the private respondent in all these cases.

2. Since the fact situation as well as the nature of grievance expressed in all these writ petitions are identical in nature, wherein similar reliefs have been prayed for, with the consent of learned counsel for all the parties, all these writ petitions are being taken up for disposal, by a common order, at the stage of motion hearing. For the sake of convenience, the facts involved in WP(C) 4802/2020 are being referred to here-in-below for the purpose of disposal of all these cases.

3. The writ petitioner is operating a Modern Chakki Mills (MCM) at Bijni in the Chirang district which falls under the BTC jurisdiction. As per the prevailing practice, the authorities allot wheat amongst the various MCMs and Roller Flour Mills (RFM) for grinding into atta for the purpose of distribution under the PDS system. By obtaining necessary licence under the Assam Public Distribution of articles Order, 1982, the petitioner had established its MCM with the approval of the Industries Department of the State of Assam and since past several years, the MCM has been operating by availing APL (above the poverty line) wheat from the authorities. The quantity of wheat allotted to the 8 MCMs and 1 RFM falling in the BTC area is 462 Metric Tones. Petitioner is one of the MCMs whereas the respondent No.8 is the sole RFM in the BTC area. For the month of July, 2020, the allocation of wheat to the petitioner was 35 Metric Tones whereas the respondent No.8 was allocated 38 Metric Tones. In the month of August, 2020, the allocation of wheat to the petitioner was 29 Metric Tones whereas the respondent No.8 was allocated 117 Metric Tones. For the month of September, 2020, the allocation remained same as that of the previous month. However, in October, 2020, the allocation made to the petitioner was brought down to 09 Metric Tones whereas that made to

the respondent No.8 was drastically increased to 360 Metric Tones. Aggrieved by such drastic reduction of wheat allocation to the petitioner, it had submitted a representation on 12.10.2020 addressed to the respondent No.2 praying for re-apportionment of the allotment on a proper assessment of the Milling Capacity of the RFM and the MCMs. However, despite receipt of such representation, when no action was taken by the authorities, the petitioner was compelled to approach this Court by filing the present writ petition.

4. The official respondent Nos.2, 3 and 5 have filed affidavit-in-opposition in this case opposing the stand of the petitioners in all the writ petitions. The writ petitioner has also filed rejoinder affidavit.

5. Mr. Das, learned senior counsel for the writ petitioners has argued that the criteria for allocation of APL wheat has been settled by the Notification dated 07.09.2007 issued by the Govt. of Assam making the basis as the Milling Capacity of the RFMs and MCMs. Mr. Das submits that challenge made to the Notification dated 07.09.2007 having been turned down by the learned Single Judge vide judgment and order dated 4.8.2016 passed in connection with *All Assam Modern Chakki Mill Association vs. The State of Assam and others [WP(C) No.5791/2007]*, it is no more *res integra* that the criteria for allocation of wheat has to be Milling Capacity of the Mills. However, submits Mr. Das, the respondents have erroneously applied the ratio of allocation as 78% to the RFMs and 22% to the MCMs, by failing to consider the fact that such ratio was worked out with reference to a large number of Mills in the entire Assam vis-à-vis the quantity allocated to the State and therefore, the same ratio cannot be applied for the BTC area, which has only 1 (one) RFM and as many as 8 (eight) MCMs. Urging that the respondents have acted in an arbitrary and illegal manner by drastically reducing the allotment of APL wheat to the writ petitioners since the month of October, 2020, Mr. Das submits that the impugned action is not only arbitrary and illegal but is also in violation of the letter and spirit of the judgment and order dated 4.8.2016 passed by this Court.

6. Mr. D Saikia, learned senior counsel for the BTC has assailed the maintainability of the writ petition by submitting that the writ petitioners, having failed to assail the validity of the Notification dated 07.09.2007, cannot now claim any benefit which is in conflict with the criteria laid down in the said notification.

7. Mr. S Banik, learned counsel for the private respondent has urged that the Notification dated 07.09.2007 took into account the total number of RFMs and MCMs within the State of Assam including those coming within the BTC area and therefore, it cannot be said that a separate criteria for percentage of allocation needs to be worked out only for the BTC. Mr. Banik has contended that there has been no violation of the Notification dated 07.09.2007 in this case and therefore, he has prayed for dismissal of the writ petition.

8. Mr. BK Singh, learned Standing Counsel, FCI submits that save and except facilitating the supply of wheat from the food storage godown maintained by FCI, his client does not have any role in the matter.

9. I have considered the submissions made by learned counsel for the rival parties and have also gone through the materials available on record.

10. The facts of the case, as noticed above, lie in a narrow compass. There is no dispute about the fact that the petitioners are operating MCMs by obtaining valid licences. It is also not in dispute that the MCMs are being fed by APL wheat allocated by the departmental authorities to be routed through the food depot of the FCI. The only controversy in this case is pertaining to the percentage that is required to be followed while distributing the APL wheat between the two categories of mill owners, viz. RFM and MCM.

11. It appears that taking note of an earlier order of this Court dated 23.02.2007 passed in connection with WP(C) 4000/2004 and WP(C) 478/2004, the Govt. of Assam had issued Notification dated 07.09.2007 laying down the criteria for distribution of APL wheat by proposing a formula. As per the formula incorporated in clause-V of the Notification dated 07.09.2007, 78% of the wheat was to be allocated to the RFMs whereas the balance 22% was to be allocated to the MCMs. The said formula has been worked out by taking note of the fact that there were as many as 83 RFMs in the State having monthly Milling Capacity of 1,95,005 MT whereas, the total number of MCM was 203 having 55,203 MT Milling Capacity. By taking note of the Milling Capacity of both the categories of Mills the aggregate of which comes to 2,50,208 MT, the respondents had worked out the formula of 78% - 22%, which was also upheld by this Court by the order dated 04.08.2016 observing that the criteria applied therein was valid and rational. Clause V of the notification is reproduced here-in-

below for ready reference:

"*v) It appears from report of the Director Food and Civil Supplies that the monthly milling capacity of RFMs and MCMs are as follows:*

Nos. of RFM/MCM	*Monthly Milling Capacity*
a) RFM 83 Nos.	*1,95,005 MT*
b) MCM 203 Nos.	*55,203 MT*
c) Total Milling Capacity: ……..	*(a+b)= 2,50,208 MT*

d) P.C. of Monthly Milling Capacity of RFM of total milling capacity in the state 78

e) P.C. of Monthly Milling Capacity of MCM of total milling capacity of the State: 22

f) Present allotment of APL Wheat to RFMs per month: 10,069 MT which is 82% of total allotment.

g) Present allotment of APL Wheat to MCMs per month: 2180 MT which is 18 % of total allotment."

12. From a reading of the aforesaid clause, it is apparent that the formula prescribed therein had been worked out by taking note of the figures projected therein, which was relevant for the entire State of Assam. However, in the present case, it is apparent that the respondents, namely, BTC authorities are responsible for distribution of only 462 Metric Tones of wheat amongst 8 numbers of MCMs and one RFM coming within the BTC area. While the allocation of wheat up to the month of August, 2020 in the BTC area has followed the criteria of Milling Capacity, since the month of October, 2020, the same has been altered by the authorities thereby applying the criteria 78% -22% vis-à-vis RFM and MCM. Application of such criteria within the BTC area had produced an absurd result which had drastically reduced the allocation of APL wheat to MCMs operated by the petitioners while increasing the allocation made to the single RFM i.e. the private respondent by several times.

13. There can be no doubt about the fact that the Notification dated 07.09.2007 did take into account the total quantity applicable in the State of Assam vis-à-vis the number of

MCMs/RFMs. However, as noticed above, the BTC authorities are dealing with far lesser number of MCMs and only one RFM. The total quantity of wheat is also only 462 Metric Tones. Therefore, if the same formula as laid down in the Notification dated 07.09.2007 is followed by the BTC authorities, then in that case, the outcome would obviously be highly incongruous, resulting into serious prejudice to the interest of the 8 MCMs.

14. Although Mr. Saikia, learned senior counsel and Mr. Banik, learned counsel for the private respondent have argued that the petitioners, having failed to assail the Notification dated 07.09.2007, are now estopped from raising the aforesaid plea, I am unable to accept the said submission for two reasons. Firstly, the respondents had understood the Notification dated 07.09.2007, as interpreted by the judgment and order dated 4.8.2016, in a particular manner for the past several years up to the month of August, 2020. The turnaround in this case has come only in the month of September/October, 2020. There is no explanation as to why the formula of 78%-22% prescribed by the Notification dated 07.09.2007 was not adopted by the authority for the BTC area immediately after the same was issued by the Govt. of Assam. Even the respondent No.8 did not object to the criteria followed by the BTC authorities until August, 2020. Secondly, the Notification dated 07.09.2007 was rendered in the fact situations noticed therein by striking a balance between the total number of Mills and total quantity of wheat applicable to the State of Assam keeping in mind the total Milling Capacity. Therefore, even if the said notification is not under challenge, if this Court finds that the interpretation sought to be given to the said notification would produce absurd result, thereby causing hardship to similarly situated mill owners in the BTC area, then there would be no impediment for this Court to read down the notification dated 07.09.2007 and interpret the same in a manner which would be in consonance with the principles of equality and fairness as envisaged by the Constitution of India.

15. For the reasons stated hereinabove, I am of the view that these writ petitions succeed and are hereby allowed. The respondent Nos.2, 3 and 4 are directed to consider the representations filed by the petitioners and work out a proper distribution criteria by taking into account, the total Milling Capacity of MCMs and RFM coming within the BTC area.

This exercise be carried out as expeditiously as possible, preferably within 4 (four) weeks from the date of receipt of a certified copy of this order. In doing so, it will be open for

the respondents to issue appropriate notification, laying down a proper and transparent formula of distribution.

Until such time, the above exercise is completed, the allotment criteria prevailing upto the month of August, 2020 be restored.

16. It is needless to mention herein that the percentage, as worked out in the Notification dated 07.09.2007, viz. 78% - 22% need not be applied for the Mills located within the BTC area.

17. The writ petitions stand disposed of accordingly.

JUDGE

Comparing Assistant