

GAHC010047172021



2024:GAU-AS:8170

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

Case No: WP(C)/1924/2021

RAM PRABESH MAHATO AND 11 ORS
S/O- SHREE MAHATO
R/O- SALBARI
P.O. AND P.S. NOONMATI
DIST.- KAMRUP (M)
GHY
PIN- 781020
ASSAM

2: LALAN SINGH
S/O- LT. DEO NARAYAN SINGH
R/O- KARBI NAGAR PATH
H.NO.6
P.O. BAMUNIMAIDAM
P.S. CHANDMARI
DIST.- KAMRUP (M)
GHY
PIN- 781021
ASSAM

3: RAJO DAS
S/O- LT. JANGLI DAS
R/O- PURBO JAYOTI NAGAR
H.NO. 69
P.O. AND P.S. NOONMATI
DIST.- KAMRUP (M)
GHY
PIN- 781020
ASSAM

4: SIV NATH SAH
S/O- LT. RAM SEVAK SAH
R/O- BISHNU RABHA NAGAR

H.NO. 6
P.O. AND P.S. NOONMATI
DIST.- KAMRUP (M)
GHY
PIN- 781020
ASSAM

5: SUSHIL SAHANI
S/O- LT. KISHORI SAHANI
R/O- PURBO JAYOTI NAGAR
H.NO. 69
P.O. AND P.S. NOONMATI
DIST.- KAMRUP (M)
GHY
PIN- 781020
ASSAM

6: PAPPU RAM
S/O- LT. SUKHDEO RAM
R/O- L.B.ROAD NEW GUWAHATI
H.NO. 9
P.O. AND P.S. NOONMATI
DIST.- KAMRUP (M)
GHY
PIN- 781020
ASSAM

7: DHARMENDRA RAY
S/O- SEKHAR RAY
R/O- PRAG DAS PATH ANANDA NAGAR
H.NO. 62
P.O. BAMUNIMAIDAM
P.S. CHANDMARI
DIST.- KAMRUP (M)
GHY
PIN- 781021
ASSAM

8: BINOD KUMAR DAS
S/O- MEGHAN DAS
R/O- PRAG DAS PATH ANANDA NAGAR
H.NO. 62
P.O. BAMUNIMAIDAM
P.S. CHANDMARI
DIST.- KAMRUP (M)
GHY
PIN- 781021
ASSAM

9: AMARJIT SAH
S/O- LT. LAXMI SAH
R/O- NOOR NASAR SALBARI-03
H.NO. 18
P.O. AND P.S. NOONMATI
DIST.- KAMRUP (M)
GHY
PIN- 781020
ASSAM

10: CHAKRA BAHADUR
S/O- LT. CHANDRRA BAHADUR
R/O- GANESH MANDIR
H.NO. 03
BYE LANE NO.8
P.O. AND P.S. NOONMATI
DIST.- KAMRUP (M)
GHY
PIN- 781020
ASSAM

11: CHANDAN SINGH
S/O- LT. UDGAR SINGH
R/O- PURBO JAYTOI NAGAR
BYE LANE-7
H.NO. 1
P.O. AND P.S. NOONMATI
DIST.- KAMRUP (M)
GHY
PIN- 781020
ASSAM

12: MADHAV PRASAD YADAV
S/O- LT. PHUL CHAND YADAV
R/O- LALGANESH
H.NO.7 GOBINDO NAGAR
DIST.- KAMRUP (M)
GHY
PIN- 781034
ASSAM
VERSUS

FOOD CORPORATION OF INDIA AND 6 ORS
REP. BY (CHAIRMAN CUM MANAGING DIRECTOR) 16-20
BARAKKHAMBA LANE
NEW DELHI- 110001

2:EXECUTIVE DIRECTOR NORTH EAST ZONE
FOOD CORPORATION OF INDIA
G.L.PUBLICATION BUILDING
G.S.ROAD
GHY-08

3:GENERAL MANAGER
FOOD CORPORATION OF INDIA
REGIONAL OFFICE ASSAM PALTAN BAZAR
GHY-08

4:DIVISIONAL MANAGER
FOOD CORPORATION OF INDIA
ULUBARI
MITRA BUILDING
GHY-07

5:MANAGER ACCOUNTS
FOOD CORPORATION OF INDIA
ULUBARI
MITRA BUILDING
GHY-07

6:MANAGER (IR)
FOOD CORPORATION OF INDIA
ULUBARI
MITRA BUILDING
GHY-07

7:MANAGER DEPOT
FOOD STORAGE DEPOT
NEW GUWAHATI
BAMUNIMAIDAM
GHY-21

Advocate for : MR A DASGUPTA

Advocate for : SC

F C I appearing for FOOD CORPORATION OF INDIA AND 6 ORS

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

For the petitioners	: Sri A. Dasgupta, Senior Advocate.
	: Ms. B. Das, Mr. B. Das, Advocates.
For the respondents	: Mr. P.K. Roy, Senior Advocate.
	: Ms. A. Chakraborty, Advocate.

Date of hearing : 03.06.2024, 06.08.2024, 13.08.2024,
: 14.08.2024.
Date of judgment : 19.08.2024.

JUDGMENT AND ORDER

(CAV)

Heard Mr. A. Dasgupta, learned senior advocate, assisted by Ms. B. Das, learned advocate for the petitioners. Also heard Mr. P.K. Roy, learned senior advocate, assisted by Ms. A. Chakraborty, learned advocate for the respondents.

2. In brief, the pleaded case of the petitioners is that they are handling workers of Food Corporation of India ('FCI' for short) and their work is for carrying food grains from one place to other. The petitioners are working in Gang No.3 of New Guwahati Food Storage Depot ('FSD' for short) of FCI. The petitioners are also called departmental labours. It is projected that each labour has to perform a minimum amount of job per day and those labour who perform more than the minimum job are entitled to have incentive.

3. The further pleaded case of the petitioners is that a gang consists of 12 to 14 labourers and the labourers perform their duty under the leadership of labour *sardar*. It is projected that when the bags containing food grains get damaged while loading and unloading, the food grains from torn bags are taken out in the open space then the food grains are refilled in new bags and some torn bags are repaired and food grains are also re-packed in those repaired bags.

4. In the writ petition, the petitioners have narrated the nature of financial incentives to which a labourer would be entitled to for doing extra work as well as the procedure of how the work done is documented, how the bills are

prepared and paid. The further pleaded case of the petitioners is that the auditor of FCI had submitted the audit report of SFD, New Guwahati on 25.10.2014 for the year 2012-13 and 2013-14, which disclosed that 1,82,15,378 food grain bags were handled in the year 2012-13 and incentive wages of Rs.2509.55 lakh was paid and that 1,46,27,464 food grain bags were handled in the year 2013-14 and incentive wages of Rs.2951.69 lakh was paid. In the opinion expressed by the auditor, 57,521 new food grain bags were issued, but there was excess certification of work in respect of filling of 11,85,791 bags, which was quantified at Rs.330.84 lakh against 28 gangs.

5. Accordingly, from the labourers, the FCI authorities had initiated a recovery process for recovery of the alleged excess amount paid to the labourers. In respect of those labourers who were still working, recovery was made from current wages from the month of November, 2020. However, in respect of those labourers who had retired, the recovery was made from their respective retirement dues. The learned senior advocate for both sides are *ad idem* that the full recovery has been made in the meantime.

6. The further pleaded case of the petitioners is that in the pay-slips, the recovered amount was shown under the head of misc. recovery and therefore, the labourers had written letter dated 05.01.2021 to the Divisional Manager. On receipt of the same, the Manager, IRL, FCI had responded by a letter dated 29.01.2021, (allegedly served on 27.02.2021), wherein the details of deduction was indicated.

7. Accordingly, relying on the ratio of the case of *State of Punjab v. Rafiq Masih (Whitewasher)*, (2015) 4 SCC 334, by filing this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for setting aside and quashing of the impugned letter no. IR/DO-Ghy/ CAG-Observation/

2015-16/783 dated 29.01.2021 and towards interim relief, prayer was made to stay the operation of the said letter dated 29.01.2021.

8. The respondents have contested the writ petition by filing their affidavit-in-opposition. The respondents had justified the recovery, based on audit report by the Comptroller and Auditor General of India. It was stated that during the period from October 2013 to March, 2014, the labourers had stitched 11,85,791 (eleven lakh eighty five thousand seven hundred ninety one bags and re-used for refilling food-grains. Moreover, it was projected that an in-house committee was constituted to investigate the matter and based on the CAG Audit report and Internal Committee's report, an initial recovery of Rs.5,000/- was made in the year 2016 from each labourer. Further recovery was commenced from the month of January, 2021. It has also been stated that the Labour Union has raised an industrial dispute under Industrial Disputes Act, 1947 and therefore, the petitioners cannot agitate the same issue in this writ petition. It has also been pleaded that till the time the affidavit-in-opposition was filed, out of Rs.3,29,98,935/- a sum of Rs.2,63,56,125/- had already been recovered.

9. That pursuant to the order dated 19.09.2023, passed in this writ petition, the respondents have filed an affidavit to bring on record the subsequent events of issuance of show-cause notice dated 30.10.2021, holding of inquiry and passing of order dated 31.12.2021 for recovery against fraudulent excess drawal of incentives by the writ petitioners.

10. The petitioners have filed an affidavit-in-reply where it has been pleaded that the enquiry was made against the petitioners during the pendency of this writ petition, without taking leave of this Court. Moreover, by heavily relying on the case of *Rafiq Masih (supra)*, it was further pleaded that recovery

of money from labourers after 5 (five) years was impermissible.

11. The learned senior advocate for both sides had made elaborate submissions spread over four dates and they have both submitted their respective written synopsis of submission, which is considered and made a part of the record.

12. The learned senior advocate for the petitioners has contended that that the audit report dated 25.10.2014 has quantified the excess incentive by only considering bags supplied by the FCI, but without taking into consideration the bags repaired by the labourers. A three member Internal Committee was constituted on 20.01.2015, which gave its report on 04.03.2015 and based on the audit report and report of the internal committee, recovery was initiated on and from the month of November, 2020, i.e. after 5 (five) years from the date of report and after 6 (six) years of alleged excess payment being made, which is not permissible in terms of ratio laid down in the case of *Rafiq Masih (Whitewasher)*, because the petitioners are Class-IV or Group-D labourers.

13. It was submitted that in the case of persons situated similarly to the present petitioners, being the case of *Nathuni Singh Sardar v. FCI & Ors., W.P.(C) 1094/2021, decided by this Court on 25.08.2021*, this Court had made certain observations and had restrained recovery of any sum from the salary of the said petitioners. Nonetheless, it was observed by this Court that the said order shall not preclude the respondents to hold disciplinary enquiry or proceeding against the petitioners of the said writ petition and/or from making recovery after giving reasonable opportunity of hearing to them.

14. It was submitted that although the petitioners were not a party to

the said case of *Nathuni Singh Sardar (supra)*, the FCI authorities, without taking leave of this Court had issued show-cause notice to the petitioners and when the said fact was brought to the notice of this Court, this Court had deprecated such action vide order dated 19.09.2023, passed in this writ petition. However, it has been submitted that in the meantime, the entire recovery has been made from the petitioners. It has been submitted that the issuance of show-cause notice to the petitioners was illegal as the present petitioners were not parties in the case of *Nathuni Singh Sardar (supra)*.

15. It has been submitted by the learned senior advocate for the petitioners that on receipt of the show-cause notice, the petitioners had submitted their reply. Therefore, it was incumbent on the part of the respondent authorities to appoint an Enquiry Officer, and also appoint a Presenting Officer and Defence representative to represent the labour and due procedure of examination of management and defence witness ought to have been permitted.

16. It is also submitted that the labourers working under FCI are otherwise covered by Industrial Standing Orders. However, as the respondents had apparently issued show-cause notice in terms of order passed in the case of *Nathuni Singh Sardar (supra)*, the respondents should have followed due process of law. It has also been submitted that without drawing up proceeding against the petitioners in the manner as envisaged under the appropriate Industrial Standing Orders, in the order dated 31.12.2021, the petitioners were given advise to file appeal before G.M.(R), R.O., Guwahati.

17. It is further submitted that as fraud was alleged, the question of fraud cannot be decided in a disciplinary proceeding. It is also submitted that as per CAG audit report, the excess payment was made in connivance with other

officials of FCI, but the respondent authorities did not make any attempt to draw up any proceeding on any other FCI staff and officers but recovered money from the petitioners by making them scapegoat.

18. It is also submitted that the Divisional Manager was the authority who had found fault with the petitioners and therefore issued show-cause notice to the petitioners and he was the person who received the reply of the petitioners and then he proceeded to hear the petitioners and passed recovery orders. Thus, the Divisional Manager was the judge of his own cause, which is illegal.

19. In support of his submissions, the learned senior advocate for the petitioners had cited the following cases, viz., (i) *A.K. Kraipak v. Union of India*, AIR 1970 SC 150, (ii) *Arjun Choubey v. Union of India*, AIR 1984 SC 1356, (iii) *Mangilal v. State of M.P.*, (2004) 2 SCC 447, (iv) *N.K. Bajpai v. Union of India & Anr.*, (2012) 4 SCC 653.

20. Per contra, the learned senior advocate for the respondents has made a short oral submission and has submitted a written note of submission. It was submitted that in the writ petition, the petitioners have only assailed the show-cause notice and not the final order dated 31.12.2021, which was brought by the respondents on record by filing affidavit-in-opposition. Hence, it has been submitted that after the show-cause notice has been acted upon, this writ petition has been rendered infructuous.

21. It was submitted that subject to correction, as per his memory, recovery proceedings was drawn up against more than 120-130 labourers. The said labourers had filed about 10 (ten) writ petitions, which were registered and numbered as W.P.(C) nos. 1094/2021, 1600/2021, 1924/2021, 1938/2021,

2281/2021, 2311/2011, 2640/2021, 2737/2021, 2743/2021 and 3159/2021. It has been submitted that out of these ten writ petition, four writ petitions, being W.P.(C) nos. 1094/2021, 2281/2021, 2311/2021 and 3159/2021 were heard and decided by this Court by order dated 25.08.2021. Therefore, as per his instructions, the officials of FCI took a view that as all writ petitioners and labourers were similarly situated, it would be in the fitness of things that all the concerned labourers should be equally treated, for which show-cause notice was issued to all those labourers who had allegedly fraudulently enriched themselves. In this regard, it was submitted that the non-obtaining of leave of this Court was an inadvertent error without any intent to undermine the majesty of this Court.

22. Materials available on record have been perused. Also considered the rival submissions made at the Bar.

23. At the outset, it may be mentioned that the learned senior advocate for the petitioners has not disputed that the affected labourers had filed ten writ petitions out of which four writ petitions, being W.P.(C) nos. 1094/2021 [*Nathuni Singh Sardar (supra)*], 2281/2021, 2311/2021 and 3159/2021 were heard and decided by this Court by separate orders passed on 25.08.2021. Therefore, the explanation tendered by the learned senior advocate for the respondents for issuing show-cause notice upon the petitioners in remaining six writ petitions is a plausible explanation. In this regard, the Court is of the considered opinion that normally, by following rule of precedence, if the petitioners in all the ten writ petitions are similarly situated and four out of ten writ petitions were decided in same manner as the case of *Nathuni Singh Sardar (supra)* was decided, there is every likelihood that unless there was any binding precedent which had otherwise decided the issue involved in the case of

Nathuni Singh Sardar (supra), the fate of remaining six writ petitions would have been same.

24. Be that as it may, during the pendency of this writ petition, the Divisional Manager, FCI had issued show-cause notices dated 30.10.2021 to the petitioners. In course of his submissions, the learned senior advocate for the petitioners has admitted that the petitioners had submitted their respective written show-cause reply. Though the learned senior advocate for the petitioners has submitted that the hearing conducted by the Divisional Manager, FCI was perfunctory without giving any opportunity to the petitioners to adduce defence evidence, but from the contents of the orders dated 31.12.2021, passed by the Divisional Manager, FCI, by which recovery of full amount paid to the petitioners were ordered, it appears that petitioners were heard.

25. Under such circumstances, the Court is of the considered opinion that no purpose would be served to interfere with the letter of intimation bearing no. IR/DO-Ghy/ CAG-Observation/ 2015-16/783 dated 29.01.2021, issued by the Manager (IR-L), Divisional Officer, FCI, Guwahati.

26. As the show-cause notice dated 30.10.2021, issued to the petitioners by the Divisional Manager, FCI, as well as the order dated 31.12.2021, passed against the petitioners by the Divisional Manager, FCI, ordering recovery, are not under challenge, there is no reason for the Court to examine those show-cause notices and orders. These documents were brought on record by the respondents by filing affidavit on 22.12.2023, in pursuance to the order dated 19.09.2023, passed by this Court.

27. For the same reason, i.e. developments subsequent to issuance of the letter dated 29.01.2021, it would be only an academic exercise to examine

and discuss the four herein before referred judgments cited by the learned senior advocate for the petitioners.

28. Therefore, in light of the discussions above, the Court is constrained to hold that as separate show-cause notices dated 30.10.2021 have been issued to the petitioners by the Divisional Manager, FCI, pursuant to which separate orders dated 31.12.2021 have been passed against the petitioners by the Divisional Manager, FCI, ordering recovery, the challenge to the impugned letter of intimation bearing no. IR/DO-Ghy/ CAG-Observation/ 2015-16/783 dated 29.01.2021, issued by the Manager (IR-L), Divisional Officer, FCI, Guwahati has been rendered infructuous. Resultantly, this writ petition stands dismissed.

29. Under the circumstances, the parties are left to bear their own cost.

JUDGE

Comparing Assistant